CODE OF ORDINANCES
TOWN OF
LAKE LURE, NORTH CAROLINA

Published in 2021 by Order of the Town Council

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Jim Proctor

Town Council

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Town Manager

William Morgan

Town Attorney

Olivia Stewman

Town Clerk

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the Town of Lake Lure, North Carolina.

Source materials used in the preparation of the Code were the 1989 Code and ordinances subsequently adopted by the town council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1989 Code and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been provided catchlines to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CHARTER	CHT:1
RELATED LAWS	RL:1
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RELATED LAWS COMPARATIVE TABLE	RLCT:1
SPECIAL ACTS COMPARATIVE TABLE	SACT:1
CODE	CD1:1
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CODE COMPARATIVE TABLES	CCT:1
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CHARTER INDEX	CHTi:1
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Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of

copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Daniel F. Walker, Code Attorney, and Nate Bruce, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Mr. Shannon Baldwin, Town Manager, for his cooperation and assistance during the progress of the work on this publication. It is hoped that his efforts, those of the other town officials, and those of the publisher have resulted in a Code of Ordinances which will make the active law of the town readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the town's affairs.

Copyright

ADOPTING ORDINANCE

ORDINANCE NO. 21-11-09C

AN ORDINANCE ADOPTING AND ENACTING A CODE OF ORDINANCES RECODIFICATION FOR THE TOWN OF LAKE LURE, NORTH CAROLINA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

BE IT ORDAINED by the Town Council of the Town of Lake Lure, North Carolina, meeting in regular session and with a majority of town council voting in the affirmative:

SECTION ONE. The Code entitled "Code of Ordinances, Town of Lake Lure, North Carolina," published by Municipal Code Corporation, consisting of chapters 1 through 36, each inclusive, is adopted.

SECTION TWO. All ordinances of a general and permanent nature enacted on or before July 9, 2019, and not included in the Code or recognized and continued in force by reference therein, are repealed.

SECTION THREE. The repeal provided for in section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

SECTION FOUR. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished according to code Section 1-10. Each act of violation and each day upon which any such violation shall continue or occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the town may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

SECTION FIVE. Additions or amendments to the Code when passed in such form as to indicate the intention of the town to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

SECTION SIX. Ordinances adopted after July 9, 2019, that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to like provisions of the Code.

SECTION SEVEN. This Ordinance shall become effective upon adoption.

Adopted this 9th day of November, 2021.

ATTEST: ;sigr; Carol C. Pritchett
Mayor ;sigl; Olivia Stewman
Town Clerk

Approved as to content & form: ;sigl; William C. Morgan, Jr.
Town Attorney

Certificate of Adoption

I hereby certify that the foregoing is a true copy of the ordinance passed at the regular meeting of the town council, held on the ___9th___day of November, 2021.

SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code Book and are considered "Includes." Ordinances that are not of a general and permanent nature are not codified in the Code Book and are considered "Omits."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

Ordinance Number	Date Adopted	Included/ Omitted
Supplement 1		
Ord. of	10-11-1977	Included
19-07-09A	7- 9-2019	Included
20-02-11	2-11-2020	Omitted
20-06-09	6- 9-2020	Omitted
21-05-11	5-11-2021	Included
21-05-11A	5-11-2021	Included
21-05-11B	5-11-2021	Included
21-06-08	6- 8-2021	Included
21-08-10	8-10-2021	Omitted
21-11-09	11- 9-2021	Included
21-11-09A	11- 9-2021	Included
21-11-09B	11- 9-2021	Omitted
21-11-09C	11- 9-2021	Included
21-12-01	12- 1-2021	Omitted
21-12-14	12-14-2021	Included

PART I
CHARTER AND SESSION LAWS

Subpart A CHARTER[1]

Section 1. The Charter of the Town of Lake Lure is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF LAKE LURE

"ARTICLE I. INCORPORATION, POWERS AND BOUNDARIES

"Section 1.1. *Incorporation.* The inhabitants of the Town of Lake Lure, in Rutherford County, are a body corporate and politic, under the name "Town of Lake Lure." Under that name, they have all the powers, duties, rights, privileges and immunities conferred and imposed on the Town by this Charter or on cities by the general law. The term "general law" is employed herein as defined in G.S. 160A-1.

"Section 1.2. *Town Boundaries.* Until modified in accordance with law, the boundaries of the Town are as set forth on the official map entitled "Boundary Map of the Town of Lake Lure, N. C.," dated March 10, 2014, and recorded at Plat Book 35, Page 30, in the office of the Rutherford County Register of Deeds. The official map of the Town's boundaries shall be maintained as required by G.S. 160A-22. Immediately upon modification of the boundaries in accordance with law, the appropriate changes to the official map shall be made, copies shall be filed in the offices of the Secretary of State, the Rutherford County Register of Deeds and the appropriate board of elections, as required by general law."

"ARTICLE II. GOVERNING BODY

"Section 2.1. *Structure; Number of Members.* The governing body of the Town is the Board of Commissioners, which has four (4) members, and the Mayor.

"Section 2.2. *Manner of Electing Board.* The qualified voters of the entire Town elect the members of the Board.

"Section 2.3. *Term of Office of Board Members.* Members of the Board are elected to four-year staggered terms. The Board members serving on the date of ratification of this Charter shall serve until the expiration of their terms. In the municipal election in 1987 and every four years thereafter, two members of the Board shall be elected. In the municipal election in 1989 and every four years thereafter, two members of the Board shall be elected.

"Section 2.4. *Election of Mayor; Term of Office.* The qualified voters of the entire Town elect the Mayor. The Mayor is elected for a term of two years. The Mayor shall have the right to vote on matters before the Board only when there are equal numbers of votes in the affirmative and in the negative."

"ARTICLE III. ELECTIONS

"Section 3.1. *Nonpartisan Plurality Method.* Town officers are elected on a nonpartisan basis, and the results determined by a plurality, as provided in G.S. 163-292."

"ARTICLE IV. ADMINISTRATION

[1]Editor's note(s)—Printed herein is the Charter of the Town of Lake Lure, as revised and consolidated by the 1987 General Session of the General Assembly, Chapter 194, House Bill 282. Section 1.2, Town Boundaries, was amended and restated by Session 2013, Session Law 2014-81, House Bill 1056.

"Section 4.1. *Form of Government.* The Town operates under the council-manager form of government, as provided in Chapter 160A of the General Statutes, Article 7, Part 2.

"Section 4.2. *Town Manager.* The Board appoints a Town Manager who is responsible for the administration of all departments of the Town government. The Town Manager has all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter.

"Section 4.3. *Town Clerk.* The Board appoints a Town Clerk to perform the duties required by law and as the Board may direct.

"Section 4.4. *Tax Collector.* The Board appoints a Tax Collector to perform the duties required by law and as the Board may direct.

"Section 4.5. *Town Attorney.* The Board appoints a Town Attorney licensed to practice law in North Carolina. The Town Attorney represents the Town, advises Town officials and performs other duties required by law and as the Board may direct.

"Section 4.6. *Finance Officer.* The Board appoints a Finance Officer to perform the duties provided by law and other appropriate duties.

"Section 4.7. *Other Officers and Employees.* The Board may authorize other offices and positions to be filled by appointment of the Town Manager and may organize the Town government and combine offices as deemed appropriate, subject to the requirements of general law."

"ARTICLE V. ADDITIONAL PROVISIONS

"Section 5.1. *Termination of Utility Service; Charges Become Liens.*

(a) Notwithstanding the provisions of G.S. 160A-314, or any other provisions of law, in case any charges for water service or sewerage service due and owing to the Town of Lake Lure are not paid, then such charges and any penalties assessed for nonpayment shall become a lien upon the property served or in connection with which service is used, upon compliance with the procedure set out in this section; provided, however, no such charges shall become a lien unless the same were incurred by the owner of the particular property.

(b) Upon nonpayment, the Town shall give the customer a fair opportunity to avoid termination of utility service and application of the charges and penalties as a lien against the property, by paying charges due or showing that the charges are in error. As soon as possible following the specified past due date, written notice of delinquency shall be sent to the customer by first-class mail.

(c) The notice required by subsection (b) shall contain the following information:

(1) The amount which must be paid to avoid termination;

(2) The date on which termination will occur, which must be at least 10 days after the mailing date;

(3) A statement that the customer may appear at Town Hall between the hours of 9:00 a.m. and 4:00 p.m. on any business day and request an informal hearing with the Town Manager or designee, for the purpose of showing error or working out a satisfactory extended payment arrangement; and

(4) A statement that failure by the customer to appear and show error, make payment or work out a satisfactory extended payment arrangement shall result in the charges and penalties being applied as a lien against the real property, which may be enforced by sale of the real property as provided by law.

(d) The employee responsible for mailing the notice as provided in subsections (b) and (c) shall certify the date on which the notice was mailed, on a form or in a record book or electronic medium designed for that purpose.

(e) If the customer does not make acceptable payment arrangements and fails to show cause why service should not be terminated and the charges and penalties applied as a lien against the property, service may be terminated on or after the date specified in the notice of termination, and the charges and penalties may be applied as a lien against the property. Service may be terminated between the hours of 8:30 a.m. and 4:00 p.m. on business days from Monday through Thursday only. If the customer fails to comply with the agreed upon extended payment arrangements, service may be terminated without further notice and the charges and penalties may be applied as a lien.

(f) Unpaid charges and penalties may at any time be collected by civil action in the name of the Town. In addition, the charges and penalties may be collected by the Town Tax Collector by sale of the property to which the lien attaches, as provided in G.S. 105-375, and the lien shall be treated as a property tax lien for the purposes of that statute. The lien shall attach on the date on which the certificate of charges due is docketed as provided in G.S. 105-375(d), and shall continue until the principal amount of the charges plus penalties, interest and costs allowed by law have been fully paid.

"Sec. 5.2. *Town Alcoholic Beverage Control Stores.* Town alcoholic beverage control stores shall operate as provided in Chapter 353, Session Laws of 1979, as amended.

"Sec. 5.3. *Rehabilitation and Maintenance of Lake Lure.*

(a) The Town shall have the power to operate the electric power generating plant at Lake Lure and sell all the power produced thereby to a single utility, to lease the plant to any private person, firm or corporation under such terms and conditions and for such period or periods as the Board of Commissioners shall deem to be in the best interests of the Town.

(b) The rehabilitation and maintenance by the Town of the lake, trunk sewerage line, dam and electric power generating plant and ancillary facilities and the issuance of revenue bonds therefore are hereby declared to be proper public and municipal purposes.

"Sec. 5.4. *Sewage Assessments.* In addition to any authority granted by general or local law to the Town to finance sewage disposal facilities and sewage treatment facilities, the Board is hereby authorized to levy assessments upon all properties which are now or will hereafter be connected to any sewage disposal or treatment facilities owned or constructed by the Town, for the purpose of financing, in whole or in part, the construction and operation of sewage disposal or treatment facilities. Such assessments shall apply uniformly within reasonable classifications to all properties now or hereafter connected to any disposal or treatment facilities owned or constructed by the Town; provided, however, the Board may establish higher assessments for property developed or to be developed for commercial, industrial, or institutional uses or purposes than those established for private residential use, and may base the assessments for residential property or hotel or motel property upon the number of dwelling units served or to be served by such disposal or treatment facility.

"Sec. 5.5. *Special Assessments.*

(a) *Streets.*

(1) In addition to the authority granted by general law, the Board is authorized to order street improvements and to assess the costs thereof against abutting property in accordance with the provisions of this section.

(2) The Board may order street improvements and assess the total costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the

assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition, upon the following findings of fact:

(i) That the street improvement project does not exceed 1,200 linear feet; and

(ii) That such street or part thereof is unsafe for vehicular traffic and it is in the public interest to make such improvements; or

(iii) That it is in the public interest to connect two streets or portions of a street already improved; or

(iv) That it is in the public interest to widen a street, or part thereof, which is already improved; provided that assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan, as applied to the particular street or part thereof.

(3) For the purposes of this Article, the term "street improvement" includes grading, regrading, surfacing, resurfacing, widening, paving, repaving, acquisition of right-of-way and construction or reconstruction of curbs, gutters and street drainage facilities.

(b) *Sidewalks.* In addition to the authority granted by general law, the Board is authorized, without the necessity of petition, to order sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total costs thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, provided that regardless of the assessment basis or bases employed, the Board may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of such street.

(c) *Procedure.* In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this section, the Board shall comply with the procedures required by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and sufficiency thereof. The effect of the act of levying assessments under authority of this section shall be the same as if assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Lake Lure and to consolidate certain acts concerning the property, affairs and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the public schools, or acts validating official actions, proceedings, contracts or obligations of any kind.

Sec. 4. All acts in conflict with this act are repealed. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 179, Private Laws of 1927

Chapter 71, Private Laws of 1929

Chapter 205, Private Laws of 1935

Chapter 228, Public-Local Laws of 1937

Chapter 254, Public-Local Laws of 1937

Chapter 738, Session Laws of 1943

Chapter 739, Session Laws of 1943

Chapter 1057, Session Laws of 1953

Chapter 437, Session Laws of 1963

Chapter 101, Session Laws of 1975

Chapter 351, Session Laws of 1979

Chapter 105, Session Laws of 1985

Sec. 5. Chapter 353, Session Laws of 1979 is amended to change each reference to "Chapter 18A" to "Chapter 18B," and to change each reference to a particular section of the former Chapter 18A of the General Statutes to refer to the provisions of the current Chapter 18B of the General Statutes which most closely correspond.

