Chapter 36 ZONING[1]

ARTICLE I. IN GENERAL

Sec. 36-1. Title.

This chapter shall be known as the "Zoning Regulations of the Town of Lake Lure, North Carolina."

(Code 1989, § 92.001; Ord. of 1-22-1991)

Sec. 36-2. Authority and enactment.

The town council, in pursuance of the authority granted by G.S. 160D, hereby ordains and enacts into law the following articles and sections for the purpose of promoting the health, safety, morals and general welfare of the community.

(Code 1989, § 92.002; Ord. of 1-22-1991; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-3. Jurisdiction.

The provisions of this chapter shall be applicable to all land within the corporate limits of the town, as established on the map entitled "Official Zoning Map, Town of Lake Lure." No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located, except as provided in this chapter.

(Code 1989, § 92.003; Ord. of 1-22-1991)

Sec. 36-4. Word interpretation.

(a) Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

(b) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board of adjustment means the town board of adjustment, and shall include both regular and alternate members.

Building includes the term "structure."

Chapter means the zoning ordinance of the town.

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[1]**Federal law references—**Preservation of local zoning authority concerning wireless telecommunications facilities, 47 USC 322(c)(7); limited federal preemption of state and local zoning laws affecting amateur radio facilities, Memorandum Opinion and Order, PRB-1, 101 FCC 2d 952 (1985) and 47 CFR 97.15(b); Religious Land Use and Institutionalized Persons Act, 42 USC 2000cc et seq.

State law reference(s)—Grant of zoning powers to local governments, G.S. 160D-702; regulation of particular uses and areas, G.S. 160D-901 et seq.; floodplain regulations, G.S. 160D-923; adoption of stormwater control regulations, G.S. 160D-925; wireless telecommunication facilities, G.S. 160D-930 et seq.; historic preservation, G.S. 160D-940 et seq.

Lot includes the term "plot" or "parcel."

May is permissive.

Person or *applicant* includes a firm, association, organization, partnership, corporation, company, trust, individual, or governmental unit.

Shall is mandatory.

Street includes the terms "road" and "highway."

Town council means the Lake Lure town council.

Used or *occupied,* as applied to any land or structure, includes the words "intended, arranged, or designed to be used or occupied."

Zoning and planning board means the town zoning and planning board.

Zoning map means the official zoning map of the town.

(Code 1989, § 92.004; Ord. of 1-22-1991)

Sec. 36-5. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Access structure means a uncovered staircase, walkway or handicap access way no greater than four feet in width and constructed above grade at an elevation no greater than reasonably required by topography to connect the principal structure to the street or shoreline.

Accessory building means a detached building subordinate to the principal building on a lot and used for purposes customarily incidental to the principal building and located on the same lot.

Accessory commercial event venue means an event venue that is considered an accessory use for the following primary uses:

(1) Bed and breakfasts (if expressly permitted in the special use permit);

(2) Common amenities (if expressly permitted in the special use permit);

(3) Inns;

(4) Churches;

(5) Conference and meeting facilities;

(6) Restaurants;

(7) Hotels;

(8) Lodges;

(9) Motels;

(10) Outdoor recreational facilities; and

(11) Commercial recreational facilities.

No additional permit is required for this accessory use.

Accessory residential event venue means a single-family home or a residential vacation rental that is leased or operated for profit as an accessory use for special events that are typically private in nature, including, but not limited to, weddings, reunions, corporate retreats, and religious or political gatherings.

Accessory use means a use customarily incidental and subordinate to the principal use and located on the same lot with such principal use.

Adult entertainment establishment means any business or other activity which, in order to comply with G.S. 14-190.14 or 14-190.15, and amendments or supplements thereto, is required to limit its patronage or attendance to persons over the age of 18 years.

Apartment means part of a building consisting of a room intended, designed or used as a residence by an individual or single family.

Arterial street means a major roadway serving as a primary street through the town.

Bed and breakfast establishment means a residence which provides temporary lodging and a morning meal to transients for compensation.

Board of adjustment means a committee of citizens appointed by the town council to hear quasi-judicial zoning matters such as variance and special use permit petitions, as well as appeals from a decision of the zoning administrator, or his duly authorized representative, during a evidentiary hearing.

Boardinghouse means any building or portion thereof containing not more than five guest units where rent is paid and guests are transient. The term "boardinghouse" is used interchangeably with the term "roominghouse."

Brewery means a facility that brews and packages beer or other fermented malt beverage for distribution locally and/or regionally. A brewery may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Brewpub means a restaurant-brewery that brews small quantities of craft beer, ale, porter or other fermented malt beverages and sells at least 75 percent of it on-site along with food in accordance with state and local laws.

Buffer strip means an area of land, whether landscaped or in its natural state, consisting of evergreen trees and shrubs used to physically separate or screen one use, structure, or property from another so as to visually shield or block noise, light, or other nuisances.

Building means any structure constructed for the shelter, or enclosure of persons, animals, or property of any kind, including, but not limited to, sheds, carports, guest cottages, and other outbuildings, and also including any extension or extrusion of the structure such as balconies, decks, porches, roof overhangs, and foundations. The connection of two buildings by means of an open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building.

Building and grading envelope (BGE) means the limits of disturbance affected by the establishment of a building and grounds. All buildings, walls, lawns, driveways, site amenities, septic fields, and associated disturbance from construction activity shall be confined within this zone. The BGE may be sited in one mass or apportioned into several smaller compounds connected by walks or drives. Provided, however, alternative septic systems shall not be included within the BGE where it is demonstrated that any disturbance associated with them is minimal.

Building coverage area means the total area under a building, including any extension or extrusion of the building such as decks, porches, roof overhangs, and foundations.

Building footprint means the total area directly beneath a building as measured from the exterior faces of exterior walls, excluding roofless wooden decks, roof overhangs, and uncovered walkways extending from the

building, but including uncovered porches of masonry construction, whether roofed or not, and all porches with roofs.

Building height means the vertical distance measured from the average finished grade at the building foundation line to the highest point of the roof ridgeline.

Building mass means the building height multiplied by the building width and building length.

Building scale means the relationship of a particular building, in terms of building mass, to the building mass of other nearby and adjacent buildings.

Caliper means the diameter measurement of small tree trunks, taken at six inches above the average ground level.

Camp means an establishment which provides simple group lodging accommodations such as cabins, group eating facilities such as a dining hall, accessory buildings, and organized religious, recreational or educational programs for groups of children or adults and families in mostly an open air, out-of-doors setting where the natural environment is used to contribute to the occupants' mental, physical, social, and spiritual growth. The term "camp" shall include, but shall not be limited to, camps with special program emphasis, such as horseback riding, conservation, music, sports, and religious instruction.

Campground means a plot of ground upon which two or more campsites are located, established, and maintained for occupancy by camping units as temporary living quarters for recreation, education or vacation purposes.

Campground, tent, means a campground designed for use of tents by persons in vehicles. This shall not include the camping of persons in vehicles not designed for camping purposes. Such campgrounds are dependent upon a service building for toilet and lavatory facilities.

Campground, walk-in, means a camping area designed exclusively for those persons which walk, bicycle, or use some other non-motorized means of access. Such areas shall contain only service roads for maintenance of campground facilities and shall not be used for parking associated with camping. This shall be a tent use area only. Such campgrounds are dependent upon a service building for toilet and lavatory facilities.

Canopy coverage means the area of the subject property that is covered by the foliage of trees.

Child care center means a use of land and buildings to provide group care for children as defined and regulated by the state department of health and human services (NCDHHS). A family child care home, as defined and regulated by the NCDHHS, is not included in this definition.

Clearable area means an area representing the maximum extent of disturbance resulting from construction, including the following:

(1) A zone that extends a maximum of 15 feet from the boundary of any structures (buildings, deck, etc.), defined by an outer clearable area line.

(2) A utility easement zone no more than eight feet in width and no longer than the required length of the easement, defined by an outer clearable area line. Clearable areas may extend into setback areas. See Figure 1.

Clearcutting means the removal of any significant trees in excess of the numbers allowed by the provisions of this chapter, and/or in locations other than those allowed by the provisions of this chapter.

Commercial building means any building or proposed building with a primary use other than a residential use, as defined herein, or any building or proposed building using "Type I" or "Type II" construction, as defined per

the state building code, or any building required to have an internal fire suppression system, such as a sprinkler system, per the state building code.

Commercial shopping center means two or more commercial uses planned, constructed, and managed as a single entity, sharing common sidewalks, driveway entrances, and signage; and where customer and employee parking is provided on-site as well as provisions for goods delivery entrances separate from customer access entrances.

Commercial use means activity involving the sale or rental of goods, services, or accommodations such as guest units for compensation.

Common amenities means clubhouses (not to include lodging facilities), gazebos, tennis courts, swimming pools, amphitheaters, parks, or other facilities or structures accessory to one or more residential developments, intended to provide recreational, cultural or social enrichment solely to persons residing within the residential development and their guests and not to the general public.

Community Theatre an establishment owned and operated by a bona fide nonprofit organization that is engaged solely in the business of sponsoring or presenting performing arts events to the public.

Community character means the qualities of the protracted area within the corporate limits such as the natural environment relative to topography, hydrology, flora, open space, and green area; the built environment relative to architectural style, building mass, and type of housing; and the public facilities, infrastructure, and services.

Community development director means the person charged with administration of this chapter. Also, sometimes referred to herein as "director." Unless specified otherwise, the terms "community development director" and "director" include the designee thereof.

Construction boundary means on a site plan the area bounded by the outline of the proposed structure, including the building foundation, decks, septic field and driveway, but not including stairs or walkways associated with paths, boardwalks, ramps, and the like. See Figure 1.

Convention Center a publicly owned or operated establishment that is engaged in the business of sponsoring or hosting conventions and similar large gatherings, including auditoriums, civic centers, convention centers, and coliseums.

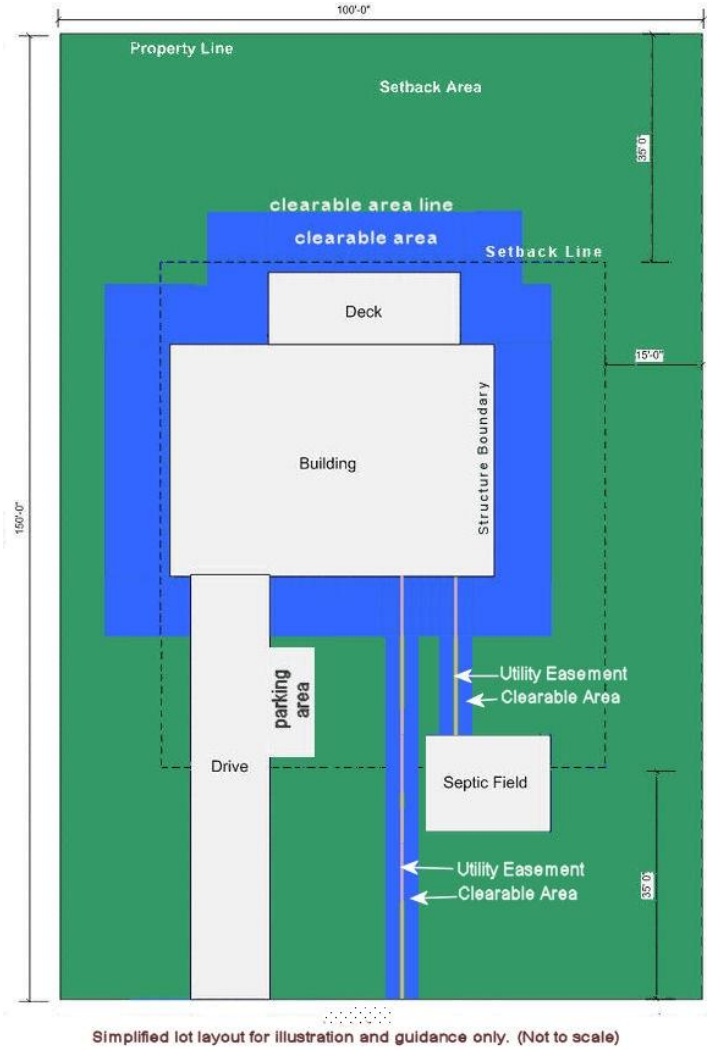


Figure 1: Individual Lot Parameters

Dbh means the diameter of a tree trunk measured at breast height, 4½ feet above the average ground level.

Density means the number of dwelling units or guest units per land area.

Design standards means defined parameters to be followed in site development and/or building construction.

Development means the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill; or any use or extension of the use of land.

Development review committee (DRC) means a group consisting of town staff and professional consultants, such as an engineer or landscape architect, selected by the community development director on an as needed basis to review and make recommendations regarding developments such as commercial developments, commercial planned unit developments, residential planned unit developments, subdivisions, land clearing, land disturbance, and/or development of any kind on steep slopes.

Diseased tree means a tree in which fungi, bacteria, mycoplasms, and/or viruses have invaded and infected causing poor growth and weak appearance, disruption of plant processes, distortion of certain tree parts and strain or death of the tree.

Distillery means a facility that manufactures and distributes spirituous beverages. A distillery may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Duplex means a building or portion thereof used or designed as two separate dwelling units.

Dwelling means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home, mobile home, or recreational vehicle, which is used solely for a seasonal vacation purpose.

Dwelling unit A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Dwelling unit density means the number of dwelling units per land area.

Easement means a grant by a property owner of a strip of land for specified purpose and use by the public, a corporation or persons.

Erosion control measures means any measures designed to prevent, retard, or mitigate accelerated erosion and subsequent sedimentation of streams, lakes, and other natural watercourses.

Event venue means a site or facility that is leased or operated for profit for special events that are typically private in nature, including, but not limited to, weddings, reunions, corporate retreats, and religious or political gatherings.

Excavation means a land disturbing activity involving the mechanical removal of earth material.

Excessive removal of trees means the removal, by any means, of all or substantially all the trees and/or woody shrubs from one acre or 25 percent of the acreage of a lot or tract of land, whichever is greater.

Family means one or more persons occupying a dwelling unit, provided that, unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants whose primary employment is on the premises may be housed on the premises without being counted as a family.

Family care home means a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons.

Fill material means a deposit of earth or other natural or manmade material placed by artificial means.

Filling means a land disturbing activity involving the placement of fill material, including the temporary stockpiling of fill material.

Fire hazard means a condition or set of conditions conducive to the unintended initiation and/or rapid spread of fires. On forested and/or brushy land such conditions include, but are not limited to, the accumulation of woody and other inflammable debris and overgrown underbrush.

Flammable species means any species of tree identified as such in the Lake Lure Tree Management Handbook.

Floor area ratio (FAR) means the gross floor area per gross lot area.

Forest area means a green area consisting of existing forest shown on a site plan and designated either for protection, for thinning, or for removal. When such a forest area is designated on any site plan as protected, all significant trees within it are considered protected trees.

Forest coverage. The forest coverage of a piece of property refers to the extent of forestation on the property. This coverage may be quantified by any of the following means:

(1) By analysis of the canopy coverage as seen in aerial photography;

(2) By calculation of the significant tree density on the property; or

(3) By other means deemed suitable by the tree protection officer. See Appendix B to this chapter.

Forestry activity means logging, timbering, and related forest maintenance activities undertaken on property that is taxed on the basis of its present-use value as forestland under G.S. ch. 105, art. 12 (G.S. 105-274 et seq.). The term "forestry activity" also refers to activity that is conducted in accordance with a forestry plan prepared or approved by a registered forester.

Forestry lands means lands that have been taxed previously on the basis of present-use value as forestry land under G.S. ch. 105, art. 12 (G.S. 105-274 et seq.) or that have been logged under a forestry plan prepared or approved by a registered forester.

Garage apartment means a part of a building in which a garage is located consisting of a room designed or used as a dwelling unit by an individual or single family.

Garden means a plot of ground where herbs, fruits, flowers, ornamentals or vegetables are cultivated.

Gardening means the cultivation of plants in any zoning district on lots solely for the use and/or consumption of the lot owner. No permit is required for this activity if the cultivated area is 2,000 square feet or less and located 50 feet or more from a body of water.

Gatehouses, guardhouses and security gates refers to structures, generally associated with resorts or subdivisions, for the purpose of controlling access to a private property, development, resort or subdivision, usually located in or across a road.

General development plan means a plan showing general land use, all individual uses and associated structures, building sites, land clearing, land disturbance, impacts of uses and structures, vehicular and pedestrian circulation, open space, green area, common areas, natural features, community facilities and utilities, and phasing for the tract of land to be developed.

Girdle means to inflict a cut or other damage to the bark of a tree such that the wound encircles the tree to sufficient depth and extent that the likely result will be the death of that tree.

Grading means any scraping, excavating or filling of the earth's surface or combination thereof.

Green area means an area of land designated on a site plan for conservation, preservation, landscaping, or reforestation.

Gross floor area means the total floor area enclosed within a building as measured from the exterior faces of exterior walls.

Gross lot area means the total area of land before rights-of-way, or any common areas, have been deducted from the overall area of land.

Group care facility means an establishment qualified for a license by the state which provides resident services to individuals of whom one or more are unrelated. The individuals are handicapped, aged or disabled, are

undergoing rehabilitation or extended care, and are provided services to meet their needs. The term "group care facility" includes group homes for all ages, half-way houses, and foster homes, but excludes family care homes.

Guest unit means a room in a boardinghouse, hotel, motel, inn, bed and breakfast, tourist court, residence hall, roominghouse, or lodge containing provisions for sleeping and sanitation and occupied, or intended to be occupied, by transients on a rental basis.

Guest unit density means the number of guest units per land area.

Handicapped person means a person with a temporary or permanent physical, emotional, or mental disability, including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments, but not including mentally ill persons who are dangerous to others as defined in G.S. 122-58.2(11)b [now see G.S. 122C-3(11)b].

Hazardous tree means a tree that meets one or more of the following criteria:

(1) It has a structural defect which predisposes it to fall or drop limbs (e.g., it is a dead tree, has trunk decay, dead branches, or V-crotches), and it is located dangerously near a target such as a structure, road, walkway, campsite or other area where property exists or people reside.

(2) Though structurally sound, it is of a species prone to flammability in dry weather, and is located within 30 feet of a flammable structure where property exists or people reside. See the Lake Lure Tree Management Handbook.

(3) Though structurally sound, it interferes with the routine activities of people, such as obstructing visibility for motorists or interfering with utilities.

Historic structures means structures listed on an official state or federal register recognizing the structure as historically significant.

Home occupation means any profession or occupation conducted entirely within a dwelling and/or a building which is customarily accessory thereto, by a family member or occupant permanently residing on the premises, that is incidental to the primary use of the dwelling as a residence.

Hospice home means a state-licensed establishment which provides medical services to terminally ill individuals residing therein.

Hotels and motels.

(1) The term "hotels and motels" means a building or group of buildings occupied as a temporary abiding place for individuals in which the rooms are usually occupied singularly for hire and in which rooms no provisions for cooking are made. Hotel or motel may include a restaurant and/or on premise consumption of alcohol, including spirituous liquors with a valid NC ABC license.

(2) A hotel or motel may include structures located on separate parcels so long as:

   a. They are contiguous and interconnected by means of one or more viable pedestrian walkways;

   b. There are common amenities; and

   c. The entire campus functions as a single enterprise.

(3) An on-site management is required for all hotels and motels.

(4) The term "hotels and motels" includes inns, but does not include lodges, bed and breakfast establishments or residential vacation rentals which are otherwise defined herein.

Impact analysis means a study to determine the potential direct or indirect effects of proposed uses and/or structures of a proposed development on utilities, surrounding and adjacent uses, community facilities and services, traffic and pedestrian circulation, and the natural environment of the community or neighborhood in which to be located.

Impervious area means a portion of a lot covered with material that prevents absorption of stormwater into the ground.

Impervious material means any material that prevents absorption of stormwater into the ground.

Improvements means any permanent structure that becomes part of or affixed to real estate, whether placed above or below land or water.

Individual sewer system means any septic tank, ground absorption system, privy or other facility serving a single source or connection and approved by the county health department.

Individual water system means any well, spring, stream or other source used to supply a single connection.

Institution means an organization, establishment, foundation, society, or the like, devoted to the promotion of a particular cause or program of public, educational, or charitable character.

Institutional use means a non-profit, religious, or public use, such as a church, library, public or private school, hospital, or government owned or operated building, structure, or land used for public purpose.

Junkyard means any land or land and structure in combination used for the storage, baling, packing, sorting, handling, disassembling, purchase or sale of any materials which are used, salvaged, scrapped or reclaimed, but are capable of being reused in some form, including, but not limited to, metals, bones, rags, fibers, paper, cloth, rubber, rope, bottles, machinery, tools, appliances, fixtures, utensils, lumber, boxes, crates, pipe, pipe fittings, tires, motor vehicles, and motor vehicle parts.

Lake structure means anything constructed or erected within the lake boundary including any pier, dock, boathouse, slip, ramp, swimming float, sea wall, or similar facility whether fixed or floating or a combination thereof, used primarily as a stationary facility for the mooring or housing of watercraft and associated items; and, used for lake access and related recreational activities. Lake structures shall not be used as living quarters. Lake Structures built within the boundary of the waters of Lake Lure at full pond will be regulated by the Town's Lake Structure Regulations. Lake Structures built within the boundary of other lakes or navigable waters will be regulated by the Town's Zoning Regulations.

Land clearing means tree removal, underbrushing, grubbing, or any activity that removes live woody plants such as trees and shrubs.

Land clearing authorization means authorization granted by the tree protection officer allowing a property owner to perform specified land clearing, grading, and/or other related activities which have neither been exempted from regulation nor previously approved under appropriate town regulations.

Land disturbance means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance or other construction or maintenance activity, including chemical applications or other techniques, that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Land disturbing activity means any grading of land, any clearing of vegetation, and any construction or rebuilding of a building or structure. The term "land disturbing activity" shall not include activities such as ordinary maintenance and landscaping operations, individual home gardens, the upkeep of yard and grounds, repairs, and the cutting of firewood for personal use.

Live-work unit means a building or space within a building that is used jointly for office/business uses allowed in the applicable zoning district and for residential use.

Lodge.

(1) The term "lodge" means a group of attached or detached buildings containing individual living or sleeping units, designed or used temporarily by automobile tourists or transients. Cooking facilities may be included within living units.

(2) A lodge may include structures located on separate parcels so long as:

a. They are contiguous and interconnected by means of one or more viable pedestrian walkways;

b. There are common amenities; and

c. The entire campus functions as a single enterprise.

(3) An on-site management is required for all lodges.

(4) The term "lodge" includes auto courts and motor lodges, but does not include hotels and motels, bed and breakfast establishments or residential vacation rentals which are otherwise defined herein.

Loft means an upper floor above a dwelling unit or hotel guest room having its only access from within that unit.

Lot means 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 entity for the transfer of title.

Lot depth means the average horizontal distance between front and rear lot lines as measured along the side lot lines.

Lot of record means any lot for which a plat has been recorded in the register of deeds office of the county, or described by metes and bounds, the description of which meets the standards of the town's regulations.

Lot width means the distance between side lot lines measured at and parallel to the front setback line.

Marina means an establishment with a lake front location for the rental of boat slips or dock space; rental, sale or repair of boats, boat motors and accessories; and the sale of marine fuel and lubricants, bait and fishing equipment and the like.

Marine sales and service facility means an establishment for the sales, rental and repair of boats, boat motors and accessories, including fishing equipment and supplies, and open or enclosed storage of boats and boat trailers.

Micro-brewery means an independently owned facility that brews craft beer, ale, porter or other fermented malt beverages in quantities up to 15,000 barrels per year with at least 75 percent of its product sold on-site. A micro-brewery may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Micro-distillery means an independently owned artisan facility that produces up to 30,000 gallons of craft spirituous beverages per year. A micro-distillery may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Micro-winery means an independently owned artisan facility that produces up to 30,000 gallons of craft wine, cider, or other fermented fruit beverage per year. A micro-winery may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Mobile Food Vendor means a readily movable trailer or motorized wheeled vehicle, with a valid DMV license tag, equipped to serve food. It shall not be considered as a restaurant.

Mobile home means a factory-assembled portable housing unit, or a portion thereof, built on a chassis and intended for use as a dwelling unit, and not constructed in accordance with the standards of the state building code for one- and two-family dwellings. A mobile home is designed to be transported on its own chassis and has a measurement of 40 feet or more in length and eight feet or more in width. A mobile home shall be construed to remain a mobile home whether or not wheels, axles, hitch, or other appurtenances of mobility are removed, and regardless of the nature of the foundation provided. All vehicles which are designated mobile homes by the Uniform Standards Code for Mobile Homes Act shall be considered mobile homes. A mobile home shall not be construed to be a travel trailer or other form of recreational vehicle.

Mobile home park means any premises where two or more mobile homes are parked for living and sleeping purposes, or any premises used or set apart for the purpose of supplying to the public parking space for two or more mobile homes for living and sleeping purposes, and which include any buildings, structures, vehicles or enclosures used or intended for use as part of such mobile home park.

Modular housing means a form of manufactured housing that meets the construction standards of the state building codes for one- and two-family dwellings regardless of how the unit or its components are transported to the site.

Multifamily dwelling means a building, or portion thereof, containing three or more dwelling units used or designed so that each unit is a separate residence for one family.

Nano-brewery means an independently owned facility that brews craft beer, ale, porter, or other fermented malt beverages in quantities up to 1,000 barrels per year in accordance with state and local laws for on-site consumption and where food is not necessarily provided.

Natural ground surface means the ground surface in its original state before any land disturbing activity.

Neighborhood character means the qualities of the zoning district and all adjoining zoning districts such as the natural environment relative to topography, hydrology, flora, open space, and green area; the built environment relative to architectural style, building mass, historic structures, and type of housing; and the public facilities, infrastructure, and services.

Net density means the maximum number of dwelling units or guest units permitted on a lot after access areas such as road rights-of-way have been subtracted from the land area.

Net floor area means the total floor area enclosed within a building, including interior balconies and mezzanines, exclusive, however, of stairways, elevator shafts, and enclosed parking areas, as measured from the exterior faces of exterior walls.

Nonconforming use means any parcel of land, or use of land, building or structure existing at the time of adoption of the ordinance from which this chapter is derived, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

Notice means a formal legal notification of either a public hearing on a proposed zoning amendment, whether a map or text amendment, or a quasi-judicial hearing on a variance, special use permit, or appeal petition.

Nursing home means an institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A nursing home is a home for chronic or convalescent patients who do not usually require special facilities, such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A nursing home provides care for persons who have remedial ailments or other ailments, for which medical and nursing care is indicated.

Open space means any area of land or water essentially unimproved and set aside, designated, or reserved for conservation, preservation and/or passive recreation.

Parking area means any public or private area, inside, under, or outside a building or structure, designed and used for temporary or permanent storage of motor vehicles, including parking lots, garages, private driveways, and legally designated areas of public streets.

Parking space means an area for parking a vehicle plus the necessary access space located outside the dedicated street right-of-way and providing vehicular access to a street or alley.

Parks means an area developed either for passive or active recreational activities, including, without limitation, walkways, benches, preserved natural areas, open fields, multi-use courts, swimming and wading pools, amphitheaters, etc. The term "park" shall not include zoos, travel trailer parks, amusement parks, or vehicle, equestrian or dog racing facilities.

Passive recreation means recreational activities that have minimal impact to the natural environment, such as hiking, running, biking, wildlife observation, photography, fishing, swimming, picnicking, lake access and other similar uses.

Permitted use means any use allowed in a zoning district by right and subject to the restrictions applicable to that zoning district as specified in the zoning regulations of this chapter as interpreted by the zoning administrator.

Planned unit development means a development where more than one principal residential building is to be constructed on a single tract, or any residential complex containing nine or more dwelling units on a single tract, or any residential building with a gross floor area of 15,000 square feet or more.

Primary event venue means a commercial event venue for which hosting commercial events is not considered an accessory to any other use.

Primary use means the legal predominate activity or function of a structure, or the intended predominate activity or function of a structure.

Principal building means a building in which the principal use of the lot is conducted.

Principal use means the legal predominate use of a lot.

Private Club a club establishment that qualities under Section 501(c) of the Internal Revenue Code, as amended, 26 U.S.C. §501(c).

Private drive (driveway) means a private access not intended to be a public ingress or egress. Private drives are intended to provide direct access from one lot or building site to a publicly or privately dedicated and maintained street. However, a private drive may provide access for up to three residential lots provided it meets the requirements of section 28-72. Private drives shall be excluded from the definition of the term "street." The term "private drive" shall include the term "driveway."

Produce stand means a retail establishment that offers for sale items limited to regionally produced fruits, vegetables, preserves, relishes, jams and/or jellies, handmade crafts, and similar products, but shall not include foods canned in metal containers. Merchandise for sale shall not be displayed outside the building.

Protected forest area means a green area consisting of existing forest designated for protection on a site plan. All significant trees within such an area are protected trees.

Protected tree means any tree marked for protection, or any significant tree not expressly marked for removal in a tree protection plan.

Protective boundary means a substantial visual screen, such as an orange barrier fence, sufficient to clearly identify and set apart a protected tree or protected forest area and the associated root protection zones.

Public hearing means a gathering of elected or duly appointed town officials announced in advance by public notice and open to the public for participation.

Public meeting means a gathering of elected or duly appointed town officials announced by public notice and open to the public.

Published notice means the advertisement of a public hearing or public meeting in a paper of general circulation indicating the time, place, and nature of said hearing or meeting where the application and pertinent documents may be inspected.

Qualified licensed professional means a licensed professional in a discipline relevant to the task at hand, whose knowledge and capability to successfully carry out that task have been amply demonstrated through his certified practical experience in that discipline and in successful completion of previous tasks similar to the one at hand.

Recreation facility means a place designed and equipped for the conduct of sports and leisure time activities.

Recreation vehicle (RV) means a vehicular unit, which is designed as a temporary dwelling for travel, recreational, and vacation use, and which is either self-propelled, mounted on, or pulled by another vehicle. The term "recreation vehicle" includes, but is not limited to, a travel trailer, camping trailer, truck camper, motor home, fifth-wheel trailer, or van.

Recreational vehicle, dependent, means a recreational vehicle which is dependent upon a service building for toilet and lavatory facilities.

Recreational vehicle, independent, means a recreational vehicle which can operate independently of connections to sewer, water and electric systems. An independent recreational vehicle may contain a water flushed toilet, lavatory, shower and kitchen sink, all of which are connected to water storage, greywater storage, and sewage holding tanks located within the RV.

Regional brewery means a facility that brews beer, ale, porter, or other fermented malt beverages in quantities up to 60,000 barrels per year.

Residential development means a subdivision or planned unit development. The term "residential development" is provided as a means of grouping the aforementioned uses into a category of uses, and is not intended to define a new use under the zoning regulations. Use of the term "residential development" shall not be deemed to add any uses to a zoning district which are not specifically listed as permitted uses or special uses within said district.

Residential use means the activity that actually takes place or is intended to take place on a lot where the principal use consists of operating and maintaining one or more dwelling units and the associated accessory uses.

Residential vacation rental means the rental of any single-family dwelling, or duplex, or any portion thereof, for occupancy, dwelling, lodging or sleeping purposes for any period of time less than 30 days. For purposes of this chapter, the term "residential vacation rental" does not include multifamily dwellings nor does it apply to duplexes other than those situated within the R-1, R-1A, R-1B, R-1C, R-1D, R-2 and M-1 zoning districts. The term "residential vacation rental" also does not include other transient lodging such as hotels and motels, lodges, and bed and breakfast establishments, which are otherwise authorized under these regulations and which have been duly permitted or which are legal nonconforming uses.

Residential vacation rental operator (operator) means the owner of a residential vacation rental or a responsible party designated by the owner to act for and on behalf of the owner in managing the property. If the operator is not the owner, the actions, undertakings and certifications of the operator shall be binding on the owner.

Residential vacation rental property means real property used or intended to be used for residential vacation rental purposes.

Restaurant means an establishment substantially engaged in the business of preparing and serving meals, and shall have a kitchen and inside dining area with seating for at least ten (10) people. Additional outside serving areas may be permitted on the establishment's premises, including on lake structures. A restaurant may include on premise consumption of alcohol, including spirituous liquors with a valid NC ABC license. Mobile Food Vendors and/or food trucks shall not be considered as a restaurant.

Retail business means establishments selling commodities directly to the consumer.

Retaining wall means a structure erected between lands of different elevations to protect structures and/or to prevent erosion or land subsidence.

Rock outcropping means the part of a rock formation that appears above the surface of the surrounding land.

Roominghouse means any building or portion thereof containing not more than five guest units where rent is paid and guests are transient. The term "roominghouse" is used interchangeably with the term "boardinghouse."

Root protection zone (RPZ) means the area that encompasses the entire system of a tree's major and minor roots, 24 inches deep and extending from the trunk of the tree a radial distance equal to one foot for each inch of trunk diameter or to the drip line of the tree, whichever is greater. See Figure 2.

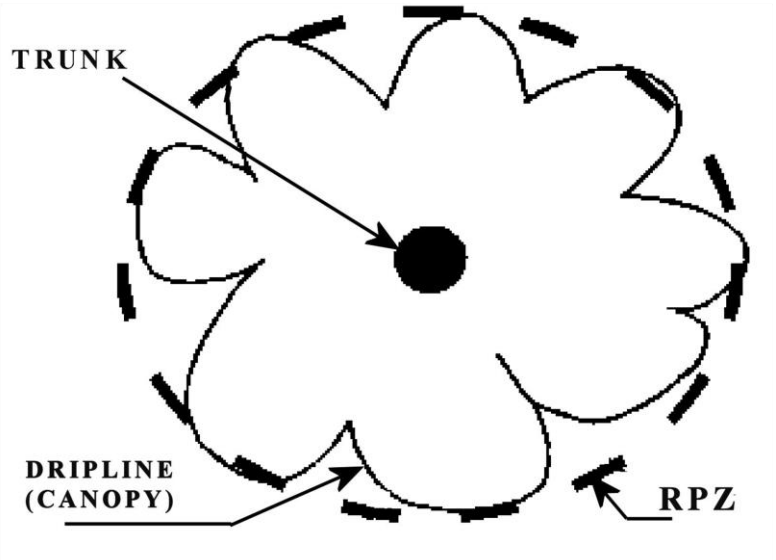


Figure 2: Root Protection Zone

Scenic view means an area visible from a specified position that provides vistas over water, across expanses of land, or from mountain tops or ridges.

Screening means a method of visually shielding or obscuring an abutting or nearby structure or use from view by fencing, walls, berms, densely planted vegetation, or a combination of the aforementioned.

Secondary use means a use of a portion of a structure customarily incidental and subordinate to the primary use of the structure and located in the same structure with the primary use.

Sensitive natural area means any area which is sensitive or vulnerable to physical or biological alteration, as identified now or hereafter by the state natural heritage program and which contains one or more of the following:

(1) Habitat, including nesting sites, occupied by rare or endangered species;

(2) Rare or exemplary natural ecological communities;

(3) Significant landforms, hydroforms, or geological features; or

(4) Other areas so designated by the state natural heritage program, which are sensitive or vulnerable to physical or biological alteration.

Setback means the minimum allowable distance measured on the horizontal plane between a property line, water's edge, right-of-way, or street centerline and specified improvements such as a building or parking area. No building or other structure may be placed within the setback area except as provided. (See definition of the term "yard" and section 36-295.) Whenever the front, side, or rear portions of a lot abut a street right-of-way, setback lines shall be measured from said right-of-way. Where no street right-of-way exists, setback lines shall be measured from the center of the traveled way.

Setback area means the area between the property lines and the setback lines (front, back and sides, including all yards) designated by the lot's zoning classification. The setback area is intended to create a buffer zone of natural vegetation between properties. See Figure 1.

Shoreline means the line where the land and water meet, which is the elevation of 990 feet mean sea level.

Shrub means a woody plant, commonly with multiple stems, whose mature growth is smaller than a tree, usually less than four meters (13.12 feet) tall and less than ten centimeters in diameter. See the Lake Lure Tree Management Handbook.

Shrubbery means a collection of shrubs, of one or more species.

Significant tree means any stable, healthy tree with a dbh equal to or greater than the dbh noted as significant for that species in the table shown in Appendix A to this chapter, or a tree of any other species with a dbh of six inches or greater.

Significant tree density means a formula based on the number of significant trees per acre. For example, a one-acre lot with ten significant trees has a significant tree density of ten. A three-acre lot with 30 significant trees also has a significant tree density of ten.

Single-family dwelling means a detached dwelling unit; a building arranged or designed to be occupied by one family.

Site means any plot or parcel of land or combination of contiguous lots or parcels of land.

Sketch plan means a general concept site plan of a proposed development of sufficient accuracy to depict vicinity map; tract boundaries; total acreage; existing and proposed uses of land; building coverage areas for principal buildings and accessory buildings; street layout; water and sewer system location; bodies of water and waterways; drainage channels; areas of environmental concern; neighboring tracts and corresponding zoning classifications; parking areas; common areas; driveway entrances; sign location; and name, address, and telephone number of owner.

Sleeping unit means room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Slope means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance. In this chapter, slopes are generally expressed as a percentage; percentage of slope refers to a given rise in elevation over a given run in distance. A 50 percent slope, for example, refers to a 100-foot rise in elevation over a distance of 200 feet. A 50 percent slope is expressed in engineering terms as a 2:1 slope.

Special use means an activity, structure, or development permitted in a particular zoning district upon providing evidence that such use, structure, or development complies with all requirements and specifications for the zoning district in which it is proposed and authorized by the board of adjustment.

Special use permit means a permit issued by the board of adjustment stating that the specified use meets all requirements and specifications set forth in these regulations. Formerly referred to as a Conditional Use Permit.

Stairway means one or more flights of stairs, either exterior or interior, with the necessary landings and platforms connecting them to form a continuous and uninterrupted passage from one level to another in or attached to a building or structure.

Steep slope means a slope exceeding 40 percent, on average.

Steep slope plan means information prepared as part of a site plan by a qualified licensed professional to a scale sufficient to clearly indicate the necessary details, including, without limitation, the following: topographical information on the steepness of the property and the slope providing access to the property; the means by which the property can best be developed for the proposed purposes, for proper management of the property during development, and for stabilizing the property once construction is complete; and any other information the zoning administrator may determine to be necessary in order to determine the specifics of the plan.

Stream buffer means the strip of land, in its natural state or restored to a suitably vegetated state, of specified width, lying adjacent to any stream, river, creek, brook, run, branch, wetland, or waterway, or any reservoir, lake, or pond, natural or impounded. (See also the discussion of buffer zones in section 22-25(1).)

Street (road) means a right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Street, primary. For the purpose of this chapter, the following streets shall be considered primary streets:

(1) U.S. Highway 64/74A (Memorial Highway);

(2) N.C. Highway 9;

(3) Island Creek Road;

(4) Girls Scout Camp Road;

(5) Buffalo Shoals Road; and

(6) Buffalo Creek Road.

Street, secondary. For the purpose of this chapter, all public streets other than primary streets, and all private streets, shall be considered secondary streets.

Street line means the right-of-way line for a street.

Structure means a combination of materials to form a permanent construction for use, occupancy or ornamentation, whether installed on, above or below the surface of the land or water.

Tall building means any building with a vertical distance greater than 35 feet as measured from the average finished grade at the building foundation line to the highest point of the roof ridgeline.

Telecommunications facility means the equipment and structure designed to support antennae used for transmitting or receiving communications and data transmissions. The term "telecommunication facility" also includes accessory buildings and related equipment required for the telecommunications facility.

Telecommunications tower means a structure on which there are electronic facilities for receiving or transmitting communication signals. Telecommunications towers less than 15 feet above the roofline, when secured to a building, are exempt. Telephone poles carrying telephone and cable TV lines are also exempt from this definition. Examples of telecommunications towers include monopoles, lattice construction and stealth structures.

Tract. The term "tract" is used interchangeably with the term "lot."

Travel trailer means any vehicle, self-propelled or otherwise, which is designed for transient, nonpermanent living, including structures mounted on auto or truck bodies that are referred to as campers.

Traveled way means part of the roadway provided for the movement of vehicles, exclusive of shoulders and auxiliary lands.

Tree means a woody plant with a well-developed main trunk of at least four inches dbh at maturity.

Tree density. See *Significant tree density.*

Tree protection officer means a duly authorized town official whose function or scope of authority includes enforcing the tree management provisions of this chapter.

Tree protection plan means information provided as part of a site plan regarding protection provided to trees during land clearing, land disturbance, and/or development, as well as the extent and condition of both the pre-development and post-development forest coverage of the property in question.

Tree thinning means the removal of a few selected trees and/or selected minor branches from selected trees for purposes of developing views and/or permitting more sunlight to reach the ground.

Tree topping means the damaging practice of cutting back its main leader stem and/or limbs larger than three inches in diameter within the crown, to such a degree as to remove the normal canopy and disfigure the tree.

Trout buffer means an undisturbed strip of land of specified width as measured in the horizontal plane and as defined and illustrated in the land disturbance regulations, that is required for the protection of waters that have been classified as trout waters by the environmental management commission. Any removal of vegetation, including the removal of living branches, is prohibited within such areas.

Undisturbed means the natural ground surface remains in its natural state; no land disturbing activity occurs; no vegetation is removed except as exempted by this chapter; and no impervious surface is constructed thereon.

Unimproved area means the portion of a lot without improvements.

Unity of title means a document in the official property records of the county stipulating that a lot, lots or parcels of land shall be held under single ownership, shall not be eligible for further subdivision, and shall not be transferred, conveyed, or sold in any unit other than in its entirety.

Use means the activity that actually takes place or is intended to take place on land, water, or a structure thereon.

Vacation rental operating permit means the permit needed to operate a residential vacation rental as defined herein.

Variance means a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to special conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship. (See section 36-183(3).)

View protection means requirements to assure that improvements do not interfere with scenic views.

Viewshed means the totality of near, medium, and long-distance views of lakes, streams, forests, ridgelines, mountains, or any combination thereof, as seen from the lakes, roadways, public areas, and homes of the town.

Wholesale business means the sale of goods in large quantities usually for resale.

Winery means a facility where wine, cider or other fermented fruit beverages are produced and distributed. A winery may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Yard means a space on the same lot with a principal building, open, unoccupied and unobstructed by buildings or structures from 30 inches above the general ground level of the graded lot upward; provided, however, that driveways; walkways; stairs; fences; walls and hedges (subject to section 36-231); poles; posts; children's play equipment; and other customary yard accessories, ornaments, statuary and furniture may be permitted in any yard subject to the provisions of section 36-295.

Yard, front, means an open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street right-of-way line and the front line of the building, projected to the side lot lines of the lot. The lake side yard of a lake front lot shall be a front yard.

Yard, lake front, means an open, unoccupied space on the same lot with a principal building extending the full width of the lot and situated between the shore of a lake and the line of the building projected to the side lines of the lot.

Yard, rear, means an open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

Yard, side, means an open, unoccupied space on the same lot with a principal building, situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard.

Zoning administrator means an official or designated person of the town charged with enforcing and administering this chapter.

Zoning and planning board means a citizen committee appointed by the town council per chapter 2 to assist as an advisory body in the land use planning and zoning process.

Zoning district means a specifically delineated area on the official zoning map of the town within which uniform regulations and requirements govern the use, placement, spacing and size of lots and structures.

(Code 1989, § 92.005; Ord. of 1-25-1994; Ord. of 11-8-1994; Ord. of 11-26-1996; Ord. of 1-28-1997; Ord. of 2-9-1999; Ord. of 4-13-1999; Ord. of 12-14-1999; Ord. of 1-9-2001; Ord. of 7-10-2001; Ord. of 4-9-2002; Ord. of 5-11-2004; Ord. of 7-12-2005; Ord. of 11-15-2005; Ord. of 4-10-2007; Ord. of 6-12-2007; Ord. of 1-8-2008; Ord. of 6-10-2008; Ord. of 11-18-2008; Ord. of 3-10-2009; Ord. of 10-13-2009; Ord. of 1-1-2010; Ord. of 4-13-2010; Ord. of 12-14-2010; Ord. of 2-8-2011; Ord. of 6-14-2011; Ord. of 4-10-2012; Ord. of 10-9-2012; Ord. of 6-11-2013; Ord. of 4-8-2014; Ord. of 10-14-2014; Ord. of 12-9-2014; Ord. of 3-10-2015; Ord. of 7-14-2015; Ord. of 9-13-2016; Ord. No. 21-05-11, 5-11-2021, Ord. of 12-12-2023)

Secs. 36-6—36-28. Reserved.

ARTICLE II. ZONING DISTRICTS AND MAP

Sec. 36-29. Use districts.

For the purpose of this chapter, the town is hereby divided into the following use districts:

(1) R-1 Residential District.

(2) R-1A Residential District.

(3) R-1B Residential District.

(4) R-1C Residential District.

(5) R-1D Residential District.

(6) R-2 General Residential District.

(7) R-3 Resort Residential District.

(8) R-4 Residential/Office District.

(9) CN Commercial Neighborhood District.

(10) CTC Commercial Town Center District.

(11) CG Commercial General District.

(12) CSC Commercial Shopping Center District.

(13) L1 Lake District.

(14) M1 Reserved Mountainous District.

(15) S1 Scenic Natural Attraction District.

(16) GU Government Use District.

(Code 1989, § 92.015; Ord. of 1-22-1991; Ord. of 8-18-1998; Ord. of 2-9-1999)

Sec. 36-30. Establishment of district boundaries.

The boundaries of these districts are hereby established as shown on the town's official zoning map.

(Code 1989, § 92.016; Ord. of 1-22-1991)

Sec. 36-31. Establishment of zoning map.

A zoning map entitled the "Official Zoning Map of the Town of Lake Lure" setting forth all approved use districts and their respective boundaries is hereby made a part of this chapter and shall be maintained in the office of the zoning administrator. This map and prior zoning maps shall be available for inspection by interested persons during normal business hours of the zoning administrator. It shall be the duty of the zoning administrator to maintain the said map and post any changes thereto as they may be made.

When zoning district boundaries reference maps such as flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies, the most current version of said maps shall be maintained for public inspection.

(Code 1989, § 92.017; Ord. of 1-22-1991; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-32. Rules governing district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, alleys, streams, rivers or other bodies of water shall be construed to follow such lines.

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

(3) Boundaries indicated as approximately following town limit lines shall be construed as following such town limit lines.

(4) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is given on the map, such dimension shall be determined by the use of the scale shown on said zoning map.

(5) Where physical features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections (1) through (4) of this section, the board of adjustment shall interpret the district boundaries only upon appeal from a decision of the zoning administrator.

(Code 1989, § 92.018)

Sec. 36-33. Conditional districts (CD).

Conditional districts are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the town council in accordance with G.S. 160D. Conditional districts provide for orderly and flexible development under the general policies of this chapter without the constraints of some of the prescribed standards guiding by-right development. Conditional districts may be associated with any land development district and shall be designated by adding the suffix "CD" to the land development district with which they are associated. Conditional districts are not intended to relieve hardships that would otherwise be handled using a variance procedure.

(1) *Application to establish district.*

a. *Applicant and property.* Conditional district classification shall only be considered upon the request of the owners and/or the representatives of the owners of all the property to be included. A conditional district shall consist of land under unified control which may be planned and developed as a single development or as an approved programmed series of development phases by multiple developers. The term "unified control" means that all land to be included within a conditional district shall be owned or otherwise under the legal control of the person or legal entity which has applied for a conditional district. Such person or entity shall be legally capable of providing a commitment to the town that the conditional district development will comply with all documents, plans, standards and conditions approved by the town.

b. *Standards of district to be met.* Within an approved conditional district, no use shall be permitted except pursuant to the conditions imposed by the applicant on the conditional district in the approval of the rezoning. In general, the development standards for the associated land development district, as well as general standards contained in this chapter, shall govern development within the conditional district. However, within a conditional district, petitioners may place additional requirements or standards onto themselves and their property or ask that certain uses identified in the associated district be decreased. In addition, specific development standards (except those involving use) may be varied if specifically requested by the petitioner as part of a conditional district application. If no specific request is made by the petitioner to change the applicable development standards or if the petition is silent on the point, it shall be understood that all applicable development standards shall govern the development and use of the property.

c. *Contents of application.* A conditional district application shall consist of the environmental survey and general development plan, as provided for herein, as well as any other plans, drawings, renderings, elevations, maps and documents specifically included as development documents for approval by the town council. The general development plan, as a site-specific conditional zoning plan, is itself a condition of the conditional district rezoning.

1. *Existing conditions survey.* An existing conditions survey is intended to document the existing conditions of the property so that the town and the applicant can fully evaluate the impacts of the proposed development. Furthermore, identification of environmental conditions on a site prior to the advanced preparation of development plans enables the reasonable and practical planned preservation of existing and environmentally sensitive areas. This requirement provides the town and the applicant the ability to evaluate the proposed development in order to preserve vegetation, to improve the appearance of the development proposed and to satisfy other requirements of this chapter. The existing conditions survey shall include the following (where applicable):

    (i) Existing property boundaries and dimensions of existing lots, including acreage of the entire area to be rezoned.

    (ii) Existing buildings and other structures, including fences and retaining walls.

    (iii) Existing roads, driveways, and parking areas, including any existing rights-of-way and easements.

    (iv) Existing utilities, including any utility easements.

    (v) A topographic survey is required. However, a topographic survey may be waived by the administrator if the slope of the property is determined to be less than ten percent and/or if no physical improvements to the site are proposed (i.e., strictly change of use).

    (vi) Existing watercourses, including perennial streams and wetlands.

    (vii) Floodplains.

    (viii) Previously documented endangered species habitats.

    (ix) Location of forest stands or trees of a uniform size and species; specimen trees of varying sizes and species, particularly freestanding or open-grown or field-grown trees; distinctive tree lines or forest edges.

(x) Significant historical and archaeological resource areas as defined by the National Register of Historic Place or other federal and/or state agencies.

2. *General development plan.*

(i) The general development plan is intended to provide a detailed two-dimensional drawing that illustrates all of the required site features, including buildings, parking areas, street locations, street sections, rights-of-way, property lines and setbacks, required or proposed watercourse buffers, site landscaping and lighting (in conceptual form), and all related development calculations (e.g., density, proposed building areas, number of parking spaces, estimated impervious surface) in sufficient detail to show compliance with this chapter. Detailed engineering drawings such as subsurface utilities (e.g., water and sewer) and on-site stormwater facilities are not required for general development plans. All plans shall be submitted at a scale not less than one inch equals 50 feet (for site plans) or one inch equals 200 feet (for subdivisions) unless otherwise authorized by the zoning administrator and shall, at a minimum, consist of the following:

A. The overall boundary and acreage of the area to be rezoned, including underlying zoning districts.

B. The general location, orientation and size of principal structures and associated parking areas; landscape and buffer areas; open space areas; the location, size and general treatment of environmentally sensitive areas; the general location and size of existing and proposed water mains and sewer trunk lines required to service the development; and general traffic routes (external and internal) to and from the development with major access points identified.

C. Tabular data, including the range and scope of proposed land uses, proposed densities, floor area ratios or impervious surface ratios as applicable to development type; and land areas devoted to each type of general land use and phase of development.

D. A full list of proposed uses consistent in character with the underlying zoning district. Such use classifications may be selected from any of the uses, whether permitted, by right or special, allowed in the general zoning district upon which the conditional district is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the conditional district.

E. A proposed development schedule if the project is to be phased.

F. Conceptual building elevations with materials and facade color for new commercial structures and additions to commercial structures that exceed 1,000 square feet to ensure compliance with section 36-107.

G. Applicant's statement as to how the proposal is consistent with the comprehensive plan and outlining any specific goals or policies achieved as a result of the proposal.

H. A statement of the proposed design standards or development requirements that differ from the requirement of the zoning and/or

subdivision regulations, including a narrative explaining the special circumstances or development or design objectives that justify the varied standards.

(i) General development plans do not necessarily need to provide the level of detail required for a final site plan; nevertheless, they should address, at least conceptually, the parameters for special use permit applications contained in section 36-103, with enough detail to realistically assess the potential impacts of the proposed development on public infrastructure, neighboring properties, and the existing natural and built environment.

(2) *Formal review.* Formal review shall be in accordance with the procedures for amending this chapter contained in section 36-369, except as modified herein.

a. *Preapplication conference.* The town strongly recommends that persons intending to apply for the creation of a conditional district schedule a preapplication meeting with the zoning administrator. The purpose of this meeting is to afford the applicant an opportunity to obtain the advice and assistance of the community development department in formulating the application in compliance with town regulations.

b. *Completeness review.* Once an application to establish a conditional district has been received by the town, the zoning administrator will promptly review it to determine if it is complete, which is to say, the requisite fee has been provided, the application itself is complete, and all required supporting documentation, including any additional information which the administrator deems necessary for the town to have an adequate understanding of the proposed project, has been provided. If the administrator determines the submittal is incomplete, he shall notify the applicant in writing of the deficiencies found therein. An applicant has the right to refuse to provide the additional information requested and to demand that the application be processed in accordance with this section.

c. *Development review committee.* Once the zoning administrator is in possession of a complete application, or once the applicant has refused to provide additional information and has demanded the processing of the application, the zoning administrator shall submit such application to the development review committee for technical review and recommendation.

d. *Neighborhood compatibility meeting.* This section provides a process whereby affected property owners, residents and developers have an opportunity to participate in a dialogue as to how development is to be integrated into their neighborhoods. This is accomplished by a neighborhood compatibility meeting to be facilitated by the zoning administrator within 14 days of receipt of the recommendation of the development review committee.

1. *Notification of participants.* At least seven calendar days prior to the meeting, notice of the meeting shall be given in the following fashion:

(i) The developer shall be informed of the meeting by mail. Failure of the developer, or his authorized agent, to attend this meeting shall lead to an automatic annulment of the application.

(ii) Property owners within 400 feet of any property line of the proposed sites shall be informed of the meeting by mail.

(iii) All other persons shall be informed of the meeting by a conspicuously placed standardized on-site sign.

2. *The developer's presentation.* During the neighborhood compatibility meeting, the developer shall explain to the affected property owners the proposed use for the site. The presentation shall include the developer's position on the compatibility of the project. It is the developer's responsibility to propose a compatible project.

3. *Relevant topics to be discussed.* Following the developer's presentation, affected property owners and residents shall be permitted time to question the developer about points which remain unclear. Questioning shall center on the proposal's compatibility as presented, not the question of whether the site should be developed or its use changed.

4. *Result of neighborhood compatibility meeting.* Following the exchange of views between the developer and affected property owners/residents, the zoning administrator shall review orally the points voiced during the informal compatibility meeting. Included in the review shall be proposals or counter-proposals to which both parties have agreed in an effort to make the project compatible, as well as those points where disagreement still exists. Upon conclusion of the review, the zoning administrator shall ask those assembled if the positions presented represent an accurate summary of the opinions expressed by the developer and affected property owners/residents. When they do, the meeting shall be concluded and the zoning administrator shall record the opinions in the zoning administrator's report. The neighborhood compatibility report shall become a part of the application file.

e. *Zoning and planning board review.* The complete application, accompanied by the report of the development review committee, shall then be submitted to the zoning and planning board. The zoning and planning board shall review the application for consistency with the town's comprehensive plan, any other applicable plans, and with this chapter. The zoning and planning board may also evaluate and comment upon the issue of whether the proposed conditional district zoning is designed to promote the public health, safety and welfare. The recommendations of the zoning and planning board shall be reported to town council for inclusion in the record of the public hearing.

f. [*Public hearing of town council.*] The town council shall conduct a public hearing on the application within 35 days of receipt of the report of the zoning and planning board. Said hearing shall be noticed and conducted in accordance with section 36-373.

1. *Decisions.* Decisions by the town council shall be by majority vote, unless a valid protest petition has been filed, in which case, a three-fourths majority vote of eligible members shall be required for approval.

2. *Fair and reasonable conditions.* The provisions of the conditional district general development plan shall replace all conflicting development regulations set forth in this chapter which would otherwise apply to the development site. The town council may attach reasonable and appropriate conditions, including, but not limited to, the location, nature, hours of operation, and extent of the proposed use; provided, however, only those conditions mutually approved by the town and the applicant may be incorporated into the zoning regulations or permit requirements for the conditional district. Conditions and site-specific standards shall be limited to those that address conformance of the development and use of the site to the zoning regulations and officially adopted plans and those standards and conditions that address the impacts reasonably expected to be generated by the development and use of the site. The applicant will have a reasonable opportunity to consider and respond to any additional requirements proposed by either the zoning and planning board or the town council prior to final action.

3. *Recordation of notice of conditional district zoning.* Within 30 days of the enactment of an ordinance creating a conditional district, the applicant shall cause a notice of conditional district zoning to be recorded in the county registry. Such notice shall reference the name of the owner of the property, the parcel identification number (PIN) of the property, the instrument by which title was obtained by the owner, and the ordinance number adopted by town council approving the conditional zoning district.

(3) *Effect of approval/changes.* The development and use of all land within the conditional district shall be in keeping with the approved general development plan and all applicable provisions therein. The applicant may proceed with development only after approval of the conditional district general development plan by the town council, followed by approval of any necessary site plans or subdivision plats, except that all subsequent approvals shall be completed by the appropriate review authority. An approved conditional district containing one or more uses listed as special uses in the associated zoning district shall not require a special use permit, and no further review by the board of adjustment is required.

a. *Final approval by stages.* If so reflected on the general development plan, the town council may allow the staging of final development. Each phase of development shall adhere to all applicable provisions and standards of this section and the applicable conditional district general development plan.

b. *Substantial changes.* Any substantial change to a general development plan as noted below shall be reviewed by the zoning and planning board and approved or denied by the town council as an amended conditional district. The following changes to a conditional district general development plan shall be deemed to constitute a substantial change requiring approval by the town council:

1. Land area being added or removed from the conditional district.

2. Modification of special performance criteria, design standards, or other requirements specified by the enacting ordinance.

3. A change in land use or development type beyond that permitted by the approved general development plan.

4. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.

5. When there is an increase in the total number of residential dwelling units originally authorized by the approved general development plan.

6. When the total floor area of a commercial or industrial classification is increased, in the aggregate, more than ten percent beyond the total floor area last approved by the town council.

c. *Additional changes.* All other changes to a conditional district general development plan shall receive approval by the zoning and planning board. However, if, in the judgment of the zoning and planning board, the requested changes alter the basic development concept of the conditional district, the zoning and planning board may require concurrent approval by the town council.

d. *Rescission of conditional districts.* The applicant shall secure a valid building or construction permit within a 12-month period from date of approval of the conditional district unless otherwise specified. If such project is not complete or a valid building or construction permit is

not in place at the end of the 12-month period, the zoning administrator shall notify the applicant of such finding. Within 60 calendar days of notification, the zoning administrator shall make a recommendation concerning the rescission of the conditional district to the town council. The town council may then rescind the conditional district or extend the life of the conditional district for a specified period of time. The rescission of a conditional district shall follow the same procedure as used for approval.

(Code 1989, § 92.019; Ord. of 7-12-2011; Ord. of 8-9-2011; Ord. No. 21-05-11, 5-11-2021)

Secs. 36-34—36-54. Reserved.

ARTICLE III. USE REQUIREMENTS

Sec. 36-55. Intent.

It is the intent of this article that if any use or class of use is not specifically permitted in a district as set forth below, it shall be prohibited in that district. Special uses shall comply with article IV of this chapter and all other applicable sections of these regulations.

(Code 1989, § 92.025; Ord. of 1-22-1991; Ord. of 4-10-2007; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-56. R-1 Residential District.

(a) *Intent.* The R-1 Residential District is established as a district in which the principal use of land is for single-family dwellings. It is the intention of these regulations to discourage any use which would be detrimental to the low density, single-family residential nature of the areas included within the district.

(b) *Permitted uses.* Within the R-1 Residential District, a building or land shall be used only for the following purpose:

(1) Single-family dwellings, excluding mobile homes.

(2) Family care homes.

(3) Customary accessory buildings, including private garages, storage buildings, and noncommercial workshops, shall be allowed for home occupations subject to all provisions of section 36-232.

(4) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(5) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Basement or garage apartments, one per lot.

(2) Duplexes.

(3) Non-customary accessory uses.

(4) 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 the 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 ensure compatibility with the neighborhood.

(5) Home occupations as defined in section 36-5 and subject to all conditions stated therein.

(6) Planned unit developments. No building located in a planned unit development shall contain more than two dwelling units.

(7) Bed and breakfast establishments. There shall not be any type of cooking instrument provided to any room in these structures. The number of rooms allowed in these uses in this district shall be limited to four per dwelling unit. The owner/proprietor shall maintain their primary residence on the property. One parking space is mandated for each room, and one parking space for each employee of the facility, as provided in section 36-218.

(8) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(Code 1989, § 92.026; Ord. of 1-22-1991; Ord. of 9-27-1994; Ord. of 1-28-1997; Ord. of 7-10-2001; Ord. of 4-10-2012; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-57. R-1A, R-1B and R-1C Residential Districts.

(a) *Intent.* The R-1A, R-1B and R-1C Residential Districts are established as districts in which the principal use of land is for single-family dwellings. Large lot size and low density residential land use are encouraged in this area. It is the intention of these regulations to discourage any use which would be detrimental to the low density, single-family residential nature of the area included within the district.

(b) *Permitted uses.* Within the R-1A, R-1B and R-1C Residential Districts, a building or land shall be used only for any of the permitted uses listed in the R-1 Residential District.

(c) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) All special uses listed in the R-1 Residential District.

(2) Common amenities for residential developments provided that they are situated within the residential development so as not to adversely impact existing and/or reasonably foreseeable uses on adjoining properties. Such amenities shall be set back a minimum of 30 feet from such adjoining properties and a minimum of 60 feet from Lake Lure. Buffering may be utilized to ensure compatibility with adjoining uses.

(3) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of

parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(d) *Large estate lots.* Lots that are in the R-1A or R-1B zoning district that are ten acres or more shall be allowed two single-family principal buildings (see section 36-222), provided the owner executes and records a unity of title satisfactory to the town. Furthermore, garage apartments located on lots in the R-1A or R-1B zoning district that are ten acres or more in size shall be considered a permitted use, and the application for a certificate of zoning compliance permit shall be processed as such.

(Code 1989, § 92.027; Ord. of 1-22-1991; Ord. of 1-8-2008; Ord. of 4-10-2012; Ord. of 4-8-2014; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-58. R-1D Residential District.

(a) *Intent.* The R-1D Residential District is established as a district in which the principal use of land is for single-family dwellings.

(b) *Permitted uses.* Within the R-1D Residential District, a building or land shall be used only for the following purposes:

(1) Single-family dwellings, excluding mobile homes.

(2) Family care homes.

(3) Customary accessory buildings, including private garages, storage buildings, and noncommercial workshops, shall be allowed for home occupations subject to all provisions of section 36-232.

(4) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(5) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Non-customary accessory uses.

(2) Common amenities for residential developments provided that they are situated within the residential development so as not to adversely impact existing and/or reasonably foreseeable uses on adjoining properties. Such amenities shall be set back a minimum of 30 feet from such adjoining properties and a minimum of 60 feet from Lake Lure. Buffering may be utilized to ensure compatibility with adjoining uses.

(3) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(Code 1989, § 92.028; Ord. of 1-22-1991; Ord. of 9-27-1994; Ord. of 5-11-2004; Ord. of 1-8-2008; Ord. of 10-13-2009; Ord. of 4-10-2012; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-59. R-2 General Residential District.

(a) *Intent.* The R-2 General Residential District is established as a district in which the principal use of land is for residential purposes. A greater coverage of lot area and densities of land use are permitted in this district. It

is the intention of these regulations to discourage any use which would be detrimental to the residential nature of the areas included within this district.

(b) *Permitted uses.* Within the R-2 General Residential District, a building or land shall be used only for the following purposes:

(1) Single-family dwellings.

(2) Duplexes.

(3) Family care homes.

(4) Customary accessory buildings, including private garages, storage buildings, and noncommercial workshops, shall be allowed for home occupations subject to all provisions of section 36-232.

(5) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(6) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Non-customary accessory uses.

(2) Home occupations as defined in section 36-5 and subject to all conditions stated therein.

(3) Cemeteries.

(4) Churches or similar places of worship, including convents and dormitories.

(5) Child care centers.

(6) Golf courses, parks, playgrounds, swimming pools, community centers, country clubs, civic clubs, private social clubs, lodges, travel trailer parks and other recreational uses.

(7) Public elementary and high schools, trade schools, and private schools having similar curricula.

(8) Public utility buildings and facilities if such use is essential for the service of the immediate area, 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 the 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 ensure compatibility with the neighborhood.

(9) 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. Adequate landscaping, screening and/or buffering shall be provided to ensure compatibility with the neighborhood.

(10) Mobile home parks, provided that:

a. The location shall be suitable for residential use. It shall not be subject to hazards such as insect or rodent infestation, objectionable smoke, noxious odors, unusual noise, subsidence, or the probability of flooding or erosion. No part of any park shall be used for nonresidential uses, except such uses that are required for the maintenance of the park to include laundry facilities and storage buildings.

b. The soil, groundwater level, drainage, rock formations, and topography shall not create hazards to the property or to the health and safety of occupants.

c. The minimum area for any mobile home park shall be two acres.

d. The minimum lot size for individual mobile home sites shall be 4,000 square feet, with a width of at least 40 feet, exclusive of common driveways. The minimum lot size for a double wide mobile home shall be 4,700 square feet, with a width of at least 40 feet, exclusive of common driveways.

e. The maximum density shall be nine mobile home sites per acre.

f. Each mobile home space shall abut a driveway within the park. Said driveway shall be graded and surfaced with not less than four inches of crushed stone or other suitable material on a well compacted sub-base to a continuous width of 25 feet, exclusive of required parking space.

g. Two off-driveway parking spaces with not less than four inches of crushed stone or other suitable material on a well-compacted sub-base shall be provided for each mobile home space. Required parking spaces may be included within the 4,000 square feet required for each mobile home space and 4,700 square feet for each double-wide mobile home.

h. No mobile homes or other structures within a mobile home park shall be closer to each other than 20 feet, except that storage or other auxiliary structures for the exclusive use of the mobile home may be closer to that mobile home than 20 feet.

i. No mobile home shall be located closer than 20 feet to the exterior boundary of the park or a bounding street or highway right-of-way. Buildings used for laundry or recreation purposes shall be located no closer than 40 feet to the exterior boundary of the park or the right-of-way of a bounding street or highway.

j. Proposed water supply and waste disposal facilities for each mobile home in the park shall be approved in writing by the appropriate state and/or local agency.

k. Not less than five percent of the gross site area shall be devoted to open space, which may be devoted to recreation facilities, generally provided in a central location.

l. All mobile home units must comply with HUD's minimum housing standards.

m. Every mobile home park owner or operator shall maintain an accurate register. The register shall be on file with the zoning administrator. The register shall contain the following information on forms provided by the zoning administrator: name of owner and/or occupant; make, model and registration number of the mobile home; and date of arrival and departure of the mobile home. These records shall be available for inspection and shall be maintained for three years.

n. The storage, collection and disposal of solid waste in the mobile home park shall be conducted so as to create no health hazards, rodent harborage, insect breeding areas, accident hazards, fire hazards, and pollution.

o. Plans clearly indicating the developer's intention to comply with the provisions of this chapter concerning mobile home parks shall be submitted to and approved by the zoning administrator prior to submission to the board of adjustment for consideration of granting a special use permit. Plans shall include the areas to be used for the mobile home park; the ownership and use of neighboring properties; all proposed entrances, exits, driveways, open space areas, and service buildings; the proposed plan for water supply and sewage disposal; and the location and size of individual mobile home lots.

p. Any expansion of mobile home parks in existence as of the effective date of the ordinance from which is section is derived shall comply with the provisions concerning mobile home parks so described in this chapter.

q. A densely planted buffer strip, consisting of evergreen trees or shrubs, shall be located along all sides of the mobile home park, but shall not extend beyond the established setback line along any street. Such buffer strip shall be not less than ten feet in width and shall be composed of trees or shrubs of a type which at maturity shall be not less than 12 feet in height. This planting requirement may be modified by the board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.

(11) Planned unit developments.

(12) Nursing homes.

(13) Hospitals, but not animal hospitals.

(14) [Repealed by Ordinance 19-02-12.]

(15) Multifamily dwellings.

(16) Common amenities for residential developments provided that they are situated within the residential development so as not to adversely impact existing and/or reasonably foreseeable uses on adjoining properties. Such amenities shall be set back a minimum of 30 feet from such adjoining properties and a minimum of 60 feet from Lake Lure. Buffering may be utilized to ensure compatibility with adjoining uses.

(17) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(18) Campgrounds.

(Code 1989, § 92.029; Ord. of 5-11-2004; Ord. of 1-9-2007; Ord. of 1-8-2008; Ord. of 10-13-2009; Ord. of 4-10-2012; Ord. of 6-12-2012; Ord. of 7-14-2015; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-60. R-3 Resort Residential District.

(a) *Intent.* The R-3 Resort Residential District is established as a district in which the principal use of land is for residential and commercial hospitality purposes to include multifamily structures, hotels, motels, and lodges. Uses in conjunction with hotels, motels, and lodges may also be allowed when approved as a special use.

(b) *Permitted uses.* Within the R-3 Resort Residential District, a building or land shall be used only for the following purposes:

(1) Single-family dwellings, excluding mobile homes.

(2) Multifamily dwellings, including duplexes.

(3) Family care homes.

(4) Hotels, lodges, motels, boardinghouses, roominghouses, bed and breakfast establishments, private clubs to provide lodging, services and board for the general public.

(5) Customary accessory buildings, including private garages, storage buildings, and noncommercial workshops, shall be allowed for home occupations subject to all provisions of section 36-232.

(6) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(7) Basement or garage apartments, one per lot.

(8) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Non-customary accessory uses.

(2) Home occupations as defined in section 36-5 and subject to all conditions stated therein.

(3) Public utility buildings and facilities as previously described in section 36-56(c)(4).

(4) Planned unit developments.

(5) Restaurants, golf courses, and other uses designed in response to the unique natural setting of the area, when in conjunction with a hotel, motel or lodge.

(6) All telecommunications tower requirements listed in section 36-72(4).

(7) Camps.

(8) All new commercial buildings; new building additions with a gross floor area of 1,000 square feet, or more, to an existing commercial building; or any new addition to an existing commercial building where the building facade length, as existing in December 2005, will be increased by more than 50 percent as a result of an addition or multiple additions.

(9) Common amenities for residential developments provided that they are situated within the residential development so as not to adversely impact existing and/or reasonably foreseeable uses on adjoining properties. Such amenities shall be set back a minimum of 30 feet from such adjoining properties and a minimum of 60 feet from Lake Lure. Buffering may be utilized to ensure compatibility with adjoining uses.

(10) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(11) Primary event venue. In issuing a special use permit for a primary event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(12) Campgrounds.

(Code 1989, § 92.029; Ord. of 1-22-1991; Ord. of 9-27-1994; Ord. of 1-28-1997; Ord. of 11-15-2005; Ord. of 1-8-2008; Ord. of 10-13-2009; Ord. of 4-10-2012; Ord. of 7-14-2015; Ord. of 11-10-2015; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-61. R-4 Residential/Office District.

(a) *Intent.* The R-4 Residential/Office District is established along U.S. 64/74A from the western town limit line to the intersection of N.C. Highway 9 with U.S. Highway 64/74A, excluding those areas currently zoned R-2 and R-3, to provide limited nonresidential uses which will have little impact on the neighboring residential areas. In many cases nonresidential uses may occupy buildings which have been used as residences. If new buildings are constructed, the town recommends that they be of a residential character design.

(b) *Permitted uses.* Within the R-4 Residential/Office District, a building or land shall be used only for the following purposes:

(1) Any of the permitted uses listed in the R-1 Residential District.

(2) Business and professional offices limited to licensed practice of law, property appraisal and surveying, building contractor, real estate, insurance, accountancy, financial advisement, architecture and building, land development, and notary. Buildings occupied by such uses may not exceed 3,000 square feet total heated area.

(3) No more than two accessory buildings with a total combined area not to exceed 600 square feet.

(4) Customary accessory buildings, including private garages, storage buildings, and noncommercial workshops, shall be allowed for home occupations subject to all provisions of section 36-232.

(5) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(6) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Prohibited uses.* Outside storage of any type including the parking or storage of heavy trucks, machinery, or equipment is prohibited in the R-4 district.

(d) *Special use permits.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) All special uses listed in the R-1 Residential District, except that planned unit developments (PUDs) may include any uses permitted in this district.

(2) Bed and breakfast establishments; provided the owner/proprietor maintains a permanent, primary residence on site. Number of rooms available for rent at any time shall be limited to five.

(3) Lodges.

(4) All new commercial buildings; new building additions with a gross floor area of 1,000 square feet, or more, to an existing commercial building; or any new addition to an existing commercial building where the building facade length, as existing on December 2005, will be increased by more than 50 percent as a result of an addition or multiple additions.

(5) Produce stands.

(6) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(e) *Site requirements.* All sites must have a minimum of 10,000 square feet. Lots which abut the street must have 50 feet of frontage on the street.

(f) *Front, rear, and side yard requirements.*

(1) For lots which abut the street, the building setback shall be not less than 35 feet from the street right-of-way.

(2) For lots which abut the lake, the building setback shall be not less than 35 feet from the lake shoreline.

(3) Side yards shall be not less than 12 feet in depth.

(4) Rear yards shall be not less than 15 feet in depth.

(5) When the lot is used for any nonresidential use, a buffer strip shall be provided along the side and/or rear lot line of any abutting residential use. If a fence or wall is used, such fence or wall shall be opaque and not less than eight feet in height. If a planted buffer is used, such buffer strip shall be composed of evergreen trees or shrubs which at planting will be at least four feet high and at maturity will be not less than eight feet high. This requirement may be modified by the board of adjustment where sufficient natural buffering exists.

(g) *Ingress/egress.* All nonresidential uses in this district shall be allowed only one means of ingress/egress for each 150 feet of frontage or fraction thereof. All ingress/egress openings for both one-way or two-way traffic shall be a minimum of 20 feet wide and a maximum of 50 feet wide unless otherwise required by the state department of transportation. Landscaped traffic delineators are required between the street and the front yard of the nonresidential use extending the full width of the front yard excepting to allow for entrances and exits. Delineators shall begin at the edge of the right-of-way or six feet from the edge of the pavement, whichever is greater, and shall extend a minimum of two feet toward the front of the structure. The area should be filled with grass, flowers, and/or shrubs not high enough to obstruct a driver's view of traffic. The zoning administrator may modify this requirement where warranted by safety considerations.

(h) *Frontage.* For purposes of this section, all sites that are double frontage lots or corner lots shall be deemed to have frontage on all such streets. All fronts must adhere to ingress/egress requirements.

(i) *Parking.* All parking and loading must be in compliance with sections 36-217 through 36-219.

(Code 1989, § 92.030; Ord. of 12-12-1995; Ord. of 7-10-2001; Ord. of 5-11-2004; Ord. of 11-15-2005; Ord. of 2-13-2009; Ord. of 4-13-2010; Ord. of 12-14-2010; Ord. of 4-10-2012; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-62. CN Commercial Neighborhood District.

(a) *Intent.* The CN Commercial Neighborhood District is intended to apply to areas where selected businesses may be appropriately located to serve one or more residential neighborhoods within convenient traveling distance. CN districts are not highway-oriented commercial districts; therefore, gasoline service or filling stations, vehicle repair or sales, and the like are prohibited. Because these commercial districts are located within or adjacent to residential neighborhoods and are subject to the public view, which is a matter of important concern to the whole community, they should provide an appropriate appearance, ample parking, controlled traffic movement and suitable landscaping.

(b) *Permitted uses.* Within the CN Neighborhood Commercial District, buildings or land shall be used only for the following purposes:

(1) Medical and dental services or clinics.

(2) Real estate, financial institutions, business and professional offices.

(3) Post offices and libraries.

(4) Retail sales such as grocery stores, drug stores, gift shops, convenience stores, video sales and rentals, and the like.

(5) Consumer services such as restaurants, dry cleaning drop-off and pick-up stores, coin laundries, tailoring shops, barber and beauty shops, and the like.

(6) Live-work units.

(7) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(8) Child care centers.

(9) Brewpubs and nano-breweries subject to special requirements contained in section 36-72(2).

(10) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Convenience stores with accessory sale of motor vehicle fuels and lubricants.

(2) Produce stands.

(3) Primary event venue. In issuing a special use permit for a primary event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(4) All new commercial buildings; new building additions with a gross floor area of 1,000 square feet, or more, to an existing commercial building; or any new addition to an existing commercial building where the building facade length, as existing on December 2005, will be increased by more than 50 percent as a result of an addition or multiple additions.

(5) Micro-breweries, micro-distilleries, and micro-wineries.

(d) *[Outside display of merchandise.]* This section specifically excludes outside display of merchandise for sale or open storage of vehicles, motorized equipment, wrecked vehicles, inoperable vehicles, discarded tires, auto parts, and machinery and construction equipment; boat storage facilities; businesses which sell, rent, or display obscene materials as defined in this Code; tattoo parlors; residential uses, including mobile homes; moveable storage facilities; and manufacturing employing ten or more persons.

(e) *Site requirements.* All lots must have a minimum of 10,890 square feet, provided the maximum area of all contiguous lots zoned CN shall not exceed two acres. No neighborhood commercial area (lot or group of contiguous lots zoned CN) shall be located within one-half mile of any other area so zoned.

(f) *Front, rear, and side yard requirements.*

(1) For lots which abut the street, the building setback shall be not less than ten feet from the street.

(2) For lots which abut the lake, the building setback shall be not less than 35 feet from the lake shoreline.

(3) Side yards shall be not less than ten feet in depth, provided the side yard shall be 20 feet in depth where adjacent to land zoned or, in fact, used for residential purposes.

(4) Rear yards shall be not less than 15 feet in depth, provided the rear yard shall be 20 feet in depth where adjacent to land zoned or, in fact, used for residential purposes.

(5) Where the lot abuts upon property used for residential purposes, a buffer strip shall be provided along the side and/or rear lot line of such abutting residential use. If a fence or wall is used, such fence or wall shall be opaque and not less than eight feet in height. If a planted buffer is used, such buffer strip shall be not less than eight feet in width and shall be composed of evergreen trees or shrubs which at planting will be at least four feet high and at maturity will be not less eight feet high. This requirement may be modified by the board of adjustment where sufficient natural buffering exists.

(g) *Ingress/egress.* All uses in this district abutting the major thoroughfares, being U.S. Highway 64/74, N.C. Highway 9, or Buffalo Creek Road, shall have access only from such thoroughfares and shall be allowed only one means of ingress/egress for each 150 feet of frontage or fraction thereof. All ingress/egress openings, for both one-way or two-way traffic, shall be a minimum of 15 feet wide and a maximum of 30 feet wide, measured at the road right-of-way line, unless otherwise required by the state department of transportation.

(h) *Landscaping.* Landscaped traffic delineators are required within the front yard of the commercial site extending the full width of the front yard excepting to allow for entrances and exits. Delineators shall begin at the edge of the right-of-way or six feet from the edge of the pavement, whichever is greater, and shall extend a minimum of two feet toward the front of the structure. The area shall be planted and maintained with grass, flowers, and/or shrubs not high enough to obstruct a driver's view of traffic.

(i) *Frontage.* All lots must have 50 feet of frontage on a street. For purposes of this section, all sites that are double frontage lots or corner lots shall be deemed to have frontage on all such streets. All fronts must adhere to ingress/egress requirements.

(Code 1989, § 92.031; Ord. of 2-9-1999; Ord. of 11-15-2005; Ord. of 3-10-2009; Ord. of 6-14-2011; Ord. of 4-10-2012; Ord. of 10-14-2014; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-63. CTC Commercial Town Center District.

(a) *Intent.* The CTC Commercial Town Center District is intended to apply to the area bounded by Pool Creek, the lots abutting the west side of Avenue "C," U.S. Highway 64/74A and Second Street. The CTC district is not a highway-oriented commercial district; therefore, gasoline service or filling stations, vehicle repair or sales, and the like are prohibited. Because this commercial district is the focal point of commerce in the town and is subject to the public view, which is a matter of important concern to the whole community, it should provide an appropriate appearance, ample public parking, controlled traffic movement and suitable landscaping.

(b) *Permitted uses.* Within the CTC Commercial Town Center District, buildings or land shall be used only for the following purposes:

(1) Medical and dental services or clinics.

(2) Real estate, financial institutions, business and professional offices.

(3) Post offices, fire stations, libraries, art galleries, museums, churches, public and private schools, and other similar cultural, civic and governmental buildings.

(4) Retail sales such as appliance stores, florist shops, bookstores, clothing stores, sporting goods and equipment stores, jewelry stores, hardware stores, grocery stores, drug stores, musical instruments, and video sales and rentals, but not excluding other similar uses.

(5) Consumer services such as restaurants, dry cleaning stores, coin laundries, tailoring shops, barber and beauty shops, indoor theaters, indoor game rooms, and indoor exercise physical fitness facilities, but not excluding other similar uses.

(6) Hotels, motels, and inns.

(7) Conference and meeting facilities.

(8) Existing (but not new) single-family dwellings.

(9) Multifamily dwellings located above the first floor of any structure.

(10) Live-work units.

(11) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(12) Child care centers.

(13) Brewpubs, micro-breweries, micro-distilleries, micro-wineries, and nano-breweries subject to special requirements contained in section 36-72(2).

(14) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Outside display of merchandise.* This section specifically excludes outside display of merchandise for sale or open storage of vehicles, motorized equipment, wrecked vehicles, inoperable vehicles, discarded tires, auto parts, and machinery and construction equipment; boat storage facilities; businesses which sell, rent, or display obscene materials as defined in this Code; tattoo parlors; mobile homes; moveable storage facilities; and manufacturing employing ten or more persons.

(d) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(2) Primary event venue. In issuing a special use permit for a primary event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(3) All new commercial buildings; new building additions with a gross floor area of 1,000 square feet, or more, to an existing commercial building; or any new addition to an existing commercial building where the building facade length, as existing on December 2005, will be increased by more than 50 percent as a result of an addition or multiple additions.

(4) Distilleries, regional breweries, and wineries.

(e) *Site requirements.* All lots must have a minimum of 10,000 square feet.

(f) *Front, rear, and side yard requirements.*

(1) Front yards are not required.

(2) Side yards may be zero feet with approved firewalls or not less than ten feet in depth, provided the side yard shall be 20 feet in depth where adjacent to land zoned or, in fact, used for residential purposes.

(3) Rear yards shall be not less than 15 feet, provided the rear yard shall be 20 feet in depth where adjacent to land zoned or, in fact, used for residential purposes.

(4) Where the lot abuts upon property used for residential purposes, a buffer strip shall be provided along the side and/or rear lot line of such abutting residential use. If a fence or wall is used, such fence or wall shall be opaque and not less than eight feet in height. If a planted buffer is used, such buffer strip shall be not less than eight feet in width and shall be composed of evergreen trees or shrubs which at planting will be at least four feet high and at maturity will be not less eight feet high. This requirement may be modified by the board of adjustment where sufficient natural buffering exists.

(g) *Ingress/egress.* All uses in this district abutting U.S. Highway 64/74 shall be allowed only one means of ingress/egress to that highway for each 150 feet of frontage or fraction thereof. All ingress/egress openings, for both one-way or two-way traffic, shall be a minimum of 15 feet wide and a maximum of 30 feet wide, measured at the road right-of-way line, unless otherwise required by the state department of transportation.