Sec. 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the Town of Lake Lure not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 9. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded or codified, the reference shall be deemed amended to refer to the amended General Statute or the General Statute which most closely corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May 1987.

CHARTER COMPARATIVE TABLE
SESSION LAWS

This table shows the location of the sections of the basic Charter and the Session Laws of the General Assembly amending the Charter.

Sess. Laws Year	Chapter No.	House Bill	Section	Section this Charter
1987	194	282	1.2	Char. (note)
2013	2014-81	1056	—	Char. (note)

Subpart B SESSION LAWS[1]

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003
SESSION LAW 2003-332
SENATE BILL 89

AN ACT TO ESTABLISH THE LAKE LURE MARINE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read:

"Article 7A.

"Lake Lure Marine Commission.

"§ 77-80. Definitions.

For purposes of this Article:

(1) "Board" means the Board of Commissioners of the Town of Lake Lure.

(2) "Commission" means the Lake Lure Marine Commission or its governing board, as the case may be.

(3) "Commissioner" means a member of the governing board of the Lake Lure Marine Commission.

(4) Lake Lure Reservoir, known for purposes of this Article as "Lake Lure" or "the waters of Lake Lure," means the body of water along the Broad River in Rutherford County, impounded by the dam at Tumbling Shoals, and lying below the 995-foot contour line above sea level.

(5) "Shoreline area" means the area submerged by the dam at Tumbling Shoals, lying below 955 feet above mean sea level of the normal full pond elevation of 992 feet above mean sea level, on Lake Lure.

(6) "Wildlife Commission" means the North Carolina Wildlife Resources Commission.

"§ 77-81. Creation of Commission authorized.

The Board of Commissioners of the Town of Lake Lure may by ordinance create the Lake Lure Marine Commission. The Board shall hold a public hearing on the ordinance to create the Commission. The location of the public hearing shall be determined by the Boards and established by resolution. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks in a newspaper of general circulation in Rutherford County. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. Upon its creation the Commission shall enjoy the powers and have the duties and responsibilities conferred upon it by the Lake Lure municipal ordinance, subject to the provisions of this Article and the laws of the State of North Carolina. The provisions of any ordinance may be modified, amended, or rescinded by a subsequent ordinance.

"§ 77-82. Governing board.

Upon its creation, the Commission shall have a governing board. The governing board shall, unless otherwise stated by ordinance, be the Board of Commissioners of the Town of Lake Lure.

[1]Editor's note(s)—Printed herein are session laws affecting the Town of Lake Lure.

"§ 77-83. Compensation; budgetary and accounting procedures.

The municipal ordinance shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by these budgetary and accounting procedures as may be specified by the municipal ordinance and the applicable laws of North Carolina.

"§ 77-84. Organization and meetings.

Upon creation of the Commission, its governing board shall meet at a time and place set by the Town of Lake Lure ordinance. Unless otherwise stated in the ordinance, the mayor of the Town of Lake Lure shall act as the presiding officer. The governing board shall adopt such rules and regulations as it may consider necessary, not inconsistent with the provisions of this Article or of any ordinance of the Town of Lake Lure or the laws of the State of North Carolina, for the proper discharge of its duties and for the governance of the Commission. In order to conduct business, a quorum must be present. The presiding officer may appoint those committees as may be authorized by such rules and regulations. The Commission shall meet regularly at those times and places as may be specified in its rules and regulations or in the Town of Lake Lure municipal ordinance. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, apply.

"§ 77-85. Powers of Commission; administrative provision.

(a) Within the limits of funds available to it, and subject to the provisions of this Article and of the Town of Lake Lure municipal ordinance, the Commission may:

(1) Hire and fix the compensation of permanent and temporary employees and staff as it may consider necessary in carrying out its duties;

(2) Contract with consultants for such services as it may require;

(3) Contract with the State of North Carolina or the federal government, or any agency or department or subdivision of them, for property or services as may be provided to or by these agencies, and carry out the provisions of such contracts;

(4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of such contracts;

(5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vehicles, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this Article; and

(6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public recreation, public safety on the waters of Lake Lure and its shoreline area, or protection of property in the shoreline area, subject, however, to the provisions of Chapter 113 of the General Statutes and rules promulgated under that Chapter as to property within North Carolina.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, or by private and civic sources.

(c) The Board of Commissioners of the Town of Lake Lure may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. It may appropriate funds out of tax revenues and may also levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the North Carolina Constitution or as provided by G.S. 160A-209.

(d) The Commission shall be subject to such audit requirements as may be specified in the municipal ordinance.

(e) In carrying out its duties, and either in addition to or in lieu of exercising various provisions of the above authorizations, the Commission may, with the agreement of the Board of Commissioners of the Town of Lake Lure, utilize personnel and property of or assign responsibilities to any officer or employee of the Town of Lake Lure. Such contribution in kind, if substantial, may with agreement between the Board and the Commission be considered to substitute in whole or in part for the financial contribution required of the Town in support of the Commission.

"§ 77-86. Filing and publication of applicable municipal ordinances.

(a) A copy of the initial municipal ordinance creating the Commission and of any ordinance amending or repealing the resolution creating the Commission shall be filed with:

(1) The Executive Director of the Wildlife Commission.

(2) The Secretary of State.

(3) The clerk to the Town of Lake Lure.

(4) The clerk of superior court of Rutherford County. Upon request, the Executive Director shall also send a certified single copy of any and all applicable ordinances to the chairman of the Commission.

(5) A newspaper of general circulation in Rutherford County.

(b) Unless the municipal ordinance specifies a later date, it shall take effect when the text has been submitted to the Secretary of State for filing. Certifications of the Board under the seal of the Commission as to the text or amended text of any municipal ordinance and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by the clerk of superior court of Rutherford County of the text of any certified ordinance filed with the clerk by the Board is admissible in evidence and the Board's submission of the resolution for filing to the clerk shall constitute prima facie evidence that such resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any ordinance by the Board to any person other than the Secretary of State.

"§ 77-87. Regulatory authority.

(a) Except as limited in subsection (b) of this section, by restrictions in any municipal ordinance, and by other supervening provisions of law, the Commission may make regulations applicable to Lake Lure and its shoreline area concerning all matters relating to or affecting the use of Lake Lure. These regulations may not conflict with provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in Rutherford County at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on Lake Lure, the Commission may, after public notice, request that the Wildlife Resources Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Lure or its shoreline area. Ordinances providing regulations for specific areas shall clearly establish the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When an ordinance providing regulations for a specific area is proposed, owners of the parcel of land involved as shown on the county tax listing, and the owners of land within 500 feet of the proposed area to be regulated, as shown on the county tax listing, shall be mailed a notice of the proposed classification by first-class mail at the last addresses listed for such owners on the county tax abstracts. This mailing requirement does not apply in regulations affecting the entire lake. Notice shall also be given by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to the waters of Lake Lure or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in Rutherford County.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

(1) The Secretary of State;

(2) The clerk of superior court of Rutherford County;

(3) The Executive Director of the Wildlife Resources Commission; and

(4) The federal Energy Regulatory Commission licensee for Lake Lure, if other than the Town of Lake Lure.

(e) Any official designated in subsection (d) of this section may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above are for informational purposes and are a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this Article relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained, and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

"§ 77-88. Enforcement.

(a) Where a municipal ordinance so provides, all law enforcement officers, or those officers as may be designated in the municipal ordinance, with territorial jurisdiction as to any part of the waters of Lake Lure or its shoreline area within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of the waters of Lake Lure and its shoreline area. A certificate of training issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification for the purposes of this Article.

(b) Where a law enforcement officer with jurisdiction over any part of the waters of Lake Lure or its shoreline area is performing duties relating to the enforcement of the laws on the waters of Lake Lure or in its

shoreline area, the officer shall have such extraterritorial jurisdiction as may be necessary to perform the officer's duties. These duties include investigations of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of the waters of Lake Lure and its shoreline area; conducting prisoners in custody to a court or to detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of Rutherford County. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(d) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be considered an extension of the duties of the office held, and no officer shall take any additional oath or title of office."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July 2003.

PART II
CODE OF ORDINANCES

Chapter 1 GENERAL PROVISIONS

Sec. 1-1. Title of Code.

The provisions embraced in this and the following chapters and sections shall constitute and be designated the "Code of Ordinances, Town of Lake Lure, North Carolina," and may be so cited. This Code may also be cited as the "Lake Lure Code of Ordinances."

(Code 1989, § 10.01)

State law reference(s)—Admission of code into evidence, G.S. 160A-79.

Sec. 1-2. Definitions.

For the purpose of this Code, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Charter. The term "Charter" means the Charter of the Town of Lake Lure.

Council, town council, board of commissioners. The term "council," "town council" or "board of commissioners" means the legislative body of the town. The term "board of commissioners" also may be used to designate that same legislative body of the town.

County. The term "county" means the County of Rutherford, in the State of North Carolina, except as otherwise provided.

Mayor. The term "mayor" means the mayor of the town.

Month. The term "month" means a calendar month.

NCAC. The abbreviation "NCAC" refers to the North Carolina Administrative Code.

Oath. The term "oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in certain cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed".

Officials, boards, and *commissions.* References made to "officials," "boards," and "commissions" by title only shall be deemed to refer to the officials, boards, and commissions of the Town of Lake Lure.

Or, and. The term "or" may be read "and" and the term "and" may be read "or," if the sense requires it.

Owner. The term "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant, or tenant by the entirety, of the whole or a part of the building or land.

Person. The term "person" extends and is applied to a corporation, firm, partnership, association, organization, and any other group acting as a unit, as well as an individual.

Personal property. The term "personal property" means every species of property except real property as herein defined.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

Real property. The term "real property" includes lands, tenements, and hereditaments.

Sidewalk. The term "sidewalk" means any portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

Signature,subscription. The term "signature " or "subscription" includes a mark when the person cannot write.

State. The term "state" means the State of North Carolina.

Street. The term "street" shall be construed to embrace any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, or bridge and the approaches thereto within the town.

Tenant or *occupant.* The term "tenant" or "occupant," applied to a building or land, includes any person holding a written or oral lease of, or who occupies the whole or a part of the building or land whether alone or with others.

Town, city, municipal corporation, or *municipality.* The term "town," "city," "municipal corporation," or "municipality" means the Town of Lake Lure, in Rutherford County, North Carolina, except as otherwise provided.

Written and*in writing.* The term "written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The term "year" means a calendar year.

(Code 1989, § 10.02)

Sec. 1-3. Rules of construction.

For the purpose of this Code, the following rules of construction shall apply:

Gender. Words importing the masculine gender shall include the feminine and neuter.

Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving authority to a majority of those persons or officers.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and any others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to that meaning.

Number. Words used in the singular include the plural and the plural includes the singular number.

Plural, singular. Words importing the singular shall include the plural, and words importing the plural shall include the singular.

Statute references. The abbreviation "G.S." refers to the General Statutes of North Carolina.

Tense. Words used in the past or present tense include the future as well as the past and the present.

Title of office. The title of any office shall be construed to include the words, "of the Town of Lake Lure, North Carolina."

(Code 1989, § 10.03)

State law reference(s)—Computation of time, G.S. 1-593; rules of construction, G.S. 12-3.

Sec. 1-4. Continuation of existing ordinances.

The provisions appearing in this Code, so far as they are the same as ordinances adopted prior to this Code and included herein, shall be considered as continuations thereof and not as new enactments.

(Code 1989, § 10.04)

Sec. 1-5. Section headings.

The underlined headings of the several sections of this Code are intended as mere catchlines to indicate the contents of the section and shall not be deemed or taken to be titles of these sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of the sections, including the catchlines, are amended or reenacted.

(Code 1989, § 10.05)

Sec. 1-6. Repeal, expiration, and revival of ordinances.

(a) The repeal of an ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued, any offense committed, any penalty or punishment incurred or any proceeding commenced before the repeal took effect or the ordinance expired.

(b) When an ordinance which repeals another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

(Code 1989, § 10.06)

Sec. 1-7. Severability.

It is declared to be the intention of the council that the sections, paragraphs, sentences, clauses, and phrases of this Code are severable and if any phrase, clause, sentence, paragraph, or section of this Code shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, the unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Code since the same would have been enacted by the council without the incorporation in this Code of an unconstitutional or invalid phrase, clause, sentence, paragraph, or section.

(Code 1989, § 10.07)

Sec. 1-8. Amendments to Code; amendatory language.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed chapters, sections, subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted, in the case of repeal, shall be prima facie evidence of subsequent ordinances until a time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the council.

(b) Amendments to any of the provisions of this Code may be made by amending these provisions by specific reference to the section number of this Code in the following or similar language: "That section ___ of the Code of Ordinances, Town of Lake Lure, North Carolina, is hereby amended to read as follows:…." The new provisions shall then be set out in full as desired.

(c) In the event a new section not heretofore existing in the Code is to be added, the following or similar language may be used: "That the Code of Ordinances, Town of Lake Lure, North Carolina, is hereby amended by adding a section to be numbered ___, which section reads as follows:…." The new provisions shall then be set out in full as desired.

(Code 1989, § 10.08)

Sec. 1-9. Damaging ordinances.

No person shall tear or deface any of the town ordinances.

(Code 1989, § 10.09)

Sec. 1-10. Enforcement and penalties.

Unless another town ordinance either previously or hereafter adopted provides within that section additional or alternative means of enforcing those provisions, a violation of any town ordinance may be enforced by any one, all, or a combination of the remedies set forth in subsections (1) and (2) of this section.