(h) *Landscaping.* Landscaped traffic delineators are required adjacent to all rights-of-way excepting to allow for entrances and exits. Delineators shall begin at the edge of the right-of-way or six feet from the edge of the pavement, whichever is greater, and shall extend a minimum of two feet toward the front of the structure. The area shall be planted and maintained with grass, flowers, and/or shrubs not high enough to obstruct a driver's view of traffic.

(i) *Frontage.* All lots must have 50 feet of frontage on a street. For purposes of this section, all sites that are double frontage lots or corner lots shall be deemed to have frontage on all such streets. All fronts must adhere to ingress/egress requirements.

(j) *Parking.*

(1) All parking and loading must be in compliance with sections 36-217 through 36-219, provided that public on-street and off-street parking spaces may be counted to meet the number of spaces required so long as such spaces are located within 900 feet, via pedestrian routing, from the entrance of the property to be served; and further provided that the number of spaces required shall be as follows:

Building	*Parking Spaces*
Multiple-family dwellings	One space for each dwelling unit
Hotels, motels and the like	One space for each accommodation
All other uses	One space for each 400 square feet of gross floor area

(2) Public parking spaces may be used to meet the requirements of more than one use at the same time.

(k) *Building height.* Notwithstanding the provisions of section 36-70 concerning building height, no structure shall exceed a height of 45 feet as measured from the average finished grade at building foundation line.

(Code 1989, § 92.031B; Ord. of 2-9-1999; Ord. of 11-15-2005; Ord. of 3-10-2009; Ord. of 6-14-2011; Ord. of 4-10-2012; Ord. of 10-14-2014; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-64. CG Commercial General District.

(a) *Intent.* The CG Commercial General District is established as districts in which the principal use of land is for retail sales and services to the consumer. The districts are intended to be located in high traffic areas along major thoroughfares. Because these commercial districts are located on the major thoroughfares of the town and are subject to the public view, which is a matter of important concern to the whole community, they should provide an appropriate appearance, ample parking, controlled traffic movement and suitable landscaping.

(b) *Permitted uses.* Within the CG Commercial General District, buildings or land shall be used only for the following purposes:

(1) Medical and dental services or clinics, animal hospitals, and veterinary clinics.

(2) Real estate, financial institutions, and business and professional offices, including, but not limited to, insurance broker, travel agent, stockbroker, attorney, and physician.

(3) Post offices, fire stations, police station, rescue squad, libraries, art galleries, museums, churches, public and private schools, public utilities and support facilities, and other similar cultural, civic and governmental buildings.

(4) Retail sales such as ABC stores, convenience stores (without gasoline sales), feed and seed stores, pet supply stores, antique stores, consignment shops, gift shops, outdoor vending machines, appliance stores, florist shops, book stores, clothing stores, sporting goods and equipment stores, jewelry stores, hardware stores (provided open storage of supplies is screened from public view), grocery stores, drug stores, musical instrument sales, and video sales and rentals, but not excluding other similar uses.

(5) Consumer services such as banks, funeral homes, personal care services (nails, tanning, weight loss), restaurants, dry cleaning stores, coin laundries, tailoring shops, barber and beauty shops, indoor theaters, indoor game rooms, pet grooming establishments, taxidermy operations, bowling alleys, and health and indoor exercise physical fitness facilities, but not excluding other similar uses.

(6) Hotels, motels, lodges, inns, and bed and breakfast establishments.

(7) Single-family and multifamily dwellings.

(8) Live-work units.

(9) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(10) Child care centers.

(11) Brewpubs, micro-breweries, micro-distilleries, micro-wineries, and nano-breweries subject to special requirements contained in section 36-72(2).

(12) Customary accessory buildings incidental to single-family and multifamily residential buildings, including noncommercial greenhouses, workshops, and private garages.

(13) Temporary structure used in conjunction with the construction of a permanent building.

(14) Telecommunications facilities and antennae (see section 36-72(4)).

(c) [*Out-of-building display.]* This section specifically prohibits out-of-building display of merchandise for sale, rent and unscreened open storage of vehicles, motorized equipment, boat storage facilities, construction equipment and supplies. Wrecked vehicles, inoperable vehicles, discarded tires or auto parts, and inoperable machinery are prohibited; businesses which sell, rent, or display obscene materials as defined in this Code are excluded from this district, in addition to tattoo parlors; mobile homes; moveable storage facilities; and manufacturing employing ten or more persons. Notwithstanding the above, one rental boat per commercial property is allowed to be displayed out of the building as an accessory use.

(d) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Gasoline service or filling stations, including accessory auto repair in completely enclosed buildings.

(2) Produce stands.

(3) Automobile and/or boat sales lots for the retail sale of new and used automobiles and/or boats, but excluding wholesale sales lots of any description and vehicle fix-up shops.

(4) Outdoor recreational facilities, excluding campgrounds.

(5) Planned unit developments.

(6) All telecommunications tower requirements listed in section 36-72(4).

(7) Marinas.

(8) Adult entertainment establishments, provided no such use shall be located on property which lies within:

a. 1,000 feet, as directly measured, of any property on which there is any other adult entertainment establishment.

b. 1,000 feet, as directly measured, of any property used as a school or place of worship.

c. 400 feet, as directly measured, of any property zoned for residential purposes.

(9) Marine sales and service facilities, provided any portion of such facilities which are not fully enclosed shall be separated from any adjacent land by a solid fence or wall not less than six feet high or an opaque landscaped buffer not less than six high and ten feet in width. Portions of such facilities used for the repair of boats and motors shall be located not less than 50 feet from any adjacent land zoned or used for residential purposes.

(10) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(11) Primary event venue. In issuing a special use permit for a primary event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(12) All new commercial buildings; new building additions with a gross floor area of 1,000 square feet, or more, to an existing commercial building; or any new addition to an existing commercial building where the building facade length, as existing on December 2005, will be increased by more than 50 percent as a result of an addition or multiple additions.

(13) Common amenities for residential developments, provided that they are situated within the residential development so as not to adversely impact existing and/or reasonably foreseeable uses on adjoining properties. Such amenities shall be set back a minimum of 30 feet from such adjoining properties and a minimum of 60 feet from Lake Lure. Buffering may be utilized to ensure compatibility with adjoining uses.

(14) Distilleries, regional breweries, and wineries.

(15) Campgrounds.

(16) Carwashes.

(17) Pet boarding operations.

(e) *Site requirements.* All sites must have a minimum of 21,780 square feet.

(f) *Front, rear, and side yard requirements.*

(1) For lots which abut the street, the building setback shall be not less than ten feet from the street.

(2) For lots which abut the lake, the building setback shall be not less than 35 feet from the lake shoreline, provided that buildings for marinas shall be set back not less than ten feet from the lake shoreline.

(3) Side yards shall be not less than 12 feet in depth.

(4) Rear yards shall be not less than 15 feet.

(5) Where the lot abuts upon property used for residential purposes, a buffer strip shall be provided along the side and/or rear lot line of such abutting residential use. If a fence or wall is used, such fence or wall shall be opaque and not less than eight feet in height. If a planted buffer is used, such buffer strip shall be not less than eight feet in width and shall be composed of evergreen trees or shrubs which at planting will be at least four feet high and at maturity will be not less eight feet high. This requirement may be modified by the board of adjustment where sufficient natural buffering exists.

(g) *Ingress/egress.* All uses in this district abutting the major thoroughfares, being U.S. Highway 64/74, N.C. Highway 9, or Buffalo Creek Road, shall have access only from such thoroughfares and shall be allowed only one means of ingress/egress for each 150 feet of frontage or fraction thereof. All ingress/egress openings, for both one-way or two-way traffic, shall be a minimum of 15 feet wide and a maximum of 30 feet wide, measured at the road right-of-way line, unless otherwise required by the state department of transportation.

(h) *Landscaping.* Landscaped traffic delineators are required within the front yard of the commercial site extending the full width of the front yard excepting to allow for entrances and exits. Delineators shall begin at the edge of the right-of-way or six feet from the edge of the pavement, whichever is greater, and shall extend a minimum of two feet toward the front of the structure. The area shall be planted and maintained with grass, flowers, and/or shrubs not high enough to obstruct a driver's view of traffic.

(i) *Frontage.* All lots must have 100 feet of frontage on a street. Lots which abut the lake must have 100 feet of frontage on the lake. For purposes of this section, all sites that are double frontage lots or corner lots shall be deemed to have frontage on all such streets. All fronts must adhere to ingress/egress requirements.

(j) *Parking.* All parking and loading must be in compliance with sections 36-217 through 36-219.

(Code 1989, § 92.031C; Ord. of 2-9-1999; Ord. of 4-13-1999; Ord. of 1-9-2001; Ord. of 11-15-2005; Ord. of 1-8-2008; Ord. of 3-10-2009; Ord. of 4-13-2010; Ord. of 6-14-2011; Ord. of 4-10-2012; Ord. of 10-14-2014; Ord. of 7-14-2015; Ord. of 6-12-2018; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-65. CSC Commercial Shopping Center District.

(a) *Intent.* The CSC Commercial Shopping Center District is intended to encourage the development of planned commercial facilities with depth rather than strip type commercial development. Commercial activities that have an adverse effect on adjacent or adjoining properties, or on shopping centers themselves, are prohibited. Rezoning of additional lands to commercial shopping center classification requires a showing of public and economic need for the establishment of new commercial areas outside existing commercial areas. It is further intended that the district shall be used for the purpose of providing a variety of goods and services and not used for single purpose activities.

(b) *Permitted uses.* Within the CSC Commercial Shopping Center District, buildings or lands shall be used only for the following purposes:

(1) Retail outlets for sale of food, wearing apparel, home furnishings and appliances, office equipment, hardware, toys, gift sundries and notions, flowers, books and stationery, leather goods and luggage,

jewelry, art, cameras, photographic supplies, sporting goods, musical instruments, pets, garden supplies, pharmaceuticals, and similar products in completely enclosed buildings.

(2) Service establishments such as barbershops or beauty shops, shoe repair shops, watch repair shops, computer repair shops, radio or television repair shops, newspaper offices, restaurants, delicatessens, interior decorator stores, photographic studios, dance studios, music studios, art studios, laundry or dry cleaner establishments, tailor or dressmakers, radio or television stations, gymnasiums, indoor motion picture theaters, bowling alleys, banks and financial institutions, and similar retail service establishments.

(3) Professional and business offices, including those of physicians, dentists, accountants, attorneys, engineers, architects, contractors, land surveyors, real estate brokers, insurance agents, and travel agents.

(4) Automotive service stations, service centers, and automotive convenience centers (including facilities for the provision of gasoline, oil, and other products for the servicing of automobiles) as an accessory use to the commercial shopping center provided:

a. No access for the service station or center shall be directly from any public street, but shall be from within the shopping center;

b. The location within the shopping center shall be such as to prevent interference with pedestrian traffic;

c. No openings for service bays shall face public streets or adjacent residential property;

d. The architectural definition shall be the same as the principal building within the commercial shopping center;

e. All major repair work, if any, shall be conducted within a completely enclosed building;

f. Open storage of wrecked or inoperable automobiles, discarded tires, auto parts or similar materials shall not be permitted;

g. Gasoline pumps and other appliances shall be at least 40 feet from any street centerline.

(5) Brewpubs, distilleries, micro-breweries, micro-distilleries, micro-wineries, nano-breweries, regional breweries, and wineries subject to special requirements contained in section 36-72(2).

(6) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Special use permit.* The following uses require special use permits subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Garden centers other than in completely enclosed buildings.

(2) Primary event venue. In issuing a special use permit for a primary event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(d) *Site requirements.* All commercial shopping centers shall be located on a single tract of not less than ten acres abutting either an arterial street and/or a collector street as defined in chapter 28.

(e) *Setback requirements.*

(1) The building setback from the centerline of any arterial street or collector street shall be equal to the maximum height of the building, but no closer than 65 feet from the centerline of any arterial street, and no closer than 60 feet from the centerline of any collector street.

(2) The building setback from adjoining property lines to the buildings (i.e., those sides not abutting the street) shall be not less than 35 feet.

(f) *Maximum height of structures.* No portion of the principal building in the commercial shopping center shall exceed 35 feet, except that, for each linear foot of front building facade greater than 250 feet, the height may increase by one foot, up to a maximum total height of 45 feet. No portion of any other structure shall be greater than 35 feet.

(g) *Ingress/egress.* All commercial shopping centers in this district must provide access from an arterial street or collector street. Further, any commercial shopping center located at the intersection of an arterial street and a collector street may have ingress and egress from each of the arterial and collector streets it abuts, not to exceed one entrance per street, except that, one additional access may be permitted from either the arterial street or the collector street if used as a service entrance for the commercial shopping center. In any event, the maximum number of entrances shall not exceed three. And further, no lot in this district shall be accessed from a minor street as defined in chapter 28.

(h) *Plan review.* All applications for commercial shopping center (CSC) developments within the CSC district shall submit a detailed site and development plan in accordance with section 36-103 to the zoning administrator to initiate administrative review. The town manager shall set forth the staff review process for administrative review. Within 30 days of the submittal of all required site and development plans to the zoning administrator, the zoning and planning board shall make a recommendation to the town council for approval or denial of the proposed CSC development. Within 30 days of the recommendation by the zoning and planning board, the town council shall, at a public meeting, approve the proposed CSC development if a simple majority of the council finds the following to be true:

(1) The commercial shopping center will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted;

(2) The commercial shopping center meets the required conditions and specifications in the town's regulations;

(3) The commercial shopping center will not substantially injure the value of adjoining or abutting property;

(4) The location and character of the commercial shopping center, as developed according to the plans submitted, will be in harmony with the area in which it is to be located; and

(5) The commercial shopping center, if developed in accordance with the plans and specifications submitted, will serve an economic need of the community.

(Code 1989, § 92.031D; Ord. of 4-10-2012; Ord. of 10-14-2014; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-66. L-1 Lake District.

The L-1 Lake District is established as a district for recreational purposes. The construction and use of all structures on the lake are not governed by this chapter, but rather by the town policy entitled "A policy regulating the construction and use of structures on Lake Lure," as amended.

(Code 1989, § 92.032; Ord. of 1-22-1991)

Sec. 36-67. M-1 Reserved Mountainous District.

(a) *Intent.* The M-1 Reserved Mountainous District is established as a district in which the principal use of land is for natural, undeveloped purposes. The land within this district is topographically restrictive for any type of land clearing, land disturbance and/or development. It is the intention to discourage any use which would be detrimental to the natural, open nature of the areas included within this district.

(b) *Permitted uses.* [Within the M-1 Reserved Mountainous District, buildings or land shall be used only for the following purposes:]

(1) Single-family dwellings.

(2) Customary accessory buildings, including private garages, storage buildings, and noncommercial workshops, shall be allowed for home occupations subject to all provisions of section 36-232.

(3) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(4) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Special use permit.* [The following uses require special use permits subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:]

(1) [Repealed by Ordinance 19-02-12.]

(2) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(Code 1989, § 92.033; Ord. of 5-11-2004; Ord. of 6-10-2008; Ord. of 10-13-2009; Ord. of 4-10-2012; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-68. S-1 Scenic Natural Attraction District.

(a) *Intent.* The S-1 Scenic Natural Attraction District is established as a district within which unique natural scenic areas are developed for commercial recreational purposes. The district is intended to encourage development of facilities and services oriented towards scenic and outdoor recreational activities, while remaining compatible with adjacent residential areas. Any land clearing, land disturbance and/or development or use which would be detrimental to the natural and ecological beauty of the district is prohibited.

(b) *Permitted uses.* Within the S-1 Scenic Natural Attraction District, structures and land shall be used only for the following purposes:

(1) Single-family dwellings, excluding mobile homes.

(2) Commercial recreational facilities which may include hiking trails, nature and wildlife exhibits, picnic facilities, and the like. Support activities such as ticket sales, information services, gift and craft shops, food services, pavilions, parking areas and the like are also permitted where accessory to the primary uses.

(3) Utility systems and facilities, including wells, pumping stations, storage tanks, garages, noncommercial workshops, and the like, as accessory to the primary uses, provided:

a. All buildings and parking areas for such uses shall be set back not less than 35 feet from any property line.

b. Fences and/or other appropriate safety devices are installed to protect the public.

c. All structures are in keeping with the character of the attraction and any adjacent residential area.

d. Any adjacent residential area and/or public and private rights-of-way shall be buffered from all such facilities by existing or planted natural vegetated areas to the extent that the utility facilities are screened from view.

(4) Customary accessory buildings, including private garages, storage buildings, and noncommercial workshops, shall be allowed for home occupations subject to all provisions of section 36-232.

(5) Residential vacation rentals subject to special requirements contained in section 36-72(1).

(6) Telecommunications facilities and antennae (see section 36-72(4)).

(c) *Special use permit.* The following uses require a special use permit subject to a finding by the board of adjustment that all applicable provisions of article IV of this chapter have been met:

(1) Planned unit developments.

(2) Hotels, lodges, motels, boardinghouses, roominghouses, or private clubs to provide lodging, services and board for the general public.

(3) Telecommunication towers, subject to the requirements of section 36-72(4).

(4) Accessory residential event venue. In issuing a special use permit for an accessory residential event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(5) Primary event venue. In issuing a special use permit for a primary event venue, the board of adjustment may impose reasonable conditions, including a maximum number of events per year and a maximum number of attendees which shall be based on the availability of parking, safe ingress and egress, sanitary facilities, potential impacts to adjacent properties and similar site-specific conditions.

(Code 1989, § 92.034; Ord. of 8-18-1998; Ord. of 5-11-2004; Ord. of 6-10-2008; Ord. of 4-10-2012; Ord. of 2-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-69. GU Governmental Institutional Use District.

(a) *Intent.* The GU Governmental Institutional Use District is intended to apply to those lands to which national, state, county or municipal governments or institutions hold title and where public, educational, or charitable facilities are used for public purpose. Any lawful governmental activity is permitted in these districts. It is not intended to classify all lands owned by governments or institutions into this district, but only those lands particularly and peculiarly related to public usage.

(b) *Permitted uses.* Within the GU Governmental Institutional Use District, buildings and land shall be used only for the following purposes:

(1) Indoor and outdoor recreation facilities such as, but not limited to, parks, playgrounds, gyms, ball fields, trail networks, and other recreation areas.

(2) Government administrative, meeting, and support facilities.

(3) Facilities such as daycares, public or private schools, colleges, hospitals and libraries and their respective accessory uses and support facilities.

(4) Other public facilities of a like nature.

(5) Those uses designated on a master plan adopted by town council for any publicly owned property.

(c) *Development criteria.* As determined by town council in compliance with all town regulations.

(Code 1989, § 92.039; Ord. of 6-10-2008)

Sec. 36-70. Building site minimum dimensional requirements.

			Setbacks(g)			
Zoning Classification	Lot Area (a)(g)	Lot Width at Building Site (b)(g)	Front Yard *	Side Yard	Rear Yard (d)	Rear Yard Open Space Percent of Lot (e)
R-1	10,000 s.f.	100 ft.	(c)	10 ft.	10 ft.	30%
R-1A	2 acres	100 ft.	(c)	10 ft.	10 ft.	30%
R-1B	1 acre	100 ft.	(c)	10 ft.	10 ft.	30%
R-1D	0.5 acre	100 ft.	(c)	10 ft.	10 ft.	30%
R-1C	0.5 acre	60 ft.	(c)	10 ft.	10 ft.	20%
R-2/R-3						
Single-family	14,000 s.f.	60 ft.	(c)	7 ft.	10 ft.	20%
Two-family	18,000 s.f.	70 ft.	(c)	8 ft.	10 ft.	20%
Three-family	24,000 s.f.	85 ft.	(c)	10 ft.	10 ft.	20%
Four-family	29,000 s.f.	100 ft.	(c)	10 ft.	10 ft.	25%
R-4 (f)	10,000 s.f.		(c)	10 ft.	10 ft.	
CN	10,890 s.f.	50 ft.	10 ft. (c)	10 ft.	15 ft.	none
CTC	10,000 s.f.	50 ft.	0 ft. (c)	0 ft. or 10 ft.	15 ft.	none
CG	21,780 s.f.	100 ft.	10 ft. (c)	12 ft.	15 ft.	none
M-1	2 acres	100 ft.	(c)	12 ft.	15 ft.	none
S-1	25 acres	100	35 (c)	35	35	none

Maximum building height in any district shall be not more than 35 feet as measured from the average finished grade at building foundation line. The average finished grade is determined by adding the elevation of the highest corner of the proposed structure to the elevation of the lowest corner of the proposed structure and divide by two.

*See definition of "setback" for streets with no right-of-way in section 36-5.

(a) Plus 2,000 square feet of lot area for each additional dwelling unit in excess of four.

(b) The lot width at the building site minimum dimensional requirements shall not apply to existing lots of record as of the effective date of the ordinance from which this chapter is derived. For any residential lot, lot width at street line shall be not less than 35 feet. For any commercial lot, lot width at street line shall be not less than 100 feet. Lot width at street line for the R-4 district shall be not less than 50 feet. Any lot abutting Lake Lure shall have a frontage along the lake of not less than 100 feet.

(c) For primary streets, the front yard setback shall be 40 feet from the centerline, but not closer than ten feet from any right-of-way line where such line exists. For secondary streets, the front yard setback shall be 35 feet from the centerline, but not closer than ten feet from any right-of-way line where such line exists. In all commercial districts, setbacks shall be measured from the right-of-way line, or where no right-of-way exists, from a point 15 feet from the centerline of the street. In most situations, the front yard lies between the building and the street. However, for lots which abut a lake, the lake side is also considered a front yard. In any zoning district, minimum setback from the lake is 35 feet measured from the shoreline.

(d) From the rear property line to the nearest building on that lot.

(e) Excluding any space occupied by an accessory building which may be located between principal building and rear lot line.

(f) Maximum building size for office: 3,000 square feet (heated area).

(g) The minimum lot area, lot width and yard requirements may be reduced in an approved conservation design subdivision provided that the zoning and planning board approves such reduction in accordance with section 28-77(3)c. The reduced setbacks shall be clearly stated on the final plat. If the reduced setbacks are not stated on the final plat, the standard setbacks noted in this section shall apply.

(Code 1989, § 92.040; Ord. of 1-25-1994; Ord. of 12-12-1995; Ord. of 11-26-1996; Ord. of 2-9-1999; Ord. of 4-10-2007; Ord. of 8-12-2008; Ord. of 2-8-2011; Ord. of 12-9-2014; Ord. of 3-10-2015)

Sec. 36-71. Protected mountain ridge overlay zones.

(a) *Intent.* Mountain ridges provide a key sense of place and are a key economic asset for the people of the town. Certain mountain ridges, by virtue of their topography, are particularly visible, and, thus, have greater potential to impact the values listed above. Protected Mountain Ridge Overlay Zones are intended to protect viewsheds associated with prominent mountain ridges from development activities which are likely to adversely impact these assets.

(b) *Applicability.* There are hereby created the Protected Mountain Ridge Overlay Zones as depicted on the map entitled "Protected Mountain Ridge Overlay Zone Map," which is attached to the ordinance from which this section is derived and which is hereby adopted as if fully set forth in this chapter. Said map shall be attached to the town clerk's copy of this chapter upon adoption and shall be duly incorporated into the zoning map of the town. In addition to complying with all applicable standards of the underlying zoning district, development on lands situated within such overlay zones shall also comply with the standards contained in this section.

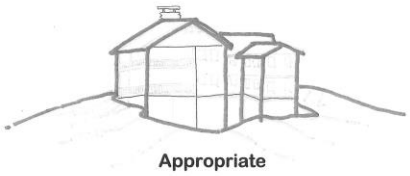
(c) *Building location.* To the extent practicable, each building shall be located so as to minimize its visual impact.

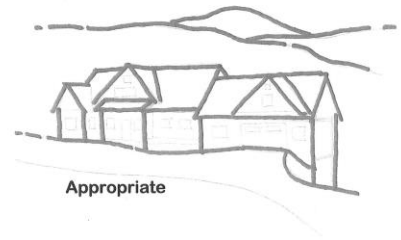
(d) *Partial screening.* A portion of natural on-site vegetation shall be retained sufficient to partially screen (along 50 percent of the building face, or that achieves 50 percent opacity or more along the building face) the building, structure, use, or activity from views from public roads not serving the building, or landscaping shall

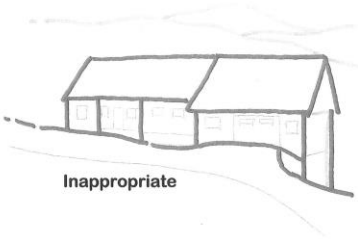
be installed and designed to partially screen the building, structure, use, or activity from views from public roads, or other measures have been included in the project and approved by the director to reduce the visual impacts of such development from views from public roads. View corridors from the proposed building to surrounding areas may be provided, but such corridors shall not extend for more than 50 percent of the width of building face between the view sought and the building face from which the view is sought.

(e) *Tree protection.* Trees which are part of the tree canopy or required screening shall not be removed unless they constitute a danger to person or property and only with written authorization of the tree protection officer.

(f) *Roofs.* Roof forms and rooflines for new structures shall be broken into a series of smaller building components to reflect the irregular forms of the surrounding mountain or hillside. The slope of the roof shall be oriented in the same direction as the natural slope of the lot. Only nonreflective roofing materials shall be used.







Roof Forms and Roof Lines

(Code 1989, § 92.041; Ord. of 11-18-2008; Ord. of 3-10-2009; Ord. of 10-9-2012; Ord. of 12-9-2014; Ord. of 3-16-2015)

Sec. 36-72. Special requirements for certain uses.

The special requirements contained in this article apply to the named uses whenever they are identified as special uses or as permitted uses subject to special requirements. Notwithstanding any other provisions of this chapter, whenever these regulations provide that a use in a nonresidential zone or a nonconforming use in a residential zone is permissible with a zoning permit, a special use permit (see section 36-102) shall nevertheless be required if the administrator finds that the proposed use would have an extraordinary impact on neighboring properties or the general public. In making this determination, the administrator shall consider, among other factors, whether the use is proposed for an undeveloped or previously developed lot, whether the proposed use constitutes a change from one principal use classification to another, whether the use is proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question.

(1) *Residential vacation rentals.* Residential vacation rentals are hereby recognized as a use within the planning jurisdiction of the town. Except as provided herein, on and after January 1, 2010, it shall be a violation of these zoning regulations to operate a residential vacation rental without a vacation rental operating permit from the town.

a. *Exceptions.* The following activities and/or uses shall not be deemed residential vacation rentals and the requirements of this subsection shall not apply to them:

1. Incidental residential vacation rentals, defined to mean no more than two such rentals in any calendar year where the total annual rental period for both rentals does not exceed two weeks.

2. Rentals of property in any hotel, lodge, motel, bed and breakfast establishment, boardinghouse or roominghouse, with a valid certificate of zoning compliance. For purposes of this regulation, the term does not include multifamily dwellings nor does it apply to duplexes other than those situated within the R-1, R-1A, R-1B, R-1C, R-1D, R-2 and M-1 zoning districts.

b. *Vacation rental operating permits.* Every residential vacation rental not excepted as in subsection (1)a of this section shall require a vacation rental operating permit issued pursuant to the regulations contained herein. The vacation rental operating permit may also function as a certificate of zoning compliance for a residential vacation rental. Any vacation rental operating permit issued prior to February 28, 2012, is recognized as having a vested status to operate under this chapter as amended on February 28, 2012. Additionally, anyone that can establish via tourism and development authority tax records or other suitable proof that they were engaged in vacation rental activity at their home prior to January 1, 2010, would also have vested status. Any future revisions and amendments to this chapter shall not apply to those vested residences. This status is transferable; although, a new vacation rental operating permit must be obtained in the name of the new owner. This status is forfeited if there is no vacation rental activity at the home for a period of five years.

1. *Application.* In order to obtain a vacation rental operating permit the owner or the operator shall submit an application for each such residential vacation rental which complies with the requirements of the town's zoning regulations and the additional

requirements as found in subsection (1)c of this section and shall pay all applicable fees in accordance with the town's adopted fee schedule.

2. *Procedure.* From and after the effective date of the ordinance from which this chapter is derived, applications for a residential vacation rental use shall submit an application for a vacation rental operating permit, to be processed as a certificate of zoning compliance application with all additional supporting documentation as per subsection (1)c of this section.

c. *Contents of application.* The application for a vacation rental operating permit shall contain the following information:

1. The address of the property.
2. Name and contact information for the owner of the property.
3. Name and contact information for the operator if other than the owner.
4. A site plan showing the off-street parking area for the property. One parking space for every two rental bedrooms shall be required. Parking areas shall not encroach into any road right-of-way or neighboring private properties.
5. The number of bedrooms on the property intended to be used for occupancy.
6. A copy of the county revenue department property information card for the subject property.
7. If the property is served by the town's sewer system, a certificate from a qualified licensed professional that the connection to the town's system is operational and free of detectable leaks.
8. If the residential vacation rental includes the use of a boat on Lake Lure, proof of a valid town commercial boat license.
9. Proof that the property is registered with the county tourism development authority.
10. A copy of the standard rental agreement used for the residential vacation rental which contains information required by this section.
11. An acknowledgment that the applicant is aware of the occupancy restrictions on the use of the property as a residential vacation rental and the applicant's agreement to abide thereby.
12. A statement by the operator, under oath, that the information in the application is correct.

d. *Inspections.* In conjunction with an application for a vacation rental operating permit, the town shall conduct an initial inspection to confirm compliance with the requirements of this section.

e. *Operational requirements.* The following operational requirements shall apply to all residential vacation rentals:

1. *Occupancy limits.* On those occasions when the property is being utilized for vacation rental activity, the overnight occupancy shall not exceed two persons per bedroom plus four additional persons. For any permits issued subsequent to February 28, 2012, occupancy shall be the lesser of the total determined by the foregoing formula or 12 persons. Bedrooms used in calculating occupancy limits shall be taken from the application as affirmed by the owner/manager and shall be the same as the number of bedrooms as

listed on the county revenue department's property information card to also assure the sufficiency of the wastewater system on site.

2. *Signs.* In the R-1, R-1A, R-1B, R-1C, R-1D and M-1 zoning districts, residential vacation rental properties shall not have any signs visible from the exterior of the premises which advertise the use of the property as a residential vacation rental, other than as required by this section. In the remaining zoning districts, residential vacation rental properties may have signage as authorized by article X of this chapter.

3. *Display of contact information.* Residential vacation rental operators shall prominently display on the exterior of the residential vacation rental property the name and 24-hour per day, 365 days-per-year telephone number for the residential vacation rental operator who will take and resolve complaints regarding operation of the residential vacation rental property and its occupants and guests. The town will prescribe the form of this display which shall also include a telephone number to report violations of this section to the zoning administrator.

4. *Parking.* Occupants or guests of any residential vacation rental property shall not park vehicles on the property other than within parking areas designated on the application for the residential vacation rental. Vehicles parked in undesignated areas, or in the street so as to violate the town's street ordinances, shall be subject to towing at the vehicle owner's expense.

5. *Trash disposal.* Household trash must be bagged and disposed of in trash receptacles. Trash receptacles shall be the size and number authorized by existing refuse contracts and shall be animal resistant.

f. *Contract addendum.* Every residential vacation rental contract shall contain an addendum, in a form prepared by the town, setting forth the requirements of this section and other applicable provisions of law. The operator shall obtain a signed acknowledgment from the renter that they have received such addendum prior to delivering possession of the residential vacation rental property. This requirement shall be deemed satisfied if the provisions of the addendum are included as part of the rental contract.

g. *Duties of the operator to respond to complaints.* To assure prompt response to complaints and issues concerning a residential vacation rental, the operator shall comply with the following:

1. Maintain a call center that is staffed by a live person and fully responsive at any time that the property is used as a residential vacation rental.

2. Continuously maintain on file with the town the operator's current address, telephone number, and facsimile number and/or email address.

h. *Noncompliance with vacation rental operating permit/residential vacation rental regulations.* Failure to comply with the standards and regulations as found in this section shall be enforced by the remedies and penalties as provided in chapter 1 and this chapter.

i. *Notification to contiguous property owners of the issuance of a vacation rental operating permit.* Upon issuance of the permit, the zoning official shall, by first-class U.S. Mail, notify all contiguous property owners of the decision to allow the use of the property as a residential vacation rental.

(2) *Breweries, distilleries and wineries.* An applicant seeking authorization to develop and/or operate a brewery, brewpub, distillery, micro-brewery, micro-distillery, micro-winery, nano-brewery or winery

shall obtain a sewer use permit for the facility prior to issuance of such authorization, whether it be a certificate of zoning compliance or a special use permit.

(3) *Campgrounds.* Campgrounds shall comply with the general standards and procedures for special uses contained in section 36-101 as well as the specific standards and procedures contained herein.

a. *Campground standards for all campgrounds.* The following standards shall apply to all campgrounds containing two or more campsites or camp lots, including sites for tents, accommodations for backpackers and recreational vehicles (RVs):

1. *Size.* All proposed campgrounds shall be a minimum of three acres in size.

2. *Certificate of compliance required.* Any proposed campground shall not be allowed to open until such campground has met all planning and building requirements of this chapter for the town and the state.

3. *Fire prevention and protection.* The application for a special use permit shall include a plan for fire prevention and protection to be reviewed by the fire [chief]. The applicant shall be provided with a copy of the fire [chief's] comments and recommendations and shall address those at the hearing on the special use permit application.

4. *Other permanent structures.* Permanent structures other than camp platforms and recreational support and sanitary facilities shall be prohibited unless the developer or owner can demonstrate the necessity or desirability for such a structure. Structures commonly deemed necessary or desirable include a gatehouse, office, laundry area, video/amusement area, common area shelters, picnic table shelters for campsites, and camping cabins.

5. *Storage of RVs.* Storage of all types of recreational vehicles within campgrounds shall be limited to no more than one stored RV per ten RV sites. Such storage area shall be buffered and screened, preferably by vegetation, from the campground or outside areas.

6. *Number of days permitted to camp.* With the exception of campers who work for the campground, camping shall be restricted to a period of no more than 90 consecutive days within any one-year period. Tent camping shall be limited to a period of 30 consecutive days within a 60-day period.

7. *Access to water for all campsites/RV utility islands.* Each campground shall have reasonable access to a source of potable water approved by the applicable health authority and building codes.

8. *Road circulation pattern.* The road circulation pattern should be a one-way paved or gravel reinforced system attached to a main two-way circular thoroughfare. If a loop system is used, it shall contain a pull-through site arrangement or back-in site ranging from a 45- to a 90-degree angle. Parking on all access roads to the entire campground area shall be prohibited. A turning radius for all emergency vehicles shall be required as approved by the fire department. The turning radius in loops and turns shall not be less than those required by the fire department, including those for parking spurs at individual RV sites.

(i) *Road width/slope in campground.* Road widths on the one-way loop shall be at least 15 feet wide. Double lane roads shall have a minimum width of 20 feet. The circulation system shall parallel existing contours as closely as possible, and shall not exceed a 16-percent slope.

(ii) *Land disturbance.* A soil and erosion sedimentation plan shall be filed and approved by the town prior to any construction.

9. *Campfires shall be contained and controlled.* Campfires are permitted only within fire rings, which shall not be placed within ten feet of a bottled gas container or other combustible source of fuel. The campground management shall require that no open fire is left unattended.

10. *Refuse disposal.* All campgrounds shall provide fly-proof, watertight containers for the disposal of refuse. These containers shall also be constructed and located such that they are not subject to rodent infestation or dog and bear invasion. Containers shall be provided in sufficient number and capacity to properly store all refuse. Refuse for camping areas shall be collected at least once a day.

11. *Overflow parking area.* All campsites shall be limited to a total of one non-RV parking space. An additional area for parking of such vehicles shall be provided equal to one parking place for every ten campsites. Such parking area can be surfaced with gravel. At no time shall parking be permitted on access roads to the campground.

12. *Insect control.* Owners of such parks shall be responsible for adequate insect control in the camping area, such as the periodic spraying for mosquitoes.

13. *Lighting.* Cut-off, overnight lighting for all bathhouses and centralized water sources shall be required. Reflectors denoting paths to above-mentioned structures are recommended. Other minimal lighting should be installed as needed for the safety and comfort of campground residents.

14. *Floodplains.* Campgrounds proposed to be developed in whole or in part in floodplains shall demonstrate compliance with the flood damage prevention regulations contained in chapter 14.

15. *Emergency evacuation.* The application for a special use permit shall contain an emergency evacuation plan which is adequate to protect the safety of those utilizing the campground.

b. *Campsites for accommodation of independent RVs.*

1. *Electricity hook up prohibited.* RVs shall not be permitted to hook up to electricity or water for occupation on individual camp lots unless as part of an approved campground.

2. *Density of sites.* To prevent intensive site use, and to maintain an aesthetic camping atmosphere, density shall not exceed 15 sites per acre.

3. *RV parking sites material/slope.* Each recreational vehicle site with individual parking shall contain at least five inches of crushed gravel leveled to not more than three percent slope.

4. *RV utility islands.* Each RV site shall contain, within the utility island, hookups to water, sewer, and electrical service.

5. *RV utility islands water/sewer plumbing requirements.* Campgrounds with access to a sewage system shall provide that each campsite contain a sewer connection with suitable fittings to permit a watertight junction with the RV outlet. Each sewer connection shall be constructed so that it can be closed, and when not in use shall be capped to prevent escape of odors. All water taps or outlets serving RV campsites shall be of a type compatible with garden hose connections. Sewer and water piping and installation shall be constructed as specified in the state building code.

6. *Electrical outlets.* Each RV site shall have access to electrical power. All electrical outlets shall be located in a properly constructed utility island.

7. *Parking dimensions RV sites.* A parking plan shall be submitted which is adequate to accommodate the campground's expected clientele. Parking spurs shall be located so that trailer doors face away from interior roads and into the site. Parking for all recreational vehicles and any additional vehicle shall be of a minimum five-inch gravel base.

8. *RV campsite spacing.* RV parking sites shall be at least 20 feet apart (this 20-foot area will include any yard, cooking areas, dining areas, and utility island for next RV site), edge-to-edge, and the center of all camping units should be at least ten feet from the edge of the campground road.

9. *RV dump station.* A sanitary dump station built to the requirements of the local health department shall be provided at the entrance to the campground or other location convenient to all campsites. The dump station shall be located so that the left rear of vehicles will slope slightly toward the dump station when connected for emptying.

c. *Sanitary facilities for accommodation of dependent RVs and tent campsites.*

1. All campgrounds for the accommodation of dependent RVs and tents shall provide sanitary facilities connected to a sewerage system. Whenever possible, these facilities shall be connected to a public sewerage system.

2. Toilets, lavatories, and bathing facilities shall be as provided under state building code volumes 1C and 2.

3. Toilet facilities shall be plainly marked, separate for each sex, lighted at night, and shall be located no farther than 200 feet from any camp pad.

4. Toilet facilities may be located in a central building or in two or more buildings according to the size of the campground and location of the campsites in relation to the facilities.

5. Adequate provisions shall be made for the disposal of dishwater according to the size of the campground. A suggested ratio is one disposal unit per ten campsites.

d. *Campsites for tents.* Construction of tent pads is not required for pup tents or other small shelters used by backpackers. Provisions for walk-in campgrounds are contained in this subsection.

1. Each tent site should contain a minimum space of 30 feet by 30 feet. Density shall not exceed 15 sites per acre. Tent sites with individual parking arrangements shall contain one automobile parking space at least 18 feet by nine feet.

2. Each site should contain a reinforced, fairly level tent pad. The pads shall be approximately 16 feet by 16 feet to provide maximum flexibility of use, but shall not contain less than an area of 12 feet by 12 feet. The tent pad shall be a minimum of six inches high and constructed of gravel, crushed aggregate, or equivalent material that will allow run-off from precipitation to flow through the pad. Pads constructed of tamped earth, asphalt or other impervious materials are prohibited. Tent pads in excess of ten percent slope should be leveled. A three-percent slope is preferable.

3. Provisions for sanitary facilities are the same as for dependent RVs set out hereinabove.

e. *Walk-in campgrounds.*

1. Camping is prohibited in areas where a source of potable water and access to sanitary facilities is not provided.
2. Walk-in campgrounds shall have access to potable water within 75 feet of all sleeping areas. In locations where a water supply system is not possible, potable water may be supplied by an approved well with a hand pump or by water from pickup stations.
3. All walk-in campgrounds shall have access to the use of a toilet facility to be located within 300 feet of each camping space.

f. *Campsites for mixed uses.* Campgrounds may be developed to provide more than one type of camping site in the same area. When uses are mixed, the highest, or most strict, standards shall apply to development of the entire campground with the exception of walk-in camping areas in a campground designed for mixed uses. In such a development, walk-in camping shall be separated from other types of campsites so that campfire smoke or noise will not constitute a nuisance to other campers.

g. *Campground design.* The campground shall be designed in a manner which is compatible with the natural features and topography of the tract undergoing development, and in a manner which provides safe, healthful and convenient camping facilities for campground users consistent with minimum land disturbance.

1. A complete master plan of any new, expanded or altered park shall be submitted to the town for approval before construction in accordance with the checklist for campgrounds found in the appendices.
2. All campgrounds containing two or more campsites or camp lots, including sites for tents, accommodations for backpackers and RVs, require a special use permit.
3. Density shall not exceed 15 sites per acre.
4. Campgrounds shall be developed to minimize noise, campfire smoke, or trespassing so as not to create a nuisance to abutting properties.
5. Sanitary and bathing facilities shall be provided per the state building code. Sanitary dump stations built to the requirements of the local health department shall be provided at the entrance to the campground or other location convenient to all campsites. The dump station shall be located so that the left rear of vehicles will slope slightly toward the dump station when connected for emptying.
6. All campsites shall be limited to a total of one non-RV parking space per site or RV parking space. An additional area for parking of such vehicles shall be provided equal to one parking place for every ten campsites in a common location or spread throughout the campground.