(1) *Remedies.* Any or all of the following procedures may be used to enforce provisions of this Code:

a. *Injunction.* Any violation of the Code of the town or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by any other appropriate proceedings permitted by state law.

b. *Civil penalties.* Any person, corporation or legal entity who violates any provisions of this Code shall be subject to the assessment of a civil penalty under the procedures provided in subsection (2)b of this section.

c. *Criminal prosecution.* Where specifically set forth within a specific ordinance provision that a violation is punishable as a misdemeanor, violations of the ordinances of the town may also be enforced by criminal prosecution as a Class 3 misdemeanor as provided in G.S. 14-4, punishable upon conviction by a maximum fine not to exceed $500.00 for each separate violation or by imprisonment not to exceed 30 days pursuant to the authority of G.S. 14-3(a)(3).

(2) *Penalties.*

a. *Criminal penalties.* If a violation of any specific ordinances of the town is enforced by criminal prosecution as a Class 3 misdemeanor as set forth in subsection (1)a of this section, the penalties

shall be pursuant to G.S. 14-4, by a maximum fine not to exceed $500.00 for each separate violation or by imprisonment not to exceed 30 days as set forth in G.S. 14.3(a)(3).

b. *Civil penalties.* If the town elects, instead of criminal penalties, as set forth in subsection (1)c of this section, each offender may be assessed a civil penalty upon the issuance of a citation for said violations as herein provided. The civil penalty, if not paid to the town within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of a debt. Said civil penalties shall be in the amount of $100.00 for each violation and each day any single violation continues shall be a separate violation. The procedures to be followed in issuing civil penalties shall be as follows:

1. The enforcement official shall cause a warning citation to be issued to the violator. Such warning citation shall be issued either in person or posted in the United States mail service by first-class mail addressed to the last known address of the violator as contained in the records of the county. Such warning citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.

2. An appeal from a warning citation shall be taken within 15 days from the date of said warning citation by filing with the enforcement official and with the board of adjustment a notice of appeal which shall specify the grounds upon which the appeal is based. Except in any case where the ordinance is violated, which is the subject of the warning citation, specifically grants to the board of adjustment other powers in considering appeals and such appeal is applied for, the board of adjustment, in considering appeals of warning citations, shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of an ordinance, in the factual situation as it relates to the application of an ordinance or both.

3. Where the enforcement official of the town determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the enforcement official may amend the warning citation to provide for additional time.

4. Upon failure of the violator to obey the warning citation, a civil citation may be issued by the enforcement official, either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first-class mail addressed to the last known address of the violator as contained in the records of the county or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear before the town manager, or designee, within 15 days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

5. If the violator fails to respond to a citation within 15 days of its issuance, and pay the penalty prescribed therein, the town may institute a civil action in the nature of debt in the appropriate division of the state general court of justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law.

c. In addition to the criminal and civil penalties set out in subsections (2)b.1 through 5 of this section, any provision of any town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.

d. In addition to the criminal and civil penalties set out in subsections (2)a and b of this section, any provision of any town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the general court of justice. When a violation of such a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of civil procedure in general and G.S. 1A-1, rule 65 in particular. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the applicable town ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judicial order. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

e. The provisions of this chapter may be enforced by one, all, or a combination of the remedies authorized and prescribed by this section.

(Code 1989, § 10.99; Ord. of 3-13-2012; Ord. of 8-14-2012, Ord. of 6-14-2022)

Chapter 2 ADMINISTRATION[1]

ARTICLE I. IN GENERAL

Secs. 2-1—2-18. Reserved.

ARTICLE II. TOWN COUNCIL

DIVISION 1. GENERALLY

Sec. 2-19. Composition; governance function.

The governing body of the town consists of a mayor and council of four members. The town council shall be charged with the general government and administration of the affairs of the town.

(Code 1989, § 20.01)

State law reference(s)—Council to organize town government, see G.S. 160A-146.

[1]State law reference(s)—Cities and towns, G.S. 160A-1 et seq.; government and general management of municipality vested in governing body, G.S. 160A-67; franchises and technical ordinances, G.S. 160A-76; code of ordinances, G.S. 160A-77; municipality must file ordinances in ordinance book, G.S. 160A-78; governing body has authority to organize and reorganize municipal government, G.S. 160A-146 et seq.; general ordinance-making power, G.S. 160A-174; city power to impose specifically authorized taxes, G.S. 160A-206; remedies for collecting taxes, G.S. 160A-207; property taxes, G.S. 160A-209.

Sec. 2-20. Powers and duties.

The powers and duties of the town council shall be as set out in the general statutes of the state, the town Charter, and the ordinances of the town.

(Code 1989, § 20.02)

Sec. 2-21. Mayor; duties.

The mayor shall be the official head of the town, and, as such, shall perform the following duties:

(1) Keep himself informed as to the town's business.

(2) Preside over the meetings of the council.

(3) Sign all contracts, ordinances, resolutions, franchises, and all other documents as authorized by the council.

(4) Appoint all committees and outline their duties, under the general direction of the council.

(5) Make recommendations to the council concerning the affairs of the town, as he deems necessary.

(6) Represent the town at ceremonies and other official occasions.

(7) Perform other duties as authorized by the general statutes, the Charter, and this Code.

(Code 1989, § 20.03)

State law reference(s)—Duties of the mayor, G.S. 160A-69.

Sec. 2-22. Mayor pro tem.

At the first meeting after its election, the council shall select one of its number to act as mayor pro tem. The mayor pro tem shall have no fixed term of office, but as such, shall perform all the duties of the mayor in the mayor's absence or disability.

(Code 1989, § 20.04)

State law reference(s)—Mayor pro tem, G.S. 160A-70.

Sec. 2-23. Town manager.

(a) The council shall appoint a town manager to serve at its pleasure. The manager shall be appointed solely on the basis of his executive and administrative qualifications. He need not be a resident of the town or state at the time of his appointment. The office of town manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to article VI, section 9 of the constitution (G.S. 160A-147).

(b) The town manager shall be the chief administrator of the town. He shall be responsible to the council for administering all municipal affairs placed in his charge by them, and shall have the following powers and duties:

(1) He shall appoint and suspend or remove all town officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the town attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt.

(2) He shall direct and supervise the administration of all departments, offices, and agencies of the town, subject to the general direction and control of the council, except as otherwise provided by law.

(3) He shall attend all meetings of the council and recommend any measures that he deems expedient.

(4) He shall see that all laws of the state, Charter, and the ordinances, resolutions, and regulations of the council are faithfully executed within the town.

(5) He shall prepare and submit the annual budget and capital program to the council.

(6) He shall annually submit to the council and make available to the public a complete report on the finances and administrative activities of the town as of the end of the fiscal year.

(7) He shall make monthly reports to council concerning the operations of town departments, offices, and agencies subject to his direction and control.

(8) He shall perform any other duties that may be required or authorized by the council (G.S. 160A-148).

(c) Neither the mayor nor any member of the council shall be eligible for appointment as manager or acting or interim manager (G.S. 160A-151).

(Code 1989, § 20.05)

Secs. 2-24—2-49. Reserved.

DIVISION 2. MEETINGS

Sec. 2-50. Regular meetings; time and place.

The regular meetings of the council shall be held on the second Tuesday of each month at 5:00 p.m. at the community center, unless otherwise designated by the council.

(Code 1989, § 20.15)

State law reference(s)—Quorum, see G.S. 160A-74; voting, G.S. 160A-75.

Sec. 2-51. Special meetings.

Special meetings of the council may be held according to the procedures set out in the applicable general statutes.

(Code 1989, § 20.16)

State law reference(s)—Notice of special meetings, G.S. 143-318.12; special meetings, G.S. 160A-71.

Sec. 2-52. Continual and adjourned meetings.

Any meeting of the council may be continued or adjourned from day to day, or for more than one day.

(Code 1989, § 20.17)

Secs. 2-53—2-77. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES

Sec. 2-78. Clerk; duties.

The board shall appoint a clerk. It shall be the duty of the clerk to:

(1) Act as secretary to the council;

(2) Keep a true record of all the proceedings of the council;

(3) Keep the original of all ordinances in a book especially provided for that purpose;

(4) Act as custodian for all the books, papers, records, and journals of the council; and

(5) Perform other duties as may be required by law or by the council.

(Code 1989, § 21.01)

State law reference(s)—Duties of the clerk specified, G.S. 160A-171.

Sec. 2-79. Town attorney; duties.

The council shall appoint a town attorney whose duties shall be to:

(1) Prosecute or defend any and all suits or actions at law or equity to which the town may be a party, or in which it may be interested, or which may be brought against, or by, any officer of the town, or in the capacity of the person as an officer of the town;

(2) See to the full enforcement of all judgments or decrees rendered or entered in favor of the town;

(3) See to the completion of all special assessment proceedings and condemnation proceedings;

(4) Draft or review any contract, lease, or other document or instrument to which the town may be a party, and approve all ordinances and resolutions of the council as to form;

(5) At the request of the council, draft ordinances covering any subject within the power of the town;

(6) Attend meetings of the council on request; and

(7) Perform any other duties required of him by G.S. 160A-173 and other laws and ordinances.

(Code 1989, § 21.02)

State law reference(s)—Duties of the attorney, G.S. 160A-173.

Sec. 2-80. Finance officer; duties.

The council shall provide for the appointment of a finance officer, whose duties shall be to:

(1) Keep the books and accounts of the town;

(2) Receive and disburse all monies of the town as required under state law;

(3) Countersign and preaudit all checks, drafts, contracts, purchase orders, or other documents obligating town funds;

(4) Report to the council monthly and as they may require concerning the finances of the town;

(5) Maintain all records of the bonded debt of the town and maintain sinking funds;

(6) Supervise the investment of idle funds; and

(7) Perform other duties assigned by the general statutes, the Charter, or by the council.

(Code 1989, § 21.04)

State law reference(s)—Duties of the finance officer, G.S. 159-25; fiscal control generally, G.S. 159-7 et seq.

Sec. 2-81. Other officers and employees.

Such other officers and employees as are deemed necessary shall be appointed by the council at the first meeting after each election. All officers and employees shall serve at the pleasure of the council and receive such compensation as from time to time may be prescribed by the council.

(Code 1989, § 21.05)

Secs. 2-82—2-105. Reserved.

ARTICLE IV. FINANCIAL ADMINISTRATION

Sec. 2-106. Procedure for disbursement.

(a) In accordance with the Local Government Budget and Fiscal Control Act, no bill or claim against the town may be paid unless it has been approved by the officer or employee responsible for the function or agency to which the expense is charged. No check or draft of the town shall be valid unless it bears on its face the certificate of the finance officer as follows: "This disbursement has been approved as required by the Local Government Budget and Fiscal Control Act."

(b) No contract, agreement, or purchase order shall be valid unless it bears the finance officer's certificate as follows: "This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act."

(Code 1989, § 22.01)

State law reference(s)—Preaudit of disbursements required, G.S. 159-28.

Sec. 2-107. Delegating authority for contract approval.

(a) *Grant of authority.* Subject to the restrictions and conditions thereinafter provided, when purchasing apparatus, supplies, materials, equipment, construction services, or professional services, for use by the town in addition to such authority as may be provided by law and/or otherwise delegated by the town council, the town manager shall have the authority to:

(1) Prepare, or cause to be prepared, plans and/or specifications setting forth a complete description of the item to be purchased and the characteristics, features and/or requirements therefor;

(2) Include, where appropriate in specifications for the item to be purchased, an opportunity for bidders to purchase as trade-in specified personal property owned by the town;

(3) Advertise, or otherwise secure bids, for such item, if required under applicable law;

(4) Award contracts for the purchase of the item, and, where applicable, award contracts for the purchase of the item and the sale of trade-in-property up to the thresholds provided for by this article;

(5) Reject bids;

(6) Re-advertise to receive bids;

(7) Waive bid bond or deposit requirements;

(8) Waive performance and payment bond requirements; and

(9) Execute and deliver the purchase contract.

(b) *Report.* At the first meeting of the town council following the award of any contract in the informal and formal range pursuant to this article, the town manager shall submit a report to the town council summarizing the bids received and the contract awarded. Such report shall be included in the minutes of the meeting at which it is received.

(c) *Extent of authority.* Except in cases of sole source purchases pursuant to G.S. 143-129(f) and cases of purchases from established contracts pursuant to G.S. 143-129(g), unless otherwise provided by law, the provisions of this article shall apply to all contracts required for use by the town.

(d) *No limitation of other authority.* The provisions of this article are not intended to limit, restrict or revoke, in any manner, authority otherwise granted and/or delegated to the town manager by statute, law or action of the town council.

(e) *Appropriation required.* No purchase shall be made by the town manager under authority of this article, unless an appropriation for such purpose has been authorized in the annual budget, or by supplemental appropriation or budget appropriation amendment duly adopted by the town council.

(f) *Application of general statutes.* In acting pursuant to the authority delegated by this article, the town manager shall comply with the requirements of G.S. ch. 143, art. 8, as from time to time amended, modified, supplemented, revised, or superseded, to the same extent as would have otherwise applied to the town council.

(g) *Contract approval.* The town council must approve all contracts that meet the following criteria:

(1) Contracts greater than $30,000.00 with or without budgetary authority.

(2) Contracts exceeding budgetary approval, which require a budget amendment.

(3) Contracts with terms greater than one year.

(4) Contracts subject to statutory informal or formal bid thresholds.

(5) Contracts suggesting a significant policy change, as determined by the town manager.

(6) Project change orders that exceed approved cost of the contract and budgeted funds.

(h) *Contract execution by town manager.* The town manager may execute contracts without additional town council approval, if the contract meets all of the following conditions:

(1) Contracts less than $30,000.00 that have been authorized by the town council through direct award or budget authorization.

(2) Contracts that are less than one year.

(3) Equipment leases or rentals for less than one year, which require a budget amendment.

(4) Project change orders that do not exceed the total capital budget and are not a significant change in project scope or design.

(i) *Contract conditions.* Department heads or designees may execute purchase, maintenance or service contracts if the contracts meet all of the following conditions:

(1) Contracts less than $5,000.00 that have been authorized by direct award or budget authorization.

(2) Contracts or agreements less than one year.

(3) Upon utilization of standard contract document or contract review process.

(4) Equipment leases or rentals for less than one year, which do not require a budget amendment.

(j) *Contract documents.* All contracts for which the contractor will perform work or provide services for the town must be accompanied by the standard town contract form or a contract approved by the town attorney. The contract must follow all procedures and contain all necessary insurance and payment options. A copy of the completed and signed contract must be forwarded to the town clerk and if necessary to the finance department for requisition approval. The town will not enter into contractual agreements that are subject to automatic renewal and will attempt to structure contracts to coincide with the fiscal year.

(k) *Contract review form.* Unless a department is utilizing the standard town contract, all contracts must be circulated through the utilization of the Contract Review Form (CRF) (attached to the ordinance from which this section is derived). The contract cannot be executed until all applicable parties have signed the CRF. The town manager or department head will execute or authorize the execution of the contract once they are satisfied that all review have been completed.

(l) *Finance officer review.* Regardless of form, no contract may be executed unless the town finance director has pre-audited the contract in the manner required by the Local Government Budget and Fiscal Control Act. Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable federal laws, policies, standards, including those under the uniform guidance (2 CFR 200).

(Code 1989, § 22.02; Ord. of 8-14-2018)

Secs. 2-108—2-127. Reserved.

ARTICLE V. DEPARTMENTS, BOARDS, AND COMMISSIONS

DIVISION 1. GENERALLY

Sec. 2-128. Board of adjustment.

For provisions concerning the board of adjustment, see section 36-178.

(Code 1989, § 23.01)

Secs. 2-129—2-154. Reserved.

DIVISION 2. ZONING AND PLANNING BOARD

Sec. 2-155. Establishment.

(a) Pursuant to the provisions of G.S. 160D-301, the town council hereby establishes a planning agency under the name of the "town zoning and planning board."

(b) The existing planning agency known as the zoning planning board shall be, and the same is hereby, discontinued.

(c) All memberships on said zoning planning board shall be, and the same are, hereby terminated.

(Code 1989, § 23.10; Ord. of 3-23-1982)

Sec. 2-156. Members; terms; vacancies.

The zoning and planning board shall consist of five members, each of whom shall serve for a term of three years, expiring on December 31 of the third year. Terms shall be staggered. Any vacancy shall be filled for the unexpired term in the same manner as the initial appointment. Not more than two members' terms shall expire in any one year.

(Code 1989, § 23.11; Ord. of 3-23-1982; Ord. of 7-27-1993)

Sec. 2-157. Officers.

The zoning and planning board shall elect from its members a chairperson and may elect such other officers as it may deem necessary.

(Code 1989, § 23.12; Ord. of 3-23-1982)

Sec. 2-158. Powers and duties.

(a) The following powers and duties are hereby delegated to the zoning and planning board:

(1) Propose amendments, or receive for review and recommendations requests or suggestions for amendments, to the town's zoning chapter and map.

(2) Make studies of the town and surrounding areas.

(3) Determine objectives to be sought in the development of the study area.

(4) Prepare and adopt plans for achieving these objectives.

(5) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.

(6) Advise the town council concerning the use and amendment of means for carrying out plans.

(7) Exercise any function in the administration and enforcement of various means for carrying out plans that the council may direct.

(8) Perform any other related duties that the council may direct.

(b) The zoning and planning board shall be subject to all the duties and responsibilities set forth in G.S. ch. 160D, and shall have such other duties and responsibilities as may have heretofore been delegated to the zoning and planning board.

(c) The zoning and planning board may adopt such internal rules, regulations and bylaws for the proper operation of its business, and not inconsistent with this division, as the board deems necessary.

(Code 1989, § 23.13; Ord. of 3-23-1982)

Secs. 2-159—2-184. Reserved.

DIVISION 3. MARINE COMMISSION

Sec. 2-185. Establishment.

Pursuant to the provisions of Senate Bill 89, effective July 20, 2003, and authority granted by the general assembly of the state, the board of commissioners of the town hereby establishes the town marine commission.

(Code 1989, § 23.20; Ord. of 9-9-2003)

Sec. 2-186. Definitions.

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

Board means the board of commissioners of the town, also known as "town council."

Commission means the Lake Lure Marine Commission or its governing board, as the case may be.

Commissioner means a member of the governing board of the Lake Lure Marine Commission.

Lake Lure Reservoir, known for purposes of this division as Lake Lure or "the waters of Lake Lure," means the body of water along the Broad River in the county, impounded by the dam at Tumbling Shoals, and lying below the 995-foot contour line above sea level.

Shoreline area means the area submerged by the dam at Tumbling Shoals, lying below 995 feet above mean sea level of the normal full pond elevation of 992 feet above mean sea level, on Lake Lure.

Wildlife commission means the North Carolina Wildlife Resources Commission.

(Code 1989, § 23.21; Ord. of 9-9-2003)

Sec. 2-187. Powers and duties.

The commission shall enjoy the powers and have the duties and responsibilities conferred upon it by the town municipal ordinance, or any modification, amendment or rescission of any ordinance, subject to the provisions of this section and the laws of the state.

(Code 1989, § 23.22; Ord. of 9-9-2003)

Sec. 2-188. Governing board.

The commission shall have a governing board. The governing board shall, unless otherwise amended by future ordinance, be the board of commissioners of the town.

(Code 1989, § 23.23; Ord. of 9-9-2003)

Sec. 2-189. Compensation; budgetary and accounting procedures.

Any compensation, or separate budgetary and accounting procedures for the commission, shall be as subsequently established by the board of commissioners of the town. Compensation of consultants and staff members employed by the commission, and reimbursement of expenses incurred by commissioners, consultants, and employees, if any, shall be as subsequently approved by the board of commissioners of the town. The commission shall be governed by these budgetary and accounting procedures as may be specified by the municipal ordinance and the applicable laws of the state.

(Code 1989, § 23.24; Ord. of 9-9-2003)

Sec. 2-190. Organization and meetings.

(a) The governing board of the town marine commission shall meet at a regular time and place as established by the board of commissioners of the town.

(b) The mayor of the town shall act as the presiding officer of the commission, unless changed by future amendment to this section. The governing board of the commission shall adopt such rules and regulations as it may consider necessary, not inconsistent with the provisions of this division or of any ordinance of the town or the laws of the state, for the proper discharge of its duties and for the governance of the commission. In order to conduct business, a quorum must be present. The presiding officer may appoint those committees as may be authorized by such rules and regulations. The commission shall meet regularly at those times and places as may be specified in its rules and regulations or in this division or any amendment thereto. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, G.S. ch. 143, art. 33C (G.S. 143-318.9 et seq.), apply.

(Code 1989, § 23.25; Ord. of 9-9-2003)

Sec. 2-191. Powers of commission; administrative provision.

(a) Within the limits of funds available to it, and subject to the provisions of this division and of the town municipal Code, the commission may:

(1) Hire and fix the compensation of permanent and temporary employees and staff as it may consider necessary in carrying out its duties;

(2) Contract with consultants for such services as it may require;

(3) Contract with the state, federal government, or any agency or department or subdivision of them, for property or services as may be provided to or by these agencies, and carry out the provisions of such contracts;

(4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of such contracts;

(5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vehicles, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this division; and

(6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat

docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public recreation, public safety on the waters of Lake Lure and its shoreline area, or protection of property in the shoreline area, subject, however, to the provisions of G.S. ch. 113 and rules promulgated under that article as to property within the state.

(b) The commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, or by private and civic sources.

(c) The board of commissioners of the town may appropriate funds to the commission out of surplus funds or funds derived from nontax sources. It may appropriate funds out of tax revenues and may also levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the state constitution or as provided by G.S. 160A-209.

(d) In the event the commission receives or expends any funds in any town fiscal year, it shall also be audited annually in conjunction with the town's audit as required by law.

(e) In carrying out its duties, and either in addition to or in lieu of exercising various provisions of subsections (a) through (d) of this section, the commission may, with the agreement of the board of commissioners of the town, utilize personnel and property of or assign responsibilities to any officer or employee of the town. Such contribution in kind, if substantial, may, with agreement between the board and the commission, be considered to substitute in whole or in part for the financial contribution required of the town in support of the commission.

(Code 1989, § 23.26; Ord. of 9-9-2003)

Sec. 2-192. Filing and publication of applicable municipal ordinances.

(a) A copy of the initial municipal ordinance creating the commission and of any ordinance amending or repealing the resolution creating the commission shall be filed with:

(1) The executive director of the wildlife commission.

(2) The secretary of state.

(3) The clerk of the town.

(4) The clerk of the superior court of the county. Upon request, the executive director shall also send a certified single copy of any and all applicable ordinances to the chairperson of the commission.

(5) A newspaper of general circulation in the county.

(b) This section shall take effect when the text has been submitted to the secretary of state for filing. Certifications of the board under the seal of the commission as to the text or amended text of any municipal ordinance and of the date of submission to the secretary of state shall be admissible in evidence in any court. Certifications by the clerk of superior court of the county of the text of any certified ordinance filed with the clerk by the board is admissible in evidence and the board's submission of the resolution for filing to the clerk shall constitute prima facie evidence that such resolution was on the date of submission also submitted for filing with the secretary of state. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any ordinance by the board to any person other than the secretary of state.

(Code 1989, § 23.27; Ord. of 9-9-2003)

Sec. 2-193. Regulatory authority.

(a) Except as limited in subsection (b) of this section, by restrictions in any municipal ordinance, and by other supervening provisions of law, the commission may make regulations applicable to Lake Lure and its shoreline area concerning all matters relating to or affecting the use of Lake Lure. These regulations may not conflict with provisions of general or special acts or of regulations of state agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the county at least ten days before the hearing. In lieu of or in addition to passing regulations supplementary to state law and regulations concerning the operation of vessels on Lake Lure, the commission may, after public notice, request that the wildlife resources commission pass local regulations on this subject in accordance with the procedure established by appropriate state law.

(b) Violation of any regulation of the commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Lure or its shoreline area. Ordinances providing regulations for specific areas shall clearly establish the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When an ordinance providing regulations for a specific area is proposed, owners of the parcel of land involved as shown on the county tax listing, and the owners of land within 500 feet of the proposed area to be regulated, as shown on the county tax listing, shall be mailed a notice of the proposed classification by first-class mail at the last addresses listed for such owners on the county tax abstracts. This mailing requirement does not apply in regulations affecting the entire lake. Notice shall also be given by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to the waters of Lake Lure or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in the county.

(d) A copy of each regulation promulgated under this section must be filed by the commission with the following persons:

(1) The secretary of state;

(2) The clerk of the superior court of the county;

(3) The executive director of the wildlife resources commission; and

(4) The Federal Energy Regulatory Commission licensee for Lake Lure, if other than the town.

(e) Any official designated in subsection (d) of this section may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this subsection as required are for informational purposes and are a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the commission under

the provisions of other sections of this article relating to internal governance of the commission need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained, and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

(Code 1989, § 23.28; Ord. of 9-9-2003)

Sec. 2-194. Enforcement.

(a) All law enforcement officers with territorial jurisdiction as to any part of the waters of Lake Lure or its shoreline area within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of the waters of Lake Lure and its shoreline area. A certificate of training issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification for the purposes of this article.

(b) Where a law enforcement officer with jurisdiction over any part of the waters of Lake Lure or its shoreline area is performing duties relating to the enforcement of the laws on the waters of Lake Lure or in its shoreline area, the officer shall have such extraterritorial jurisdiction as may be necessary to perform the officer's duties. These duties include investigations of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing, by reasonable routes, from one portion of this area to another although across territory not within the boundaries of the waters of Lake Lure and its shoreline area; conducting prisoners in custody to a court or to detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of the county. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(c) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be considered an extension of the duties of the office held, and no officer shall take any additional oath or title of office.

(Code 1989, § 23.29)

Chapter 3 RESERVED

Chapter 4 ANIMALS[1]

Sec. 4-1. 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:

Chicken coop means a protective indoor space where chicken hens are kept.

Chicken run means a fully enclosed area where chicken hens may move freely in the open.

Dog having dangerous or destructive propensities means a dog which constitutes a physical threat to humans or other animals, or a dog which habitually turns over garbage receptacles, habitually destroys shrubs, flowers, grass, and other plant growth, habitually kills other animals, habitually attacks or attempts to attack persons, or habitually performs other similar acts.

Free range means permitting livestock to graze, forage for food or otherwise roam freely outdoors as opposed to being confined within an enclosure.

Hen means a female chicken.

Proper enclosure when used in reference to dogs means a building or other structure from which a dog cannot escape, or an outside area enclosed by a fence at least six feet in height secured to the ground in a manner so that a dog cannot escape.