(4) *Telecommunications support facilities and antenna.*

a. *Purpose and intent.* The town desires to encourage the orderly development of wireless communication technologies for the benefit of the town and its citizens. The town also recognizes the need to protect the character and appearance of its community. As a matter of public policy, the town desires to encourage the delivery of new wireless technologies throughout the town while controlling the proliferation of communication towers. Such development activities will promote and protect the health, safety, prosperity and general welfare of persons living in the town. Unless superseded by Session Law 2013-185, the Cell Tower Deployment Act, or Session Law 2017-159, Wireless Communication Infrastructure Siting, both of

which shall control, the following provisions shall apply to the erection or replacement or modification of a wireless facility.

b. *Severability.*

1. If any word, phrase, sentence, part, section, subsection, or other portion of this section or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

2. Any zoning permit issued pursuant to this section shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the town.

c. *Definitions.* The following words, terms and phrases, when used in this subsection (4), shall have the meanings ascribed to them in this subsection (4)c, except where the context clearly indicates a different meaning:

Accessory facility or structure means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities or complexes, including, but not limited to, utility or transmission equipment storage sheds or cabinets.

Amend, amendment and *amended* mean any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.

Antenna means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

Applicant means any wireless service provider submitting an application for a zoning permit for wireless telecommunications facilities.

Application means all necessary and required documentation that an applicant submits in order to receive a zoning permit and building permit if applicable for wireless telecommunications facilities.

Certificate of completion (COC) means a required document issued by the town that confirms that all work represented in the application:

1. Was properly permitted;
2. Was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline;
3. Was fully constructed as approved and permitted; and
4. A final inspection was requested, conducted and the facility or complex passed the final inspection.

Collocation means the use of an approved telecommunications structure to support antenna for the provision of wireless services.

Commercial impracticability or *commercially impracticable* means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the

project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be commercially impracticable and shall not render an act or the terms of an agreement commercially impracticable.

Completed application means an application that contains all necessary and required information and/or data as set forth in this chapter and that is necessary to enable an informed decision to be made with respect to an application and action on the application.

Complex means the entire site or facility, including all structures and equipment located at the site.

Distributive access system or *DAS* means a technology using antenna combining technology allowing for multiple carriers or wireless service providers to use the same set of antennae, cabling or fiber optics.

Eligible facility means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a substantial modification. An eligible facility application shall be acted upon administratively and shall not require a special use permit, but shall require staff administrative approval.

Expert assistance fee means a set fee intended to prevent taxpayer subsidization for the town's review of an application for telecommunication support facilities, WTFs, DAS systems, or antennae.

FAA means the Federal Aviation Administration, or its duly designated and authorized successor agency.

Facility means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

FCC means the Federal Communications Commission, or its duly designated and authorized successor agency.

Height means the distance measured from the preexisting grade level to the highest point on the tower or support structure, even if said highest point is an antenna or lightening protection device. As regards increasing the height of an existing structure, the term "height" means the height above the top of the structure prior to any work related to a wireless facility.

In-kind replacement means replacing a component that is malfunctioning with a properly functioning component of the same weight and dimensions and that does not enable an increase in revenue for the service provider or increase the compensation paid to the owner or manager of the support structure.

Maintenance means plumbing, electrical, carpentry or mechanical work that may or may not require a zoning permit and building permit, if applicable, but that does not constitute a modification of the WTF.

Modification or *modify* means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility or complex with identical components, including, but not limited to, antennae, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to an existing support

structure or tower as a collocation is a modification, unless the height, profile or size of the compound is increased, in which case it is not a modification.

Necessary, necessity, or *need* means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in the effect of prohibiting the provision of service as intended and described in the narrative of the application. The term "necessary," "necessity" or "need" does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an applicant's specific chosen design standards.

NIER means non-ionizing electromagnetic radiation.

Person means any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

Personal wireless facility. See *Wireless telecommunications facilities.*

Personal wireless services or *PWS* and *personal telecommunications service* or *PTS* shall have the same meaning as defined in the 1996 Telecommunications Act.

Repairs and maintenance means the replacement or repair of any components of a wireless facility or complex where the replacement is identical to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility or complex that will impose new visible burdens of the facility or complex as originally permitted. Any work that changes the services provided to or from the facility, or the equipment, is not repairs or maintenance.

Stealth or *stealth siting technique* means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean building the least visually and physically intrusive facility and complex that is not technologically or commercially impracticable under the facts and circumstances. Stealth techniques include such techniques as:

1. DAS or its functional equivalent; or
2. Camouflage where the tower is disguised to make it less visually obtrusive and not recognizable to the average person as a wireless facility complex.

Structural capability, structural capacity, or *structural integrity* means, notwithstanding anything to the contrary in any other standard, code, regulation or law, up to and not exceeding a literal 100 percent of the designed loading and stress capability of the support structure.

Substantial modification means a change or modification that increases the existing vertical height of the structure by the greater of:

1. More than ten percent; or
2. The height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of:

(i) More than 20 feet; or

(ii) More than the width of the wireless support structure at the level of the appurtenance; or increases the square footage of the existing equipment compound by more than 2,500 square feet.

Telecommunications means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Telecommunications site. See *Wireless telecommunications facilities.*

Telecommunications structure means a structure used primarily to support equipment used to provide wireless communications or was originally constructed primarily for such purpose.

Temporary means not permanent in relation to all aspects and components of this section and that will exist for fewer than 90 calendar days.

Tower means any structure designed primarily to support an antenna and/or other equipment for receiving and/or transmitting a wireless signal and is the lesser of:

1. More than ten feet taller than the adjacent buildings or trees; or
2. Taller than 40 feet.

Wireless telecommunications facility or facilities (WTF or WTFs), facility, site, complex, telecommunications site and *personal wireless facility site* mean a specific location at which a structure that is designed or intended to be used to house, support or accommodate antennae or other transmitting or receiving equipment is located. This includes, without limit, towers and support structures of all types and kinds, including, but not limited to, buildings, church steeples, silos, water towers, signs or other any other structure that is used or is proposed to be used as a support structure for antennae or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets and other structures associated with the complex used to provide, though not limited to, radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services, internet access services and any commercial wireless telecommunication services whether or not licensed by the FCC.

Zoning permit means a permit denoting compliance with this chapter and other applicable zoning requirements and standards that must be granted as a prerequisite to applying for and being granted any other required permit.

d. *General policies and procedures for applications under this section.*

1. It shall be unlawful for any person, corporation, partnership or other entity to erect any wireless facility without first obtaining a zoning permit from the administrator. A permit shall also be required for the erection of a replacement wireless support structure or the modification of an existing wireless support structure.

(i) Existing wireless support structures owned by government agencies and designed for noncommercial emergency communications may be replaced with a wireless support structure equal in height to the existing wireless support structure; however, all other chapter provisions are applicable.

(ii) The placement or collocation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities, requires a zoning permit in compliance with requirements of this article.

(iii) Wireless support structures are allowed, with standards as in this article, in all zoning districts.

2. The administrator or board of adjustment shall approve or disapprove the zoning permit based upon the receipt of a completed site plan as required above and the following provisions:

(i) The wireless facility design plan was prepared by a professional engineer registered in the state, including engineer's signature, seal and address.

(ii) The site plan shall illustrate, with details, the foundation and base of the wireless support structure, the foundation for all the guy line anchors and support structures, all proposed buildings, and any other proposed improvements, including access roads and utility connections, within and to the proposed site.

(iii) In addition to any other materials required for a standard permit under this section or any other ordinance of the town, all applicants for permits to construct a telecommunications support facility or antenna shall submit visual impact demonstrations using photo or similar graphic simulations of the proposed facility as it would be seen from residential areas, public rights-of-way, and public parks and other sites.

(iv) Location requirements. The applicant shall identify all possible alternatives considered within the service area for the proposed wireless facility location and explain why the proposed wireless facility is necessary and why existing wireless facilities or other structures cannot accommodate the proposed antenna.

3. Wireless support structure height, operational limitations/requirements, and access infrastructure (for traditional wireless support facilities).

(i) A wireless support structure shall not exceed an overall height (OAH) of 200 feet, including the height of all antennae and lightning rods.

(ii) A wireless support structure located on any major mountain ridge shall be monopole and no taller than 30 feet higher than the vegetative canopies immediately surrounding the base of the tower.

(iii) The proposed wireless support structure shall be designed and constructed for collocation of at least three additional telecommunication antenna systems. The wireless facility area shall be of sufficient size to accommodate the accessory equipment for at least three additional telecommunication providers.

(iv) Contingent upon space available, the wireless facility operator shall also be equitable to allowing government emergency service communications to collocate on their facility at a reduced industry standard price.

(v) The wireless facility access road must be a minimum of 12 feet in width accommodating, to the satisfaction of the town fire [chief], all emergency equipment and vehicles; and, if gated, shall employ a Siren Operated Sensor access system.

4. The applicant shall be required to provide written documentation certifying compliance or, when appropriate, exemption from all applicable federal and state regulations.

5. The applicant shall present to the administrator or board of adjustment, if applicable, proof of either fee simple ownership, an option to purchase or lease, a recorded leasehold interest, or an easement, from the record owner of all property involved and any necessary rights-of-way to the wireless facility site.

6. Signage shall be limited to a sign identifying the owner and operator of the tower, an emergency telephone number and any other signage as required by any government agency. Signage shall be placed in a clearly visible location on the premises of the tower.

7. Setback requirements (engineered fall zone facilities).

(i) A tower shall be separated from other on-site and off-site towers and supporting structures such that one tower will not strike another tower or its support structure if it falls. Towers shall be set back from property lines in accordance with the twice the setback requirements for the district or 110 percent of the documented engineered fall zone, whichever is greater. Additionally, telecommunications towers must set back from any residential districts or uses a distance equivalent to the fall radius of the tower being erected times ten percent.

(ii) Wireless facilities located within transmission line easements are not required to meet the requirements of subsection (4)d.7(i) of this section.

(iii) There shall be no setback requirement from structures located on the same parcel as the proposed wireless facility as long as a professional engineer, registered in the state, certifies that the fall zone of the wireless support structure is designed to avoid said structures and the owner of the structures in question records a legally valid hold harmless agreement, indemnifying the town from all liability and claims for damages arising from the performance of the telecommunications facility designer, contractor and installer; including any subcontractors or consultants associated with the project.

8. The wireless support facility shall be constructed to the Electronics Industries Association/Telecommunications Industries Association 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Support Structures," as the same may be amended from time to time. Any tower shall also comply with the requirements of the state building code, National Electrical Code, Uniform Plumbing Code, and Uniform Mechanical Code. The wireless support structure shall be designed to meet the ANSI/EIA/TIA-222-G (as minimum) one-half inch of solid radial ice standard.

9. The wireless facility and any guy wires shall be surrounded by a commercial grade chain link secure fence at least eight feet in height, which may include no more than two feet of barbed or razor wire.

10. Lighting on wireless support structures shall not be permitted except as required by federal and state regulations.

11. Wireless support structures shall be light gray except when specific colors and color patterns are required by federal or state regulations or a different natural color, as approved by the administrator, which would make the tower blend into its natural surroundings more readily.

12. All wireless facilities shall be landscaped by semi-opaque vegetative screening on all sides. All plants and trees shall be indigenous to western North Carolina and shall be drought resistant.

13. Stealth wireless facility.

    (i) Antennae must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.

    (ii) The structure utilized to support the antennae must be allowed within the underlying zoning district. Structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, parapets, and steeples.

14. A DAS system that is owned or operated by a commercial carrier and is part of a commercial wireless system, or is used for commercial purposes, is expressly included in the context of this section, regardless of the location or whether the facility or any of its components is located inside or outside a structure or building.

15. Wireless facilities shall comply with all other applicable regulations of this chapter, and, where applicable, shall meet the requirements for a special use permit.

16. The applicant shall provide the administrator with a certificate of general liability insurance in the minimum amount of $1,000,000.00. The certificate shall contain a requirement that the insurance company notify the town 30 days prior to cancellation, modification or failure to renew the insurance coverage required.

17. The collocation of facilities and/or stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request.

18. Any tower constructed under a permit pursuant to this article shall be removed within 180 days of the date which it ceases to be in active use, or upon notice from the ordinance administrator, whichever is more favorable to the owner.

19. Collocation of small wireless facilities. Pursuant to guidance as provided by G.S. 160D, the town shall allow collocation of small wireless facilities on eligible facilities pursuant to the following guidelines:

    (i) A zoning compliance permit is required.

    (ii) All ground support equipment shall require semi-opaque vegetative landscape screening on any sides visible to the motoring public such as can be accomplished without compromising underground utilities, and while maintaining a 12-foot by 25-foot sight triangle from intersections, and 15 feet of clear area along perpendicular streets culminating at a corner lot.

    (iii) Each new facility in the right-of-way shall not extend more than ten feet above the utility pole, city utility pole, or wireless support structure on which it is collocated. Extensions proposed higher than ten feet shall require a variance from the board of adjustment.

(iv) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed 50 feet above ground level. In residentially zoned areas, the height limit for new pole installation shall be 40 feet unless granted a variance by the board of adjustment.

(v) Wireless providers are responsible for damages due to their activities to town rights-of-way while occupying, installing, repairing or maintaining wireless facilities, wireless support structures, city-owned or other utility poles.

(vi) Collocations on private support structures shall require a letter of consent from the owner of the structure.

e. *Fees.* Subject to the provisions of G.S. 160A-400.54(e), 160A-54(f), 160A-296(a)(6), 160A-206(b), and 160D, all fees and charges, including, but not limited to, application fees, inspection fees and permit fees, shall be as set forth in the town's schedule of fees and charges. For new towers, support structures, or substantial modifications, an expert assistance fee shall be established in advance to prevent taxpayer subsidization of the applicant. This fee shall be established in the town schedule of fees and charges, and shall be tendered in cash or a certified cashier's check upon submittal of the telecommunications support facility application. It shall be held by the town's finance officer in an escrow account, whereby it may be drawn upon as necessary for payment of professional services related to the town's review of the application.

(5) *Mobile food vendors*

a. *Definitions.*

1. Mobile Food Vendor means a readily movable trailer or motorized wheeled vehicle, currently registered with the N.C. Division of Motor Vehicles, equipped to serve food.

2. Regulatory Fee means a fee assessed to cover the cost of regulating a particular type of business activity that is assessed to an operator of that type of business.

b. *Permitting.*

1. *Permit required for Mobile Food Vendor operator:* An annual Mobile Food Vendor permit from the Zoning Administrator of the Town of Lake Lure shall be required prior to operating a Mobile Food Vendor in Lake Lure. A regulatory fee will be assessed to cover the costs associated with regulation of Mobile Food Vendors in Lake Lure.

2. A Mobile Food Vendor Permit is valid for one (1) year from the month in which the permit was issued. This permit shall be posted in a visible location on the food truck.

3. The Mobile Food Vendor shall have the signed approval of the property owner for any location at which the Mobile Food Vendor operates.

4. Mobile Food Vendors operating on Town-owned property must provide evidence of at least $300,000 liability insurance coverage.

5. Mobile Food Vendors shall provide documentation of approval from the North Carolina Department of Health and Human Services. A valid health permit must be maintained for the duration of the Mobile Food Vendor permit and shall be placed in a conspicuous location on the vehicle for public inspection.

6. *Zoning permit required for property use:* No land may be used for a Mobile Food Vendor operation until a certificate of zoning compliance shall have been issued to the property owner. The zoning permit shall be for Mobile Food Vendor operations as either a

commercial primary use or as an accessory to a commercial use. Zoning district yard setbacks shall apply to any Mobile Food Vendor location.

c. *Locations and Restrictions.*

1. Permitted Mobile Food Vendors may operate on private property that has a valid zoning permit for Mobile Food Vendor use within the following districts:

   R-3 Resort Residential: with a special use permit when in conjunction with a hotel, motel, lodge or resort; or as an accessory use to an existing restaurant
   CN Commercial Neighborhood District
   CTC Commercial Town Center District
   CG Commercial District
   CSG Commercial Shopping Center District
   S-1 Scenic Natural Attraction District
   GU Governmental Institutional Use District, upon approval of Town Council

2. Permitted Mobile Food Vendors may operate on private property as an accessory use to a legally permitted campground in any zoning district.
3. Permitted Mobile Food Vendors may operate on Town-owned property with approval from Town Council regardless of the zoning district.

4. Permitted Mobile Food Vendors may be utilized for a specific, temporary event in conjunction with the following uses, regardless of the zoning district in which they are located:

   Primary Event Venues in connection with an event at the venue.
   Accessory Residential Event Venues in connection with an event at the venue.
   Churches or school, in connection with temporary event on that location.
   Town Council approved Farmers' Markets with Mobile Food Vendor(s) use approved.
   Town Council approved festival or event with Mobile Food Vendor(s) use approved.
   Residences, in connection with a private event at the residence.

5. The Mobile Food Vendor vehicle shall be positioned at least 100 feet from the customer entrance of an existing restaurant during its hours of operation, unless the Mobile Food Vendor operator provides documentation from the restaurant owner supporting a closer proximity.

6. The Mobile Food Vendor vehicle shall not block drive aisles, other access to loading/service areas, or emergency access and fire lanes. The Mobile Food Vendor vehicle must also be positioned at least 15' away from fire hydrants, any fire department connection, driveway entrances, alleys, or handicapped parking spaces and must have at least three off-street parking spaces in addition to spaces required by Section 36-218 for any other existing uses on parcel.

7. These Mobile Food Vendor permitting requirements, rights or privileges shall not apply in any respect to food vending at any event that is approved and sanctioned, or sponsored, by Town Council. Town Council shall consider the recommendations of the Police Chief, Fire Chief and Community Development Director when approving specific, individualized requirements, rights and/or privileges for any such event.

d. *Public Safety and Nuisance Provisions*

1. A trash receptacle shall be provided for customers. Town trash receptacles do not satisfy this requirement. All associated equipment, including trash receptacles, must be within five (5) feet of the Mobile Food Vendor vehicle.
2. Temporary connections to potable water are prohibited. All plumbing and electrical connections shall be in accordance with the State Building Code.
3. No liquid, grease or solid wastes may be discharged from the Mobile Food Vendor. Absolutely no waste may be disposed of in tree pits, storm drains, or onto the sidewalks, streets, or other public space. Under no circumstances shall grease be released or disposed of in the Town's sanitary sewer system.
4. Mobile Food Vendor vehicle must have the following fire extinguisher on board during hours of operation: minimum Class 2A, 10B, and C rated extinguisher. If food preparation involves deep frying, a Class K fire extinguisher must also be on the vehicle. All National Fire Protection Association (NFPA) standards shall be met to include fire extinguishers and fire suppression hood systems shall be maintained.
5. If the Mobile Food Vendor vehicle operates after dark, the Vendor shall provide appropriate lighting. Lighting shall be such that minimizes the glare on roadways and surrounding properties.
6. No signage shall be allowed other than signs permanently attached to the Mobile Food Vendor vehicle and one (1) sandwich style menu sign.
7. The noise level from the Mobile Food Vendor vehicle and operations shall comply with the Town's noise ordinance.
8. Mobile Food Vendors shall only operate between the hours of 7am to 11pm.

e. *Revocation of permit*

1. The permit issued for the Mobile Food Vendor operator may be revoked if the Vendor violates any of the provisions contained in this article; or any Environmental Health Department, county or state regulation pertaining to mobile food vendor operations.
2. If at any time evidence of the improper disposal of liquid waste or grease is discovered, all permits for the Mobile Food Vendor shall be rendered null and void, and the operation within the Town will cease.
3. If at any time, the Environmental Health Department revokes or suspends the issued food vending permit, all Town permits shall be revoked or suspended simultaneously.
4. The town manager may revoke a permit if he or she determines that the Mobile Food Vendor's operations are causing parking, traffic congestion, or litter problems either on or off the property where the use is located or that such use is otherwise creating a danger to the public health or safety.

f. *Exceptions*

1. A temporary event sponsored by local schools, churches, registered not-for-profit organizations, or the local Chamber of Commerce may have Mobile Food Vendor permit fees waived or reduced with recommendation of Zoning Administrator and Town Council approval.
2. Actively operating restaurants within the Town limits may apply for up to one (1) waived Mobile Food Vendor permit fee. The Mobile Food Vendor permit will still be required.

g. *Penalties.*

1. Any violation of subsections B, C, and D shall constitute a civil violation and subject the violator to a civil penalty in the amount of fifty dollars ($50.00). Each day that a violation continues uncorrected shall constitute a separate violation. In addition, these violations subject the vendor to permit revocation as outlined in subsection (E).
2. The Code Enforcement Officer and his/her designees are authorized to determine the existence of the violations and to assess the civil penalties established by this article by issuing a citation to the person determined to be in violation or by sending a letter to the vendor responsible for the violation. Any such notice or citation shall state the nature of the violation and the procedures available for review of the penalty imposed.
3. Any violation and penalty assessed under this article may be appealed to the town manager provided such appeal is filed with the town manager's office within fifteen (15) days after notice of said civil penalty. If an appeal is timely filed, the manager or his designee shall conduct an administrative hearing; shall consider any information the party assessed the penalty presents; and shall render a decision on the appeal within ten (10) days of the conclusion of the hearing. If no appeal is filed, the determination of the Code Enforcement Officer or his or her designee shall be final.
4. Any penalty not paid within thirty (30) days of assessment, or the conclusion of any appeals taken under the provisions of this section may be recovered by the town in a civil action in the nature of the debt. In addition to the penalties and remedies provided by this section, the Town may institute any appropriate action or proceedings to prevent, restrain, correct, or abate a violation of this Section.

(Code 1989, § 92.042; Ord. of 10-13-2009; Ord. of 1-1-2010; Ord. of 2-28-2012; Ord. of 10-14-2014; Ord. of 7-14-2015; Ord. of 3-13-2018; Ord. of 2-12-2019; Ord. of 7-9-2019; Ord. No. 21-05-11, 5-11-2021; Ord. No. 21-11-09, 11-09-2021, Ord. No. 22-11-08A)

Secs. 36-73—36-100. Reserved.

ARTICLE IV. SPECIAL USES

Sec. 36-101. Purpose.

Special uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district as special uses if the provisions of this and all other articles of this chapter have been met.

(Code 1989, § 92.045; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-102. Special use permit review procedure and application.

(a) *Sketch plan conference.* Any person seeking to obtain approval of a special use shall submit to the zoning administrator a sketch plan prior to submitting an application for a special use permit. The purpose of submitting the sketch plan is to afford the applicant an opportunity to obtain the advice and assistance of the development review committee in order to facilitate the subsequent preparation and timely approval of the special use permit application. This procedure does not require formal application or fee. Applications must be made by a person with a property interest or a contract to purchase the property.

(b) *Review procedure.* All special use permit applications and applicable fees shall be delivered to the office of the zoning administrator to be processed for the board of adjustment. Incomplete applications shall be

returned to the applicant by the zoning administrator accompanied by a letter outlining the deficiencies found therein.

(1) *Development review committee.* The zoning administrator shall submit the complete special use permit application to the development review committee for technical review and recommendation within seven days of the date the application was received and found to be complete by the zoning administrator. The development review committee shall review the application and make recommendations to the board of adjustment in addition to the zoning and planning board within 30 days of the date the application was determined to be complete by the zoning administrator.

(2) *Zoning and planning board.* The complete application, accompanied by the recommendations of the development review committee, shall then be submitted to the zoning and planning board by the zoning administrator for review and recommendation. The zoning and planning board may consider site treatment, building design, relationship of building to site, harmony of buildings and uses with neighborhood character, landscaping, signs, lights and any other considerations it feels reasonably affect the appearance of the proposed project. The zoning and planning board shall have 35 days to make its recommendation to the board of adjustment. The 35 days shall begin on the date the zoning and planning board first considers the application at a regularly scheduled meeting. Applications which do not involve the change in the appearance of a building or premises, as determined by the zoning administrator, shall not be required to be reviewed by the zoning and planning board.

(3) *Board of adjustment.* The board of adjustment shall hold a hearing no later than 65 days from the date the application was reviewed by the development review committee. The board of adjustment shall neither deny nor approve any application solely on the basis of a recommendation from the development review committee or zoning and planning board. The board of adjustment may or may not incorporate the recommendations from the development review committee or zoning and planning board in its decision regarding the special use permit application.

(c) *Hearing.* Upon receipt of a complete application for a special use permit, the zoning administrator shall assign the application a hearing before the board of adjustment. Hearing shall be quasi-judicial and shall be noticed and conducted in accordance with the provisions of section 36-184. A decision by the board of adjustment shall be made within 45 days of the date the hearing ends.

(d) *Issuance of special use permit.* The board of adjustment shall grant and issue the special use permit if and only if it finds the following:

(1) *Application.* The application is complete, and the applicant has demonstrated the proposed use complies with all applicable standards of these zoning regulations, including any special requirements in section 36-72.

(2) *Public safety.* The proposed use will not materially endanger the public safety, if located and developed according to the application as submitted; and satisfactory provision and arrangement has been made for at least the following, where applicable:

a. Automotive ingress and egress.

b. Traffic flow.

c. Traffic control.

d. Pedestrian and bicycle ways.

e. Lake use (water vessels, watersports, swimming activities, etc.).

f. Fire suppression.

(3) *Public health.* The proposed use will not materially endanger the public health, if located and developed according to the application as submitted; and satisfactory provision and arrangement has been made for at least the following, where applicable:

a. Water supply.

b. Water distribution.

c. Sewer collection.

d. Sewer treatment.

(4) *Protection of property values.* The proposed use will not substantially injure the value of adjoining or abutting property, if developed according to the application as submitted; and satisfactory provision and arrangement has been made for at least the following, where applicable:

a. Lighting.

b. Noise.

c. Odor.

d. Landscaping.

(5) *Standards and requirements.* The proposed use will meet all standards and requirements specified in the regulations, if located and developed according to the application as submitted; and satisfactory provision and arrangement has been made for at least the following, where applicable:

a. Parking spaces.

b. Loading zones.

c. Sign design.

d. Street design.

(6) *Comprehensive plan and neighborhood character compatibility.* The location and character of the proposed use and structures will be in harmony with the neighborhood character and in general conformity with the applicable elements of the land use plan and other officially adopted plans of the town, if developed according to the application as submitted; and satisfactory provision and arrangement has been made for at least the following, where applicable:

a. Site layout and treatment.

b. Building design.

c. Relationship of buildings to site.

d. Harmony of buildings and uses with neighborhood character.

(e) *Conditions.* In addition to any other requirements provided by these regulations, the board of adjustment may, in issuing a special use permit, designate additional conditions and requirements in connection with the application as will, in its opinion, assure that the use in its proposed location will be in harmony with the area in which it is proposed to be located and with the spirit of the regulations. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted and also on the ruling issued by the board. All conditions so imposed shall run with the land and shall be binding upon the original applicant, as well as the applicant's heirs, successors, or assigns, during the continuation of the use specially permitted.

(f) *Expiration of permit.* A special use permit issued in accordance with this article shall expire if a certificate of zoning compliance for such use is not obtained by the applicant within six months from the date of the decision. If, after commencing work under a special use permit and prior to completion of the entire project, work is discontinued for a period of 12 months, the special use permit shall become void, and no work may be performed until a new special permit has been issued. If, after issuance of a certificate of zoning compliance for a special use, and that use is discontinued for a period of 12 months, the special use becomes void, and the use may not be re-established until a new special use permit has been issued. When a special permit expires, the board of adjustment shall treat re-application for a new special use permit in the same manner as any other application, and the provisions of the regulations currently in effect shall be applicable. The permit will be provided in writing or electronic form. If electronic form is used it will be protected from further editing.

(g) *Construction schedule departure.* All construction approved pursuant to a special use permit shall be completed in accordance with the construction schedule submitted and approved by the board of adjustment. In the event that a significant departure from the construction schedule occurs during a project, the applicant may appear before the board and request an amendment to the special use permit. The board may extend the construction schedule only upon finding that delays in construction have been caused by, or are expected to be caused by, circumstances beyond the control of the applicant. Unless the construction is extended by amendment of the special use permit, failure to complete construction within the approved time shall be considered a violation of the special use permit.

(h) *Voidance of permit.* In the event of failure to comply strictly with the plans, documents, and other assurances submitted and approved with the application, or in the event of failure to comply with any conditions imposed upon the special use permit as provided in subsection (d) of this section, the permit shall immediately become void.

(i) *Periodic inspections.* The zoning administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this chapter have been met. The zoning administrator shall report his findings to the board of adjustment. If, at any time after a special use permit has been issued, the board of adjustment determines that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated and the operation of such use discontinued. If a special permit is terminated for any reason, it may be reinstated only after reapplying for a special permit. The board of adjustment shall treat re-applications for a new special use permit in the same manner as any other application, and the provisions of the regulations currently in effect shall be applicable.

(Code 1989, § 92.046; Ord. of 11-15-2005; Ord. of 10-9-2012; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-103. Application.

All applications for a special use permit shall precede any application for a certificate of zoning compliance and shall be submitted on the proper form obtainable from the zoning administrator. The application shall include a development plan/site plan, building elevations, floor plans, landscape plan, lighting plan, sign drawings, construction schedule, and a description of the use. It should be noted that due to severe topographic conditions, sensitive natural areas, or soils that do not easily support soil drainage systems, some land may be unsuited to some land clearing or land disturbance projects that may be proposed.

(1) *Development plan/site plan.* This plan shall be drawn to a scale sufficient to clearly indicate the following:

a. The site conditions and characteristics, before and after the proposed land clearing, land disturbance and/or construction, including contours, watercourses, flood hazard areas, and any sensitive natural areas or unique manmade features.

b. All boundary lines of the proposed development, proposed lot lines and plot designs.

c. The location and use of all existing and proposed structures.

d. The location and size of all areas to be conveyed, dedicated or reserved as common open spaces, parks, recreational areas, school sites and similar public or semi-public uses.

e. The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public rights-of-way. Notations of proposed ownership of the street system (public or private).

f. The approximate location of proposed water and sewer/septic systems, as well as septic test results from the county.

g. The areas to be graded showing corresponding sedimentation and erosion control devices, retaining walls, and provisions for stormwater drainage during construction and after construction. See also section 36-234.

h. The location and/or notation of existing and proposed easements and rights-of-way.

i. The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, buffers, berms, and walls.

j. Information on adjacent land areas, including land use, zoning classifications, public facilities, any unique natural features, and historic features.

k. The zoning districts in which the project is located.

l. A legal description of the total site proposed for development, including a statement of present and proposed ownership.

m. Quantitative data for the following: proposed total number and type of residential dwelling units, parcel size, and total amount of open space.

n. A statement of the applicant's intentions with regard to the future selling, leasing, and/or renting of all or portions of the development.

o. A written description for maintenance of common areas, recreation areas, open spaces, streets and utilities.

(2) *Building elevations.* These shall be drawn to scale and show building height and exterior treatment on all sides of the building. The front elevation shall be fully colored with proposed color selections and all materials noted and identified. Paint samples shall be included. Elevations shall be required of all other sides if color, materials, and design are substantially different from the front elevation.

(3) *Floor plans.* These shall be drawn to scale a scale not less than one-eighth inch to one foot and show all features and details such as gross floor area, net floor area, number of seats, storage areas, or any other applicable information.

(4) *Landscape plan.* This shall be drawn to scale and show species, quantity, size, and location of plantings, as well as hardscape features such as walls, fountains, and waterfalls.

(5) *Lighting plan.* This shall be drawn to scale and show type, quantity, height, intensity, coverage area, type of light source, duration of use, and impact on adjacent property and streets as certified by an electrical engineer or lighting professional with lighting certified credentials.

(6) *Sign drawings.* This shall be drawn to scale and show the size, type, and location of any signs proposed to be erected in conjunction with the use. Method, source, and intensity of illumination shall also be included on these drawings and appropriate documentation verifying specifications provided.

(7) *Construction schedule.* This shall be a complete construction schedule, including date the construction is expected to begin and end.

(8) *Description of use.* This shall be a complete and detailed written description of the uses proposed.

(9) *Additional information.* Any additional information required by the board of adjustment in order to evaluate the impact of the proposed development [may be required]. The board of adjustment may waive a particular requirement if in its opinion the inclusion is not essential to a proper decision of the project.

(10) *Written documentation.* Where applicable, the following written documentation shall be submitted:

a. A legal description of the total site proposed for development, including a statement of present and proposed ownership.

b. The zoning districts in which the project is located.

c. A land clearing, land disturbance and/or development schedule indicating approximate beginning and completion dates, including any proposed milestones or stages of completion.

d. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development.

e. Quantitative data for the following: proposed total number and type of residential dwelling units, parcel size, and total amount of open space.

f. Plan for maintenance of common areas, recreation areas, open spaces, streets and utilities.

(Code 1989, § 92.047; Ord. of 1-22-1991; Ord. of 11-15-2005; Ord. of 6-10-2008; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-104. Special use standards and requirements for PUDs.

The purpose of this section is to encourage and provide for flexibility and innovation in the design and location of structures and land development, to provide for the most efficient and environmentally sensitive use of land resources, and to provide an opportunity to develop land areas in a manner different from the standard arrangement of one principal building on one lot. It is further intended that a planned unit development will be in harmony with the character and natural beauty of the area in which it is located.

(1) *Planned unit development (PUD) standards.* The following land development standards shall apply for all planned unit developments in addition to all other applicable sections of this chapter. Planned unit developments may be located only in certain specified districts as special uses, subject to a finding by the board of adjustment that the following requirements be met:

a. *Ownership control and project completion.* The land in a PUD shall be under single ownership or management by the applicant before final approval and/or construction begins. Proper assurances (legal title or execution of a binding sales agreement) shall be provided to verify the development can be successfully completed by the applicant. Further, financial information shall

be required to assure that the planned unit development can be successfully completed by the applicant.

b. *Density requirements.* There are no density requirements for nonresidential uses as long as the proposed project does not violate the intent of the district in which it is located. The proposed residential density of the planned unit development shall conform to that permitted in the district in which the development is located as indicated in section 36-70. If the planned unit development lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire planned unit development.

c. *Frontage requirements.* Planned unit developments shall have access to a highway or road suitable for the scale and density of the development being proposed.

d. *Minimum requirements.*

1. *Distance between buildings.* The minimum distance between buildings shall be 20 feet or as otherwise specified by the board of adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.

2. *Access and circulation.* Every dwelling unit shall have access to a public or private street, walkway or other area dedicated to common use. There shall be provision for adequate vehicular circulation to all development properties in order to ensure acceptable levels of access for emergency vehicles.

3. *Privacy.* Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walks, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants and adjacent properties, for screening of objectionable views or uses, and for reduction of noise. Multi-level buildings shall be located in such a way as to dissipate any adverse impact on adjoining low rise buildings and shall not invade the privacy of the occupants of such low rise buildings.

4. *Perimeter requirements.* Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provisions of the zoning regulations controlling the zoning district within which the property is situated.

5. *Water and sewer.* The developer shall provide plans showing approximate location of water and sewer lines. The developer shall provide documentation from the town's utilities director, public works director, fire coordinator, and/or town engineer ensuring that the water supply and sewer capacity is available to adequately serve the planned unit development.

6. *Parking.* Preliminary plans shall include provision for parking and loading for all proposed uses within the planned unit development in accordance with sections 36-217 through 36-219. When more than one use is located in the planned unit development, the minimum parking and loading requirements shall be the sum of the required parking for each use within the development. However, separate uses may share parking spaces if deemed appropriate by the board of adjustment.

7. *Pedestrian and bicycle paths.* Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.

8. *Relationship to affected areas.* Layout of parking areas, service areas, entrances, exits, yards, courts, structures, and landscaping. Signs, lighting, noise or other potentially adverse influences shall be in harmony with the neighborhood character and any other affected areas.

9. *Common areas.* Conveyance and maintenance of open spaces, recreational areas and communally owned facilities shall be in accordance with the Unit Ownership Act (G.S. ch. 47A) and/or any other appropriate mechanisms acceptable to the board of adjustment.

10. *Tall building standards.* Tall buildings are permitted in planned unit development having an area of 25 acres of more. The following tall standards shall apply to those tall buildings located in planned unit developments having an area of 25 acres or more:

    (i) The maximum height of tall buildings shall not exceed 45 feet.

    (ii) The maximum tall building density ratio shall not exceed one tall building per 20 acres of lot area.

    (iii) Tall buildings shall be surrounded by a green area at least 50 feet in width. The green area shall consist of landscaped areas with trees, shrubs, grasses native to the Southern Mountains and/or open and undeveloped areas. Sidewalks, trails, and walkways may be located within the green area. Roadways and access drives may cross the green area, but no automotive vehicular parking may be located therein.

    (iv) Tall buildings shall be set back a minimum of 100 feet from any adjoining road right-of-way, 100 from any property line, and 200 feet from the lake shoreline.

    (v) Tall buildings located within 125 feet of an existing public road shall be buffered by either a landscaped berm or living hedge consisting of species native to the Southern Mountains or combination thereof at least ten feet in height above the grade of the road.

    (vi) Tall buildings shall not have a building footprint more than 15,000 square feet.

    (vii) Tall buildings shall not display mechanical equipment, such as, but not limited to, HVAC equipment, on the roof.

    (viii) Tall buildings shall have a primary roof pitch between 8/12 and 10/12.

    (ix) Tall buildings shall be in harmony with the neighborhood character.

11. *Uses per zoning district.*

    (i) The proposed uses for any planned unit development in multiple zoning districts shall conform to the requirements of the respective zoning districts. A use or structure not expressly permitted as either a permitted use or special use in a given district is prohibited from locating in any district except those uses listed in subsections (1)d.11(ii) through (v) of this section.

    (ii) The following uses are permitted within planned unit developments:

        A. Single-family dwellings, excluding mobile homes.

B. Multifamily dwellings, including condominiums, duplexes, townhouses, and individual units or clusters of detached units located on lots or tracts in single ownership or held in common ownership under a condominium agreement in districts that permit such uses.

C. Customary accessory buildings, including garages and storage buildings.

D. Recreational facilities intended exclusively for use by the owners, residents and guests of the PUD, and which are an integral part of such development.

(iii) The following accessory commercial uses may be permitted in a PUD designed for 50 or more dwelling units, subject to the provisions of this section:

A. Real estate sales and rental offices for on-premises inventory only;

B. Administrative offices for the PUD;

C. Property management offices exclusively for the PUD.

(iv) The accessory uses in subsection (1)d.11(iii) of this section may be permitted subject to the following conditions:

A. The PUD shall have a minimum of seven acres;

B. All sales and rentals shall be for the use and convenience of the owners, residents or guests of the PUD;

C. All accessory uses listed in this subsection (iv) shall not occupy more than 15 percent of the total floor area of the PUD, except that in no case shall the accessory uses exceed a maximum of 12,000 square feet. No individual accessory use permitted in this subsection (iv) shall occupy more than five percent of the total floor area of the development, except that in no case shall the accessory use exceed a maximum of 4,000 square feet;

D. Any accessory use permitted in this section shall be designed in a manner compatible with the architectural style and function of the PUD and development on adjacent properties.

(v) The following accessory commercial uses may be permitted in a planned unit development with 150 or more dwelling units having certificates of occupancy, subject to the provisions of this section:

A. Retail sales for PUD residents and guests, excluding petroleum products sold or disbursed from pumps, and provided no merchandise may be displayed or stored outside of the building.

B. Sports equipment sales and rentals for PUD residents and guests.

(vi) The above listed accessory uses in both subsections (1)d.11(iii) and (v) of this section may be permitted subject to the following conditions:

A. The PUD shall have a minimum of 21 acres;

B. All sales and rentals shall be for the use and convenience of the owners, residents and guests of the PUD;

C. All accessory uses listed in this subsection (vi) shall not occupy more than ten percent of the total floor area of the PUD, except that in no case shall the accessory uses exceed a maximum of 30,000 square feet. No individual accessory use permitted in this section shall occupy more than three percent of the total floor area of the development, except that in no case shall the accessory use exceed a maximum of 6,000 square feet;

D. Any accessory use permitted in this section shall be designed in a manner compatible with the architectural style and function of the PUD and development on adjacent properties.

12. [*Common amenities.*] Common amenities for residential developments provided that they are situated within the residential development so as not to adversely impact existing and/or reasonably foreseeable uses on adjoining properties. Such amenities shall be set back a minimum of 30 feet from such adjoining properties and a minimum of 60 feet from Lake Lure. Buffering may be utilized to ensure compatibility with adjoining uses.

(2) *Planned unit developments post-approval requirements.* The following items may be reviewed for approval after the board of adjustment issues the permit for a special use. A certificate of zoning compliance shall not be issued until the following applicable items have been submitted to the zoning administrator for review and approval:

a. *Guarantee of performance.* In order to ensure the applicable improvements are completed properly within a period of time specified by the town council, the developer shall enter into a guarantee for completion with the town council. A performance guarantee shall be negotiated between the developer and the town council after the issuance of the special use permit by the board of adjustment. The guarantee of performance shall require that the developer complete the improvements, including roads, parking areas and rights-of-way; water and sewer facilities; drainage, erosion and sedimentation control facilities; lighting and landscaping; and any other improvements, including protection/replacement of natural vegetation, specified by town council. The guarantee shall be provided by either one or a combination of the following guarantees not exceeding 1.25 times the entire cost as provided herein:

1. *Surety performance bond.* The developer shall obtain a performance bond from a surety bonding company authorized to do business in the state. The bond shall be payable to the town and shall be in an amount equal to 1.25 times the entire cost, as estimated by the town manager, of installing all required improvements. The duration of the bond shall be until such time as the improvements are approved by the town council. The town council shall not give said approval until it has been satisfied that all required improvements have been installed.

2. *Cash or equivalent security.* The developer shall deposit cash or other instrument readily convertible into cash at face value, either with the town or in escrow with a financial institution designated as an official depository of the town. The use of any instrument other than cash shall be subject to the approval of the town council. The amount of deposit shall be equal to 1.25 times the cost, as estimated by the town manager, of installing all required improvements. If cash or other instrument is deposited in escrow with a financial institution as provided above, then the developer shall file with the town council an agreement between the financial institution and himself guaranteeing the following:

(i) That said escrow account shall be held in trust until released by the town council and may not be used or pledged by the developer in any other matter during the term of the escrow; and

(ii) That in the case of a failure on the part of the developer to complete said improvements, the financial institution shall, upon notification by the town council and submission by the town council to the financial institution of the town manager's estimate of the amount needed to complete the improvements, immediately either pay to the town the funds estimated as needed to complete the improvements, up to the full balance of the escrow account, or deliver to the town any other instruments fully endorsed or otherwise made payable in full to the town.