(Code 1989, § 81.01; Ord. of 12-12-2023)

Sec. 4-2. Dangerous dogs; barking; leash requirements.

(a) The keeping or maintenance outside a proper enclosure of any dog having dangerous or destructive propensities is prohibited.

(b) The keeping or maintenance of any dog which by prolonged and habitual barking, howling, or whining cause serious annoyance to neighboring residents and interfere with the reasonable use and enjoyment of the premises occupied by such residents, or with the reasonable use and enjoyment of the public streets, sidewalks or other public areas, is prohibited.

[1]State law reference(s)—Rabies, G.S. 130A-184 et seq.; authority of city to define and prohibit abuse of animals, G.S. 160A-182; authority of city to regulate domestic animals, G.S. 160A-186; limitations on municipal regulations concerning standards of care for farm animals, G.S. 160A-203.1; authority of city to regulate possession or harboring of dangerous animals, G.S. 160A-187; bird sanctuaries, G.S. 160A-188.

(c) It shall be unlawful for any person owning, having possession, charge, care, custody or control of a dog to allow such dog to enter any town owned parcels, including, but not limited to, Lake Lure Town Hall, Washburn Marina, Morse Park, Dittmer Watts Nature Trail and Lake Lure Greenspace without being secured by a leash, lead or other means of physical restraint not exceeding 10 feet in length, which leash, lead or other means of physical restraint is not harmful or injurious to the dog and which is held by a responsible person capable of physically restraining the dog. This section shall apply to all dogs with the following exceptions:

(1) Dogs used or being trained for law enforcement by law enforcement officials.

(2) Service animals, as defined by the Americans with Disabilities Act, used by authorized persons and under the control of such persons.

(3) Dogs in specified off-leash areas as designated by the town.

(4) Dogs fulfilling a specific town or public purpose, per authorization from the town.

(Code 1989, § 81.02; Ord. of 9-11-2012; Ord. of 5-14-2019; Ord. No. 12-14-2021, Ord. of 11-9-2022)

Sec. 4-3. Livestock.

(a) *Keeping of livestock prohibited.* It shall be unlawful to keep or maintain any cow, mule, sheep, goat, hog, other livestock, or fowl other than hens as defined in section 4-1, on any lot or within any pen, stable, or other enclosure or building within the corporate limits. This section shall not be deemed to prohibit the assembling of livestock for shipment or the unloading from shipment of livestock, provided that such livestock are not kept within the corporate limits for more than 24 hours prior to shipment or subsequent to unloading.

(b) *Horses and ponies.* Horses and ponies may be kept within town limits for pleasure or recreational purposes only, provided that no horse or pony is kept, housed, penned, or maintained in a shed, stall, stable or other place within 200 feet of a residence, including the owner's or boarder's residence, church, store or other place of business. All pens, sheds, stalls or stables, or structures in which the same may be kept, housed or penned, shall at all times be required to be kept clean, disinfected and sanitary, and the same shall not emit at any time any noxious or offensive odor or smell which can be detected by and is offensive to the occupant of any house in the town. Safeguards must be utilized and maintained to minimize the breeding and dissemination of rodents and flies by the use of appropriate pesticides and feed-storage facilities. The pasturing of any horse or pony will be limited to one animal for every two acres of pasture.

(c) *Hens.* Up to four (4) hens may be kept within town limits, on residentially zoned properties, for non-commercial purposes only, provided that no hen is kept, housed, penned or maintained within 100 feet of a residence other than the owner’s or tenant’s, a church, store or other place of business. Additionally, hens shall be kept separated from any property line by a minimum of 50 feet and a minimum of 75 feet from any body of water or roadway. All areas where hens are kept shall at all times be required to be kept clean, disinfected and sanitary, and the same shall not emit at any time any noxious or offensive order which can be detected by and is offensive to the occupant of any dwelling in the town. Safeguards must be utilized and maintained to minimize the breeding and dissemination of rodents and flies by the use of appropriate pesticides and feed-storage facilities. Hens must be kept within a completely enclosed chicken coop and/or run, the total area of which shall not exceed 160 square feet in size. The free ranging of hens is prohibited. Any individual keeping hens within the town must obtain an annual registration fee to be in compliance with this section of the Code of Ordinances.

(d) *Effect upon existing livestock.* Persons keeping or maintaining within the corporate limits any of the animals named in subsection (a) of this section, shall remove them from the corporate limits in order to comply with subsection (a) of this section not later than six months from the effective date of the ordinance from which this subsection is derived.

(e) *Violations.* In any event, if any horse, pony or hen being kept pursuant to this section becomes noncompliant with these provisions, upon written notice given by the town to either the owner of the horse, pony or hen or the possessor of said horse, pony or hen, that owner or possessor shall have seven days to correct the deficiencies noted in the written notice, and failure to correct the deficiencies noted in the written notice shall constitute a violation of this chapter.

(Code 1989, § 81.03; Ord. of 2-23-1993, Ord. of 12-12-2023)

Sec. 4-4. Bird sanctuary.

(a) The territory within the corporate limits of the town is declared a bird sanctuary.

(b) It shall be unlawful for any person to kill, trap, or otherwise take any bird within the corporate limits except hawks, crows, starlings, pigeons, and domesticated fowls.

(c) On all town property, it shall be unlawful to:

(1) Feed any pigeon, duck, goose, or any other bird;

(2) Disperse any food material or other matter edible by pigeons, ducks, geese, or any other birds so as to make such material or matter available to pigeons, ducks, geese, or any other birds for ingestion; or

(3) Permit any food or other matter edible by any pigeon, duck, goose, or any other bird to remain on the ground after dispersing or dropping the same.

(d) A violation of subsection (c) of this section shall constitute an infraction for the first offense. Any subsequent violation occurring within six months after the first violation shall constitute a misdemeanor punishable as per section 4-5. At the sole discretion of the town attorney, any subsequent violation may be prosecuted as an infraction.

(Code 1989, § 81.04)

State law reference(s)—Establishment of bird sanctuaries authorized, G.S. 160A-188.

Sec. 4-5. Penalty.

(a) Any person violating the provisions of sections 4-2 and 4-3 shall be guilty of a misdemeanor, punishable on conviction by a fine not exceeding $50.00 or by imprisonment of not more than 30 days.

(1) The violation of any provision of section 4-3 shall subject the offender to a civil penalty in the amount of $50.00 to be recovered by the town. Violators shall be issued a written citation which must be paid within 72 hours.

(2) Each day's continuing violation of section 4-3 shall be a separate and distinct offense.

(3) Notwithstanding subsection (a)(1) of this section, this provision may also be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction or by criminal penalties as provided in G.S. 14-4.

(b) Any person violating the provisions of section 4-4 shall be guilty of a misdemeanor, punishable on conviction by a fine not exceeding $50.00 or by imprisonment of not more than 30 days, or both.

(c) In addition, enforcement of this chapter may be by injunction, restraining order, or order of abatement in a court of competent jurisdiction, as provided by G.S. 160A-175(d) and (e).

(Code 1989, § 81.99; Ord. of 2-23-1993)

Chapter 5 RESERVED

Chapter 6 BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. IN GENERAL

Secs. 6-1—6-18. Reserved.

ARTICLE II. ABANDONED STRUCTURES; UNFIT DWELLINGS[1]

Sec. 6-19. Finding; intent.

(a) *General.* It is hereby found that there exists within the town dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accident or other calamities; lack of ventilation, light, or sanitary facilities; and other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the town, and that there exists within the town abandoned structures which the town council finds to be hazardous to the health, safety, and welfare of the residents of the town due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. 160A-174 et seq., and 160D-1201 et seq., it is the intent of this article to provide for the repair, closing, or demolition of any such dwellings or abandoned structures in accordance with the provisions and procedures as are set forth by law.

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

Abandoned structure means any structure, whether designed and intended for residential or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past two-year period and which is determined by the code enforcement officer to be unfit for human habitation or occupancy based upon the standards as set forth in this article.

Code enforcement officer means the code enforcement officer designated or appointed by the town council to carry out the administration and enforcement of this article.

Structure means a combination of material to form a construction. The term "structure" shall be construed as if followed by the words "or part thereof."

(Code 1989, § 90.01; Ord. of 3-13-2012)

[1]State law reference(s)—Minimum housing codes, G.S. 160D-1201 et seq.; regulation regarding repair or demolition of nonresidential structures, G.S. 160D-1129; condemnation of unsafe buildings, G.S. 160D-1119.

Sec. 6-20. Duties of the code enforcement officer.

The code enforcement officer is hereby designated as the town officer to enforce the provisions of this article. It shall be his duty to:

(1) Locate abandoned structures within the town and determine which structures are in violation of this article;

(2) Locate dwellings within the town that are unfit for human habitation;

(3) Take such action, pursuant to this article as may be necessary to provide for the repair, closing, or demolition of such structures and dwellings;

(4) Keep an accurate record of all enforcement proceedings begun pursuant to the provisions of this article; and

(5) Perform such other duties as may be prescribed herein or assigned to him by the town council.

(Code 1989, § 90.02; Ord. of 3-23-1982; Ord. of 3-13-2012)

Sec. 6-21. Powers of the code enforcement officer.

The code enforcement officer is authorized to exercise such powers as may be necessary to carry out the intent and the provisions of this article, including the following powers in addition to others granted herein:

(1) To investigate the condition of buildings within the town in order to determine which structures are abandoned and in violation of this article and to report the same to the town council;

(2) To investigate the condition of dwellings within the town in order to determine those that are in violation of this article and to report the same to the town council;

(3) To enter upon premises for the purpose of making inspections;

(4) To administer oaths and affirmations, examine witnesses, and receive evidence; and

(5) To designate such other officers, agents, and employees of the town as he deems necessary to carry out the provisions of this chapter.

(Code 1989, § 90.03; Ord. of 3-23-1982; Ord. of 3-13-2012)

Sec. 6-22. Standards for enforcement.

(a) Every abandoned structure within the town shall be deemed in violation of this article whenever such structure constitutes a hazard to the health, safety, or welfare of the town citizens as a result of:

(1) The attraction of insects or rodents;

(2) Conditions creating a fire hazard;

(3) Dangerous conditions constituting a threat to children; or

(4) Frequent use by vagrants as living quarters in the absence of sanitary facilities.

(b) In making the determination of whether or not an abandoned structure is in violation of this article, the code enforcement officer may, by way of illustration and not limitation, consider the presence or absence of the following conditions:

(1) Holes or cracks in the structure's floors, walls, ceilings, or roof which might attract or admit rodents and insects, or become breeding places for rodents and insects;

(2) The collection of garbage or rubbish in or near the structure which might attract rodents or insects, or become breeding places for rodents or insects;

(3) Violations of the fire prevention code which constitutes a fire hazard in such structure;

(4) The collection of garbage, rubbish, or combustible material which constitutes a fire hazard in such structure;

(5) The use of such structure or nearby grounds or facilities by children as a play area;

(6) Repeated use of such structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking, or eating.

(c) A dwelling within the town shall be deemed unfit for human habitation, and the code enforcement officer may so determine, if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety, or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the town.

(d) In seeking the determination of whether or not a dwelling is in violation of this article, the code enforcement officer may, by way of illustration and not limitation, consider the following defective conditions:

(1) Defects therein increasing the hazards of fire, accidents, or other calamities.

(2) Lack of adequate ventilation, light, or sanitary facilities.

(3) Dilapidation.

(4) Disrepair.

(5) Structural defects.

(6) Uncleanliness.

(Code 1989, § 90.04; Ord. of 3-23-1982; Ord. of 3-13-2012)

Sec. 6-23. Procedure for enforcement.

(a) *Preliminary investigation; complaint and notice of hearing.* Whenever a petition is filed with the code enforcement officer by a public authority or by at least five residents of the town charging that any dwelling or structure is in violation of this article or whenever it appears to the code enforcement officer, upon inspection, that any dwelling or structure exists in violation hereof, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or structure a complaint stating the charges and containing a notice that a hearing will be held before the code enforcement officer at a place therein fixed, not less than ten or more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such dwelling or structure. Any person so desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.

(b) *Notice of lis pendens.* Upon the issuance of a complaint and notice of hearing pursuant to this section, the inspector may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing

attached thereto, in the office of the clerk of superior court of the county, to be indexed and cross-indexed in accordance with the indexing procedures of the state general statutes. The inspector shall cause a copy of the notice of lis pendens to be served upon the owners and parties in interest in the dwelling at the time of filing in accordance with G.S. 160D-1206, as applicable. Upon compliance with the requirements of any order issued based upon such complaint and hearing, the inspector shall direct the clerk of superior court to cancel the notice of lis pendens.

(c) *Procedure after hearing; order.* If, after notice and hearing, the code enforcement officer determines that the structure under consideration is unfit for human habitation in accordance with the standards set forth herein, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order as provided herein.

(1) If the repair, alteration or improvement of the dwelling can be made at a cost of less than 50 percent of the value of the dwelling, the order shall require the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation.

(2) If the repair, alteration or improvement of the dwelling cannot be made at a cost of less than 50 percent of the value of the dwelling, the order shall require the owner, within the time specified, to repair, alter, or improve the dwelling in order to render it fit for human habitation or, at the owner's option, to remove or demolish such dwelling.

(3) If continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements, the current state of the property, and any additional risks due to the presence and capacity of minors under the age of 18 years or occupants with physical or mental disabilities, the order may require that the property be vacated and closed. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the remedies afforded the town in subsection (d) of this section.

(d) *Failure to comply with order.*

(1) *In personam remedy.* If the owner of any dwelling or structure shall fail to comply with an order of the code enforcement officer within the time specified therein, the code enforcement officer may submit to the town council at its next regular meeting a resolution directing the town attorney to petition the superior court for an order directing such owner to comply with the order of the inspector, as authorized by G.S. 160D-305.

(2) *In rem remedy.* After failure of an owner of a dwelling or structure to comply with an order of the code enforcement officer within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in subsection (d)(1) of this section, the code enforcement officer shall submit to the town council an ordinance ordering the code enforcement officer to cause such dwelling or structure to be repaired, altered or improved, vacated and closed, or removed or demolished, as provided in the original order of the code enforcement officer and pending such repair, alteration, improvement, vacating, closure, removal or demolition, to placard any such dwelling as provided by G.S. 160D-1203.

(e) *Appeals.*

(1) The board of adjustment is hereby appointed as the housing appeals board to which appeals from any decision or order of the code enforcement officer may be taken. Except where this article provides for different rules or procedures, the board of adjustment acting as the housing appeals board shall follow its rules of procedure, which may be amended to provide specifically for this function.

(2) An appeal from any decision or order of the code enforcement officer may be taken by any person aggrieved thereby or by any officer, board or commission of the town. Any appeal from the code enforcement officer shall be taken within 15 days from the rendering of the decision or service of the order by filing with the code enforcement officer and with the board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the code enforcement officer refusing to allow the person aggrieved thereby to do any such act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the code enforcement officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the code enforcement officer certifies to the board after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the code enforcement officer, by the board, or by a court of record upon petition made pursuant to subsection (e)(5) of this section.

(3) The board of adjustment shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the code enforcement officer, but the concurring vote of four-fifths of the members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer. The board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this article, to adapt the application of the section to the necessities of the case to the end that the spirit of the article shall be observed, public safety and welfare secured, and substantial justice done.

(4) Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(5) Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board may petition the superior court for an injunction, restraining the code enforcement officer from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the code enforcement officer pending a final disposition of the cause as provided by G.S. 160D-305. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the court on a petition within 20 days, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection.

(Code 1989, § 90.05; Ord. of 3-23-1982; Ord. of 3-13-2012; Ord. of 3-14-2013)

Sec. 6-24. Methods of service of complaints and orders.

(a) Complaints or orders issued by the code enforcement officer shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days

after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the inspector makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the town at least not later than the time at which personal service would be required under the provisions of this article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(Code 1989, § 90.06; Ord. of 3-23-1982; Ord. of 3-13-2012)

Sec. 6-25. In rem action by code enforcement officer; placarding.

(a) After failure of an owner of a structure to comply with an order of the code enforcement officer issued pursuant to the provisions of this article, and upon adoption by the town council of an ordinance authorizing and directing him to do so, as provided by G.S. 160D-1203 and section 6-23(c), the code enforcement officer shall proceed to cause such structure to be repaired, altered or improved, vacated and closed, or removed or demolished, as directed by the ordinance of the town council and shall cause be to posted on the main entrance of such structure a placard prohibiting the use or occupation of the structure. Use or occupation of a building so posted shall constitute a misdemeanor.

(b) Each such ordinance shall be recorded in the office of the register of deeds in the county, and shall be indexed in the name of the property owner is the grantor index, as provided by G.S. 160D-1203.

(Code 1989, § 90.07; Ord. of 3-23-1982; Ord. of 3-13-2012)

Sec. 6-26. Costs a lien on premises.

(a) As provided by G.S. 160D-1203, the amount of the cost of any removal or demolition caused to be made or done by the code enforcement officer pursuant to this article shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by G.S. ch. 160A, art. 10 (G.S. 160A-216 et seq.).

(b) If the dwelling is removed or demolished by the code enforcement officer, he shall sell the materials of the dwelling, and any personal property, fixture or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the code enforcement officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order of the decree of the court.

(Code 1989, § 90.08; Ord. of 3-23-1982; Ord. of 3-13-2012)

Sec. 6-27. Alternative remedies.

(a) Neither this article nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this chapter by criminal process, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy provided herein or in other ordinance or law.

(b) In addition to the remedies provided for herein, an owner or party of interest may be subject to a misdemeanor as provided in NCGS 14-4(a) for any violation of the terms of this article. In addition, violations of this article may subject the violator to civil penalties and remedies as set forth in section 1-10.

(Code 1989, § 90.09; Ord. of 3-23-1982; Ord. of 3-13-2012. Ord. of 6-14-2022)

Sec. 6-28. Conflict with other provisions.

In the event any provision, standard or requirement of this article is found to be in conflict with any provision of any other ordinance or Code, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the town's jurisdiction shall prevail. The North Carolina Building Code, current edition, shall serve as the standard for all alterations, repairs, additions, removals, demolitions and other acts of building made or required pursuant to this chapter.

(Code 1989, § 90.10; Ord. of 3-13-2012)

Sec. 6-29. Violations.

In addition to the conditions, acts or failures to act that constitute violations specified in this article, it shall be a violation of this article for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or vacate and remove or demolish the same, upon order of the code enforcement officer duly made and served as herein provided, within the time specified in such order. It shall be a violation of this article for the owner of any dwelling, with respect to which an order has been issued pursuant to section 6-23, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, or vacation and removal or demolition. Violations of this section are punishable as a misdemeanor as provided by G.S. 14-4. In addition, violations of this article may subject the violator to civil penalties as set forth in section 1-10.

(Code 1989, § 90.11; Ord. of 3-13-2012, Ord. of 6-14-2022)

Secs. 6-30—6-46. Reserved.

ARTICLE III. LAKE STRUCTURES

Sec. 6-47. Intent and application.

(a) *Intent.* All land covered by the waters of Lake Lure at full pond is owned by the town. Lure is held in trust by the town for the benefit of the citizens of the town. Based on the above, the town council desires to establish regulations governing all structures to be erected and maintained within the boundaries of the lake for the purpose of enhancing the health, safety, and welfare of the general public and to preserve the property of the town and the properties of upland landowners.

(b) *Application.* No structure shall hereafter be erected or maintained within the lake boundary of Lake Lure within the corporate limits of the town and no use made of the water surface and land thereunder or any facility or structure located thereon, except in conformity with the regulations of this article, or amendments thereto. Issuance of a permit or certificate for a lake structure does not confer any rights to ownership of land or water owned by the town.

(c) *Preexisting structures.* The town recognizes that some lake structures with living quarters existed at the time of adoption of these regulations. It is the intent of the town that this nonconforming use of lake structures

eventually goes away. These structures may continue such use, including repairs and remodeling consistent with these regulations, until the structure is voluntarily removed or involuntarily destroyed.

(Code 1989, § 94.01; Ord. of 12-15-1992; Ord. of 4-12-2016)

Sec. 6-48. 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:

Boardwalk means a structure running parallel to the shoreline and used for pedestrian access along the shoreline of one or more properties.

Boathouse means any roofed structure enclosed with walls containing one or more slips designed principally for permanent or temporary storage and/or housing of watercraft.

Cluster mooring facility means a fixed or floating pier with more than three permanent moorings to provide dock space to owners of condominiums and other dwellings or customers of marinas.

Commercial use means any use of the lake or lake structure in a manner that will generate direct or indirect revenue or by a commercial entity that operates for profit or not for profit. The term "commercial use" can be, but is not limited to, activities that may occur in connection with any type of business, trade or commerce such as boat rentals, marinas, resorts, inns, lodging establishments, camps, ski schools, fishing guides, realtors, house rentals, tour boats, contractors, boat repair companies, real estate development companies or property owners associations.

Covered slip means any roofed structure not enclosed with walls and containing one or more slips designed principally for permanent or temporary storage and/or housing of watercraft.

Cutoff fixture means a fixture, which provides a cutoff (shielding) of the emitted light.

Distance from the shoreline means measured from the contour elevation of 990 feet MSL.

Dock means a platform generally parallel to the shoreline for the reception, loading, unloading and mooring of boats.

Glare means the discomfort or impairment of vision experienced when parts of the visual field are excessively bright in relation to the general surroundings.

Involuntary destruction means destroyed or rendered useless by an act of God or force of nature. This shall not include structures rendered useless due to decay or deterioration as the result of neglect and lack of maintenance.

Lake advisory board means the board appointed by the town council to advise the town council, the marine commission, and staff, on lake-related issues.

Lake boundary means the contour elevation 995 feet MSL. The term "lake boundary" is not synonymous with the term "lake shoreline."

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 structure administrator means the person responsible for administering and enforcing the lake structure regulations.

Lake structure appeals board means the board appointed by the town council to review and rule on applications for lake structure permits and variances.

Lake structure certificate means the document that is issued to property owners following approval by the lake structure administrator that the lake structure adjacent to their property conforms to this article.

Lake structure tag means a metal tag, to be affixed to a lake structure, which indicates that a lake structure certificate has been issued.

Light trespass means light directed or projected beyond a perimeter of 50 feet from any light source on the lake structures or shore.

Living quarters means a room used as overnight housing, designed to be used as overnight housing or equipped with furnishings, appliances and accessories that create a domicile.

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.

Marina, restricted, means a facility with a lakefront location contiguous to a private development or commercial property which provides temporary or permanent watercraft moorings for rent or lease to occupants, guests, clients, or customers of that property only, and not to the general public not doing business with that property.

Marina, unrestricted, means a facility with a lakefront location which provides temporary or permanent watercraft mooring for rent or lease and may also include the rental, sale or repair of boats, boat motors, and accessories, and/or the sale of marine fuel and lubricants, bait and fishing equipment, and the like to the general public.

Markers means floating buoys or fixed signs that give navigational or warning information.

Measurable shoreline means the shoreline length used to determine what type of lakeside structures are permissible, the permissible number of such structures, and the permissible dimensions of such structures. The term "measurable shoreline" is the front footage of any upland lot where it meets the shoreline with the exclusion of creeks, streams or other tributaries, which may be covered with water at the elevation of 990 MSL and is 28 feet or less in width. The span of the tributary shall be included in the measurable shoreline; measured at the narrowest point at either the mouth if narrower than 28 feet at the 990 MSL or where it constricts to 28 feet.

Moored floating platform means a floating platform anchored near the shoreline for the use of swimmers, to include both solid surfaced swimming floats and inflatable water recreational platforms.

Mooring means a location adjacent to the shoreline or any lake structure, equipped with cleats, posts or any other devices intended to secure a boat.

Mooring, permanent, means a mooring that can be occupied at any time.

Mooring, temporary, means a mooring that can only be occupied during the hours between 6:00 a.m. and 12:00 midnight.

MSL means the elevation above mean sea level, North Carolina Geodetic Survey Datum.

Multi-dwelling use means any use of the lake or lake structure in a manner that creates a lake portal for owners or occupants of multiple dwellings. The term "multi-dwelling use" can be, but is not limited to, activities that may occur in connection with any type of operation or association such as boat clubs, real estate development companies or property owners associations.

Permit means documents that are required prior to any construction of a structure on land or in the lake within the lake boundary.

Pier means an uncovered structure extending from land out into the lake for the mooring of boats and to afford convenient passage of passengers and cargo to and from boats.

Ramp means a short slope extending from the shoreline into the lake for the purpose of launching or retrieving a boat.

Reconstruction means full or partial replacement of a lake structure or more than 50 percent of the structure's support base. The support base consists of all components underlying but within the exterior perimeter of the structure.

Repair, internal, external or cosmetic, means actions that affect the general maintenance of a lake structure, but do not alter electrical or plumbing systems, or the outer dimensions of the structure. Examples of the term "repair; internal, external or cosmetic" include painting, staining, or pressure washing; replacing decking inside or outside of a structure; replacing exterior siding; replacing the roof covering, felt or sheeting; removing and replacing rooftop decks; replacing entrance or boat slip doors; replacing windows; or replacing any portion of approved decktop accessory structures. Also included are standard repairs of electrical or plumbing items by licensed professionals.

Repairs, Minor Structural. Structural repair or replace in like kind actions to an existing lake structure costing no more than $4,999.

Repair, structural, means actions that affect sea walls and other shoreline stabilization methods; or the support base, framing, electrical or plumbing systems, or alteration of the outer dimensions of any lake structure. Examples of the term "repair, structural" are support posts, footers, studs, headers, top or bottom wall plates, load-bearing walls, floor joists, rafters, wiring, circuit breakers, or sewer connections; or repairs affecting height, length, width, or relationship of the structure to setbacks.

Sea wall means a structure built along the shoreline to resist the erosion of the land caused by the lake and which may also be used to moor boats and as a structure to receive and discharge a boat's passengers and cargo.

Shoreline means the line where the land or an existing seawall and waters of the lake meet. For the purpose of these regulations, the normal lake level of 990 feet MSL as it exists for the majority of each year shall be used to establish the shoreline. The official benchmark for MSL Datum shall be as marked on the Lake Lure dam. For the purpose of positioning lake structures along an irregular boundary, the term "shoreline" shall be defined as the straight line between the two widest points on the shoreward side of the lake structure, where they meet the shoreline.

Slip means a specific type of mooring, contiguous to a lake structure that is confined by two parallel sides of the lake structure, does not exceed 11 feet in width and that is designed for temporary or permanent mooring. A space confined by one side and one end may be a mooring, but is not a slip.

Upland lot means a lot having a boundary coexistent with the portion of the shoreline where a lake structure exists or is planned.