3. *Letter of credit.* A satisfactory, irrevocable letter of credit as approved by the town attorney and town council and deposited with the town clerk shall be submitted. When a letter of credit is submitted, the following information shall be contained in said letter:

(i) It shall be entitled "Irrevocable letter of credit."

(ii) It shall indicate that the town is the sole beneficiary.

(iii) The amount (of the letter of credit) as approved by the town manager.

(iv) The account number and/or credit number that drafts may be drawn on.

(v) A list of improvements that shall be built that the letter is guaranteeing.

(vi) Terms in which the town may make drafts on the account.

(vii) Expiration date of the letter.

4. *Default.* Upon default, meaning failure on the part of the developer to complete the required improvements in a timely manner as spelled out in the agreement, then the surety, or the financial institution holding the escrow account shall, if requested by the town council, pay all or any portion of the bond or escrow fund to the town up to the amount needed to complete the improvements based on the town manager's estimate. Upon payment, the town council, in its discretion, may expend such portion of said funds as it deems necessary to complete all or any portion of the required improvements. The town shall return to the surety or escrow account any funds not spent in completing the improvements.

5. *Release of guarantee security.* The town council may release a portion of any security posted as the improvements are completed and recommended for approval by the town manager. At such time as the town council approves all improvements as recommended by the town manager, then all security posted shall be immediately released.

b. *Soil erosion control plans.* These shall conform to the town soil erosion and sedimentation control regulations or the applicable soil erosion regulations of the state. A land disturbance permit shall be secured from the town's soil erosion and sedimentation control officer before construction begins.

c. *Water system plans.* Detailed water distribution plans showing exact size and location size of water lines, material types, and specifications shall be submitted to the town and applicable state agency for approval. Water system plans and specifications shall conform to the document

entitled "Town of Lake Lure, Standard Specifications and Details for Construction." All applicable water system permits and approvals must be secured before construction begins.

d. *Sewer collection system plans.* Detailed sewer collection plans showing exact location of lines and manholes, material types, and specifications shall be submitted to the town and the applicable state agency for approval. Sewer collection system plans and specifications shall conform to the document entitled "Town of Lake Lure, Standard Specifications and Details for Construction." All applicable sewer collection system permits and approvals must be secured before construction begins.

(Code 1989, § 92.048; Ord. of 11-15-2005; Ord. of 6-10-2008; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-105. Special use standards and requirements for gasoline service or filling stations.

The following regulations shall apply to all gasoline service or filling stations in addition to other applicable sections of this chapter:

(1) All buildings shall be located at least 40 feet from any street right-of-way line.

(2) Gasoline pumps and other appliances shall be located at least 15 feet from any street right-of-way line.

(3) All service, storage or similar activities shall be conducted entirely on the premises.

(4) All major repair work, if any, shall be conducted within a completely enclosed building.

(5) Open storage of wrecked or inoperable cars, discarded tires, auto parts or similar materials shall not be permitted.

(Code 1989, § 92.049; Ord. of 11-15-2005; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-106. Special use standards and requirements for camps.

(a) *Membership.* All camps shall be active members in the American Camp Association (ACA) or similar accrediting organization.

(b) *Health.* The camp shall comply with all relevant regulations enforced by the county health department. Inspection reports from the county health department shall be submitted to the town on an annual basis to ensure the camp is complying with minimum standards established for dining facilities, sleeping quarters, and other uses.

(c) *Building footprint coverage area.* No single building shall have a building footprint larger than 10,000 square feet. The sum total of all building footprints shall not exceed six percent of the total land area.

(d) *Tall buildings.* Camps shall be permitted tall buildings not to exceed 45 feet, as measured from the average finish grade at the building foundation line to the highest point of the roof ridgeline. The tall building to land area ratio shall not exceed one tall building per 20 acres of land area.

(e) *Building separation.* Buildings may be clustered together, provided no building may be closer than 20 feet to another building.

(f) *Setbacks.* Buildings not exceeding 35 feet, as measured from the average finish grade at the building foundation line to the highest point of the roof ridgeline, shall be set back at least 100 feet from the centerline of any abutting primary or secondary street, and at least 100 feet of any adjoining property line. Except, however, in relation to the lake shoreline, buildings not exceeding 35 feet in height may be closer than 100 feet but shall be no closer than 35 feet to the lake shoreline in any case. Any building taller than 35

feet, as measured from the average finish grade at the building foundation line to the highest point of the roof ridgeline, shall be set back a minimum of 200 feet from the lake shoreline.

(g) *Architecture.* The exterior architecture design of any building or other structure shall complement the existing character of buildings located on adjacent properties. Further, any structure visible from the lake shall compliment the natural setting in which it is located.

(h) *Ingress/egress.* A maximum of two driveways shall be permitted, provided both are no wider than 25 feet and not located closer than 200 feet from one another as measured from entrance to entrance. Each driveway shall be located to minimize disruption of normal traffic flow on public streets.

(i) *Parking.* One parking space per four seats in the dining hall or one space per four beds, whichever is greater. Parking areas shall be discreetly located and screened from view from adjoining properties, public streets, and the lake. Parking areas may either be constructed of gravel, concrete, asphalt, or a semi-pervious surface. In any case, the parking spaces shall be clearly delineated and designed in accordance with town standards.

(j) *Signs.* Signs shall comply with the residential standards set forth for the R-3 Resort Residential Zoning District.

(k) *Landscaping/buffer strips.* Landscaping and buffer strips shall be provided to maintain visual compatibility with the neighborhood and surrounding uses. Landscaping and buffer strips shall mostly consist of plant and tree species native to the Southern Mountains.

(l) *Noise.* Public announcement systems shall be permitted while camp is in session or nonemergency purposes only from 7:00 a.m. to 9:00 p.m. so as to not disrupt the tranquility of the neighborhood. However, a one-time, lights-out announcement, no later than 10:00 p.m., shall be permitted while camp is in session.

(m) *Lighting.* Lighting shall be permitted throughout the camp to ensure a safe environment for campers. Light fixtures shall cast the light emitted downward and be of a residential size and type. The coverage area of the light emitted shall not spill over onto adjoining properties in any manner.

(n) *Lake use.* The town lake use regulations shall apply at all times. A certified lifeguard shall be on duty when campers are engaged in water sports such as swimming or other types of water activities.

(Code 1989, § 92.050; Ord. of 1-10-2006; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-107. Design standards for commercial buildings.

(a) *Intent.* It is the intent of these regulations to encourage development that helps maintain the visual qualities of the town that make it the unique, resort-retirement, mountain town of retreat and recreation that it is today. It is also the intent of these regulations to encourage the development of pedestrian-friendly, human scale buildings that achieve variety and creative design to protect property values and interests of residents and visitors. The town endeavors to set a high standard for commercial construction, which uses basic architectural design principles and encourages harmony with the eclectic mix of the original Mediterranean revival style commercial buildings, and the cottage type dwellings consisting mostly of natural materials such as wood and stone. The town wants to ensure that commercial buildings are in harmony with existing natural environment, neighborhood and community character. These regulations include basic design elements that are appropriate for such buildings in the town.

(b) *Applicability.* These regulations establish architectural design standards for all new commercial buildings in commercial zoning districts, new commercial buildings in residential zoning districts, any addition with a gross floor area of 1,000 square feet or greater to an existing commercial building in either a residential or commercial zoning district, or any addition to an existing commercial building where the length of the

original building facade will be increased by more than 50 percent as a result of the proposed additions in those same zoning districts. These regulations are used as criteria by which to judge plan submissions.

(c) *Neighborhood character compatibility.* New or modified buildings in or adjacent to existing developed areas shall be compatible with the established architectural character of adjacent areas by using a design that is complimentary. In some cases, it may not be desirable to create compatible character with surrounding buildings. Character compatibility shall be achieved through techniques such as repetition of rooflines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns, and/or the use of building materials that have color shades and textures similar to those of existing in the neighborhood of the proposed development. Any addition less than 1,000 square feet, or any addition less than 50 percent of the original facade length, shall be deemed to be compatible with neighborhood character if the addition mimics with the architectural style of the existing structure.

(d) *Building size, height, mass, and scale.* Buildings shall either be similar in size and height, or, if larger, be articulated and subdivided into massing that is proportional to the mass and scale of other structures in the neighborhood.

(e) *Alternative design.* Upon the recommendation of the zoning and planning board, the board of adjustment may grant a special use permit for a commercial building which departs from the design standards contained in sections 36-107 through 36-110 so long as the design of such development is in substantial compliance with the town design guidelines for new commercial construction.

(Code 1989, § 92.054; Ord. of 11-15-2005; Ord. of 6-10-2008; Ord. of 3-9-2010; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-108. Definitions for commercial building design standards.

The following words, terms and phrases, when used in sections 36-107 through 36-110, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Arbor means a structure designed to create a shady area.

Arcade means a covered walkway usually supported by piers or columns attached to a building wall.

Arch means a structural element shaped in an arc or curve.

Architectural sign graphic means building materials used to convey corporate colors, signage, or graphics.

Barrel tile means semi-cylindrical tile used for roofing, especially for Mediterranean revival style architecture.

Board and batten means vertical siding composed of wide boards that do not overlap and narrow strips, or battens, nailed over the spaces between the boards.

Bond means the general method of overlapping the joints of successive courses of bricks or stones, thereby binding them together to form a wall or surface. Different patterns may be formed by the joints such as, but not limited to, common bond, herringbone bond, and English bond.

Building base means the lowest portion of the building side.

Building bays means a section of the building facade, which is divided by a vertical element, on both ends, designed to break down the massing for large buildings.

Building body means the middle portion of the building side.

Building cap means the highest portion of the building side.

Canopy means a covering, extending from a building, over an outside area.

Clapboard means siding material of horizontal wooden strips, often applied with the thicker edge overlapping the clapboard view.

Cornice means projecting ornamental molding along the top of a building or wall.

Course means a horizontal row of bricks, shingles, stones, or other building materials.

Deck means a roofless, floored area constructed of wood that adjoins a house.

Design standards means parameters to be followed in site development and/or building construction.

Dormer means a structure projecting from a sloping roof with window or ventilating louvers.

Double portico means a projecting two-story porch with columns as a pediment.

Eave means the projecting overhang at the lower edge of the roof.

Exterior insulated finish system (E.I.F.S.) means a synthetic stucco cladding material applied on exterior walls, finished with color.

Facade means the face of a building emphasized architecturally.

False fenestration means artificial openings on a facade made to look like windows and doors, often used to break down the massing of buildings.

Fascia means a flat, horizontal band used to finish the edge of an exposed rafter.

Fenestration means the arrangement of windows and openings in the exterior wall of a building.

Flashing means copper or other materials used to make weather-tight the joint between the chimney and a roof.

Flat roof means a roof having only enough slope for drainage.

Floor area ratio (FAR) means the gross floor area of all buildings on a lot per lot area, excluding vertical core circulation areas for multistory structures.

Frieze means a horizontal band, often with decorative detail, located below the cornice.

Gable means a triangular wall section at the end of a pitched roof.

Gambrel roof means a roof with one low, steep slope and an upper, less-steep one on each of its two sides, giving the look of a traditional American hay barn.

Hip roof means a roof with four uniformly pitched sides.

Impervious material means a material through which water will not pass.

Keystone means the central, topmost stone or feature of an arch. Also, the central detail above windows or doors which appears to come from an arch but is used for decorative purposes.

Lintel means the horizontal beam over the top of a door or window.

Mansard roof means a roof with two slopes on each side, the lower slope being much steeper; frequently used to add an upper story.

Masonry means stone work or brick work used in a wall construction.

Mass means three-dimensional forms, the simplest are cubes, boxes, or "rectangular solids." Buildings are rarely one of these simple forms.

Miter means the edge of a piece of material, generally wood, that has been beveled preparatory to making a miter joint.

Molding means a decorative band either carved or applied to a surface.

Muntins means a small, slender wood or metal member which separates the panes of glass in a window.

Overhang means an area of the roof extending past the wall.

Parapet means a low wall on the top of the building often used to screen roof-top units from view.

Pediment means wide, low pitched gable end of the roof; triangular crowning element over doors and windows.

Pervious material means any material that permits the passage of water.

Pitch means the slope of a roof expressed in terms of a ratio of height to span.

Piers means a solid masonry support or solid mass between doors, windows, and other openings in buildings.

Porch means a roofed outside walking area having the floor elevated more than eight inches above grade.

Portico means a roofed space, open or partly enclosed, forming the entrance and centerpiece of the facade, often with detached or attached columns and an overhead structure.

Primary building facade means the particular facade of a building which faces the street to which the address of the building pertains.

Principal building means the main structure on a lot.

Rafter means a sloping structural member of the roof that extends from the ridge.

Rib means a projecting band on a building facade which is structural of purely decorative.

Shake means split wood shingles.

Shed roof means a sloping, single planed roof as seen on a lean-to.

Shingle roof means a thin, oblong shaped material laid in overlapping rows as a covering for roofs, typically of wood or an asphalt-based material.

Shutter means a cover or screen for a door or a widow.

Siding means building material used for the surface of a building.

Sill means lowermost member of a frame house; the large dimension wooden element resting directly on the foundation.

Slate means thinly laminated rock, split for roofing and paving.

Soffit means the finished underside of an eave.

Street frontage means the total linear dimension of all property lines which coincide with the edge of an adjoining street right-of-way.

Stucco means coarse or fine plasterwork used for exterior or interior walls.

Terra cotta means a fine-grained, brown-red fired clay used for roof tiles and decoration; literally, cooked earth.

Tile roof means a thin, usually rectangular material laid in overlapping rows as a covering for roofs, typically of fired clay or concrete.

Treillage means an outdoor open structure of framework for supporting plant material.

Veranda means a roofed porch sometimes stretching on two sides of a building.

(Code 1989, § 92.055)

Sec. 36-109. Design standards for commercial buildings less than 15,000 square feet.

(a) *Architectural style.* Forms and finish materials of buildings, signage, gasoline pump canopies and other accessory structures shall be compatible with neighborhood character, or within the same development, through compliance with the following standards:

(1) All buildings, including gasoline pump canopies, shall utilize a consistent architectural style. Different buildings, businesses or activities in the development may be distinguished by variations within the architectural style. Architectural sign graphics used as predominant siding is not permitted.

(2) The sides and back of buildings shall be as visually attractive as the front through the design of rooflines, architectural detailing, and landscape features.

(3) Vending machines and other site accessories shall be integrated into the architectural theme.

(b) *Character and image.* In new buildings, and to the extent feasible, in development projects involving changes to existing building walls, facades or awnings (as applicable), entrances shall be clearly defined and recessed or framed by an element such as an awning, arcade or portico in order to provide shelter from the summer sun and winter weather.

(c) *Facade elements.*

(1) Minimum wall articulation. Building bays shall be a maximum of 30 feet in width. Bays shall be visually established by architectural features such as columns, ribs or pilasters, piers and fenestration pattern. In order to add architectural interest and variety and avoid the effect of a single, long or massive wall with no relation to human size, the following additional standards shall apply:

a. No wall that faces a street or connecting walkway shall have a blank, uninterrupted length exceeding 30 feet without including at least two of the following: change in plane, change in texture or masonry pattern, windows, treillage with vines, or an equivalent element that subdivides the wall into human scale proportions.

b. Side or rear walls that face walkways may include false windows and door openings defined by frames, sills and lintels, or similarly proportioned modulations of the wall, only when actual doors and windows are not feasible because of the nature of the use of the building.

c. All sides of the building shall include materials and design characteristics compatible with those on the front.

(2) Facades that face streets of connecting pedestrian frontage shall be subdivided and proportioned using features such as windows, entrances, arcades, arbors, awnings, and treillage with vines, along no less than 50 percent of the facade.

(d) *Variation in massing.* A single, large, dominant building mass shall be avoided in new buildings and, to the extent reasonably feasible, in development projects involving changes to the mass of existing buildings.

(1) Horizontal masses shall not exceed a height to width ratio of 1:3 without substantial variation in massing that includes a change in height and projecting and recessed elements.

(2) Changes in mass shall be related to entrances, the integral structure and/or the organization of interior spaces and activities and not merely for cosmetic effect.

(e) *Building base, body, and cap.* All architectural elevations of principal buildings shall consist of a base, a body, and a cap.

(1) The base shall occupy the lowest portion of the elevation, and shall have a height no less than eight percent of the average wall height.

(2) The body shall occupy the middle portion of the elevation, and shall have a height no less than 60 percent of the average wall height.

(3) The cap shall occupy the highest portion of the elevation, excluding the roof, and shall have no less than eight percent of the average wall height, not to exceed the height of the base.

(4) The cap shall consist of at least one of the following architectural features:

a. Cornice;

b. Parapet;

c. Awning;

d. Canopy; or

e. Eaves.

(5) The base and cap shall be clearly distinguishable from the body through changes in color, material, pattern, profile, or texture. A cap and base shall incorporate at least three of these design patterns.

(f) *Materials.* The materials used on a building facade play a large part in determining the appearance of a building. In order to ensure that a building is aesthetically pleasing, it is important to ensure that the materials and the colors used on the exterior of a building are pleasing to the eye and are compatible with the surroundings. As a general rule, the use of high quality natural building materials such a wood, brick, and native stone contribute to aesthetically pleasing facades. The following is a list of permitted materials for the building base, body, and cap:

(1) *Building base.* Brick, native stone, manufactured stone, or textured concrete masonry units.

(2) *Building body.* Wood, brick, native stone, manufactured stone, or other applied materials such as exterior insulated finish system (E.I.F.S.).

(3) *Building cap.* Brick, native stone, manufactured stone, textured concrete masonry units, wood, or applied materials such as exterior insulated finish system (E.I.F.S.).

(g) *Facade colors.* The use of low reflectance, subtle, neutral, or earth tone colors on the facade usually results in an acceptable appearance. The use of high intensity colors, metallic colors, black or fluorescent colors as the predominate facade color usually does not result in an aesthetically appealing building. Building trim and accent areas may feature brighter colors, including primary colors, but the use of neon tubing as a feature for a building is not permitted.

(1) *Building base.* The base shall read as a single, subdued, earth tone color.

(2) *Building body.* The body shall read as a single, subdued, earth tone color. A maximum of three accent colors are also permitted that are compatible with the body color.

(3) *Building cap.* The cap shall consist of colors that are compatible with the building body color, any accent color and to each other.

(h) *Roofs.* In order to reduce the massive size of large structures, flat roofs should be avoided if at all possible. The use of varied rooflines, through the utilization of parapets and/or sloped roofs, is encouraged. The roof treatment should harmonize with the neighborhood character. Building walls, parapets, and/or roof systems shall be designed to conceal all roof-mounted mechanical equipment from view to adjacent properties and public rights-of-way.

(1) Permitted roof styles shall include gable, mansard, and hip roofs. Flat roofs are permitted if disguised through the use of parapet walls.

(2) The height of any pitched roof shall not exceed the average wall height to the building.

(3) Permitted materials for pitched roofs include wood, slate, fiberglass reinforced asphalt shingles, and standing seam or terned metal.

(Code 1989, § 92.056; Ord. of 11-15-2005; Ord. of 3-3-2010; Ord. of 3-9-2010)

Sec. 36-110. Additional design requirements for commercial buildings 15,000 square feet or greater.

These requirements are in addition to regulations applicable to commercial buildings with a gross floor area less than 15,000 square feet. In order to promote human scale, large blank building facades need elements that provide visual interest. Human scale and visual interest can also be provided through the use of articulation that breaks down large facades into smaller, more human scale segments. The elements used to accomplish this should be integrated into the design of the building structure. Other methods used to break down large, blank building facades include, but are not limited to, color changes, texture changes, or material changes. The utilization of superficial trim, painting or other graphics as the sole method of breaking up large building facades is not permitted. All building facades that are visible from adjoining properties and/or public streets should follow the material and color guidelines of these requirements.

(1) *Wall projections and recesses.* Facades greater than 100 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade and extending at least 20 percent of the length of the facade. No uninterrupted length of any facade shall exceed 100 horizontal feet.

(2) *Ground floor facades.* Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings or other such features along no less than 60 percent of their horizontal length.

(3) *Repeating pattern.* Building facades must also include a repeating pattern of no less than three of the following elements:

a. Color change.

b. Texture change.

c. Material module change.

d. An expression of architectural or structural bays through a change in plane no less than 12 inches in width, such as an offset, reveal, or projecting rib.

Note: At least one of elements of subsections (3)a through c of this section shall repeat horizontally. All elements shall repeat at intervals no less than 30 feet, either horizontally or vertically.

(4) *Roofs.* Roofs shall have no less than two of the following features:

a. Parapet concealing flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed at any point one-third of the height of the supporting wall. Such parapet shall feature three-dimensional cornice treatment.

b. Overhanging eaves, extending no less than three feet past the supporting walls.

c. Sloping roofs that do not exceed the average height of the supporting walls with an average slope greater than or equal to one foot of vertical rise for every three feet of horizontal run and less than or equal to one foot of vertical rise for every one foot of horizontal run.

d. Three or more roof slope planes.

(5) *Materials and facade colors.* See section 36-109(f) and (g).

(6) *Entryways.* A course texture paver area shall be installed on the street adjacent to all pedestrian entrances to encourage traffic calming and provide distinct area for safe pedestrian crossing. Smooth texture paver crosswalks shall be installed within this area for handicap accessibility as appropriate. Each large retail establishment on a site shall have clearly defined, highly visible customer entrances featuring no less than three of the following:

a. Canopies or porticos.

b. Overhangs.

c. Recess/projections.

d. Arcades.

e. Raised corniced parapets over the door.

f. Peaked roof forms.

g. Arches.

h. Outdoor patios.

i. Display windows.

j. Architectural details such as tile work and moldings which are integrated into the building structure and design.

k. Integral planters or wing walls that incorporate landscaped areas and/or places for sitting.

(Code 1989, § 92.057; Ord. of 11-15-2005)

Sec. 36-111. Special use outdoor lighting standards and requirements.

(a) *Conformance.* All proposed outdoor artificial illumination devices for a special use shall be installed in conformance with the provisions of this section and the state building code. For existing nonconforming commercial lighting, refer to section 36-234. Where there is a conflict between the provisions of this section and applicable provisions of the state building code, the most restrictive shall govern.

(b) *Materials and installation.* The provisions of this section are not intended to prevent the use of any equipment, material or method of installation not specifically prescribed by this section provided the board of adjustment has approved the alternative. The board of adjustment may approve any such alternative provided that the proposed design provides the approximate equivalence to the specific requirements of this section.

(c) *Shielding.* All outdoor lighting fixtures, including decorative luminaries, except those exempted by subsection (g) of this section shall be fully shielded as specified in this section. A fully shielded outdoor lighting fixture must be shielded or constructed so that all light emitted is projected below a horizontal plane which is parallel to the ground and runs through the lowest part of the fixture.

(d) *Light trespass.* The maximum illumination at five feet inside an adjacent residential area, or public right-of-way, or beyond, from light emitted from an artificial light source is 0.5 horizontal footcandles and 0.5 vertical footcandles. No line of site to a bulb is permitted five feet or more beyond a residential property line or public right-of-way line by an observer viewing from a position that is level with or higher than the ground below the fixture. Compliance is achieved with fixture shielding, directional control designed into the fixture, fixture location, fixture height, fixture aim, or a combination of these factors.

(e) *Duration of use.* All unnecessary outdoor lighting fixtures shall be turned off after the close of business. However, fixtures nearest building entryways may remain lighted at minimum intensity for safety and security.

(f) *Canopies.* The lighting fixture bulbs shall be recessed into a canopy ceiling so that the bottom of the fixture is flush with the ceiling so that light is restrained to no more than 85 degrees from vertical. As an alternative to recessed ceiling lights, indirect lighting may be used where the light is directed upward and then reflected down from the underside of the canopy. In this case, light fixtures shall be shielded so that direct illumination is focused exclusively on the underside of the canopy. The lighting for such facilities, such as pump islands and under canopies, shall have a maximum of 15 footcandles average, maintained at grade.

(g) *Exemptions.* Fixtures including the following are exempt from regulation: incandescent fixtures (other than floodlights or spotlights) less than 160 watts, natural gas or liquid propane lights, and any light source of 1,800 lumens or less.

(Code 1989, § 92.058; Ord. of 11-15-2005; Ord. of 3-12-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-112. Special use landscaping requirements.

(a) *Small parking areas.* All new parking areas for commercial buildings and planned unit developments which contain more than five spaces, but less than 40 spaces, shall be provided with one or more landscape areas. Such landscape areas shall be not less than ten percent of the total parking area, and shall be located, wherever possible, so as to safely contain preexisting significant trees and stands of native shrubbery and their root protection zones. The total parking area includes parking spaces, loading areas, access aisles, and that portion of driveway entrances not located in public rights-of-way. Landscape areas shall be located either adjacent to the parking area or within the parking area, but may not be located within any public right-of-way. The forest coverage standard (Appendix B to this chapter) shall be maintained within parking areas by planting additional trees in these green spaces or, if there is not sufficient room, elsewhere on the subject property.

(b) *Large parking areas.* All new parking areas for commercial buildings and planned unit developments which contain 40 or more parking spaces shall be provided with one or more landscape areas. Such landscape areas shall amount to not less than ten percent of the total parking area and shall be located, wherever possible, so as to safely contain preexisting significant trees and stands of native shrubbery and their root protection zones. The total parking area includes parking spaces, loading areas, access aisles, and that portion of driveway entrances not located in public rights-of-way. These landscape areas shall be located totally within the parking area and may not be located within the public right-of-way. The forest coverage and/or significant tree standard, as per Appendix B to this chapter, shall be maintained within parking areas by planting additional trees in these green spaces or, if there is not sufficient room, elsewhere on the subject property.

(c) *Buffer strip.* In addition to the landscape areas described in subsections (a) and (b) of this section, all new parking areas for planned unit developments and commercial developments which contain 40 or more parking spaces shall be provided with a buffer strip five feet in width between the parking area and any adjoining right-of-way. Any buffer strip 20 feet in length must contain at least one tree for every 20 feet of the buffer strip.

(d) *Plant type.* All specified landscape areas shall be adequately covered with trees, shrubs, or a combination of both; provided, however, that any landscape area exceeding 100 square feet in area must contain at least one tree. At least 75 percent of the tree, shrub, or plant species proposed shall be desirable species native to the Southern Mountains as per the Lake Lure Tree Management Handbook.

(Code 1989, § 92.059; Ord. of 11-15-2005; Ord. of 6-12-2007; Ord. No. 21-05-11, 5-11-2021)

Secs. 36-113—36-137. Reserved.

ARTICLE V. ADMINISTRATION, ENFORCEMENT, APPEALS

Sec. 36-138. General administrative process.

Except for those referred to the tree protection officer by the explicit terms of these regulations, all questions arising in connection with this chapter shall be presented first to the zoning administrator, who shall be responsible for the day-to-day administration of this chapter. The board of adjustment shall have the authority to rule on matters of interpretation of this chapter, consider appeals from decisions of the zoning administrator and tree protection officer, issue special use permits, and grant variances. Any appeal from a decision of the board of adjustment shall be to the courts as provided by law. The duties of the town council in connection with this chapter shall be the duty of considering and passing upon the initial chapter and any proposed amendments or repeal of this chapter as provided by law. The town zoning and planning board shall serve in an advisory capacity to the town council and shall provide recommendations to the council, including recommendations pertaining to zoning amendments and other matters as designated in G.S. 160D.

(Code 1989, § 92.060; Ord. of 1-22-1991; Ord. of 6-12-2007; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-139. Administrative duties.

The town shall appoint a zoning administrator and a tree protection officer who shall be charged with the duty to administer and enforce the provisions of this chapter as specified herein.

(1) *Duties of the zoning administrator.* The zoning administrator shall issue certificates of zoning compliance and certificates of occupancy and shall perform such other duties as are prescribed herein. The zoning administrator shall be the person principally responsible for the administration and enforcement of this chapter and is authorized to issue notices of violation and citations in accordance with section 36-431.

(2) *Duties of the tree protection officer.* The tree protection officer shall have such duties as are assigned him by these regulations and shall have authority to issue notices of violation and citations, pursuant to section 36-431, and to pursue remedies pursuant to section 36-430, for those matters for which he is principally responsible.

(Code 1989, § 92.061; Ord. of 6-12-2007; Ord. of 10-8-2013; ; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-140. Certificate of zoning compliance required; applications.

(a) Except as otherwise provided in this chapter, no building or other structure shall be erected, moved, added to or structurally altered, nor shall any county building permit be issued nor shall any change in the use of any building or land be made until a certificate of zoning compliance shall have been issued by the zoning administrator. No certificate of zoning compliance shall be issued except in conformity with the provisions of this chapter. Upon approval of a special use permit or variance by the board of adjustment the zoning administrator shall issue a certificate of zoning compliance. The certificate of zoning compliance review fee for a Home Occupation, as defined by section 36-5, that has been granted a special use permit for a Home Occupation use that will not involve the change in appearance of a building or premises, as determined by the Zoning Administrator, shall be waived.

(b) All applications for certificates of zoning compliance shall be accompanied by the following:

(1) Detailed site plans, in duplicate and drawn to scale, showing the following:

a. Actual dimensions and general topography of the lot to be built upon;

b. Accurate dimensions, uses and locations on the lot of the building proposed to be erected or altered;

c. The significant trees to be protected or removed; and

d. A steep slope plan in accordance with section 36-262 where such slopes occur.

(2) If connection is to be made to the town's water or sewer systems, proof of approval for taps from the town, or a completed "waiver of liability" on a form obtainable from the town.

(3) If individual septic tanks and/or wells are to be used, proof of approval from the county health department.

(4) Such other information as may be necessary to provide for the enforcement of the provisions of this chapter.

(5) The application package shall include the review fee, the amount of which shall be established by the town council. Failure to obtain a required permit prior to commencing work shall subject applicant to double application review fee.

(c) Prior to issuance of a certificate of zoning compliance, the zoning administrator may consult with such qualified personnel as surveyors, geotechnical engineers, the tree protection officer, the erosion control officer, and others, as needed, for assistance to determine if the application meets the requirements of this chapter. The cost of a zoning compliance certificate shall be as set forth in the town fee schedule at the time the application for a certificate of zoning compliance is made.

(Code 1989, § 92.062; Ord. of 1-22-1991; Ord. of 4-10-2007; Ord. of 6-12-2007; Ord. of 1-8-2008; Ord. No. 21-05-11, 5-11-2021; Ord. No. 21-11-09A, 11-9-2021)

Sec. 36-141. Infrastructure not to be damaged during construction.

(a) It shall be a violation of these regulations to damage any street, sidewalk, bridge, culvert, ditch and drain, sign, signpost, streetlight, water line, water meter, sewer line, manhole, or other property owned by the town.

(b) Prior to the issuance of a certificate of zoning compliance, the town public works director or his designee shall perform a pre-construction inspection of the public infrastructure in the vicinity of the subject property to assess and document the existing conditions thereof. Subsequently, prior to the issuance of a certificate of

occupancy, the public works director or his designee shall perform a post-construction inspection of the same infrastructure and assess and document damage, if any.

(c) If, in the determination of the zoning administrator, in consultation with the public works director, damage resulted from the construction process, the property owner shall be responsible for repairing the damaged infrastructure.

(Code 1989, § 92.063; Ord. of 4-13-2010)

Sec. 36-142. Building permit required.

Upon receiving a certificate of zoning compliance, a building permit shall be obtained from the county building inspections office for the construction or alteration of any building or structure pursuant to the procedures of the county building inspections office.

(Code 1989, § 92.064; Ord. of 1-22-1991)

Sec. 36-143. Foundation survey required.

Where plans submitted for a certificate of zoning compliance show that any portion of a new structure or addition to an existing structure will be within five feet of any required yard, a survey prepared by a registered land surveyor or civil engineer shall be made to ensure that the proposed structure will be located as shown on the approved plans. This survey shall be conducted after the construction of any foundation. The survey shall also indicate the location of roof overhangs, decks, chimneys and any other appurtenances that extend beyond the walls of the structure. This survey shall be submitted to the zoning administrator for review and, if in accordance with the approved plans, the zoning administrator shall issue a statement of approval. This statement shall be required before any certificate of occupancy shall be issued by the county building inspections office. If the survey is not performed or if the survey shows the structure is not in accord with the approved plans, the certificate of zoning compliance shall be rescinded until such time as a survey shows the location of the structure is in conformance. In the event the certificate of zoning compliance is rescinded, the zoning administrator shall notify the county building inspections office that the building permit is no longer valid.

(Code 1989, § 92.064; Ord. of 11-17-1998; Ord. of 2-8-2011; Ord. of 3-10-2015)

Sec. 36-144. Certificate of occupancy required.

(a) A certificate of occupancy issued by the zoning administrator is required in advance of:

(1) Occupancy or use of a building hereafter erected, altered or moved.

(2) Change of use of any building or land.

(b) In conjunction with the final building inspection, the zoning administrator shall certify that all requirements of this chapter have been met. The applicant shall call for such certification coincident with the final building inspection or within ten days following completion. A certificate of occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a certificate of zoning compliance and shall be issued within ten days after the erection or structural alterations of the building, or part, shall have been completed in conformity with the provisions of this chapter. When only a change in use of land or existing building occurs, the zoning administrator shall issue a certificate of occupancy coincident with the certificate of zoning compliance. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this chapter. If the certificate of occupancy is denied, the zoning administrator shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the zoning administrator, and copies

shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

(Code 1989, § 92.065; Ord. of 1-22-1991)

Sec. 36-145. Construction progress.

Construction sites shall be kept clean and free of debris. If work has not commenced within six months of the date of the issuance of the certificate of zoning compliance, or if work begins and then ceases for a period of 12 months, the certificate of zoning compliance shall become invalid.

(Code 1989, § 92.066; Ord. of 1-22-1991; Ord. of 4-10-2007; Ord. of 1-8-2008)

Sec. 36-146. Compliance.

In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building or land is used in violation of this chapter, the zoning administrator or any other appropriate town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

(Code 1989, § 92.067; Ord. of 1-22-1991)

Sec. 36-147. Appeal from the zoning administrator.

All questions arising in connection with this chapter shall be presented first to the zoning administrator, and such questions shall be presented to the board of adjustment only on appeal from a ruling of the zoning administrator. Any order, requirement, decision or determination made by the zoning administrator may be appealed to the board of adjustment pursuant to the procedure found in section 36-185.

(Code 1989, § 92.068)

Secs. 36-148—36-163. Reserved.

ARTICLE VI. SITE SPECIFIC VESTING PLANS

Sec. 36-164. Site-specific vesting plans.

(a) An approved site-specific vesting plan precludes any zoning action by the Town of Lake Lure, which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan and in accordance with applicable limitations and exceptions.

(b) The development approvals listed below are determined by the Town of Lake Lure to qualify as site-specific vesting plans.

(1) Planned Unit Development Plan;

(2) Subdivision Plat;

(3) Site Plan;

(4) Preliminary or General Development Plan;

(5) Special Use Permit;

(6) Conditional Zoning.

(c) A vested right established pursuant to this article shall run for a period of two to five years from the effective date of the approval of the underlying development application.

(Ord. No. 21-05-11, 5-11-2021)

Sec. 36-165. Process for submittal, approval, and amendment of a site-specific vesting plan.

(a) Each site-specific vesting plan shall include the information required by the Town of Lake Lure for the underlying type of development plan.

(b) Each site-specific vesting plan shall provide the notice and hearing required for the underlying type of development plan.

(c) An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the local government in the same manner as required for the underlying type of development plan.

(d) Upon following the same process as required for the original approval, the decision-making board or official may extend the vesting of a site-specific vesting plan up to three years (with total length of vesting not to exceed five years) upon finding that:

(1) The permit has not yet expired;

(2) Conditions have not changed so substantially as to warrant a new application; and

(3) The extension is warranted in light of all other relevant circumstances—including, but not limited to the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations.

(Ord. No. 21-05-11, 5-11-2021)

Sec. 36-166. Limits of site-specific vesting plans.

(a) 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. The development remains subject to subsequent review and approvals to ensure compliance with the terms and conditions of the original approval as provided for in the original approval or by applicable regulations.

(b) The establishment of a vested right pursuant to this article 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 Town of Lake Lure, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

(c) New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right shall become effective upon the expiration or termination of the vested rights period provided for in this article.

(d) Upon issuance of a building permit, the expiration provisions of G.S. § 160D-1111 and 160D-1115 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.

(e) Any vested rights for a site-specific vesting plan are subject to the exceptions specified at G.S. § 160D-108.1.

(Ord. No. 21-05-11, 5-11-2021)

Sec. 36-167. Application completeness review.

(a) Completeness. Determination applicants shall submit applications to the zoning administrator in accordance with the applicable published schedule of submittal dates. Until an application is determined to be complete in accordance with the requirements, an application has not been submitted.

(b) On receiving a development application, the zoning administrator shall, within 30 business days, determine whether the application is complete or incomplete. A complete application is one that:

(1) Contains all information and materials required by for submittal of the applicable type of application, [and in].

(Ord. No. 21-05-11, 5-11-2021)

Secs. 36-168—36-177. Reserved.

ARTICLE VII. BOARD OF ADJUSTMENT[2]

Sec. 36-178. Establishment.

There shall be and hereby is created a zoning board of adjustment consisting of five members to be appointed by the town council. Members of the board shall serve a term of three years, provided that upon initial appointment the terms of office may be staggered. In filling vacancies created by resignation or other causes, a new member may be appointed to fill the unexpired term of the member so vacating. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member while attending any regular or special meeting of the board and serving in the absence of any regular members shall have and may exercise all the powers and duties of a regular member. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the board of adjustment.

(Code 1989, § 92.080)

Sec. 36-179. Alternate members.

The town council shall appoint three alternate members to serve on the board of adjustment in the absence, for any cause, of any regular member. Such alternate members shall be appointed for three-year terms. Such alternate members while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. The alternate members shall be subject to the provisions of section 36-180.

(Code 1989, § 92.081; Ord. of 1-22-1991; Ord. of 1-9-2007)

Sec. 36-180. Rules of conduct.

(a) Members of the board of adjustment may be removed by the town council for cause, including violation of the rules stated in this section.

(b) Faithful attendance at meetings of the board and conscientious performance of the duties required of members of the board shall be considered a prerequisite to continuing membership on the board.

[2]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. VI, as art. VII, as herein set out.

(c) A board member 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.

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

(e) Members of the board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(f) When a member is aware of a potential conflict of interest, he shall give notice to the chairperson at least 48 hours prior to the time scheduled for hearing such matter.

(g) No board member shall vote on any matter that decides an application or appeal unless he has attended the hearing on that application or appeal.

(h) All members appointed to the board shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and 160A-61.

(Code 1989, § 92.082; Ord. of 1-22-1991; Ord. of 10-9-2012; Ord. of 10-8-2013; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-181. General proceedings.

(a) The board of adjustment shall annually elect a chairperson and a vice-chairperson from among its regular members. The chairperson in turn shall appoint a clerk, who may be an employee of the town or a municipal officer.

(b) The chairperson, or any member acting as chair, and the clerk may administer oaths.

(c) The chairperson or, in the absence of the chairperson, anyone acting as the chairperson may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160D may make a written request to the chairperson explaining why it is necessary for certain witnesses or evidence to be compelled. The chairperson shall issue requested subpoenas he determines to be relevant, reasonable in nature and scope, and not oppressive. The chairperson shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chairperson may be appealed to the full board of adjustment.

(d) The board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.

(Code 1989, § 92.083; Ord. of 1-22-1991; Ord. of 10-8-2013; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-182. Meetings.

(a) *Board meetings.* The board of adjustment shall hold regular monthly meetings at a specified time and place. Special meetings of the board may be called at any time by the chairperson or by request of three or more members of the board. At least 48 hours' written notice of the time and place of meetings shall be given, by the chairperson, to each member of the board. All board meetings are to be held in accordance with G.S. ch. 143, art. 33C (G.S. 143-318.9 et seq.), commonly referred to as the Open Meetings Act.

(b) *Cancellation of meetings.* Whenever there are no appeals, applications for special uses or variances, or other business for the board, or whenever so many members notify the clerk of inability to attend that a quorum will not be available, the chairperson may dispense with a meeting by giving written or oral notice to all members.

(c) *Quorum.* A quorum shall consist of three members of the board, but the board shall not pass upon any questions relating to an application for a variance when there are less than four members present.

(d) *Voting.* 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 all other issues before the board, including any other quasi-judicial matter or 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.

(Code 1989, § 92.084; Ord. of 1-22-1991; Ord. of 10-8-2013; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-183. Powers and duties.

The board of adjustment is empowered and shall have the responsibility to hear and decide:

(1) Appeals from decisions of administrative officials pursuant to section 36-185;

(2) Applications for special use permits pursuant to section 36-102; and

(3) Applications for variances pursuant to section 36-186.

(Code 1989, § 92.085; Ord. of 10-8-2013; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-184. General requirements for quasi-judicial hearings and decisions.

A quasi-judicial decision is a process that involves the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special use permits, and appeals of administrative determinations.

(1) *Procedure for filing appeals and applications.* Notices of appeal shall be filed with the town clerk. Applications for special use permits and applications for variances shall be filed with the zoning administrator and processed in accordance with these regulations. All appeals and applications shall be made upon the form specified for that purpose, and all information required on the form shall be complete before an appeal or application shall be considered as having been filed.

(2) *Notice of hearing.* Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal or application is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; to the owners of all parcels of land within 100 feet of the land (as determined by GIS) that is the subject of the hearing; and to any other persons entitled to receive notice as provided by these regulations. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. In addition, notice of a hearing on an application for a special use permit shall be posted at town hall and published in a newspaper having general circulation in the town within that same time period.