Usable shoreline means the shoreline length on lots of record that is available for use for lake structures after subtracting the required 30 feet from both 15-foot side yard setbacks from the measurable shoreline.

Water depth means measured from the average lake level of 990 feet above mean sea level, North Carolina Geodetic Survey Datum.

(Code 1989, § 94.02; Ord. of 8-9-1994; Ord. of 10-20-1998; Ord. of 6-18-2001; Ord. of 12-9-2003; Ord. of 4-12-2005; Ord. of 7-11-2006; Ord. of 8-14-2007; Ord. of 4-12-2011; Ord. of 12-9-2014; Ord. of 4-12-2016)

Sec. 6-49. Permit to construct.

(a) No structure of any kind, whether stationary, floating, or access ramp, or fuel dispensing system for boats, shall be constructed or installed before having first made written application for and obtained from the lake structure administrator a lake structure permit. A building permit must be obtained from the county building inspector except for structures installed rather than built (such as umbrellas, awnings, canopies, or moored inflatable platforms), so long as these structures do not exceed 150 pounds in total weight. Upon application for a lake structure permit, the applicant shall present to the lake structure administrator the following information and materials. The application and all plans shall be signed and dated by the property owner. Additional restrictions and regulations apply to commercial lake structures, cluster mooring facilities and marinas. Please see sections 6-58 through 6-60 for information regarding the permit to construct these types of lake structures.

(1) Plans, drawn to scale, showing the location of the proposed installation with respect to the shoreline and the boundaries of the upland lot to which it is adjacent.

(2) A map of the measurable shoreline of upland lot showing the shoreline length.

(3) Plans certified by a licensed architect or engineer in accordance with the state code, drawn to scale, showing the height, length, width and configuration of the proposed installation. Excluded from this requirement are structures installed rather than built (such as umbrellas, awnings, canopies, or moored inflatable platforms) so long as these structures do not exceed 150 pounds in total weight.

(4) Whether covered or uncovered (enclosed or open).

(5) Specified materials for use in construction or installation.

(6) Water depth at the farthest point of projection.

(7) Distance from the farthest point of projection to the opposite shore.

(8) Proof of liability insurance (see section 6-50).

(9) Documents showing approval of fuel storage and dispensing systems from any appropriate federal, state and local agencies, if required.

(10) In the case of a boathouse, proof of ownership of a residence or residence under construction on the upland lot or an adjoining lot. This is not required for any other lake structures.

(11) Plans for the construction of a sea wall (if required) must be accompanied by all required permits (e.g., North Carolina Division of Water Quality, Army Corps of Engineers, North Carolina Game and Wildlife, etc.). The applicant is responsible for separately securing required permits from the applicable county, state, or federal agency.

(12) The application 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 fee.

(13) A deposit of compliance that is refundable if the structure receives a lake structure certificate. The deposit of compliance shall be a certified or cashier's check for $500.00 for any structure or alteration costing more than $1,000.00 and less than $5,000.00 or $1,000.00 for any structure or alteration costing more than $5,000.00.

(b) Dimensional and structural guidelines are provided in section 6-51 and in the town standards, specifications and details for construction.

(c) Construction pursuant to the issuance of a lake structure permit must commence within six months of approval and may not, thereafter, cease for a period of 12 consecutive months or the permit shall become invalid. If the structure for which a permit was approved has not received a lake structure certificate within two years after the date of approval, the applicant shall be required to renew the permit and comply with all regulations in effect on the date of renewal.

(d) The final approval of the construction shall require an inspection and certification by the lake structure administrator that the structure was built substantially in accordance with the approved plans. Where plans submitted for a dock, pier or boathouse show that any portion of the new structure or addition to an existing structure will be within 20 feet of either side lot line as extended into the lake or within five feet of the maximum distance the structure is allowed to extend into the lake, a survey prepared by a registered land surveyor or civil engineer shall be made to ensure that the proposed structure has been located as shown on the approved plans. The survey shall also indicate the location of roof overhangs, decks, and any other appurtenances that extend beyond the walls of any boathouse. This survey shall be submitted to the lake structure administrator for review. The lake structure administrator shall have the authority to require a survey where there is a question regarding the location of a new sea wall in relation to the approved plans. All approved structures, upon final inspection, shall be issued a lake structure certificate and tag. Upon issuance, the tag shall be attached to the structure to indicate it is an approved structure.

(Code 1989, § 94.03; Ord. of 8-9-1994; Ord. of 2-12-2002; Ord. of 7-11-2006; Ord. of 9-12-2006; Ord. of 8-14-2007; Ord. of 10-13-2009)

Sec. 6-50. Liability insurance.

All property owners having structures other than seawalls on Lake Lure (including existing lake structures as well as future lake structures) must at all times keep and maintain in force, at their sole expense, liability insurance coverage against claims for bodily injury, death or property damage occurring in or about the lake structure in the amount of at least $500,000.00 per occurrence. Prior to applying for a lake structure permit or renewal of a lake structure certificate, proof of this liability insurance must be provided the town pursuant to section 6-49(a)(8).

(Code 1989, § 94.04; Ord. of 6-28-1994; Ord. of 10-20-1998; Ord. of 7-11-2006; Ord. of 9-12-2006)

Sec. 6-51. Design and construction standards.

The following standards shall be adhered to during the design and construction of any structure on Lake Lure. The lake structure administrator will carefully examine plans submitted with any applications for a lake structure permit as described in section 6-49, to be sure that the plans meet the following provisions. Requests for variances must be made when the lake structure permit application is submitted.

(1) Effective the date of this regulation, December 15, 1992, the minimum measurable shoreline length required to construct any lake structure shall be 100 feet. Nonconforming lots of record that existed prior to these regulations, with 35 to 100 feet of measurable shoreline length, may construct any authorized lake structure, provided minimum setbacks are met, and the owner of the subject lot does not own contiguous upland property to enable conformity to the minimum measurable shoreline length through recombination. When contiguous upland property is owned by the same owner, it shall be legally recombined to achieve the longest shoreline length possible, before any lake structure is approved. In rare situations, recombination may not be legally possible. Should recombination not be allowed, the subject shoreline shall be treated as though it is not contiguously owned. See examples A and B in subsections (1)d.1 and 2 of this section. Sea walls are allowed on any lot subject to shoreline stabilization requirements in section 6-53.

a. Covered or enclosed structures, including boathouses, shall be limited to a width of 45 feet or 45 percent of the measurable shoreline length, or the usable shoreline length of the upland lot, whichever is less.

b. Lots with 100 feet or more of measurable shoreline length shall be limited to any authorized lake structure or combination thereof, with a maximum of three moorings or slips, provided minimum setbacks are met. Other provisions of these regulations shall apply and the maximum number of moorings or slips shall not be varied.

c. Lots of record with 35 to 100 feet of measurable shoreline length shall be limited to any authorized lake structure or combination thereof, with a maximum of two moorings or slips, and shall not exceed the usable shoreline length. Variances are not permitted for the maximum number of moorings or slips; or structures that are larger than what the usable shoreline will accommodate. Covered or enclosed structures shall require a lake structure appeals board determination the proposed structure will not materially obstruct the view of the lake from any adjacent upland property. Other provisions of these regulations shall apply. See examples C and D in subsections (1)d.3 and 4 of this section.

d. Lots of record with a minimum measurable shoreline length of less than 35 feet shall be limited to a single mooring, which shall not be varied. This mooring may be part of a pier not to exceed six feet in width. The pier will be centered on the subject shoreline to the greatest extent possible but, without variance, shall be allowed up to five feet off center. When placed off center, the tie up cleats will be on the side of the pier with the greatest area available between the pier and the projected property line. Other provisions of these regulations shall apply, which may require a variance.

    1. Example A. A lot of record has 50 feet of measurable shoreline which, after subtracting the 30 feet for both 15-foot side yard setbacks, could accommodate a boathouse with one slip in the 20 feet of remaining usable shoreline.

    2. Example B. The same owner in example A owns the small upland lot of record next door with 25 feet of measurable shoreline, which would normally allow a single pier. That owner could not build the small boathouse on the one lot and the pier on the other. Instead, that owner must recombine the lots to provide 75 feet of measurable shoreline before building any structure. If the recombination was not allowed for some legal reason, then both lots could be built upon.

    3. Example C. Assume the recombination in example B did occur. On the new 75-foot lot, the owner would be allowed to build any authorized lake structure that would fit in the resulting 45 feet of usable shoreline, but still subject to the lesser 45 percent of the measurable shoreline length for covered or enclosed structures, which is 33.75 feet in this scenario. The owner could then build a boathouse up to 33.75 feet wide with two slips anywhere within that 45 feet of usable shoreline. The remaining usable shoreline space could be used for docks and access.

    4. Example D. A lot of record with only 40 feet of measurable shoreline could build a small lake structure up to ten feet wide. Conversely, that same lot could not get a variance to build the structure 11 feet wide or wider. The usable shoreline, ten feet in this example, is less than 45 percent (18 feet) of the measurable shoreline.

(2) No structure shall be placed in the water more than 30 feet or one third the distance to the opposite shore, whichever is less, as measured to and from the shoreline. At least one third of the waterway shall be left unobstructed. No portion of any lake structure shall extend beyond this boundary. For the

purpose of positioning lake structures along an irregular boundary, the shoreline shall be defined as the straight line between the two widest points on the shoreward side of the structure, where they meet the shoreline. The measurement to the opposite shore shall be made to the point on the opposite shore which results in the shortest distance from the proposed structure.

(3) No portion of any structure shall be located closer than 15 feet to any side lot line, as projected into the lake. The projection of the lot line shall be a straight line on the same bearing as the lot line and shall extend no further than 30 feet or one third the distance to the opposite shore. This provision does not apply to sea walls.

(4) Handrails should be constructed in such a way so as not to interfere with boaters' visibility.

(5) Height.

a. Except as provided in subsection (5)b of this section, lake structures shall not exceed 15 feet in height above the shoreline elevation of 990 feet MSL. This does not include the additional height of railings (no greater than 42 inches) around a rooftop deck. As actual lake levels may vary, establishing the 990 MSL on any particular day can be achieved by calling the town hall for the lake level reading at the dam on that day. The maximum allowable height of structures above the shoreline elevation can then be calculated. As an example, if the lake level is one foot below 990 MSL, then the maximum allowable height is 16 feet above the actual level of the lake on that particular day.

b. Accessory structures to be used for protection from direct sun and rain may be erected above rooftop decks provided they meet the following standards and are approved by the lake structures appeals board.

(6) Decktop accessory structures guidelines:

a. Shall not exceed a height of ten feet above the surface of the rooftop deck. Thus, the maximum allowable height of any lake structure that includes a decktop accessory structure is 25 feet.

b. Shall not exceed 50 percent of the area of the rooftop deck or 150 square feet, whichever is less.

c. Shall be completely open on all sides except for partial walls not more than 42 inches in height above the surface of the rooftop deck and insect screens.

d. Shall be located abutting the shoreward end of the rooftop deck and not extend towards the lake beyond the midpoint of the deck.

e. Shall not include any sanitary facilities.

f. May include one storage container not more than 42 inches in height to store deck furnishings.

(7) Decktop accessory structures shall be approved by the lake structures appeals board upon a finding that the structures meet the standards in this subsection and that they do not materially obstruct the view of the lake from any adjacent or nearby properties.

(8) Materials of construction for pilings shall include reinforced concrete, hot dipped galvanized steel, aluminum, or pressure-treated wood, provided railroad ties and other wood treated with creosote or similar material shall not be allowed. Anchorages for floating docks and piers shall be of galvanized steel cables or the equivalent secured to reinforced concrete anchorage on the lake bottom and/or to steel anchor piles in firm ground on shore. Alternate materials may be approved if specified by a licensed engineer or architect and does not pose an environmental threat.

(9) The town exercises no jurisdiction or control over the design of structures to be built over the lake, but strongly urges that the design of lake structures be architecturally compatible with that of the residence on the adjoining upland lots.

(10) Any sewage or wastewater systems installed in or on lake structures must meet state and local codes.

(11) No lake structure shall be designed, constructed or used as temporary or permanent living quarters.

(12) Satellite dish antennae of not more than 30 inches in diameter may be installed on lake structures, provided they do not exceed the highest portion of the lake structure to which it is attached.