(3) *Hearings.* The board shall conduct a quasi-judicial hearing on the appeal or application. It shall determine contested facts and make its decision within 45 days of the conclusion of hearing. The board's decision shall be based upon competent, material, and substantial evidence in the record of the hearing. During the hearing, parties will be to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; may allow non-parties to present competent, material, and substantial evidence that is not repetitive. The decision shall be reduced to writing and reflect the board's determination of contested facts, if any, and their application to applicable standards. The evidentiary hearing will be the applicant's opportunity to gather and present competent material and substantial evidence to establish the facts of the case. The hearing will have testimony under oath from the applicant's parties and will establish written findings of fact and conclusions of law. The written decision shall be signed by the chair or other duly authorized member of the board. The decision of the board shall be effective upon filingsuch decision with the clerk to the board. The clerk shall see that the decision is delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, any entity granted party status at the hearing, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective and shall certify that proper notice has been made.

(4) *Expiration of authorizations.* Unless otherwise specified, any order or decision of the board in granting a variance or a special use permit shall expire if a certificate of zoning compliance for such use is not obtained by the applicant within six months from the date of the decision.

(Code 1989, § 92.086; Ord. of 10-8-2013; Ord. of 5-12-2015; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-185. Appeals.

The board of adjustment shall hear and decide appeals of administrative officials charged with enforcement of this chapter and with the subdivision regulations contained in chapter 28 in accordance with the provisions of this section.

(1) The town and any person who has standing under G.S. 160D may appeal a decision to the board. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property for at least ten days. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.

(5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the regulations. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the regulations shall not stay further review of an application for permits or permissions to use such property; in these situations, the appellant may request, and the board may grant, a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subsection (6) of this section, the board shall hear the appeal within 45 days of the date of filing such appeal, and shall render its decision within a reasonable time thereafter.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. 160D or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D.

(10) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

(Code 1989, § 92.087; Ord. of 10-8-2013; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-186. Variances.

When unnecessary hardships would result from carrying out the strict letter of these regulations, the board of adjustment shall vary such regulations upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) 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.

(3) 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.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

a. In determining what constitutes an unnecessary hardship, the board of adjustment shall be guided by the following:

   1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question that are not applicable to other lands or structures in the same district.

   2. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

   3. A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

   4. The requested variance will not be injurious to the neighborhood or to the general welfare.

   5. The special circumstances are not the result of the actions of the applicant.

   6. A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts, will not be considered grounds for the issuance of a variance.

b. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under section 36-431.

(Code 1989, § 92.088; Ord. of 10-8-2013)

Sec. 36-187. Fees for variances, special uses and appeals.

The fee for a request for a variance, special use, or for an appeal to the board of adjustment shall be determined by resolution of the town council and shall be payable to the town.

(Code 1989, § 92.089; Ord. of 10-8-2013; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-188. Judicial review of decisions of the board.

Decisions of the board of adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section 36-184(3). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(Code 1989, § 92.090; Ord. of 10-8-2013; Ord. No. 21-05-11, 5-11-2021)

Secs. 36-189—36-214. Reserved.

ARTICLE VIII. NONCONFORMANCE; OFF-STREET PARKING AND LOADING; GENERAL REQUIREMENTS[3]

Sec. 36-215. Zoning affects every building and use.

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located, except as provided in this article.

(Code 1989, § 92.100; Ord. of 1-22-1991)

Sec. 36-216. Nonconforming uses.

(a) *Intent.*

(1) Within the districts established by these zoning regulations or amendments that may later be adopted there may exist:

a. Lots;

b. Structures;

c. Uses of land or water and structures; and

d. Characteristics of use which were lawful before these zoning regulations were adopted or amended, but which would be prohibited, regulated, or restricted under the terms of these zoning regulations or future amendments.

(2) It is the intent of these zoning regulations to permit these nonconformities to continue until they are voluntarily removed or removed as required by these zoning regulations; however, such nonconformities shall not be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

(3) Nonconforming uses are declared by this article to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land or water, or a nonconforming use of a structure and land or water in combination shall not be extended or enlarged after the effective date of the ordinance from which this chapter is derived or its amendment by attachment on structures or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature or characteristic which would be prohibited generally in the district involved. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building for which a valid permit has been approved prior to the effective date of the ordinance from which this adoption or amendment of this chapter is derived.

(b) *Nonconforming lots of record.* This category of nonconformance consists of lots for which plats or deeds have been recorded in the county register of deeds, which at the time of the adoption of the ordinance from which this chapter is derived, or any amendment thereto, fail to comply with the minimum area or width

[3]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. VII, as art. VIII, as herein set out.

requirements of the districts in which they are located. Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located provided the owner of the subject lot does not own sufficient contiguous land to enable conformity to the minimum area or lot width requirements through recombination, and all other dimensional requirements can be met. The zoning administrator is authorized to issue a certificate of zoning compliance after having received an attorney's certificate of title on a form obtainable from the town.

(c) *Nonconforming uses of land (or land with minor structures).* Where, at the effective date of the ordinance from which the adoption or amendment of this chapter is derived, lawful use of land exists which would not be permitted by these zoning regulations, and where such use involves no minor individual, permanently fixed structure with a replacement cost exceeding $1,000.00 and no combination of permanently fixed structures with a replacement cost as high as $4,000.00, the use may be continued so long as it remains otherwise lawful, provided:

(1) *Enlargement, increase, intensification.* No such nonconforming use shall be enlarged, increased, intensified or extended to occupy a greater area of land than was occupied at the effective date of the ordinance from which the adoption or amendment of this chapter is derived.

(2) *Movement.* No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of the ordinance from which the adoption or amendment of this chapter is derived.

(3) *Discontinuance.* If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.

(4) *Subdivision or structural additions.* No land in nonconforming use shall be subdivided, nor shall any structures be added on such land, except for the purposes and in a manner conforming to the regulations for the district in which such land is located; provided, however, that subdivision may be made which does not increase the degree of nonconformity of the use.

(d) *Nonconforming structures.* Where a structure exists lawfully under this chapter at the effective date of the adoption or amendment of this chapter, that could not be built under these zoning regulations by reasons of restrictions on area, residential densities, height, yards, location on the lot, or requirements other than use concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) *Enlargement, alteration.* No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity. Enlargements, additions, or alterations under an existing roofline or within the existing building footprint shall not be considered an increase in a structure's nonconformity. Further, a nonconforming structure may be enlarged or altered if the part of the structure to be enlarged or altered and the area of the lot into which such changes are proposed pre-exist in conformance with the requirements of these regulations.

(2) *Involuntary destruction.* Should such nonconforming structure or nonconforming portion of a structure be destroyed by any means other than voluntary removal, it may be reconstructed to the same configuration, including density, height, area, setbacks, parking, and the like, as existed prior to destruction.

(3) *Relocation.* Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(e) *Nonconforming use of major structures, or of major structures and premises in combination.* Where, at the effective date of the adoption or amendment of this chapter, lawful use of structures, or of structures and premises in combination exists involving an individual, permanently fixed structure with a replacement cost at or exceeding $1,000.00 or a combination of permanently fixed structures with a replacement cost at or exceeding $4,000.00, which use would not be permitted under these zoning regulations, such use may be continued so long as it remains otherwise lawful, provided:

(1) *Enlargement, extension, alteration, etc., of structures.* No existing structure devoted to a use not permitted by this chapter in the district in which such use is located shall be enlarged, extended, constructed, reconstructed, moved to another location on the property, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

(2) *Extension of use in building manifestly designed for such use.* Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date the ordinance from which the adoption or amendment of this chapter is derived. Any nonconforming use which occupied a portion of a building not originally so arranged or designed or intended for such use shall not be extended to any other part of the building. No nonconforming use shall be extended to occupy any land outside the building, nor any additional building on the same lot or parcel, not used for such nonconforming use at the effective date of the adoption or amendment of this chapter.

(3) *Change in tenancy or ownership.* There may be a change in tenancy, ownership, or management of a nonconforming use.

(4) *Change in use.* If no structural alterations are made, any nonconforming use of a structure, or of a structure and premises in combination, may be changed to another nonconforming use of the same character, or to a more restricted but nonconforming use, provided that the zoning administrator shall find that the proposed use is equally or more appropriate to the district than the existing nonconforming use and that the relation of the structure to surrounding properties is such that adverse effects on occupants and neighboring properties will not be greater than if the existing nonconforming use is continued. In permitting such change, the zoning administrator may require appropriate condition and safeguards in accordance with the intent and purpose of these zoning regulations.

(5) *Change to conforming use requires future conformity with district regulations as to use.* Any structure, or structure and premises in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations as to use for the district in which such structure is located, and the nonconforming use shall not thereafter be resumed nor shall any other nonconforming use be permitted.

(6) *Discontinuance.* If any nonconforming use of a structure, or structure and premises in combination, ceases for any reason (except where governmental action impedes access to the premises) for a period of more than 12 consecutive months, any subsequent use shall conform to the regulations for the district in which the use is located.

(7) *Subdivision or structural additions.* Premises of major structures (having values as indicated in this subsection), where such major structures are used for nonconforming purposes as of the effective date of the adoption or amendment of this chapter, shall not be subdivided, nor shall any structures be added on such premises, except for purposes and in a manner conforming to the regulations for the district in which such premises are located.

(f) *Nonconforming characteristics of use.* If characteristics of use, such as residential densities, signs, off-street parking or off-street loading, or other matters pertaining to the use of land and structures are made

nonconforming by these zoning regulations as adopted or amended, no change shall thereafter be made in such characteristics of use which increases nonconformity with the regulations set out in this chapter; provided, however, that changes may be made which do not increase, or which decrease such nonconformity.

(g) *Repairs and maintenance.* On any nonconforming structure or portion of a structure and on any structure containing a nonconforming use, ordinary repairs, or repair or replacement of walls, fixtures, wiring, or plumbing, may be done.

(h) *Nonconforming structures unsafe because of lack of maintenance.* If a nonconforming structure or portion of a structure or any structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance, and is declared by the county building inspector to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

(i) *Nonconforming structures unsafe for reasons other than maintenance.* If a nonconforming structure or portion of a structure or any structure containing a nonconforming use becomes physically unsafe or unlawful for reasons other than lack of repairs or maintenance, nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of such building or part thereof declared to be unsafe by the county building inspector.

(j) *Structures conforming as to use and location.* Where a structure is conforming as to location and use, nothing in these zoning regulations shall be deemed to prevent the strengthening or restoring to a safe condition of such structure or part thereof declared to be unsafe by the official of the county building inspector.

(k) *Casual, temporary, or illegal use.* The casual, temporary or illegal use of land or structures, or land and structures in combination, shall not be sufficient to establish the existence of a nonconforming use or to create rights in the continuance of such use.

(l) *Uses under special use provisions not nonconforming.* Any use which is permitted as a special use in a district under the terms of this chapter shall not be deemed a nonconforming use in such district, but shall without further action be deemed a conforming use in such district.

(Code 1989, § 92.101; Ord. of 3-10-2015; Ord. of 2-9-2016; Ord. of 7-9-2019; Ord. No. 19-07-09A, 7-9-2019; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-217. Off-street parking and loading requirements.

It is the intent of these regulations that adequate parking and loading facilities shall be provided on private property in order to promote the public safety, to lessen congestion in the public streets, and to help make possible the full use of existing streets for traffic movement unhindered by parking, loading and unloading maneuvers conducted within the public streets. To achieve these purposes, it is further intended that upon the erection of any building or the use of any lot, off-street parking and loading space shall be provided which is not less than the minimum required herein. Compliance with these requirements shall be a continuing responsibility.

(Code 1989, § 92.102; Ord. of 1-22-1991)

Sec. 36-218. Off-street parking required.

(a) [*Generally.*] Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereafter established. The number of parking spaces provided shall be at least as great as the number specified below for various uses. Each space shall be provided with vehicular access to a street or alley and shall be provided with adequate space for turning so that no vehicle shall be required to

back into the street except from space used for single- or two-family dwellings. Commercial parking spaces shall measure at least nine feet by 18 feet. To ensure orderly parking, each parking space shall be appropriately delineated as determined by the zoning administrator.

(b) [*Parking requirements.*] Requirements for off-street parking for uses not specifically mentioned in this section shall be the same as provided for the use most similar to the one sought, it being the intent of these regulations to require all uses to provide off-street parking unless specific provision is made to the contrary.

Uses	*Required Parking*
Any residential use consisting of not more than four dwelling units	One space for each dwelling unit
Roominghouses, boardinghouses, and bed and breakfast establishments	One space for each bedroom available for rent, plus one space for each two employees
Tourist courts, hotels, motels and inns	One space for each accommodation, plus one space for each two employees
Multifamily residential uses containing more than four dwelling units, including condominiums	1½ spaces for each dwelling unit
Bowling alleys	Two spaces for each alley, plus one space for each two employees
Sanitariums, nursing homes, rest and convalescent homes, homes for the aged, family care homes, and other similar institutions	One space for each six patient beds, plus one space for each staff or visiting doctor, plus one space for each four employees
Mobile home parks	Two spaces for each mobile home space
Hospitals and clinics	One space for each two beds, plus one space for each staff or visiting doctor, plus one space for each two employees, including nurses
Mortuary or funeral home	One space for each four seats in the chapel or parlor
Places of public assembly, including school auditoriums	One space for each four seats in the principal assembly room
Places of assembly or recreation without fixed seats	One space for each 200 square feet of gross floor space directed to patron use
Schools, elementary and junior high	One space for each classroom and administrative office
Schools, senior high	One space for each classroom and administrative office
Churches or other religious institutions	One space for each four seats in the auditorium or main assembly room
Colleges	One space for each four pupils
Libraries, art galleries, and public	One space for each 200 square feet of gross floor

buildings	space
Physicians' and dentists' offices	Five spaces per physician or dentist, plus one space for each employee
Professional and business offices	One space for each 200 square feet of gross floor space
Banks	One space for each 200 square feet of gross floor space, plus one space for each two employees
Retail stores and shops of all kinds, including barber and shoe and similar service outlets	One space for each 200 square feet of gross floor space, plus one space for each two employees
Car sales, house and truck trailer sales, outdoor equipment and machinery sales, commercial nurseries	Four spaces for each salesperson, plus one space for each two other employees
Restaurants	One space for each three seating accommodations, plus one space for each two employees on shift of greatest employment
Gasoline service or filling stations	Five spaces for each grease rack, and five spaces for each wash rack
Child care centers	One space for each employee, plus one space per ten children but no less than four spaces beyond those provided for employees

(c) *Location on other property.* If the required automobile parking spaces cannot reasonably be provided on the same lot on which the principal use is conducted, such spaces may be provided on other off-street property provided such property lies within 400 feet of the main entrance to such principal use. Such automobile parking space shall be associated with the principal use and shall not thereafter be reduced or encroached upon in any manner.

(d) *Extension of parking space into a residential district.* Required parking space may extend up to 120 feet into a residential zoning district, provided that the parking space:

(1) Adjoins a commercial district;

(2) Has its only access to or fronts upon the same street and is adjacent to the property in the commercial district for which it provides the required parking space; and

(3) Is separated from abutting properties in the residential district by a 15-foot-wide buffer strip densely planted with evergreens which at maturity will be at least six feet in height.

(e) *Reduction in area and number of parking spaces.* No open area in an off-street parking area shall be encroached upon by buildings, storage, or any other use; nor shall the number of parking spaces be reduced except after the submission of proof to the zoning administrator that, by reason of reduction in floor area, seating capacity, number of employees, or change in other factors controlling the regulation of the number of off-street parking spaces, the proposed reduction is reasonable and consistent with the intent of this chapter.

(f) *Mixed uses.* In the case of mixed uses, including live-work units, the total requirement for off-street parking shall be the sum of the requirements of the various uses computed separately as specified herein.

(Code 1989, § 92.103; Ord. of 1-22-1991; Ord. of 1-24-1995; Ord. of 7-10-2001; Ord. of 3-10-2009)

Sec. 36-219. Off-street loading and unloading space required.

Every lot on which business or trade use is hereafter established shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley, or if there is no alley, to a street. For the purpose of this section, an off-street loading space shall have minimum dimensions of 12 feet by 40 feet. Required space shall be considered as follows:

(1) *Retail business.* One space for each 5,000 square feet of gross floor area.

(2) *Truck terminals.* Sufficient space to accommodate the maximum number of trucks to be stored or to be loading or unloading at the terminal at any one time.

(Code 1989, § 92.104; Ord. of 1-22-1991)

Sec. 36-220. Corner visibility.

On any corner lot in any district, no planting, fence, structure, or other obstruction shall be erected so as to interfere with sight distance standards established by the department of transportation for secondary roads.

(Code 1989, § 92.105; Ord. of 1-22-1991)

Sec. 36-221. Required yards not to be used by another building.

The minimum yards or other open spaces required by this chapter for each and every building hereafter erected, moved or structurally altered shall not be encroached upon or considered to meet the yard or open space requirements of any other building except as provided in section 36-104.

(Code 1989, § 92.106; Ord. of 1-22-1991)

Sec. 36-222. One principal building on a lot.

Every building hereafter erected or moved shall be located on a lot, and in no case shall there be more than one principal building and its accessory buildings on a lot except as provided in sections 36-57(d) and 36-104.

(Code 1989, § 92.107; Ord. of 1-22-1991; Ord. of 4-8-2014)

Sec. 36-223. Reduction of lot and yard area.

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

(Code 1989, § 92.108; Ord. of 1-22-1991)

Sec. 36-224. Street access.

No building or use of land for other than agricultural purposes shall be established on a lot which does not abut a street except as provided in section 36-104.

(Code 1989, § 92.109; Ord. of 1-22-1991)

Sec. 36-225. Corner lots.

On corner lots, the side yard on that side of the lot abutting the side street shall not be less than the front yard requirements for lots fronting on the side street.

(Code 1989, § 92.110; Ord. of 1-22-1991)

Sec. 36-226. Junkyards and outdoor privies.

Junkyards and outdoor privies not connected to public water and sewer facilities are prohibited in the town.

(Code 1989, § 92.111; Ord. of 1-22-1991)

Sec. 36-227. Mobile homes.

It shall be unlawful for any person to park or locate, place, maintain or use any mobile home within the limits of the town, either occupied or unoccupied, unless said mobile home is within a mobile home park, except that a mobile home may be used as a temporary shelter or office on a construction site during the actual period of construction.

(Code 1989, § 92.112; Ord. of 1-22-1991)

Sec. 36-228. Mobile home tie-downs.

All mobile homes in the town limits shall be anchored or tied down in accordance with the regulations of mobile homes for the state. Existing mobile homes in the town limits shall be so anchored or tied down within one year of the effective date of the ordinance from which this chapter is derived.

(Code 1989, § 92.113; Ord. of 1-22-1991)

Sec. 36-229. Travel trailers (motor homes).

One unoccupied travel trailer may be parked or located in any accessory private garage building or in a yard of an occupied dwelling. Upon receipt of an occupancy permit from the zoning administrator, a travel trailer so located may be occupied for a period not exceeding 90 days. Existing situations, where a travel trailer is attached as an integral part of a permanent structure to provide utilities or living quarters, shall not constitute a nonconforming use under the terms of this chapter.

(Code 1989, § 92.114; Ord. of 1-22-1991)

Sec. 36-230. Rights-of-way.

Street and highway rights-of-way shall not be determined as part of a lot or any required yard or open space.

(Code 1989, § 92.115; Ord. of 1-22-1991)

Sec. 36-231. Fences, walls and hedges.

(a) Fences, walls and hedges are exempt from setback requirements except that in residential districts, fences and walls are limited to eight feet in height from the existing ground elevation in the required side and rear yards.

(b) In the required lake front yards of all residential districts, fences, walls and hedges shall be limited to 42 inches in height.

(c) In the required street front yards of all residential districts, open fences (those allowing the free flow of light and air other than those prohibited by subsection (d) of this section) are limited to eight feet in height and solid walls and fences are limited to three feet in height from the existing ground elevation. Walls and fences may be combined, provided not more than three feet of the height of the structure may be solid and the remainder shall be open fence work. Where fences are erected, solid support columns not more than 16 inches in width on not less than eight-foot centers shall be allowed up to eight feet in height and such columns may be topped with decorative elements such as balls, vases and the like up to a total height of nine feet. Open fences include wood or metal picket, wrought iron or similar designs with a solid to open ratio of not more than 1:4. Columns at entrance to vehicular driveways shall be allowed up to 36 inches per side.

(d) Chain link fencing, chicken wire, hardware cloth, and other woven or mesh products are not permitted in required street front yards of any district. Welded, galvanized or painted wire fencing materials are permitted when fully framed within a wood or similar construction fence. However, when used to enclose, protect, or secure property owner by a utility or a government agency, dark coated chain link fencing is permissible with or without dark woven mesh products. All dark woven mesh products shall installed on the interior side of fence.

(e) All fences, walls and hedges are subject to the provisions of section 36-220 regarding visibility at intersections.

(f) Retaining walls needed to prevent erosion or land subsidence are allowed in all required yards and are exempt from the height limitations of this section.

(Code 1989, § 92.116; Ord. of 1-12-1999; Ord. of 10-14-2003; Ord. No. 21-05-11B, 5-11-2021)

Sec. 36-232. Home occupations.

(a) The person conducting the home occupation must be the owner of the dwelling unit/building or accessory building in which the home occupation is to be located, or if the applicant is a tenant, written approval of the owner must be provided.

(b) The use of the dwelling unit/building or accessory building for home occupations shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and shall under no circumstances change the residential character of it.

(c) Deliveries or pick-ups of supplies or products associated with the home occupation are allowed only between 8:00 a.m. and 6:00 p.m.

(d) The home occupation shall not generate additional traffic beyond what is customary to and of the type associated with residential use.

(e) Goods or materials used in connection with a home occupation shall only be stored within a completely enclosed structure.

(f) No vehicles used primarily in connection with a home occupation which advertises that home occupation may be parked where they are visible from the road.

(g) No merchandise or articles for sale shall be displayed for advertising purposes so as to be visible from outside the main dwelling.

(h) No persons other than the resident occupants and three individuals shall be working on the home occupation in the dwelling unit/building or accessory building at any given time.

(i) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference which is detectable.

(j) There shall be no visible evidence of the conduct of a home occupation when viewed from the street right-of-way or from an adjacent lot. No changes shall be made to the outside appearance of the dwelling unit or lot for the use in conjunction with a home occupation and there shall be no other visible evidence of the conduct of such home occupation on the lot. Notwithstanding the foregoing, a home occupation may utilize one non-illuminated sign, not exceeding two square feet in area, affixed to the residence.

(k) The home occupation shall cease immediately when the use is determined by the zoning administrator to be a nuisance or is in violation of any statute, ordinance, law or regulation.

(l) Parking adequate to accommodate employees, clients or customers, and residents shall be provided off the street and shall be screened from view from adjoining properties.

(Code 1989, § 92.117; Ord. of 1-8-2008)

Sec. 36-233. Fabric and metal structures.

(a) *Fabric structures.* To protect the character and appearance of the town, no fabric structures, including tents and similar fabric-covered shelters, shall be erected in the town in any zoning district except in accordance with chapter 6.

(b) *Metal structures.* Metal framed structures and metal sheathing are permitted in the town in any zoning district, provided that no metal sheathed walls shall be visible from any primary streets or adjoining residentially zoned property. All proposed metal sheathed walls within sight distance from any primary streets or adjoining residentially zoned property shall either be overlaid with wood, stone, or other natural or simulated natural material or hidden by walls, structures, buffer strips, or other means.

(Code 1989, § 92.118; Ord. of 11-15-2005; Ord. of 4-10-2007; Ord. of 10-13-2009; Ord. of 9-10-2013)

Sec. 36-234. Existing nonconforming commercial lighting.

(a) *Lights brought into compliance.* Any commercial lighting existing on the date of enactment of the ordinance from which this article is derived which does not conform to the requirements of section 36-111 shall be taken down and removed or brought into compliance by the owner, agent, or person having the beneficial use of the building, land, or structure upon which such lighting may be found within a period of ten years.

(b) *Amortization.* The amortization period for nonconforming commercial lighting is ten years. All commercial lighting must be in compliance by March 12, 2029.

(c) *Repair of nonconforming lighting.* Any commercial lighting existing on the date of enactment of the ordinance from which this article is derived shall not be repaired if 50 percent or more of the value of the fixture must be restored in order for it to be deemed in good repair; instead, such lighting shall be removed and a new lighting fixture which conforms to the regulations set forth by section 36-111 shall be erected. The 50 percent standard shall not be applicable to the retrofitting of fixtures to achieve conformance as per section 36-111.

(d) *Relocation of nonconforming lighting.* Any commercial lighting fixture existing on the date of enactment of the ordinance from which this article is derived exhibiting light trespass as per section 36-111(d) shall be taken down and removed or brought into compliance on or before March 12, 2029, by the owner, agent, or person having the beneficial use of the building, land, or structure upon which such lighting may be found.

(e) *Emergency lighting.* Emergency lighting, or lighting deemed essential by OSHA or any other regulatory agencies, to enhance worker safety in hazardous environments shall not be subject to the requirements of this section.

(f) *Enforcement.* Enforcement of the provisions of this section shall be as provided in section 36-431.

(Code 1989, § 92.119; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-235. Gatehouses, guardhouses and security gates.

(a) Gatehouses, guardhouses and security gates may be permitted provided that:

(1) It is not located on a publicly dedicated street or street right-of-way; and

(2) The project proposal is reviewed and approved by the Fire Chief, Police Chief and any other authority having jurisdiction (AHJ).

(b) Gatehouses, guardhouses and security gates are exempt from yard setback requirements but for applications other than personal dwellings:

(1) Shall be setback sufficiently far from public road access to allow for the stacking of at least three (3) vehicles out of the public travel lanes on the public road;

(2) Shall have an additional setback in front of the gate to allow a vehicle which is denied access to safely turn around and exit onto a public road;

(3) Shall provide adequate gate width and alignment of approach and departure areas, on both sides of gate, to allow free and unimpeded passage of emergency vehicles;

(4) Where the gate crosses a travel way, such gate shall open so as to provide a minimum width of 18 feet of passage for two-way travel; or minimum width of 12 feet of passage for one-way travel.

(c) Gatehouses, guardhouses and security gates shall provide unfettered and immediate access to all private roads by emergency and law enforcement vehicles and reasonably guarantee access to all private roads by Town, County and State of North Carolina employees operating within the scope of their official duties to perform governmental regulatory activities, and to all public utility companies to perform installation and maintenance activities of public utility infrastructure. If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, shall be the responsibility of the owner or operator of the gate. A statement to this effect shall be filed with the Town of Lake Lure Police Department and appear on the final plat of all new development.

Secs. 36-236—36-261. Reserved.

ARTICLE IX. LAND CLEARING AND GRADING[4]

Sec. 36-262. Land clearing and grading associated with development.

(a) *General.* Except as provided herein, no land clearing and/or grading associated with development, as defined in this chapter, shall begin unless and until an approved land disturbance permit in chapter 22 has been obtained, a site plan meeting the requirements of this section has been approved by the tree protection

[4]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. VIII, as art. IX, as herein set out.

officer or his designee and the property has been staked according to the structure boundaries and clearable areas shown on the site plan. Cutting of significant trees during development in areas other than those designated as appropriate in Figure 1 and this section is prohibited unless provided for as part of an approved site plan. Tree topping is prohibited under any conditions. It should be noted that due to severe topographic conditions, sensitive natural areas, or soils that do not easily support soil drainage systems, some land may be unsuited to some land clearing or land disturbance projects that may be proposed.

(b) *Site plan.* The tree protection officer may require the site plan to take the form of a topographic survey of the subject property, at a scale sufficient to clearly indicate required details, which may include at least the following:

(1) Adjoining roads, and any watercourses or bodies of water either contained within the bounds of the subject property or adjoining it.

(2) Property and setback lines.

(3) The location on the site and footprints of all proposed structures and other improvements, such as dwellings (including any associated extrusions such as balconies, porches, decks, exterior stairways, patios, car ports, and the like), outbuildings, utilities, water lines, sewer lines or septic system, and other structures such as paths and walkways (including any associated boardwalks, ramps, stairs, and the like), driveways, parking areas, garden areas, and the like.

(4) Clearable areas as defined in this article. Utility easements, if required, shall follow the route estimated to cause the least possible disruption to vegetation, to viewsheds, and/or to the natural contour of the land.

(5) Location of additional areas proposed for clearing or thinning for the purpose of grading, patios, views, etc.

(6) With regard to commercial parking lots for five or more cars, the site plan shall clearly show the location and extent of areas that are to be cleared and areas that are to be protected as green spaces within or adjacent to the parking area (see section 36-112).

(7) Where the subject property includes steep slopes, a steep slope plan shall be included as part of the site plan. See also sections 36-396 through 36-398.

(8) Any additional documentation that the tree protection officer may determine to be necessary in order to determine the specifics of the plan.

(9) Seals or signatures are required from any professionals who are involved in preparation or review of the site plan, such as the surveyor and the architect or builder who adds to the site plan the location of the house and/or other structures to be constructed or improved. On steep slopes, the seal or signature of the inspecting qualified licensed professional is also required.

(c) *Standards.* Except as otherwise noted, land clearing permitted under these zoning regulations shall be governed by the locations of trees and/or shrubbery with respect to the structures planned for the lot (see Figure 1).

(1) *Structure boundary.* The removal of trees and native shrubs is required within the footprint of the proposed structures, provided that such structures meet all applicable town regulations.

(2) *Clearable areas.* The removal of trees and native shrubbery is permissible within the clearable area lines provided that soil safety and retention are not put at risk.

(3) *Remainder of lot.* All areas outside of the clearable areas shall be marked on the site plan as protected forest areas. No significant trees or native shrubs may be removed from these areas except for

specified significant trees or areas of shrubbery whose thinning or removal may be authorized on the site plan by the tree protection officer. Such special authorizations may be granted for purposes such as those listed below, provided that the visual tree canopy and natural appearance of ridgelines are protected and that soil safety and retention are not put at risk. The purposes for which tree thinning or removals may be authorized include the following:

a. Underbrushing without grubbing, for landscaping purposes.

b. Tree thinning, except within trout buffers, for the development of views or to provide sunlight for gardening.

c. Removal or thinning of flammable species for purposes of fire prevention. (See The Lake Lure Tree Management Handbook.)

d. Underbrushing with grubbing, for construction of erosion control measures in specified areas (as directed by the erosion control officer), to clear for gardening (see section 36-263), or to prevent regeneration of undesirable species as directed or approved by the tree protection officer).

Note that these permissions do not include the removal of significant trees for the construction of easily relocatable features such as stairs and paths without exception being granted by the tree protection officer or his designee.

(4) *Lakefront lots.* For lakefront lots, any trees that must be removed as a result of marine construction or due to erosive collapse shall be indicated on the plan and be replanted according to the requirements of this section.

(Code 1989, § 92.120; Ord. of 6-12-2007; Ord. of 6-10-2008; Ord. of 1-9-2018)

Sec. 36-263. Land clearing and grading not associated with an application for development authorization.

(a) *General.* It shall be unlawful to conduct land clearing and grading not associated with an application for development authorization except in accordance with this section.

(b) *Authorization.* Authorization must be obtained in writing from the tree protection officer or designee for any land clearing or grading activity not authorized by an approved site plan in section 36-262 or exempted (section 36-262(c)) under these regulations. Any such land clearing that is begun without authorization subjects the property owner to penalties outlined in section 36-431. Requirements for land clearing authorization include the following:

(1) A site plan showing relevant features of the property proposed for land clearing and/or grading, including, but not limited to, property lines, waterways adjoining or passing through the property, steep slopes, sensitive natural areas, and the extent of proposed land clearing and/or grading activities.

(2) A sequential list detailing the permit acquisitions, authorizations, land clearing, grading, and/or any other activities the proposal may require, in the correct order of execution. In the case of clearing prior to development, the list shall also include a date for submission of formal section 36-232 development plans for the property.

(3) A date by which all listed activities must be completed.

(4) Any other items the tree protection officer or designee deems necessary to ensure compliance with these regulations.

(c) *Allowed activities.* The activities listed herein shall be allowed provided that the person undertaking them obtain land clearing authorization from the tree protection officer or designee.

(d) *Forestry activity.*

(1) Forestry activity on land that is taxed on the basis of its present-use value as forest land under G.S. ch. 105, art. 12 (G.S. 105-274 et seq.) and that is conducted in accordance with a forest management plan prepared or approved by a forester registered in accordance with G.S. ch. 89B. A copy of the forest management plan shall be filed with the tree protection officer prior to the removal of trees from the land.

(2) Property owners wishing to harvest trees from property that is neither taxed on the basis of its present-use value as forest land nor managed in accordance with a valid forest management plan must obtain a valid forestry management plan as well as land clearing authorization before harvesting begins.

(e) *Delay of development authorization.* When any allowed activity, as described in subsection (b) of this section, results in excessive tree removal, as defined in this chapter, the town may deny a certificate of zoning compliance or refuse to approve a site plan or subdivision plat for such land for a period of three years after the last date that clearing activities occurred on the site. If the violation was willful, this period may be increased to five years from the last date that clearing activities occurred on the site.

(f) *Exceptions.* Insofar as they are not undertaken with the intent of circumventing these zoning regulations, the following activities do not require land clearing authorization or a permit and, so long as they comply with any other applicable regulations, may be carried out at any time:

(1) Cutting of diseased or hazardous trees.

(2) Cutting of trees not classified as significant.

(3) Tree removal for the purpose of creating a hiking or biking trail.

(4) Tree removal for installation or maintenance of utilities, provision of safe visibility at intersections, or any other public health or safety purpose.

(5) Tree removal on a lot containing a single-family dwelling or duplex which does not constitute the excessive removal of trees as defined in this chapter.

(Code 1989, § 92.121; Ord. of 6-12-2007; Ord. of 6-10-2008; Ord. of 1-9-2018)

Sec. 36-264. Special administrative and enforcement provisions for land clearing and grading activities.

The following special administrative and enforcement provisions shall apply to land clearing and grading activities as specified in sections 36-262 and 36-263:

(1) *Inspections.* The tree protection officer or a designee shall periodically inspect all land clearing and grading activities to ensure compliance with this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the site plan are effective in protecting all significant trees not indicated in the site plan for removal. Notice of the right to inspect shall be included in the certificate of zoning compliance.

(2) *Stop-work order.* The tree protection officer is authorized to issue a stop-work order at any time that any of the following is determined to have occurred:

a. Tree removal for development prior to obtaining a land clearing authorization and site plan approval.

b. A significant deviation from approved plans, certificates, or permits.

c. Systematic or habitual removal of or damage to protected trees and/or shrubs, and/or their root protection zones.

d. General carelessness with regard to tree protection and/or erosion control.

(3) *Remedies.* Following issuance of a stop-work order the tree protection officer shall provide the property owner with detailed descriptions of approved methods, protective barriers, and the repairs and/or replantings needed to correct the damage. In cases where additional or more severe penalties are required, the penalties described in section 36-431 may be considered. The tree protection officer shall verify that all appropriate measures have been implemented, including any necessary agreements by the owner or the owner's agent to complete weather-sensitive replantings at the appropriate season, before work is allowed to resume.

(4) *Replantings.* Any significant tree cut in excess of the number allowed by the Forest Coverage Table or without an approved tree protection plan, or in violation of an approved tree protection plan, or that is damaged during construction to the extent that the tree is likely to die, shall be replaced by healthy trees at the expense of the owner of the property, or the owner's agent. Such trees shall be replaced by species recommended in the Lake Lure Tree Management Handbook, at the "minimum dbh for replanting" sizes appropriate to the species as shown in Appendix A to this chapter and in sufficient numbers to equal the total inches in dbh of the trees damaged or unlawfully removed. Any areas exceeding 100 square feet in size from which native shrubbery and their stumps and roots have been removed without approval as part of a tree protection plan, or that are damaged to an extent likely to cause the death of those shrubs, shall be replanted with healthy shrubbery at the expense of the owner or the owner's agent. Such replacement trees and/or shrubs shall be planted in the approximate location of the originals that were damaged or unlawfully removed, or elsewhere on the property as approved by the tree protection officer, and shall be inspected at intervals by the tree protection officer. Any replanted trees or shrubs not continuing in good health for a minimum of two years shall be replanted at the expense of the owner of the property or the owner's agent.

(Code 1989, § 92.122; Ord. of 6-12-2007)

Secs. 36-265—36-291. Reserved.

ARTICLE X. EXCEPTIONS[5]

Sec. 36-292. Lot of record.

Only where the owner of a lot consisting of one or more lots of official record in any district at the time of the adoption of this article, or his successor in title thereto, does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this article, may such lot be used as a building site subject to the provisions of section 36-216.

(Code 1989, § 92.130; Ord. of 1-22-1991)

[5]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. IX, as art. X, as herein set out.

Sec. 36-293. Front yard setbacks for dwellings.

The front yard setback requirements of this chapter for dwellings shall not apply to any lot where the average setback of existing buildings located wholly or partially within 100 feet on either side of the proposed dwelling and on the same side of the same block and use district and fronting on the same street as such lot is less than the minimum required front yard depth. In such cases, the setback on such lots may be less than the required setback, but not less than the average of the existing setbacks on the aforementioned lots, or a distance of ten feet from the street right-of-way line, whichever is greater.

(Code 1989, § 92.131; Ord. of 1-22-1991)

Sec. 36-294. Lots not served by public water and/or sewer.

Lots not served by public water and/or sewer, and for which development is proposed, shall be examined by the county health department and certified to equal or exceed the public health requirements for private water and/or sewerage facilities for the proposed use before a building permit shall be issued.

(Code 1989, § 92.132; Ord. of 1-22-1991)

Sec. 36-295. Exceptions to required yards.

In all zoning districts, yards, as defined in section 36-5, shall be as established by this chapter provided the following shall be permitted in any yard:

(1) Access structures to connect the principal structure to the street or shoreline, provided said structures are constructed above grade at an elevation no greater than reasonably required by topography.

(2) Fences, walls, hedges, and retaining walls under the provisions of section 36-231.

(3) One masonry column located on each side of a driveway to define the entrance to a property or to support a gate across a driveway, provided that such columns shall not exceed 36 inches in width and eight feet in height.

(4) Entrance gates, gatehouses or guardhouses as defined in section 36-5 and under the provisions of section 36-235.

(Code 1989, § 92.133; Ord. of 4-9-2002; Ord. of 10-14-2003)

Sec. 36-296. Lake structures.

Lake structures within the full pond boundary of the waters of Lake Lure are regulated by the Lake Structure Regulations, rather than this Zoning Regulations chapter. Lake Structures within the boundary of any other lake or navigable body of water will be regulated under this chapter as accessory structures with the following provisions:

(1) Lake structures not within the full pond boundary of the waters known as Lake Lure will be exempt from setback requirements at the point where the lake structure connects with the lakeshore property line.

(2) The owner of the lake or other navigable body of water must provide authorization for the structure to be built on that property, including but not limited to the owner's signature on the zoning permit application.

Secs. 36-297. Exceptions to 36-140 (b) (5).

The doubled permit fee penalty for failing to obtain a required permit prior to commencing work shall not apply to either a Mobile Food Vendor Operator or a Vacation Rental Operator who begin operating within the Town without the required Town permit. However, the violation may subject that violator to civil fines as provided in the Town fee schedule.

Secs. 36-298—36-323. Reserved.

ARTICLE XI. SIGN REGULATIONS[6]

Sec. 36-324. Intent and application.

This article is established to regulate and control all existing and future signs throughout the zoning jurisdiction of the town. The provisions of this article shall apply to the display, construction, erection, placement, alteration, use, location, illumination, and maintenance of all signs, except as specifically exempted in this article. A sign may be erected, placed, established, painted, created or maintained in the town only in conformance with the standards, procedures, exemptions and other requirements of this article. All signs not expressly permitted by this article are prohibited. This article shall provide for the enforcement of the provisions of this chapter and establish a limited variety of signs in other zones, subject to the standards and permit procedures of this chapter. Internally lighted signs are acceptable, however, to improve the environmental setting the town would prefer that signs be externally lighted whenever possible.

(Code 1989, § 92.145; Ord. of 1-22-1991; Ord. of 11-18-2003)

Sec. 36-325. Purpose of article.

It shall be the purpose of this article to promote the safety, health, peace, dignity and general welfare of the people and the town in a manner consistent with the unique natural beauty that distinguishes the town through the regulation of the posting, displaying, erection, use and maintenance of signs. Further, it is recognized that the standards and regulations for signs will address the following purposes:

(1) Provide an improved environmental setting and community appearance which is vital for the economic well-being of the town.

(2) Create a more productive and professional business environment.

(3) Provide signs which are in scale and appropriate to the planned character and development in each zoning district.

(4) Promote traffic safety and prevent hazard or nuisance conditions for vehicle or pedestrian traffic.

(5) Prevent the visual clutter of signage which distracts from business and conflicts with legitimate informational signage and signage which is essential for public health and safety.

(6) Protect and enhance the value of properties within the town.

(7) Promote the public safety and general welfare of the town.

(Code 1989, § 92.146; Ord. of 11-18-2003)

[6]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. X, as art. XI, as herein set out.

Sec. 36-326. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned sign means a sign which was erected on property in conjunction with a particular use, which use has been discontinued for a period of 180 days or more, or a temporary sign for which the permit has expired or the event has occurred. This is not intended to apply to the seasonal type businesses which annually operate "in season." However, failure to operate any business for a minimum of 90 consecutive days in a calendar year will deem these signs to have been abandoned.

Additional signs (signage) means signs used on premises in addition to a business designation sign to identify the availability of products, services or other items.

Amortization means the method of eliminating a nonconforming sign by requiring the termination of the sign after a specified period of time.

Banners, pennants and *balloons* mean any animated, rotating, fluttering or nonstationary device made of flexible materials designed to attract attention.

Blade sign means a sign not designed to stand alone, which must be appended to another sign.

Business designation sign means a sign to designate the legal name of the business.

Canopy means a structure constructed of rigid materials, including, but not limited to, metal, wood, concrete, plastic, canvas or glass that is attached to and supported by a building or by columns, poles or braces extended to the ground.

Canopy sign means a sign which is suspended, attached to or supported from, or forms a part of a canopy.

Changeable copy sign means a sign on which message copy is changed manually or electronically in the field, through the utilization of attachable letters, numbers, symbols and other similar characters or changeable pictorial panels. Time and temperature signs are not included in this definition.

Commercial or industrial center means three or more separate occupancies located within the same or adjacent building or buildings on the same non-residentially zoned parcel.

Directory sign means a sign listing only the names and/or use or location of more than one business, activity or professional office conducted within a building, group of buildings, or commercial center.

Double-faced sign means a sign with two faces which are usually, but not necessarily, parallel.

Electrical sign means a self-illuminated sign or sign structure in which the electrical wiring, connections or fixtures are used as part of the sign proper.

Exempt sign means any sign that is specifically listed as exempt from this article. Said listed exempt signs are not regulated by the terms of this article.

Existing sign means any sign that was erected or displayed prior to the adoption of this article.

Externally illuminated sign means any sign that is lighted by an outside light source.

Facade means the entire building wall, including wall face, parapet fascia, windows, doors, canopy, and roof on any complete elevation.

Fixed projecting sign means a sign, other than a flat sign, which extends out for more than six inches from the facade of any building and is rigidly affixed thereto.

Flat sign means a sign erected parallel to and extending out not more than 12 inches from the facade of any building to which it is attached and supported throughout its entire length by the facade and not extending above the building.

Freestanding detached sign means a sign supported by a sign structure secured in the ground and which is wholly independent of any building, fence, vehicle or object other than the sign structure for support.

Frontage means the length of the property line on any one premises serving as a public right-of-way line.

Frontage wall face means the building facade, excluding parapet, facia, soffit, mansard and roof, which faces a frontage of the premises.

Governmental sign means any sign erected by or on the order of an authorized public official in the performance of his office or duty, including, but not limited to, traffic control signs, street name signs, warning and directional signs, public notice, or signs of a similar nature.

Holiday sign means a sign used for the celebration of any national or religious holiday which is erected for a limited period of time.

Incidental flat sign means a sign containing accessory information for the principal use and erected parallel to and extending out not more than 12 inches from the facade of any building to which it is attached and supported throughout its entire length by the facade and not extending above the building. No advertising may be affixed to incidental flat signs.

Incidental sign means a single face, non-illuminated professional or announcement sign attached wholly to a building, window or door containing information relative to emergencies, store hours, credit cards honored, and other similar accessory information.

Inflatable sign means a sign that is either expanded to its full dimensions or supported by gasses contained within the sign, or sign parts, at a pressure greater than atmospheric pressure.

Internally illuminated sign means any sign which has light transmitted outward through its face or any part thereof.

Neon type signs means signs made from tubes filled with neon, argon, xenon, or other luminous gasses, and producing various colors of light.

Noncommercial message means any message protected by the First Amendment that does not direct attention to a business operated for profit, or to a commodity or service for sale.

Nonconforming sign means a sign erected and in existence prior to the date of adoption of the ordinance from which this chapter is derived or an amendment to the chapter, that does not meet one or more of the standards imposed by this chapter.

Occupancy means any one business activity or professional office.

Off-premises directional sign means any off-premises sign indicating the location of or directions to a business or other activity. The sign shall not include any information or message except the name of the business or the nature of the activity, universal symbol, if applicable, and an arrow indicating direction and distance to the business or activity. If a sign contains any additional message or exceeds the maximum area, it shall be considered to be in violation of this chapter.

Off-premises sign means a sign identifying, advertising or directing the public to a business, merchandise, service, institution, residential area, entertainment, or activity which is located, sold, rented, based, produced, manufactured, furnished or taking place at a location other than the property on which the sign is located.

Painted wall sign means a sign painted directly on any exterior building wall or door surface, exclusive of windows or door glass areas.

Panel means the primary surface of a sign upon which the message of the sign is carried.

Parapet means a vertical false front or wall extension above a roofline.

Perimeter means the contour of the face of the sign.

Permitted sign means a sign for which a valid permit has been issued.

Person means any individual, partnership, association, corporation or other entity.

Political sign means a sign erected by a political candidate, group or agent thereof for the purpose of advertising a candidate or stating a position regarding an issue upon which the voters of the town shall vote.

Portable sign means a sign generally constructed to be easily movable without a permanent attachment to the ground and which may or may not be equipped with wheels. Such signs may be designed for changeable messages. The term "portable sign" does not apply to sidewalk or sandwich board signs permitted in section 36-336.

Principal flat sign means a sign advertising the principal use and erected parallel to and extending out not more than 12 inches from the facade of any building to which it is attached and supported throughout its entire length by the facade and not extending above the building.

Private traffic direction/information sign means a sign which is on-premises and is designed and erected solely for the purpose of vehicular or pedestrian traffic direction or safety.

Project sign means any sign erected and maintained on the premises temporarily while undergoing construction by an architect, contractor, developer, finance organization, subcontractor, or materials vendor upon which property the individual is furnishing labor, services or materials.

Public right-of-way line means the line where the property meets the public right-of-way at a public street or public waterway, provided that this definition shall not include alleys, easements, or other similar dedicated uses.

Real estate sign means a sign erected by the owner, or his agent, advertising real property upon which the sign is located for rent, for lease, or for sale.

Resort means a place under common management where a large selection of organized activities takes place, such as recreation and entertainment, and where facilities are provided for dining and lodging for residents and guests.

Roof means the exterior upper covering of the top of a building.

Roof sign means a sign erected over or on, and wholly supported by or partially dependent upon the roof of any building for support, or attached to the roof in any way.

Sidewalk or sandwich board sign means an A-frame, inverted V-shape, or similarly shaped moveable sign not secured or attached to the ground or any building or structure. A sidewalk or sandwich board sign is portable and usually double-sided.

Sign means any form of publicity or advertising which is designed to be visible from any public way, directing attention to an individual business, commodity, service, activity or product by means of words, lettering, numerals, trade names or trademarks, or other pictorial matter designed to convey such information.

Sign face means the part of the sign that is or can be used to identify, advertise, communicate information, or for visual representation which attracts the attention of the public for any purpose. The term "sign face" includes any background material, panel, trim, color and direct self-illumination used that differentiates the sign

from the building, structure, backdrop surface or object against which or upon which it is placed. The sign structure shall not be included as a portion of the sign face provided that no message, symbol or any aforementioned sign face criteria are displayed on or designed as part of the sign structure.

Sign structure means a supporting structure erected or intended for the purpose of identification, with or without a sign thereon, situated upon or attached to the premises upon which any sign may be fastened, affixed, displayed or applied; provided, however, said definition shall not include a building or fence.

Snipe sign means a sign which is tacked, nailed, pasted, glued, or otherwise attached to trees, poles, stakes or fences, or to other objects.

Special event directional sign means a sign which directs the public to a special event at a place other than the premises upon which the sign is located.

Special event sign means a sign which carries a message regarding a special event or civic function sponsored by a nonprofit organization such as, but not limited to, Kiwanis, Rotary, or the Lion's Club for fund drives, fairs, festivals, and sporting events, or a sign which carries a message regarding special events for businesses such as, but not limited to, initial openings or special sales which are of general interest to the community.

Subdivision or mobile home park entrance sign means an entrance sign which designates the name of a subdivision, or a residential district, or of a mobile home park and is located at or near the main entrance.

Swinging sign means a sign projecting from the outside walls of any building which is supported only by one rigid support.

Temporary sign means a sign with or without letters and numerals such as land sale signs, subdivision openings, construction signs, seasonal events, or community, public and semi-public functions.

Vehicle sign means a permanent or temporary sign affixed to or placed upon any parked vehicle, parked trailer, or other parking device capable of being towed, the primary purpose of which is to attract the traveling public, provided that this definition does not include a single sign placed on a single vehicle or trailer at a residence of an individual which sign identifies the vehicle or trailer as being for sale.

Window means an opening covered in glass built into the wall or roof which functions or appears to function to admit light to a building or structure.

Window sign means any sign which is painted on, applied to, attached to or projected upon or within the exterior or interior of a building glass area, including doors, whose identification, message, symbol, insignia, visual representation, logotype, or any other form which communicates information can be read from off-premises, contiguous property or public right-of-way.

Window sign, temporary, means a window sign of a temporary nature used to direct attention to the sale of merchandise or a change in status of the business, including, but not limited to, signs for sales, specials, going out of business, and grand openings.

(Code 1989, § 92.147; Ord. of 9-28-1993; Ord. of 11-18-2003; Ord. of 3-9-2010)

Sec. 36-327. Area of sign defined.

The area of a sign shall be considered to be that of the smallest rectilinear figure which encompasses all lettering, wording, design or symbols, together with any background difference on which the sign is located if such background is designed as an integral part of and related to the sign. Any cut-outs or extensions shall be included in the area of a sign but supports and bracing which are not intended as part of the sign shall be excluded. In the case of a double-faced sign, the area of the sign shall be considered to include all faces visible from one direction. The area of a wall or window sign consisting of individual letters or symbols attached to or painted on a surface,

building, wall or window shall be considered to be that of the smallest rectangle which encompasses all of the letters or symbols.

(Code 1989, § 92.148)

Sec. 36-328. Method of attachment defined.

The following methods of attachment, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Attached sign means any sign attached to, applied on, or supported by any part of a building (such as a wall, projecting, window, canopy, awning or marquee) which encloses or covers useable space.

Flush attached signs means signs which are mounted flush and parallel, or any sign painted on an exterior wall or surface of a building.

Freestanding detached signs means signs supported by a structure placed in the ground and which is wholly independent of any building or object other than the sign structure for support.

Freestanding ground sign means a freestanding detached sign flush to the ground and not elevated upon poles or stanchions and not attached to a building.

Freestanding pole sign means a freestanding detached sign which is permanently affixed to the ground by a pole or other structure and which is not part of a building.

Projecting attached signs means signs end-mounted or otherwise attached to an exterior wall of a building and which project out from the wall, including signs which are incorporated in or attached to an awning or canopy.

Suspended sign means a sign which is suspended from the underside of a horizontal plane surface, such as a canopy or marquee, and which is supported by such surface.

Window sign means signs permanently attached to, painted on a window, or displayed to be seen through a window.

(Code 1989, § 92.149)

Sec. 36-329. Height of freestanding detached signs.

(a) The height of a freestanding detached sign shall not exceed the maximum height set forth in this article. The height of a freestanding detached sign shall be measured as the vertical distance from the uppermost point of the sign or sign structure, whichever is higher, to the base of the sign at street grade or adjacent parking area grade. Where the grade of the parking area is lower than the street, the measurement will be taken at the street grade at the driveway entrance, or in the case of two entrances, at the upper entrance.

(b) The height of all other signs shall be measured as the vertical distance to the uppermost point of a sign measured from the ground level of the structure to which the sign is attached.

(Code 1989, § 92.150; Ord. of 11-18-2003)

Sec. 36-330. Value of signs.

The value of an existing sign shall be the value for tax purposes of any sign so listed. If the tax value is not available, the value shall mean the original cost of the sign. In the absence of information as to the original cost submitted by the sign owner, the administrator shall estimate the original cost based upon the best information reasonably available.

(Code 1989, § 92.151)

Sec. 36-331. Administration.

The zoning administrator shall be responsible for the administration and enforcement of this article.

(Code 1989, § 92.152)

Sec. 36-332. Permits required.

All existing signs and all signs hereafter erected, placed, posted, attached, painted or otherwise made visible from an adjacent property or right-of-way require a sign permit in accordance with the provisions of this article except as otherwise prohibited, exempted or not requiring a permit by this article. Any sign which requires a permit which is displayed without the requisite permit shall be in violation of this chapter and shall be considered an illegal sign.

(Code 1989, § 92.153)

Sec. 36-333. Signs exempt from regulations.

The following signs are exempt from the regulations of this article:

(1) Signs not visible from beyond the boundaries of the property on which they are located.

(2) Signs of a governmental body, including traffic warning or regulatory signs and devices. These signs shall also include other governmental signs including building identification, directional information, and welcome signs. Signs of a governmental body, other than the town, require town council approval, regardless of the type of sign, unless otherwise exempted by federal or state law. Although exempt from sign regulations, specific governmental signs like building identification, directional information, and welcome signs must be reviewed by the planning board and approved by town council. However, traffic control signs, traffic warning signs, public notices, or signs of a similar nature need only town manager approval.

(3) Trade names, graphics, and prices which are located on gas pumps, newspaper, soft drink and similar vending devices.

(4) Flags, or insignia of any governmental, nonprofit, or business organization when not displayed as an advertising device.

(5) Seasonal/holiday signs and decorations associated with a national or religious holiday.

(6) Warning of danger signs posted by utility or construction companies.

(7) Signs on vehicles indicating the name of a business, unless the immediate use of the vehicle is for the display of signs.

(8) Signs required by law, statute or ordinance.

(Code 1989, § 92.154; Ord. of 5-13-2014; Ord. of 9-13-2016)

Sec. 36-334. Signs exempt from permit requirements.

The following signs shall not require a permit and shall not be counted as part of the allowable sign area. However, such signs shall conform to the requirements set forth below as well as other applicable requirements of this article.

(1) *Private traffic directional signs.* Signs containing information to direct pedestrian or vehicular traffic shall be located on the premises for which directions are indicated. Directional signs shall not contain any advertising or logo, shall not exceed three square feet per face, two faces per sign, and shall not exceed three feet in height if freestanding or six feet in height if attached to the principal or an accessory structure. The maximum signs allowed per lot shall be four. These signs may be indirectly or directly illuminated as prescribed by standards set forth in section 36-338.

(2) *Incidental signs.* Signs containing information necessary or convenient for persons coming on to a premises shall be located on the premises to which the information pertains. No advertising may be affixed to such a sign and these signs shall be single-faced only and wholly attached to a principal building (including the windows or doors).

(3) *Political signs.* Political signs advertising candidates or issues shall be allowed in any zone. However, no such sign shall be placed within any public right-of-way or on any public property or attached to any utility pole or tree. The property owner and the political candidate shall be equally responsible for the proper location, maintenance and removal of political signs. All political signs must be removed within seven calendar days following the election to which the sign pertains. Political signs shall not exceed four square feet in area per display face and two faces per sign.

(4) *Copy changes and maintenance.* No permit is required for copy changes made to a changeable copy sign, menu board or marquee sign. No permit is required for maintenance carried out in accordance with the provisions in section 36-338 and where no structural changes are made.

(5) *Residential identification signs.* Signs which provide the name or address of an individual residence, either attached or detached, indirectly or non-illuminated, provided no sign shall exceed two square feet in size per sign face.

(6) *No trespassing signs.* "No trespassing," "no hunting," "no fishing," "no loitering" and similar signs not exceeding two square feet per sign face.

(7) *In any residential district.*

a. One real estate sign, not exceeding four square feet per sign face area and, if freestanding, not exceeding four feet in height from ground level shall be permitted. Property with two or more on-premises frontages shall be permitted one additional sign.

b. To display a sign on a premises not personally owned by the realtor, the realty company must have a valid, current, exclusive sales agreement with the property owner.

(8) [*Real estate signs.*] In any business, commercial or industrial district a real estate sign shall be permitted on the premises for sale, rent or lease. Such sign shall be non-illuminated, not to exceed 32 square feet in area. A double-faced real estate sign is permitted, provided that it shall not exceed 32 square feet per sign face and, if freestanding, it shall not exceed 12 feet in height.

(9) *Window signs.* Signs painted on or placed in a window shall be permitted, subject to the following provisions:

a. Such signs shall not exceed an aggregate area equal to 25 percent of the window and/or glass area of the building wall on which it is located, to include all temporary signs.

b. The sign area for a window shall not be included in the allowable sign area for the particular occupancy or activity utilizing such sign, as defined in section 36-336(b)(1).

(10) [*Works of art.*] Works of art that do not include a commercial message.

(Code 1989, § 92.155; Ord. of 1-9-2001; Ord. of 11-8-2003; Ord. of 3-9-2010)

Sec. 36-335. Signs prohibited.

The following are prohibited within the jurisdiction of this article:

(1) Swinging signs.

(2) Snipe signs.

(3) Portable signs, except for special events.

(4) Banners, pendants, flags and balloons, except as otherwise allowed.

(5) Off-premises signs along public thoroughfares.

(6) A sign which contains any moving, flashing, animated lights, visible moving or movable parts, or giving the appearance of animation.

(7) Vehicle signs, except as exempt in section 36-333.

(8) Any sign which emits a sound, odor or visible matter.

(9) Any sign which obstructs free ingress or egress from a required door, window, fire escape or other required exit way.

(10) Any sign and/or sign structure which obstructs the view of, may be confused with, or purports to be a governmental or traffic direction/safety sign.

(11) Signs painted on or attached to trees, fence posts, rocks or other natural features, telephone or utility poles, or painted on roofs or walls of buildings designed to be visible from any public thoroughfare.

(12) Abandoned signs.

(13) Any sign which exhibits statements, words or pictures of obscene or pornographic subjects as defined in G.S. ch. 15.

(14) Signs affixed to a private residence or dwelling, or displayed upon the grounds thereof, except one personal identification sign not exceeding two square feet of sign area, and one non-illuminated "For Sale" or "For Rent" sign not exceeding four square feet per sign face, and any other signs authorized by this article.

(15) Inflatable signs.

(16) Political signs on public property and within public rights-of-way. The town may remove these signs immediately.

(17) Signs, whether temporary or permanent, within any street or highway right-of-way, or within ten feet from the edge of any roadway, paved or not, where no right-of-way exists, with the exception of governmental signs.

(18) Neon type signs, in all circumstances, except for windows signs as provided in section 36-334(9).

(Code 1989, § 92.156; Ord. of 1-9-2001; Ord. of 11-18-2003)

Sec. 36-336. Signs permitted and regulated.

(a) *Residential.*

(1) All residential districts:

a. One non-illuminated sign not to exceed 12 square feet per sign face and a height not to exceed six feet from ground level shall be permitted for family care homes.

b. Subdivision developments and planned units developments (except in R-1D) shall be permitted one sign per entrance identifying the development. Said sign may be illuminated. Said sign shall not exceed 50 square feet per sign face. Any additional identification or directional signs abutting public thoroughfares in the development shall not exceed 30 square feet per sign face. Each entrance identification sign shall require a separate permit fee and is classified as a business designation sign. Additional signs along public thoroughfares shall be classified as additional signs and the permit fees will be in accordance with section 36-340.

c. Up to two decorative non-advertising flags of not more than three feet by five feet in size shall be permitted as accessory to any residential structure. Said flags shall be exempt from the permit requirements of this chapter.

(2) R-1, R-2, R-3, R-1A, R-1B and R-1C districts: shall permit one attached non-illuminated sign not exceeding three square feet per sign face on plots containing permitted public utility buildings or home occupations or uses, other than accessory.

(3) R-1, R-2, R-3, and R-4 districts:

a. One flat sign not to exceed 12 square feet, identifying the premises of or on which permitted nonresidential uses are located [shall be permitted]. Such signs shall not be illuminated by either an internal or external source. This subsection shall not apply to home occupations, signs in which are regulated by the terms of section 36-232(j).

b. One freestanding sign identifying the nonresidential premises may be permitted in lieu of a flat sign; provided, however, it does not exceed 24 square feet per sign face, does not exceed seven feet in height, and is not closer than ten feet to the public right-of-way. Such sign shall not be illuminated by either an internal or external source.

c. Churches are permitted to erect on the premises a freestanding sign, either non-illuminated or illuminated, no closer than ten feet to the right-of-way, not to exceed 24 square feet per sign face area and not exceeding seven feet in height, provided that such sign is so shielded that the source of light is not visible from any abutting residence.

d. Mobile home parks in R-2 districts shall be governed by the same sign provisions as provided for subdivisions and planned unit developments, except that no sign shall exceed 24 square feet per sign face.

(4) All businesses operating under a special use permit as authorized in section 36-101 in any residential district shall be governed by subsection (b) of this section, unless otherwise specified by the board of adjustment.

(b) *Business, commercial and industrial districts.*

(1) *Sign permitting and maintenance.* As this subsection is applied to commercial centers, the commercial center owner shall be responsible for securing permits and maintaining the following signs:

a. *Commercial center signage.* Each commercial center, as defined herein, shall be allowed one freestanding, double-faced, detached sign, or up to three suspended or flush attached signs, identifying the center. A freestanding detached sign may also contain the names of individual businesses located in the commercial center and may be illuminated. The aggregated total sign face area of said signs shall not exceed 100 square feet. Signs listed in sections 36-333, 36-334 and 36-337 shall not be included in the allowable area calculated.

b. *Individual business entry signage.* In addition, each individual business in the commercial center having a separate individual outside entrance serving the general public shall be permitted one projecting or flush attached sign, as defined herein, to identify the public entrance to that business. Said business entrance signs shall be positioned adjacent to the entrance of said business. The total aggregate area of the business entrance signs shall not exceed three percent of the gross area of the frontage wall, nor shall any single sign exceed 240 square feet. The signs may be illuminated. Signs listed in sections 36-333, 36-334 and 36-337 shall not be included in the allowable area calculated.

c. *Incidental flat signs.* Incidental flat signs affixed to the exterior side of the building wall on which the main entrance of the business is located, indicating an incidental use such as a pharmacy, garden center, deli or similar accessory use in a commercial center, shall be permitted. In no case shall the total aggregate area of incidental flat signs exceed two percent of the gross area of the frontage wall face, as defined herein, nor shall any single sign exceed 160 square feet.

(2) *Allowable sign area.* Any business establishment not operating in a commercial center shall be allowed a maximum of 50 square feet of sign area as defined in section 36-327. Said sign area may be divided between a maximum of two signs. Signs may be illuminated. Signs listed in sections 36-333, 36-334 and 36-337 shall not be included in these calculations.

(3) *Commercial subdivision development requirements.* Commercial subdivision developments shall be permitted one double-faced sign or two single-faced signs per entrance identifying the development, and shall be subject to the following:

a. Said sign may be illuminated.

b. Said sign shall not exceed 50 square feet per sign face. Signs listed in sections 36-333, 36-334 and 36-337 shall not be included in the allowable area calculated.

c. Any additional directional signs abutting public thoroughfares in the development shall not exceed 30 square feet per sign face.

d. Each entrance identification sign shall require a separate permit fee and is classified as a business designation sign. Additional signs along public thoroughfares shall be classified as additional signs and the permit fees will be in accordance with section 36-340.

(4) *Commercial sponsor name or motif.* Any signs permitted in business, commercial or industrial districts may contain a commercial sponsor name or motif provided that the total commercial name or motif shall not exceed 25 percent of the total allowable sign face area and shall be included in the total of sign face area.

(5) *Changeable copy.* No sign in this subsection (b) shall have more than 50 percent of its sign face area devoted to changeable copy.

(6) *Maximum height.* The maximum height of any freestanding detached sign shall be 16 feet; all other signs shall not project above the base of the roof of the building to which they are attached.

(7) *Sign location restriction.* Signs in this subsection (b) may be located within required front yards so long as no portion of any sign encroaches into any right-of-way and further provided that signs within 50 feet of any property zoned residential shall be no closer than ten feet to the right-of-way.

(8) *Decorative flags.* Up to two decorative flags of not more than three feet by five feet in size shall be permitted for each 50 feet of street frontage as accessory to any business. Said flags may include artwork depicting the products and services available from the business and shall be exempt from the permit requirements of this chapter.

(9) *Sandwich board sign placement, size and removal.* Commercial districts may be permitted a single sandwich board sign to be placed adjacent to a sidewalk, the front of the individual business, or in the parking area providing such sign is located on the business establishment's property and does not pose a safety hazard. Business establishments located in the arcade may also be permitted to place one such sign in front of their business under the breezeway on the walkway providing such location does not pose a safety hazard to pedestrians. This sign shall not exceed four feet in height or eight square feet in area per sign face. The sign must be removed at the end of each day when the business closes. Said signs may include artwork depicting the products and services available from the business, changeable copy, and shall be exempt from the permit requirements of this chapter.

(c) *Government districts.* [Signs in government districts shall be] as determined by town council in compliance with all town regulations during its review of a proposed development project or on a case-by-case basis.

(d) *Resort signs.* These standards govern signage located within resorts containing 75 acres or more as that term is defined in section 36-326. If any resort sign regulated pursuant to this subsection is illuminated, it shall only be illuminated by an external bulb.

(1) *Resort private road sign.* A sign communicating limits on speed and/or messages of warning, caution, and prohibitions for regulating vehicular or pedestrian traffic for safety [shall be permitted]. These signs shall neither exceed six feet in height nor be greater than nine square feet in area per sign face. Said sign may display the insignia or logo of the entity which owns and maintains the private road, so long as not more than 20 percent of the sign face is used to display the logo or insignia. Signs shall be placed in a manner so as to neither obstruct visibility nor sight distance of motorists.

(2) *Resort direction sign.* A sign within a resort designed and erected solely for the purpose of vehicular or pedestrian traffic direction [shall be permitted]. These signs shall neither exceed ten feet in height nor be greater than 40 square feet in area per sign face. Such signs may display the insignia or logo of the resort, so long as not more than 20 percent of the sign face is used to display the logo or insignia. Signs shall be placed in a manner so as to neither obstruct/impair visibility nor sight distance of motorists.

(3) *Resort information sign.* A single-faced announcement sign within a resort designed and erected solely for the purpose of conveying information relative to rules of conduct, resort protocol, directives, warnings, or caution [shall be permitted]. These signs shall neither exceed seven feet in height nor be greater than 40 square feet in area per sign face. Such signs may display the insignia or logo of the resort, so long as not more than 20 percent of the sign face is used to display the logo or insignia. Signs shall be placed in a manner so as to neither obstruct/impair visibility nor sight distance of motorists.

(4) *Resort incidental sign.* A single-faced announcement sign within a resort containing information relative to direction, warning, emergencies, caution, rules, or other similar necessary accessory messages [shall be permitted]. These signs shall neither exceed five feet in height nor be greater than five square feet in sign area. The total number of resort incidental signs in a resort shall not exceed a number which is the product of three times the number of acres in the resort. For purposes of determining this number, acreage contained within a golf course shall not be counted, nor shall any resort incidental signs contained within such golf course.

(Code 1989, § 92.157; Ord. of 12-12-1995; Ord. of 1-8-2008; Ord. of 10-13-2009; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-337. Special signs.

The following special signs are permitted, subject to the provisions of this article and other applicable provisions of this section:

(1) *Project signs.* One non-illuminated sign may be permitted on the premises subject to the following conditions:

a. The sign shall not exceed 24 square feet per sign face if for a multifamily or nonresidential development. If the sign is for the contractor of a single-family residence, the sign may not exceed four square feet per sign face.

b. The sign shall not be erected prior to issuance of a building permit, and must be removed when a certificate of occupancy is issued; provided, however, if the sign is erected as permitted hereunder and if construction is not commenced within 30 days after the permit is issued or if construction is not continually progressed to completion, the sign shall be removed by the owner or be subject to removal pursuant to this article.

c. The signs shall be located on the premises being developed.

(2) *Rear entrance sign.* When a building has a rear entrance or remote parking area on premises, one flat sign per occupancy, not exceeding 12 square feet in sign area, shall be permitted at the rear building entrance.

(3) *Special event sign and special event directory sign.*

a. One sign directing the attention of the public to a special event or function of a business shall be permitted on the premises of said event for a period not to exceed 15 consecutive days, shall not exceed 40 square feet per sign face, and shall not exceed seven feet in height. Said signs may include banners, pennants, and flags, but not balloons. A temporary sign permit shall be obtained from the zoning administrator before said sign is erected.

b. One sign directing the attention of the public to a special event or function of civic or nonprofit organizations shall be permitted on the premises of said event for a period not to exceed 30 consecutive days, shall not exceed 40 square feet per sign face, and shall not exceed seven feet in height. Said signs may include banners, pennants, and flags, but not balloons. A temporary sign permit shall be obtained from the zoning administrator before said sign is erected.

c. Special event directional signs for civic or nonprofit organizations, including banners but not pennants, flags, or balloons, are permitted provided that a temporary permit is obtained from the zoning administrator. The signs shall be located at points specified by the zoning administrator for a period not to exceed 30 consecutive days.

d. Special event temporary signs shall be permitted only two times in a calendar year.

(4) *Town directory signs.* The town may erect directory signs for the benefit of visitors, on which may be listed institutional names, churches, and points of interest. Civic organizations and churches may be granted permission to place their insignia thereon.

(5) *Town off-premises directional signs.* The town may erect off-premises directional signs for the benefit of the traveling public. The cost of manufacture, erection, and maintenance of the signs shall be charged to those requesting the sign at a rate established by the town.

a. Off-premises directional signs are permitted for the following types of businesses: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; outdoor recreational areas; and establishments providing motor fuel, lodging, and/or meals for the general public.

b. Off-premises directional signs may be located at the intersection of a major thoroughfare (U.S. Highway 64/74, Buffalo Shoals Road, Buffalo Creek Road, and N.C. Highway 9) with the side

street leading to the business or activity. One additional off-premises directional sign may be located at the intersection of the street leading to the business or activity with the street providing access to the establishment.

c. Off-premises directional signs shall be 18 inches by 48 inches per sign face, one sign face per directional flow of traffic, and two sign faces per sign structure. Not more than two off-premises directional signs shall be permitted for the same business or activity.

(6) *Other directional signs.* Churches and civic organizations located within the boundaries of the town may display one directional sign to be located at the discretion of the zoning administrator. Such signs shall not exceed five square feet per sign face.

(7) *Natural, scenic or cultural business attractions.*

a. Any business known as a natural, scenic or cultural attraction, thereby developing and attracting tourism for our community and located on property consisting of at least 75 acres, shall be categorized under this subsection (7).

b. Any on-site existing signs in place along a public thoroughfare as of the date of adoption of the ordinance from which this article is derived not exceeding 50 square feet per sign, shall be deemed legally permitted signs and shall be subject to the annual license fee structure in section 36-340.

(8) *Marina signs.* Recognizing that marinas need signs that can be seen and read from the lake, as well as an on-premises sign for the highway, the town will permit signage on the marina building, "business designation" and/or "additional signage." The town will also permit a second "business designation" sign on the highway, not to exceed 50 square feet in sign area. Only one annual business designation fee shall be charged. The total signage for a marina shall not exceed 100 square feet.

(Code 1989, § 92.158; Ord. of 9-28-1993; Ord. of 9-28-1994; Ord. of 8-8-2006)

Sec. 36-338. Sign maintenance and abandoned signs.

(a) *Maintenance provisions.* All signs, supports, braces, poles, wires and other appurtenances of signs or sign structures shall be kept in good repair, maintained in safe condition, and shall conform to the following standards:

(1) A sign shall be in a state of disrepair when more than 20 percent of its total surface area is covered with disfigured, cracked, ripped or peeling paint or poster paper, or any combination of these conditions. Any sign in a state of disrepair shall be considered in violation of this chapter.

(2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which causes the sign to stand more than 15 degrees from the perpendicular.

(3) No sign or sign structure shall be allowed to have weeds, vines or other vegetation growing on it and obscuring it from the street or highway from which it is intended to be viewed.

(4) No indirectly illuminated sign shall be allowed to stand with only partial illumination operational.

(5) Any sign which violates the maintenance provisions listed in this subsection (a) shall be in violation of this chapter and shall be repaired or removed as required by the applicable sections of this article.

(b) *Abandoned signs.*

(1) Signs or parts of signs which advertise or pertain to a business, product, service, commodity, or purpose which no longer exists or that has not been in use for 180 days or more shall be deemed to be

an abandoned sign. Signs which are associated with seasonal business shall not be considered abandoned provided there is clear intent to continue the business in the upcoming season. However, failure to operate any business for a minimum of 90 consecutive days in a calendar year shall deem any sign associated with such business an abandoned sign.

(2) Abandoned signs are prohibited and shall be removed by the owner or his agent or the owner of the property where the sign is located within 30 days from the date such sign is deemed to be abandoned.

(3) This section shall be enforced in accordance with section 36-340(d).

(Code 1989, § 92.159)

Sec. 36-339. Noncommercial messages.

(a) *General.* Notwithstanding any other provisions of this chapter, any sign, display or device allowed under this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with size, lighting, height and other requirements of the district in which it is located.

(b) [*Illumination.*] If illuminated, signs shall be illuminated only by the following means:

(1) A steady stationary light of reasonable intensity, which shall be shielded and directed solely at the sign.

(2) Light sources to illuminate signs shall be shielded from all adjacent residential buildings and streets and shall not be of such brightness so as to cause glare hazardous to pedestrians or auto drivers or so as to create a nuisance.

(3) Internally lit signs shall have the same requirements as subsections (b)(1) and (2) of this section.

(4) Electrical requirements pertaining to signs shall be as prescribed in local codes.

(c) *Unlawful cutting of trees or shrubs.* No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim, destroy or remove any trees, shrubs or other vegetation located within a public right-of-way of any road or highway.

(Code 1989, § 92.160)

Sec. 36-340. Permits, fees, nonconforming signs, and enforcement.

(a) *Permits.* All new or existing signs, except as otherwise provided in section 36-334, shall require a sign permit prior to being located or erected on any property within the jurisdiction of this chapter. Sign permits shall be issued by the zoning administrator. If a sign permit is denied, the decision may be appealed to the board of adjustment as provided in section 36-185.

(b) *Permit fees.* The town council may establish a fee schedule for all sign permits issued in accordance with this article.

(c) *Nonconforming signs.*

(1) Signs that are erected and were in place prior to the adoption of this chapter, but which do not conform to the provisions of this chapter, are declared nonconforming signs. Signs that were erected and that are in place and which conformed to the provisions of this chapter at the time erected, but which do not conform to an amendment of this chapter enacted subsequent to the erection of said signs also are declared nonconforming signs. Any sign erected after the passage of this chapter must meet all the criteria within this chapter.

(2) All nonconforming signs shall be maintained in accordance with section 36-338, but shall not be:

a. Changed or replaced with another nonconforming sign except that an existing sign may be replaced to reflect a change in business identification so long as the replacement sign is in the same general location and the size of the replacement sign face does not exceed that of the existing sign.

b. Expanded or relocated.

c. Reestablished after damage or destruction in excess of 50 percent of the appraised replacement cost at the time of the damage or destruction.

d. Modified in any way which increases the sign's degree of nonconformity.

(3) With the exception of off-premises signs for which a current, valid permit has been issued by the state department of transportation, any nonconforming sign shall either be eliminated or brought into conformance within seven years of the date it became nonconforming.

(d) *Enforcement.* Violation of the provisions of this article shall be enforceable as set forth below in addition to the enforcement provisions as set forth in this chapter.

(1) *Notice of violation.* The zoning administrator shall have the authority to issue a notice of violation for all violations of this article. Where the owner of the sign is indicated on the sign or is otherwise apparent or known to the zoning administrator, a copy of the notice of violation shall be delivered to the sign owner by hand delivery or by certified mail. In all other cases, a copy of the notice of violation shall be posted on the sign and a copy shall be delivered by hand delivery or certified mail to the property owner as shown on the county tax records. In addition, service hereunder may be made in accordance with rule 4 of the state rules of civil procedure.

(2) *Time to remedy violation.* The sign owner and/or the property owner shall have 15 days to remedy all violations set forth in the notice of violation. The 15-day period shall commence upon the earlier of the posting of the notice of violation on the sign or the delivery of a copy of the notice of violation to the sign owner or property owner.

(3) *Extension of time for compliance.* The zoning administrator shall have the authority to grant a single 30-day extension of time within which the sign owner must comply with the notice of violation. The single extension of time may be issued based upon a written request for extension of time which sets forth valid reasons for not complying within the original 15-day period.

(4) *Remedies for failure to comply.* Pursuant to G.S. 160A-175(f), the zoning administrator may choose from the remedies set forth below to enforce these regulations when there is a failure to comply with the notice of violation. Those remedies are as follows:

a. In addition to or in lieu of the other remedies set forth in this section, the zoning administrator may issue a citation setting forth a civil penalty of $50.00. In the case of a continuing violation, each 24-hour period during which the violation continues to exist shall constitute a separate violation. The citation shall be served upon the person described in subsection (d)(1) of this section by the means set forth therein. In the event the offender does not pay the penalty within ten days of service of the citation, the civil penalty shall be collected by the town in a civil action in the nature of debt, which shall not constitute a misdemeanor, and in so providing, the town council hereby chooses to exercise the option provided by G.S. 160A-175(b).

b. In addition to or in lieu of the other remedies set forth in the section, the zoning administrator shall have the authority to issue a remove order for any sign not repaired or brought into compliance within the time required by the foregoing provisions. Remove orders shall be issued

to and served upon the person described in subsection (d)(1) of this section by the means set forth therein. The sign owner or the landowner shall be allowed a period of 30 days after the service of the remove order within which to remove the sign at his own expense. The remove order shall describe specifically the location of the sign to be removed and all of the reasons for issuance of the remove order, including specific reference to the provisions of the chapter which have been violated.

c. In addition to or in lieu of the other remedies set forth in this section, the zoning administrator may seek injunctive relief in the appropriate court.

(5) *Removal and recovery of expense.* If a sign owner or property owner fails to comply with the requirements of a remove order, the zoning administrator may cause such sign to be removed. The sign owner and property owner shall be jointly and severally liable for the expense of removal. Notice of the cost of removal shall be served upon the person described in subsection (4)b of this section by the means set forth therein. If said sum is not paid within 30 days thereafter, said sum shall be collected by the town in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of G.S. 14-4.

(6) *Removal of dangerous signs.* Pursuant to G.S. 160D, the zoning administrator shall have the authority to summarily remove, abate, or remedy a sign which is dangerous or prejudicial to the public health or safety. The expense of the action shall be paid by the sign owner, or if the sign owner cannot be determined, by the landowner, and if not paid, shall be a lien upon the land or premises where the nuisance arose, and shall be collected as unpaid taxes.

(Code 1989, § 92.161; Ord. of 9-28-1994; Ord. of 12-12-1995; Ord. of 11-26-1996; Ord. of 11-18-2003; Ord. No. 21-05-11, 5-11-2021)

Secs. 36-341—36-368. Reserved.

ARTICLE XII. AMENDMENTS[7]

Sec. 36-369. Amendment procedure.

These zoning regulations, including the zoning map, may be amended by the town council in accordance with the provisions of this article. All proposed amendments shall be referred to the zoning and planning board for its review and recommendations to the town council.

When adopting an amendment to the zoning ordinance, the zoning and planning board must also adopt a brief statement describing whether the amendment is consistent or inconsistent with the approved plans. In addition, the board must note on the applicable future land use maps when a zoning map amendment is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved.

(Code 1989, § 92.170; Ord. of 1-22-1991; Ord. No. 21-05-11, 5-11-2021)

[7]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. XI, as art. XII, as herein set out.

Sec. 36-370. Application.

Before any application on a proposed change or amendment, an application shall be submitted to the office of the zoning administrator at least 30 days prior to the zoning and planning board's meeting at which the application is to be considered. The application shall contain the name and addresses of the owner of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question. The zoning and planning board will not consider a reapplication for any rezoning of any such property denied for a period of 12 months from the date of denial. The provisions of this section and section 36-371 regarding application fees shall not apply to amendments generated by the town.

(Code 1989, § 92.171; Ord. of 1-22-1991; Ord. of 1-8-2008)

Sec. 36-371. Application fee.

(a) Costs associated with a rezoning request shall be borne by the petitioner. Included in such costs, but not limited to the following, are legal fees, advertising costs, and expenses incurred in notification of adjacent property owners.

(b) A deposit based on the zoning administrator's estimate of the costs in subsection (a) of this section shall be tendered before work is begun on the request.

(Code 1989, § 92.172; Ord. of 1-22-1991)

Sec. 36-372. Zoning and planning board action.

Before taking any action on a proposed amendment to the chapter, the town council shall consider the zoning and planning board's recommendations on each proposed amendment. Provided, however, if the zoning and planning board shall not have made its recommendations within 35 days after the first consideration of an application by the board, the applicant shall have the right to demand that the application be forwarded to the town council for a public hearing thereon.

(Code 1989, § 92.173; Ord. of 1-22-1991; Ord. of 1-8-2008)

Sec. 36-373. Public hearing.

(a) Before enacting any amendment to this chapter, the town council shall hold a public hearing. A notice of such public hearing shall be published in a newspaper of general circulation in the county once a week for two successive weeks; the first publication shall not appear less than ten days or more than 25 days prior to the date fixed for the public hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included. The notice shall include the time, place and date of the hearing, and include a description of the property or the nature of the change or amendment to the chapter and/or map.

(b) Whenever there is a zoning classification action involving a parcel of land, 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, as well as properties separated from the subject property by street, railroad, or other transportation corridors, shall be mailed a notice by the zoning administrator of the proposed classification by first-class mail at the last address listed for such owners on the county tax abstracts, provided that this mailing requirement does not apply in the case of a total rezoning of all property within the corporate limits of the town. The person mailing such notices shall certify to the town council that fact,

and such certificate shall be deemed conclusive in the absence of fraud. This provision shall apply only when tax maps are available for the area to be zoned.

(Code 1989, § 92.174; Ord. of 1-22-1991; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-374. Decision.

The town council shall make a decision on the proposed amendment within 60 days after the public hearing. The Town Council will follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; they will adopt any development regulation by ordinance not by resolution.

(Code 1989, § 92.175; Ord. of 1-22-1991; Ord. No. 21-05-11, 5-11-2021)

Secs. 36-375—36-391. Reserved.

ARTICLE XIII. MOUNTAIN AND HILLSIDE DEVELOPMENT[8]

Sec. 36-392. Applicability.

In order to protect the public health, safety, and welfare, the regulations contained in this article apply to mountain and hillside development which is any lot, tract or parcel of land for which the average slope, as defined herein, equals or exceeds 30 percent. Applicability shall initially be determined by means of the town's GIS maps. Property owners may provide topographic maps of the property if they disagree with the determination made by reference to the GIS maps.

(1) *Determining slope.* Average slope shall be determined for each separate land tract in accordance with the methods and procedures contained herein. All slope determinations for the purposes of administering this article shall be the natural slope of the lot to be developed or subdivided, which is to say the slope of the lot prior to any modification due to development activities.

a. Prior to commencing any development or land disturbing activity and prior to making application for any permits and/or other approvals, the calculated average slope for a particular land tract shall be approved by the director. Average slope calculations and supporting documentation shall be submitted to the director for review. Within 20 days of receipt, the director shall:

1. Request additional information;

2. Request revisions to the average slope calculation submittal; or

3. Issue written concurrence with the determination of average slope, as submitted.

b. Each slope calculation submitted to the director for review shall include a scaled map, accurately showing:

1. Topography for the entire land tract;

2. A closed perimeter line delineating a single area proposed for any type of land of land disturbing activity; and

3. The deeded land tract boundary.

[8]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. XII, as art. XIII, as herein set out.

The accuracy and detail of the map shall be acceptable to the director for site-specific conditions and the particular land disturbing activities proposed. In certain cases, the director may, at his discretion, require that the slope calculation and associated mapping be prepared by a state professional land surveyor, a state professional engineer, or a state professional landscape architect.

c. For an individual lot, the basis of the average slope calculation shall include the entire lot. For subdivisions, the average slope calculation shall be based on the entire tract to be subdivided unless the subdivider has elected to exclude areas subject to an absolute conservation easement pursuant to subsection (2) of this section or the director has approved a division of area pursuant to subsection (3) of this section.

d. Land slopes shall be calculated based on both:

1. The downstream drainage slope from the highest, most remote point within the delineated area of proposed land disturbance; and

2. The upstream drainage slope from the lowest, most remote point within the delineated area of proposed land disturbance in accordance with the following requirements.

e. Land slope based on the highest, most remote point shall be calculated by determining the maximum horizontal length of drainage travel (D) from the highest, most remote point (Elevation H1) within the delineated area of land disturbance in a downslope, drainage direction and perpendicular to topographic contours for the greatest distance to the lowest point (Elevation H2) at which drainage would exit the delineated area of proposed land disturbance. Slope based on the highest, most remote point shall be calculated using the following formula:

S_a	=	$\frac{H1-H2}{100}$	x	100

$S_a = ((H1-H2)/D)(100)$

Where:

S_a = Slope expressed as a percentage.

H1 = Elevation of highest, most remote point.

H2 = Elevation of the lowest point drainage point below H1.

D = The maximum length of drainage travel between points H1 and H2 expressed as a horizontal measurement (D is not necessarily a straight line distance).

f. Land slope based on the lowest, most remote point shall be calculated by determining the maximum horizontal length of drainage travel (D) from the lowest, most remote point (Elevation L2) within the delineated area of land disturbance in an upslope direction and perpendicular to topographic contours for the greatest distance to the highest point (Elevation L1) at which location drainage to point L2 would begin within the delineated area of proposed land-disturbance. Slope based on the lowest, most remote point shall be calculated using the following formula:

S_b	=	$\frac{L1-L2}{100}$	x	100

$S_b = ((L1-L2)/D)(100)$

Where:

S_b = Slope expressed as a percentage.

L1 = Elevation of highest point above drainage point.

L2 = Elevation of the lowest, most remote point.

D = The maximum length of drainage travel between points L1 and L2 expressed as a horizontal measurement (D is not necessarily a straight line distance).

Average slope shall be the greater of S_a or S_b rounded off to the nearest one percent.

(2) *Conservation easements.* Lands subject to an "absolute" conservation easement, that is, an easement in which the landowner retains no development rights, may, at the landowner's option, be excluded when determining average natural slope under this chapter.

(3) *Division of area.* Where there is a substantial variation in the landform character within one site, the site may, with the director's approval, be divided into two or more distinct areas for the purposes of slope determination. Generally, this provision shall only be used in cases where large tracts of property encompass flat land as well as significant mountain and hillside terrain. Details for each division must be provided.

(Code 1989, § 92.200; Ord. of 11-18-2008; Ord. of 3-10-2009; Ord. of 8-9-2011)

Sec. 36-393. Goals.

This article is adopted in order to further the following goals:

(1) To preserve the appearance and protect the natural resources of Lake Lure's mountains and hillsides;

(2) To protect ridgelines and steep slopes;

(3) To prevent soil erosion, and to control stormwater runoff;

(4) To protect trees and other native vegetation;

(5) To encourage responsible development and to allow for reasonable uses that complement the natural and visual character of the natural landscape;

(6) To encourage the application of sound and innovative design principles to development of these areas; and

(7) To provide standards and guidelines for building and subdivision designs so they will be compatible with mountain and hillside surroundings in a way that benefits the landowner and the community.

(Code 1989, § 92.201; Ord. of 11-18-2008)

Sec. 36-394. Lots of record.

Any existing lots, tracts or parcels of record as of the effective date of the ordinance from which this article is derived shall be considered without exception to be approved for the building of a single-family dwelling; provided, however, that all requirements for the health department are met and any required development permit or building permit is obtained. Provided, further, for any building requiring a Level 2 analysis, as per section 36-397(2), the applicant shall provide a geotechnical analysis and report demonstrating the site is suitable and safe for construction of the proposed dwelling. Any new structures also must meet all applicable building codes and

those development standards that may be set by other regulations, as may be required. When application for a certificate of zoning compliance is made on one of these existing lots, the applicant shall demonstrate compliance with the following requirements of this article unless deviations from such standards are reviewed and approved as a variance as provided in this chapter:

(1) The requirements for the construction of buildings contained in section 36-399; and

(2) The general regulations for all land disturbing activity contained in section 36-398 with the exception of section 36-398(7) and (8).

(Code 1989, § 92.202; Ord. of 11-18-2008; Ord. of 3-10-2009)

Sec. 36-395. Exemptions.

The following land uses or activities are exempt from the requirements of this article:

(1) Agriculture and forestry, provided that such activities are consistent with the best management practices established by the state division of forest resources or the state natural resources conservation service, consistent with all state and federal laws, and all applicable regulations promulgated by the state.

(2) Landscape maintenance activities including the removal of diseased, dead or damaged trees; provided, however, that such activities shall be carried out in conformance with applicable regulations of this article or other resolutions that might apply.

(3) Any land disturbing activity on any land which was contained in or subject to any site-specific development plan granted a statutory vested right.

(4) Additions to single-family residences, on legal lots of record, properly permitted and approved prior to the effective date of the ordinance from which this article is derived, shall be permitted, subject to the following:

a. The addition complies with the requirements of section 36-399 herein.

b. The height of the building addition does not exceed the height of the existing building or the maximum height permitted pursuant to the regulations contained herein, whichever is greater.

c. No land disturbance is required to accomplish the building addition that would encroach on any reserved area, or that exceeds the land disturbance maximum specified herein.

d. The building addition is in conformity with the purposes and intent and consistent with regulations of this chapter as determined by the community development director or designee.

(5) Development of subdivisions for which preliminary or final plat approval has been granted prior to the effective date of the ordinance from which this article is derived. Lots in any such subdivision, the final plat for which was recorded in the office of the register of deeds subsequent to November 18, 2008, shall be deemed existing lots of record in accordance with section 36-394.

(Code 1989, § 92.203; Ord. of 11-18-2008; Ord. of 3-10-2009)

Sec. 36-396. Application requirements for all land disturbing activity other than that associated with a single-family dwelling.

The following information shall be submitted as part of the first request for development authorization, including, without limitation, approval of a preliminary subdivision plat, permit for land disturbing activity,

development plan approval, or permit for a building, road, or driveway for anything other than a single-family dwelling. In order to reduce costs to applicants, the topographic survey, soils report, hydrological report and plan, and geotechnical analysis and report need not address areas not proposed for development. Surveys, reports, plans and analyses required herein shall in all cases be prepared by a qualified licensed professional.

(1) *Topographic survey.* A topographic survey of the project site shall be required for preliminary subdivision plat approval. Notes and details of existing terrain shall be included in the required topographic information, as needed to adequately portray the natural and manmade features of the land, as well as its elevations. A topographic survey may be required by the community development director for any other application for land disturbing activity or building approval where reliable data on existing topography including county GIS maps or other topographic maps which may be available do not provide sufficient detail to administer the requirements of this chapter. Said topographic survey, if required by this section or by the community development director pursuant to this section, shall provide contour intervals of no more than five feet unless otherwise approved by the community development director.

(2) *Soils report.* This report shall include conclusions and recommendations regarding the effect of soil conditions on the proposed development. The report may use the soil survey prepared and published by the natural resources conservation service for the county, as its basis, although site-specific soil tests may be required at the discretion of the community development director.

(3) *Hydrology report and plan.* This report shall include a complete description of the hydrology of the site, including the presence and location of springs, seeps and streams and the classification of streams as perennial, intermittent or ephemeral. The report shall also include conclusions and recommendations regarding the effect of hydrological conditions on the proposed development, and the capability of the site to be developed. A hydrological control plan shall also be required. At minimum, said plan shall show and take into account the direction of flow within the local drainage basin; all natural drainage channels directed toward and away from the site within 50 feet of the perimeter of the site; and other natural drainageways which may affect or be affected by the development proposal. Alterations of natural drainageways shall be prohibited except for approved road crossings and drainage structures. Natural drainageways shall be rip-rapped or otherwise stabilized below drainage and culvert discharge points for a distance sufficient to convey the discharge without channel erosion. Special notations shall be included which highlight details of the terrain, existing natural surface drainage and areas subject to seepage or spring flow.

(4) *Geotechnical analysis and report.* This analysis and report shall address the existing geology, topographic and hydrologic conditions of the site, including an evaluation of the ability of the site to accommodate the proposed activity. Such analysis and report shall contain a professional opinion regarding slope stability, soil-bearing capacity, the potential for landslide or other geological hazards and their potential impact on structures or surrounding properties, and any other pertinent information. The analysis and report shall then be used by a qualified licensed professional engineer or qualified licensed architect to create a design that is structurally sound and addresses the design elements outlined in this article. Upon completion of all improvements shown on approved plans but prior to the issuance of any final approval of improvements by the town, the applicant shall submit a declaration by the design engineer or architect that the design was provided in substantial accordance with the geotechnical analysis. The applicant shall also submit a declaration by a qualified licensed professional engineer or qualified licensed architect that the work was completed in accordance with approved plans.

(5) *Assessment.* A written assessment of how the project has been designed to minimize the negative impacts of development on the environment of the mountain or hill.

(Code 1989, § 92.204; Ord. of 11-18-2008; Ord. of 8-9-2011)

Sec. 36-397. Application requirements for land disturbing activity associated with a single-family dwelling.

A plot plan of the lot or site on which the building is to be located shall be submitted to the zoning administrator for review and approval. The plot plan shall be prepared by a surveyor, civil engineer, or other qualified professional licensed or registered in the state and shall show the finished floor elevation of the building in relation to the natural ground surface and in relation to the uppermost point of the crest, summit, or ridge top of the mountain or hill on which said building is constructed. The plot plan shall also indicate the limits of the area to be disturbed and the slope of the building and grading envelope and of any proposed driveways. Areas proposed or required to remain undisturbed shall be marked on the plot plan and in the field with tape, orange plastic fencing, or other approved marker until a certificate of occupancy is issued or as otherwise approved by the community development director. The following additional information shall be submitted along with the plot plan:

(1) *Level 1 requirements.* Every application for authorization to undertake land disturbing activities associated with development of a single-family dwelling shall contain a topographic survey of the lot with contour intervals of two feet and a certification of maximum structure height as per section 36-396(1). The applicant shall also conduct an analysis of the county soils map. If the soils map indicates the presence of problematic soils, a soils report meeting the requirements of section 36-396(2) should accompany the application.

(2) *Level 2 requirements.*

a. Level 2 requirements apply to any application to develop a single-family home where:

1. The soils report confirms the presence of problematic soil types; and/or

2. The natural slope of the building and grading envelope equals or exceeds 40 percent.

b. In addition to the topographic survey required in section 36-396(1), Level 2 applications shall also contain the following information:

1. A soils report meeting the requirements of section 36-396(2), if one has not already been provided;

2. A hydrology report and plan meeting the requirements of section 36-396(3); and

3. A geotechnical analysis and report meeting the requirements of section 36-396(4).

(Code 1989, § 92.205; Ord. of 11-18-2008; Ord. of 3-10-2009)

Sec. 36-398. General regulations for all land disturbing activity.

The following minimum standards shall apply to earth moving and land disturbing activity which is not otherwise exempt:

(1) *Minimum alterations.* Earth moving shall be limited to the minimum required for building foundations, driveways, drainage control structures and other approved improvements and immediate areas surrounding the building, structure, road driveway, drainage structure or other approved improvements. With the exception of approved stockpiling or restoration efforts, substantial earth moving beyond that required for the installation or construction of approved buildings, structures, driveways, roads, or drainage structures shall not be permitted.

(2) *Cut and fill.* Unless otherwise specifically approved by the town, cut slopes shall be no steeper than 1½ half horizontal to one vertical (1½:1) and fill slopes shall not be steeper than two horizontal to one vertical (2:1). Slopes exceeding 35 feet in height shall be benched at 35-foot intervals.

(3) *Compaction of fill.* All fill shall be stabilized in conformance with generally accepted engineering standards, including a compacted density of a least 95 percent. Vegetation which has been cut or cleared shall be removed from the site and shall not be covered by, or imbedded in, fill material.

(4) *Timing of disturbance and prompt completion.* The applicant for any land disturbing activity regulated hereunder shall propose a construction program to regulate the timing of construction which shall be designed to accomplish all earth moving and land disturbance in the shortest practical period of time. Absent extenuating circumstances beyond the control of the developer, failure to comply with the construction program shall constitute a violation of this article.

(5) *Natural drainage channels.* Natural drainageways shall be preserved to the maximum extent possible.

(6) *Impact on adjacent property.* Realignment of streams and natural drainage channels shall not be permitted except for the purpose of effecting a stream crossing and only as specifically approved by the community development director upon issuance of all necessary state and federal permits. In such cases, natural or typical flow of surface or subsurface water shall not be altered or obstructed in any way by grade changes if such alteration may adversely affect the property of another by either contributing to pooling or collection of waters, or to the concentration or intensification of surface water discharge.

(7) *Density limits.* Unless developed as a planned unit development pursuant to the provisions of subsection (8) of this section, development on lands that are subject to this article shall meet the density and development requirements shown in Table 1. No lot that is subject to the requirements of this article shall be approved for subdivision unless it complies with the requirements of this table.

TABLE 1

Average Natural Slope of Lot to be Subdivided	*Minimum Lot Size (acres)*	*Maximum Building and Grading Envelope (BGE)*
30%—34%	1	25%
35%—39%	2	20%
40% or more	5	15%

Note: Minimum lot size may also be expressed in terms of dwelling units per acre. Thus, a two-acre minimum lot size would result in a maximum density of one dwelling per two acres (or one-half dwelling per acre) and so forth. This table shall not be construed to impair the clustering of dwellings and lots so long as maximum density is not exceeded.

(8) *Planned unit development alternative.* In lieu of developing land subject to the density limits contained in subsection (7) of this section, the owner of such land may propose to develop it as a planned unit development in accordance with the procedures contained in article IV of this chapter. The board of adjustment shall approve such application so long as the applicant demonstrates that the proposed planned unit development complies with applicable standards and requirements contained in article IV of this chapter, as well as the following additional standards:

a. The average natural slope of the building and grading envelope for each lot proposed for development shall be less than 30 percent.

b. With the exception of subsection (7) of this section concerning density limits, the proposed development shall comply with the requirements of this article.

(9) *Storm drainage.* The potential for rapid erosion is extremely high in mountainous and hillside areas. Steep slopes create perfect conditions for rapid movement of soils downhill during rainfall. Therefore, it is essential to address stormwater drainage and soil and erosion before land disturbing activities begin. Natural drainage flows shall be maintained wherever possible and developers and landowners are encouraged to use the best technology available to reduce the effects of this increased flow. All applications that affect the natural flow of stormwater must meet all local regulations, including, without limitation, the soil erosion and sedimentation control regulations. Stormwater flow shall not be altered from its natural flow so as to impact or damage the property of others.

(10) *Clearing and grading.*

a. A great deal of environmental damage associated with new development can be avoided if construction and the position of the development site are well planned. As the most potentially destructive part of the construction process, grading must be carefully planned and executed to maintain the stability of protected mountain and hillside property. The choice of an appropriate building site is the key to minimizing potential erosion problems. Grading, if required on the site, shall not take place prior to development plan approval and issuance of any permit required by the soil erosion and sedimentation control regulations. Only areas which have been approved for disturbance may be disturbed, and then only after all erosion measures and other regulations have been met.

b. The applicant's plans for meeting the following standards will be reviewed during planning or before construction begins:

1. Cut and fill activities shall be minimized by carefully selecting the site for structures, drainfields, septic tanks, etc.

2. Grading areas shall be clearly marked before any grading begins. Highly visible fencing is recommended to prohibit earth moving equipment from moving beyond designated grading boundaries.

3. Grading shall be phased so that prompt revegetation will provide optimal erosion controls.

4. All top and bottom edges of slopes caused by either cut or fill should be a minimum of two feet away from property lines.

(11) *Retaining walls.* Retaining walls, where required, shall be built to follow the contours of the land. Retaining walls, any portion of which exceeds ten feet in height, shall be designed to blend in with the natural landscape and shall incorporate vegetation to screen them from view.

(12) *Requirements for streets and driveways.* No new public or private street, road or driveway serving lands to which this article is applicable shall be permitted or constructed unless such street, road or driveway complies with the requirements of section 28-105.

a. All new public and private streets and roads and all driveways shall be designed and constructed to minimize the potential for landslides, erosion, and runoff.

b. Streets, roads and driveways shall be located such that the maximum number of existing trees on the site is preserved.

c. Streets, roads and driveways shall be designed to create the minimum feasible amounts of land coverage and the minimum feasible disturbance of the soil. Variations in roadway design and construction specified by these regulations shall be permitted, as may be approved by the community development director, to prevent the dedication of unnecessarily large amounts of land to such streets, roads or driveways. One-way streets shall be permitted and encouraged where appropriate for the terrain and where public safety would not be jeopardized. For example, a two-way street may have the directions of flow split into one-way pairs that differ in elevation, circumnavigate difficult terrain, or avoid tree clearance. Such streets shall have a minimum pavement width of 16 feet for one-way loop roads and divided streets less than 2,500 feet in length, and 18 feet for one-way loop roads and divided streets 2,500 feet or greater in length, and shall meet all other applicable standards for roads constructed within the town.

d. Except as may be modified herein, the maximum grade for any street or road is 15 percent. Grades within 100 feet of an intersection shall not exceed five percent without approval by the director. Where doing so will result in less disturbance to steep slopes, grades of up to 18 percent may be approved for distances not to exceed 500 feet per section or 15 percent of the length of the entire road system in the project, whichever is more. No grades in excess of 15 percent shall be approved in areas not served by functioning fire hydrants. Those portions of streets or roads for which the grade exceeds 15 percent shall be paved.

e. Except as may be modified herein the maximum grade for any new driveway is 22 percent. Grades of up to 25 percent may be authorized for distances not to exceed 300 feet where doing so will result in less disturbance to steep slopes. Where grades greater than 15 percent are authorized, driveways shall be paved. Where grades in excess of 22 percent are authorized, driveways shall have a minimum pavement width of 12 feet.

(Code 1989, § 92.206; Ord. of 11-18-2008; Ord. of 3-10-2009)

Sec. 36-399. Requirements for construction of buildings.

Unless exempted by the terms of this section, no residential or nonresidential building or manufactured home shall be erected within the area governed by this article except in compliance with the following provisions:

(1) *Disturbance limits for single-family homes.* Land disturbance associated with the development or redevelopment of a single-family home on land subject to this article shall, in addition to other applicable requirements, comply with the following provisions:

a. No more than 50 percent of a lot may be disturbed; provided, however, the disturbance area on any lot shall not be required to be less than 7,500 square feet, nor may the disturbance area on any lot exceed 15,000 square feet.

b. No lot may contain more than 6,000 square feet of impervious surface. Any impervious surfaces on a lot shall be counted as disturbed area when calculating the limits contained in subsection (1)a of this section.

c. No development or land disturbance activity may occur in the following areas of a parcel:

1. Rock outcroppings without a geotechnical analysis assessing the suitability of the site for the proposed disturbance activity.

2. Wetlands or buffer areas along streams.

3. Natural drainageways.

4. All sensitive natural areas.

5. Significant historical and archeological resource areas as defined by the National Register of Historic Places or other federal and state agencies.

d. The provisions of this subsection (1) shall not apply to the crossing of streams and creeks for utility corridors and roadways if construction does not exceed 1,000 square feet, does not reduce drainage, and meets all other criteria for land disturbance activities as set forth in chapter 22.

(2) *Disturbance limits for lots intended for other than single-family homes.* For lots intended for development as other than single-family homes, the building and grading envelope and impervious surfaces shall be the minimum necessary to develop the property for its intended use as authorized in the special use permit for the project and shall otherwise comply with the requirements of this section.

(3) *Building and grading envelopes.* To the extent practical, building and grading envelopes shall be sited so as to minimize the visibility of any structures to be placed thereon from public rights-of-way or public lands. This may be accomplished through natural terrain, existing vegetation or other means approved by the director.

(4) *Setbacks.* Setbacks shall be used to protect natural features of the mountain and hillside terrain. Placing structures away from the shoulder reduces the visual impact of development as well as erosion on steep slopes. All structures shall be set back a minimum of 20 feet above the shoulder of a ridge line. The shoulder is defined as the plane at which the slope of the land changes from greater than 20 percent to a ridge top of less than 20 percent. Natural vegetation shall be maintained undisturbed within the setback area except for access to a lot or limited cutting to provide a view. All other setbacks, including, but not limited to, those from streams, creeks, springheads and property lines, shall be met as required by this Code with the following exception. Often in steep-slope settings, the preferred placement of a structure is immediately adjacent to the roadway, thereby minimizing the amount of disturbance of the hillside. The community development director shall have authority to reduce the minimum front yard requirements in such circumstances.

(5) *Outdoor lighting.* While lighting outside of homes is often necessary, it can be quite obtrusive in the night skyline. Mountainous and hillside areas are generally rural in character and should be maintained as such even in the presence of development. The following shall apply to the placement of outside lights:

a. Except for landscaping lighting not exceeding a height of 24 inches, all lights shall have fully-shielded fixtures that direct the light downward. These shields shall eliminate scattered light and excessive glare.

b. Light poles shall not exceed the height of surrounding buildings.

(6) *Landscaping.* Because the mountainous and hillside areas of the town are largely valued for their natural beauty, it is the intention of these regulations to preserve this forested quality.

a. No construction equipment or development is permitted outside the building and grading envelope.

b. Revegetation is required on all disturbed areas that remain after construction, including areas around permanent structures, resurfaced areas such as driveways and areas of cuts and fills, pursuant to land disturbance regulations. Where trees have been removed due to insect damage or disease, and this tree removal increases land disturbance so that it exceeds the maximum building and grading envelope, replanting is required.

c. Riparian buffers act to intercept sediment, nutrients, pesticides, and other materials in surface runoff and reduce nutrients and other pollutants in shallow subsurface water flow. They also serve to provide habitat and wildlife corridors and can reduce erosion by bank stabilization. All buffers shall be protected in accordance with applicable requirements in the soil erosion and sedimentation control requirements contained in chapter 22.

d. Any clearing or thinning of trees or other vegetation shall be accomplished in accordance with the requirements of sections 36-234 and 36-262.

(Code 1989, § 92.207; Ord. of 11-18-2008; Ord. of 3-10-2009; Ord. No. 21-05-11, 5-11-2021)

Secs. 36-400—36-426. Reserved.

ARTICLE XIV. LEGAL PROVISIONS[9]

Sec. 36-427. Severability.

It is the legislative intent of the town council in adopting this chapter that all provisions and sections thereof shall be liberally construed to protect and preserve the health, safety and general welfare of the inhabitants of the town, and, further, that should any provision, portion, section or subsection of this chapter be held to be invalid by a court of competent jurisdiction, such ruling shall not be construed as affecting the validity of any of the remaining provisions, portions, or sections, it being the intent of the town council that this chapter shall stand, notwithstanding the invalidity of any provision, or sections or part thereof.

(Code 1989, § 92.185; Ord. of 1-22-1991)

Sec. 36-428. Conflict with other laws.

When provisions of this chapter require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, provisions of this chapter shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the provisions made by this chapter, the provisions of that statute or local ordinance or regulation shall govern.

(a) *Governing board.* A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) *Appointed boards.* Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text

[9]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. XIII, as art. XIV, as herein set out.

amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) *Administrative staff.* No staff member shall make a final decision on an administrative decision required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a city local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) *Quasi-judicial decisions*. A member of any board exercising quasi-judicial functions pursuant to this chapter 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 violations of due process 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.

(e) *Resolution of objection*. If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(f) *Familial relationship*. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(Code 1989, § 92.996; Ord. of 1-22-1991; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-429. Violations.

Whenever, by the provisions of this chapter, the performance of any act is prohibited, or whenever any regulation, dimension, or limitation is imposed on the use of land, or on the erection or alterations, or on the use or change of use of a structure, or the uses within such structure, a failure to comply with such provisions of this chapter shall constitute a separate violation and a separate offense.

(Code 1989, § 92.997; Ord. of 1-22-1991)

Sec. 36-430. Remedies.

Any or all of the following procedures may be used to enforce the provisions of this chapter:

(1) *Injunction.* Any violation of this chapter or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceedings pursuant to state law.

(2) *Civil penalties.* Any person who violates any provision of this chapter shall be subject to the assessment of a civil penalty under the procedures provided in section 36-431.

(3) *Denial of permit, application or certificate.* The administrator or his designee shall withhold or deny any permit, application, certificate, or other authorization on any land, building, structure, sign, or use in which there is an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit, certificate, or other authorization previously granted. Furthermore, the administrator may request the county building inspector withhold applicable building permits under the state building code until any violation of this chapter has been remedied, including violations pertaining to the establishment of unapproved subdivisions or the transfer of lots in unapproved subdivisions.

(4) *Special permit or temporary certificate.* The administrator or his designee may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security bond approved by administrator.

(5) *Stop-work orders.* Whenever any land disturbing activity is commenced and/or a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with G.S. 160D or the state building code. Furthermore, the administrator may request the county building inspector issue a stop-work order regarding applicable building permits issued under state building code until any violation of this chapter has been remedied, including violations pertaining to the establishment of unapproved subdivisions or the transfer of lots in unapproved subdivisions.

(6) *Revocation of permits or certificates.* The administrator or his designee may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked. Furthermore, the administrator may request the county building inspector to revoke applicable building permits issued under state building code requirements until any violation of this chapter has been remedied, including violations pertaining to the establishment of unapproved subdivisions or the transfer of lots in unapproved subdivisions.

(Code 1989, § 92.998; Ord. of 6-12-2007; Ord. No. 21-05-11, 5-11-2021)

Sec. 36-431. Enforcement and penalties.

(a) *Enforcement procedures.* When the administrator or his designee becomes aware of a violation of this chapter, it shall be his duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation. The owner or occupant shall immediately remedy the violation. If needed, the administrator will inspect the premises during reasonable hours and upon presenting credentials. The administrator must have the consent of the premises owner or an administrative search warrant to inspect areas that are not open to the public.

(b) *Notice of violation.* If the owner or occupant of the land, building, structure, sign, or use in violation fails to take prompt corrective action, the administrator or his designee shall give the owner or occupant written notice of violation (by personal delivery, first-class mail, and/or by posting notice conspicuously on the property) of the following:

(1) That the activity, land, building, structure, sign, or use is in violation of this chapter;

(2) The nature of the violation, and citation of the section of this chapter violated;

(3) The measures necessary to remedy the violation; and

(4) Mechanisms available to appeal the decision of the administrator.

(5) Any commencement of land clearing or removal of vegetative growth in violation of section 36-234 without first receiving a land disturbance permit and providing an approved site plan, or in violation of section 36-262 without first receiving a land disturbance authorization, as required by this chapter, shall subject the property owner or the owner's agent to a civil fine not to exceed $500.00 per day for each occurrence of such a violation. The fine shall be payable immediately upon notification and shall be assessed from the date of violation. Each day of a continuing violation shall constitute a separate violation. If, following the appropriate inspections, the illegal development is found to meet all requirements of this chapter, certificates of zoning compliance shall be issued upon payment of the fine and submittal of the appropriate documents, including fees. If the development does not meet said requirements, the development shall either be returned as far as possible to its original state, or be brought into compliance prior to receipt of site plan approvals.

(6) The removal of significant trees or native shrubbery with their stumps and roots, without an approved site plan, as required by this chapter, shall subject the property owner to fines of $500.00 for each significant tree illegally removed and $500.00 for each 100 square feet of native shrubbery, with their stumps and roots, illegally removed. If the number of significant trees and/or extent of native shrubbery previously existing on the property is not known by means of an on-site inspection, fines shall be levied based on the canopy coverage observable from existing aerial photography of the area in question. In addition to these fines, illegally removed significant trees shall be replaced at the expense of the owner or the owner's agent as set forth in section 36-234.

(c) *Appeal.* Any owner or occupant who has received a notice of violation may appeal in writing the decision of the administrator or his designee to the board of adjustment in accordance with sections 36-184 and 36-185. In the absence of an appeal, the decision of the administrator shall be final.

(d) *Failure to comply with notice of violation or decision of the board of adjustment.* If the owner or occupant of a property fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the BOA following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law or by section 36-430.

(e) *Civil penalties.* Any person who violates any provision of this chapter shall be subject to the assessment of a civil penalty in accordance with the provisions set forth herein.

(1) *Responsible parties.* The owner or occupant of any land, building, structure, sign, use of land, or part thereof, and any architect, builder, contractor, agent, or other person, who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this chapter may be held responsible for the violation and subject to the civil penalties and remedies provided herein and in section 36-430.

(2) *Issuance of citations.* No civil penalty shall be assessed under this section until the person alleged to be in violation has been notified in accordance with subsection (b) of this section. If after receiving a notice of violation the owner or other violator fails to correct the violation, a civil penalty shall be imposed in the form of a citation. Such citation shall substantially conform to the following:

a. It shall be in writing;

b. It shall be delivered by certified or registered mail to the last known address of the owner or occupant or such other person or by personal service or by posting conspicuously on the property;

c. It shall state the civil penalty which is imposed upon the violator; and

d. It shall direct the violator to pay the civil penalty within ten business days of the date of service of the citation.

(3) *Payment of civil penalties.* The schedule for civil penalties shall be set forth in a fee schedule maintained by the town clerk. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalties. For each additional and separate offense, the citation amount for the same violation shall be twice the amount as the last citation as set forth in the fee schedule. If the offender fails to pay any civil penalties within 30 days of service of a citation, the town may recover such penalties in a civil action in the nature of debt. Assessment of civil penalties shall be stayed pending appeals taken to the board of adjustment.

(Code 1989, § 92.999; Ord. of 6-12-2007; Ord. of 5-13-2014; Ord. of 8-8-2017; Ord. No. 21-05-11, 5-11-2021)

Secs. 36-432—36-460. Reserved.

ARTICLE XV. APPENDICES[10]

Sec. 36-461. Appendix A, Significant trees: Common tree species of Lake Lure and recommended diameters.

Tree Species	*Average Diameter at Breast Height (dbh)*	*Significant dbh*	*Maximum Caliper for Replanting*
White Oak	2-3'	12"	3"
Northern Red Oak	3-4'	15"	3"
Scarlet Oak	1-2'	6"	3"
Chestnut Oak	3-4'	15"	3"
Blackjack Oak	1-2'	6"	3"
White Ash	1-2'	6"	3"
Red Maple	1-2'	6"	3"
Flowering Dogwood	12 -18"	4"	3"
Black Locust	2-3'	12"	3"
Black Walnut	2-4'	12"	3"
Bitternut Hickory	18-24"	10"	3"
Pignut Hickory	2-3'	12"	3"
Mockernut Hickory	18-24"	10"	3"

[10]Editor's note(s)—Ord. No. 21-05-11, adopted May 11, 2021, added art. VI, site specific vesting plans, thereby renumbering former art. XIV, as art. XV, as herein set out.

Yellow Poplar	2-6'	12"	3"
Sycamore	3-4'	15"	3"
Basswood*	2-3'	12"	3"
Beech	2-3'	12"	3"
Slippery Elm*	1-2'	6"	3"
Sweet Birch	2-3'	12"	3"
Black Cherry	2-3'	12"	3"
American Holly	6-24"	6"	3"
Sourwood	18-20"	6"	3"
Carolina Silverbell	6-12"	6"	3"
Persimmon	10-12"	6"	3"
Blackgum	1-2'	6"	3"
Cucumber Magnolia*	1-2'	6"	3"
Fraser Magnolia	10-12"	6"	3"
Redbud	10-12"	6"	3"
Yellow Buckeye*	To 3'	12"	3"
Eastern Hemlock	2-3'	12"**	3"
Carolina Hemlock	2-3'	12"**	3"
Shortleaf Pine	3-4'	6"	3"
Virginia Pine	1-2'	6"	3"
Pitch Pine	1-2'	6"	3"
White Pine	2-3'	12"	3"

*Species that may or may not occur in the town, but do occur in the region.

**It may become necessary to preserve all these trees, regardless of dbh, due to potential loss of the species due to mortality from invasive species.

(Code 1989, ch. 92, app. A; Ord. of 6-12-2007)

Sec. 36-462. Appendix B, Forest coverage table: Significant tree density and canopy coverage.

Forest coverage can be estimated in several ways depending on the size and topography of the property, the number of trees on the property, and the availability of suitable aerial photographs. The table below shall be used to determine the minimum forest coverage that must be retained during land clearing, land disturbance, and/or development or achieved through replanting with trees and shrubs recommended in the Lake Lure Tree Management Handbook. Copies of all materials used to arrive at tree density or canopy coverage estimates must be presented with the site plan.

(1) *The ground survey - significant tree density.* A small property or one with relatively few trees could be evaluated by a ground survey. With this method, a qualified licensed professional shall visit the area on foot (at the owner's expense), count or (if necessary) estimate the number of significant trees present before clearing, and report the significant tree density. Significant trees, and/or forest areas, shall be

marked on the site plan for protection or removal as described in section 36-234. Estimates of significant tree densities that will remain after land clearing, land disturbance, and/or development shall be produced based on the number of significant trees to be removed. Where this density falls below that required on the Forest Coverage Table, the tree protection officer shall direct the replanting of trees to make up the deficit.

(2) *The aerial survey - canopy coverage.* A larger property, particularly one with steep topography, or a property with significant forest coverage, might best be managed by a canopy coverage estimate involving analysis of existing aerial photographs. This analysis shall be carried out by a qualified licensed professional, at the owner's expense, by the method described under Aerial Survey - Canopy Coverage Method at the end of this appendix.

(3) *The combined ground and aerial survey.* When a large area to be evaluated by aerial survey also includes pockets of forest that are to be left for greenspace or common areas, or small undisturbed forest areas (less than one acre and less than 50 percent canopy coverage) that will be disconnected from larger undisturbed forest areas, these isolated areas shall be evaluated by a ground survey, with the significant tree density figure to be shown on the plat or site plan for each such isolated area. This method will improve accuracy in calculating overall forest coverage, particularly where common areas and greenspace are so designated. The significant tree density method shall also be used when planning tree thinning on a portion of the property or for other special purposes needing particular accuracy.

(4) *Other methods.* Property owners wishing to compute the pre-land clearing/land disturbance/development forest coverage estimate by their own methods shall provide their calculations to the tree protection officer with sufficient clarity and accuracy that the tree protection officer can duplicate and validate their results.

(5) *The Forest Coverage Table.* This table computes the minimum significant tree density or canopy coverage that shall remain on a property after land clearing, land disturbance and/or development, based on the significant tree density or canopy coverage on the property prior to land clearing, land disturbance and/or development. Where the post-land clearing, land disturbance and/or development values fall below those required on the Forest Coverage Table, the tree protection officer shall direct the replanting of trees to make up the deficit.

Significant Tree Density/Canopy Coverage Table

Pre-Land Clearing/Land Disturbance/Development Significant Tree Density (Significant Trees per Acre)	*Pre-Land Clearing/Land Disturbance/Development Canopy Coverage (Percentage of Total Property Area)*	*Post-Land Clearing/Land Disturbance/Development Significant Tree Density Or Canopy Coverage*
0 to 10	0% to 10%	1.0 x initial value
11 to 20	11% to 20%	0.90 x initial value
21 to 50	21% to 50%	0.80 x initial value
50 or more	50% or more	0.70 x initial value

Examples

Tree Density Example 1: For a two-acre lot with an average initial significant tree density of 25 significant trees per acre, the final significant tree density shall average 20 significant trees per acre (0.80 x 25).

Tree Density Example 2: For a one-acre lot with an initial significant tree density of 15 per acre, a minimum of 13.5 significant trees must remain after construction (0.90 x 15). If construction renders greater tree removal unavoidable, then a replanting plan shall be submitted as part of the site plan that will achieve the minimum final density.

Tree Density Example 3: For a 0.5-acre lot with just ten significant trees (initial significant tree density of 20), nine of them shall remain (or be replaced) after construction.

Canopy Coverage Example 1: For a two-acre lot with an initial canopy coverage of 25 percent, the minimum final canopy coverage shall be 20 percent of the two-acre lot (0.80 x 0.25).

Canopy Coverage Example 2: For a one-acre lot with an initial canopy coverage of 80 percent, a minimum final coverage of 56 percent of the one-acre lot must remain after construction (0.70 x 0.80). If construction renders greater tree removal unavoidable, then a replanting plan shall be submitted as part of the site plan that will achieve the minimum final coverage.

Canopy Coverage Example 3: For a 0.5-acre lot with an initial canopy coverage of just ten percent, all the trees shall remain (or be replaced) after construction (0.10 x 1.)

Aerial Survey - Canopy Coverage Method

Step 1: Using a clear, 2005 or later aerial photo of the property, draw a grid overlaying the property. The grid lines shall be spaced at one-half inch intervals. Count the total number of squares in the grid, then study the squares and estimate each square's coverage level the percentage (100 percent, 75 percent, 50 percent, 25 percent, or zero percent) of each square that is covered by forest canopy.

For squares with 100 percent canopy coverage, a value of 1 shall be assigned.

For squares with 75 percent canopy coverage, a value of 0.75 shall be assigned.

For squares with 50 percent canopy coverage, a value of 0.5 shall be assigned.

For squares with 25 percent canopy coverage, a value of 0.25 shall be assigned.

For squares with 0% canopy coverage, a value of 0 shall be assigned.

Step 2: Count the number of squares with 100 percent coverage and multiply by 1. To calculate the percentage of the total property area that the 100 percent coverage squares represent, divide the number of 100 percent squares by the total number of squares in the grid. Use the following formula to do the division and convert the results into a percentage:

(a x 1) X	x	100	=	(?)%

x = total number of squares covering the whole property.

a = total number of squares with a 100 percent canopy coverage level.

Then count the number of squares with 75 percent coverage and multiply by 0.75. Use the same formula to do the division and convert the results into percentages.

(b x 0.75) X	x	100	=	(?)%

x = total number of squares covering the whole property.

b = total number of squares with a 75 percent canopy coverage level.

Follow the same steps for the other levels of canopy coverage using the following values:

For the 50 percent canopy coverage:

(c x 0.50) X	x	100	=	(?)%

x = total number of squares covering the whole property.

c = total number of squares with a 50 percent canopy coverage level.

For the 25 percent canopy coverage:

(d x 0.25) X	x	100	=	(?)%

x= total number of squares covering the whole property.

d = total number of squares with a 25 percent canopy coverage level.

For the 0% canopy coverage:

(e x 0) X	x	100	=	(?)%

x= total number of squares covering the whole property.

e = total number of squares with a 0 percent canopy coverage level.

When the area percentage for each coverage level is known, add the percentages together for the total estimated canopy coverage as a percentage of the total property acreage.

Example Problem: A grid is laid over a two-acre tract. The property has been previously disturbed and shows mixed patches of forest and cleared areas. The total number of squares covering the parcel is 140. 100 squares are completely vegetated; ten squares are 75 percent vegetated; 15 squares are 50 percent vegetated; ten squares are 25 percent vegetated; and five squares no longer contain any vegetation. Using the above equation, calculate the estimated canopy coverage for the site.

x = 140
a = 100
b = 10
c = 15
d = 10
e = 5

(a x 1) / x x 100 = (?)%	(b x .75) / x x 100 = (?)%	(c x .5) / x x 100 = (?)%
(100 x 1) / 140 x 100 = (?)%	(10 x .75) / 140 x 100 = (?)%	(15 x .5) / 140 x 100 = (?)%
100 / 140 x 100 = (?)%	7.5 / 140 x 100 = (?)%	7.5 / 140 x 100 = (?)%
.71 x 100 = **71%**	.053 x 100 = **5.3%**	.053 x 100 = **5.3%**
(*d* x .25) / *x* x 100 = (?)%	(*e* x 0) / *x* x 100 = (?)%	71.0%
		5.3%
		5.3%
(10 x .25) / 140 x 100 = (?)%	(5 x 0) / 140 x 100 = (?)%	1.8%
		+ 0.0%
		83.4% Total Canopy
2.5 / 140 x 100 = (?)%	0 / 140 x 100 = (?)%	
.0179 x 100 = **1.8%**	0 x 100 = **0%**	

The estimated canopy coverage is **83.4%**.

Canopy Coverage Estimation

(Code 1989, ch. 92, app. B; Ord. of 6-12-2007; Ord. of 12-8-2009)