(13) Moored floating platforms.

a. Moored wooden or other solid surfaced floating swimming platforms shall be no greater than 64 square feet in area and have white or silver reflectors affixed to both sides of each corner. The frames for such structures shall be constructed of hot dipped galvanized steel or pressure treated lumber and with polystyrene floatation. Steel drums are prohibited. Alternate materials may be approved if specified by a licensed engineer or architect and does not pose an environmental threat. Only one permanently moored floating platform (solid or inflatable) shall be permitted for each upland lake front lot, except as provided in subsection (13)c of this section.

b. Permanently moored inflatable floating platforms shall be no greater than 178 square feet in area or 15 feet in diameter and have white or silver reflectors affixed to both sides of each corner or, for circular platforms, at least every six feet of circumference. Such platforms shall be located not less than ten feet from the shore or any hard surfaced structures and shall be moored in water not less than ten feet in depth at any point below the platform. All permanently moored inflatable floating platforms shall be removed from the lake between November 1 and April 1 of each year and at any time they deflate or are in a state of disrepair. As part of the permit application process, the applicant shall provide a copy of the manufacturer's recommended safety specifications and shall specify the manner in which the applicant will adhere to said specifications. Only one permanently moored floating platform (solid or inflatable) shall be permitted for each upland lake front lot, except as provided in subsection (13)c of this section.

c. Permanently moored inflatable floating platforms larger than 178 square feet in area may be approved by the town council, but only for organized group recreation programs supervised by appropriately trained personnel meeting the standards of the American Red Cross. Said platforms shall only be approved adjacent to land zoned R-3, CG or GU under chapter 92 and shall have white or silver reflectors affixed to both sides of each corner or, for circular platforms, at least every six feet of circumference. All permanently moored inflatable floating platforms shall be removed from the lake between November 1 and April 1 of each year and at any time they deflate or are in a state of disrepair. As part of the permit application process, the applicant shall provide a copy of the manufacturer's recommended safety specifications and shall specify the manner in which the applicant will adhere to said specifications. At its discretion, the town council may allow more than one permanently moored inflatable floating platforms adjacent to land zoned R-3, CG or GU.

d. Anchorage for moored floating platforms shall be of galvanized steel cables, galvanized chain or stainless steel cables secured to reinforced concrete anchorage on the lake bottom, vertically below. Alternate materials may be approved if specified by a licensed engineer or architect and does not pose an environmental threat.

e. Temporarily moored inflatable water recreation devices shall be no greater than 80 square feet in area or ten feet in diameter and are allowed in the lake only from April 1 through November 30.

f. Any moored floating platform, whether permanent or temporary, shall be identified with the owner's name, local address, and local telephone number so that the platform can be identified and returned if it breaks loose from its mooring. This identification may be accomplished by attaching a metal or plastic tag to the platform or by printing the information directly onto the device using paint or ink.

(14) Boardwalks shall not exceed four feet in width and shall not extend more than six feet into the lake. If approved by adjoining property owners, a boardwalk may run the full distance from property line to property line or even cross the property line if the adjacent properties' owners approve of its construction and wish it to continue along in front of their property.

(15) No lake structure, other than sea walls, shall obstruct the free flow of water in the lake.

(16) As a condition of issuance of a permit, all structures built above the roof of a boathouse or covered slip, including decks and deck top accessory structures, shall require certification by a licensed architect or engineer that the boathouse structure is capable of supporting the dead and live load of the rooftop structure. Excluded from this requirement are structures installed rather than built (such as umbrellas, awnings, canopies, or moored inflatable platforms) so long as these structures do not exceed 150 pounds in total weight.

(17) Temporary mooring at commercial and resort locations shall be identified by a sign which states that the mooring may only be occupied during the hours between 6:00 a.m. and 12:00 midnight.

These standards shall not apply to any lake structures owned or proposed by the town, providing that designs for such structures have been reviewed and approved by the lake advisory board and the town council.

(Code 1989, § 94.05; Ord. of 12-15-1992; Ord. of 10-20-1998; Ord. of 6-18-2001; Ord. of 4-12-2005; Ord. of 7-11-2006; Ord. of 8-14-2007; Ord. of 3-11-2008; Ord. of 10-13-2009; Ord. of 4-12-2011; Ord. of 4-12-2016)

Sec. 6-52. Repair, reconstruction, and removal of structures.

(a) Internal, external, and cosmetic repairs do not require a lake structure permit, unless a county building permit is required. It is the property owner's responsibility to determine if a county building permit is required for the work being performed.

(b) Minor structural repairs and replacements may be excluded from the requirement that plans be professionally sealed if presented plans are approved by the Lake Structure Administrator as sufficient to justify the applicant’s assurance of structural integrity of the project.

(c) Structural repairs and reconstruction of lake structures require a lake structure permit as described in section 6-49 before any work is performed. A survey shall be required, and must accompany the application for all structural repair and reconstruction endeavors that affect the physical location, outer dimensions (height, length, width), projection into the lake, or setbacks of a lake structure. A county building permit may also be required depending on the nature and extent of the work.

(d) Reconstruction of lake structures shall be permitted as described in section 6-49; shall begin within 18 months from the date of condemnation, collapse, or destruction; and shall meet the following requirements:

(1) The original structure may be replaced with a like structure, not necessarily of the same dimensions, (i.e., a dock with a dock, a boathouse with a boathouse) and shall not include living quarters over the water.

(2) Height and projection into the lake meets current standards as described in section 6-51.

(3) The number of permanent moorings meets current standards as described in section 6-51.

(4) The distance from the lake structure to the projected upland lot property lines, if less than 15 feet, shall be no closer to the projected lot line than the structure being replaced and shall not encroach on or over projected property lines.

(e) Cleanup and removal of condemned, collapsed, or involuntarily destroyed structures shall begin within 90 days of the date of condemnation, collapse, or destruction. Hazardous items such as fuel, lubricants, paint, chemicals, unused boat batteries, etc., shall be removed immediately to protect water quality.

(f) These standards shall not apply to any lake structures owned by the town, providing that designs for such structures have been reviewed and approved by the lake advisory board and the town council.

(Code 1989, § 94.06; Ord. of 10-20-1998; Ord. of 7-11-2006; Ord. of 8-14-2007; Ord. of 3-11-2008; Ord. of 4-12-2016)

Sec. 6-53. Shoreline stabilization.

Preserving the shoreline and the water quality of the lake is dependent on following established BMPs (best management practices) of riparian and shoreline stabilization. Land disturbance creates sedimentation from the erosion of the upland lot and waves generated by wind and boating activities can attack the disturbed shoreline from the lakeside. To minimize the effects of these disturbances, several routes may be taken. Whether retaining a natural buffer along the majority of the shoreline or utilizing a variety of construction methods and materials to reduce the effects of the disturbance, the town requires plans for some form of shoreline stabilization be included with any lake structure permit application.

(1) Property owners are required to stabilize the shoreline on any lot with a lake structure. The lake structures appeals board may waive this requirement if the property is determined by to be substantially free of erosion potential by the town's erosion control officer and is also determined to be eligible for exemption from this requirement by the lake structure administrator. If necessary, the construction of sea walls for shoreline stabilization shall only disrupt the contour of the shoreline to a minimum. The application for the construction of the shoreline stabilization shall include the following:

a. An existing site plan with an overlay showing any proposed changes to the contours and profiles of the shoreline.

b. Dimensions and proposed type of construction.

c. Signature of property owner and date.

d. Plans drawn by a licensed engineer or architect—sea walls only.

(2) The shoreline stabilization or construction shall address erosion above and below the shoreline elevation of 990 feet MSL. The level of protection depends on the lakeside wind and boat activity at the particular location and the potential of erosion of the upland lot. (Note: Refer to section 6-51 for details on how to establish the shoreline elevation of 990 feet MSL.) The erosion control officer will determine the type of stabilization required.

a. Retained natural stabilization is allowed for lots that are 90 percent undisturbed to the building buffer boundary of 35 feet from the shoreline and no tree lap is removed from the shoreline. This is also allowed on banks located within no wake coves, protected from the wind, and the lot is undisturbed within the 25-foot trout buffer with no tree lap removed from the shoreline. A sea wall or rip-rap stabilization will be required shoreward of lake structures to ensure their structural integrity.

b. Moderate stabilization is required where the land disturbance on the upland lot creates moderate to severe erosion potential and the lakeside is not threatened from the wind and is located within a no wake cove. If sea walls are utilized, underwater reinforcement of the toe with rip-rap to the shoreline height is required.

c. Extreme stabilization is required where the land disturbance on the upland lot creates moderate to severe erosion potential and the lakeside is threatened from the wind and by boat traffic at wake speed. If sea walls are utilized, underwater reinforcement of the toe with rip-rap extending to a height of two feet above the shoreline is required.

(3) Earth fills on the lakeside of the shoreline are prohibited.

(4) When possible, rip-rap laid on a layer of geotextile filter fabric should be considered as the optimum choice for moderate or extreme stabilization. While this stabilization method does not require an engineer's or architect's design, the illustrated method of installation with the prescribed slope of 2:1 and elevations above the shoreline of three feet must be adhered to. Please refer to the illustration within the town's standards, specifications and details for construction.

(5) If rip-rap is not selected for the shoreline stabilization, sea walls, designed by a licensed engineer or architect, and reinforced at the toe with rip-rap to the shoreline or two feet above the shoreline on the lake side for extreme stabilization shall be constructed of one of the following materials:

a. Concrete—to conform to NC DWQ regulations, it must cure 28 days prior to making contact with the lake water.

b. Stone—to conform to NC DWQ regulations, the mortar must cure 28 days prior to making contact with the lake water.

c. A properly designed plastic, steel or aluminum sheet piling system.

d. A properly designed pressure treated wood piling system. Railroad ties and other wood treated with creosote or environmentally hazardous materials shall not be allowed.

(6) All sea walls shall be in a good state of repair or the property owner will be subject to penalties outlined in section 6-65.

(Code 1989, § 94.07; Ord. of 8-9-1994; Ord. of 10-20-1998; Ord. of 7-11-2006; Ord. of 9-12-2006; Ord. of 4-12-2016)

Sec. 6-54. Lake structure certificate and tag; maintenance of structures.

(a) All structures on the waters of Lake Lure, either new or existing, prior to the adoption of the ordinance from which this section is derived, shall require a lake structure certificate and tag issued in accordance with this section. All owners of existing structures deemed in compliance with sections 6-51, 6-53, 6-55 through 6-57 and 6-61 will be issued a lake structure certificate and accompanying tag after the lake structure administrator receives the lake structure certificate fee and approves the property owner's lake structure certificate application. The tag must be attached to the lake structure so it is visible from the water before

December 1, 1994, and be renewed every five years. Therefore, any structure not having a lake structure tag attached by December 1, 1994, shall be considered in violation of this article. Any boathouse which cannot qualify for a certificate and tag either because it is not in compliance with this section, or because it is not in the same ownership as the upland lot, shall be removed at the owner's expense. Owners of upland property who fail to comply with this section shall be ineligible to receive a boat permit.

(b) The property owner shall be responsible for maintaining all lake structures covered by this article in good repair. The town shall have the authority to condemn any lake structure due to decay, disrepair, or any hazardous condition. The property owner will be given a written notice and 90 days to comply with the town council's determination. If the owner fails to appeal to the town council for a hearing or comply with their determination, council may revoke their lake structure certificate and accompanying tag (if one had been issued) and remove the structure at the property owner's expense.

(c) The purpose of a lake structure permit is to ensure compliance with the lake structures regulations, and is not in the nature of a building permit, which is additionally required. Neither the issuance of a lake structures permit nor the failure of the town to inspect said lake structure periodically and reissue a lake structure permit, or revoke a lake structure permit, or take action to condemn a lake structure, shall imply warranty or constitute either a contract or assurance that any lake structure is safe for the general public because it has a lake structure permit.

(Code 1989, § 94.08; Ord. of 8-9-1994; Ord. of 10-20-1998; Ord. of 9-9-2003; Ord. of 8-14-2007; Ord. of 4-12-2006)

Sec. 6-55. Markers.

No markers or signs, other than navigational aids that comply with the uniform waterway marking system and the state wildlife resources commission's regulations, shall be placed within the lakebed. Placement of these markers will be reviewed and approved by the lake advisory board. Appeals of the lake advisory board decision shall be sent to the marine commission. Unauthorized movement or removal of markers will result in the revocation of all lake lure boat permits held by the owner of the boat used for such activity and the penalties and civil fines described in section 6-65.

(Code 1989, § 94.09; Ord. of 8-14-2007; Ord. of 4-12-2016; Ord. of 9-11-2018)

Sec. 6-56. Electrical and plumbing.

All electrical wiring and fixtures and all plumbing must be inspected and approved by the county building inspector. Lighting, whether public or private, which offers navigational aid on the lake shall comply with the state wildlife resources commission's regulations. Non-navigational lighting must be non-flashing white or yellow, with the exception of bug lights, and shall be of such a low intensity as to not cause blindness of boat operators on the lake or inhibit their vision in any way. In addition to all state and local requirements, all pole mounted outdoor fixtures on the lake structure or within the lake boundary must be cutoff fixtures. All lighting shall be mounted and maintained to avoid light trespass and glare on the waterway of Lake Lure.

(Code 1989, § 94.10; Ord. of 8-14-2007)

Sec. 6-57. Swimming areas.

Swimming areas, whether adjacent to public or private property, shall be marked in accordance with the state wildlife resources commission's regulations and the town's ordinances regulating boating and water safety.

(Code 1989, § 94.11; Ord. of 8-9-1994)

Sec. 6-58. Commercial and multi-dwelling use lake structures.

(a) The lake structure administrator and the lake advisory board shall review each lake structure permit application for any new or existing structure that is to be built or converted for commercial or multi-dwelling use. The application review will confirm that the proposed facility conforms to these regulations, evaluate its impact on the lake's carrying capacity, and determine that the location will not be adverse to navigation and boating safety or to any nearby residential area with single-family dwellings. A recommendation based on this review will then be submitted to the town council. The town council shall approve or deny the request after examining the report. Specific design standards, restrictions, and/or prohibitions may be varied by a special grant from the town council if specifically requested by the petitioner as part of a commercial lake structure application and if the special grant is found to secure general welfare and the best overall interest of the public and the municipality. The town council may also apply specific conditions with nonconforming upon commercial lake structures as council deems necessary.

(b) As an exception to subsection (a) of this section, any application to change the use of a lake structure with nonconforming living quarters to a commercial use, shall be submitted to the lake structure appeals board for approval or disapproval, and then to the town council for further appeal if necessary. The lake structure appeals board will determine if the application is consistent with section 6-47(a) concerning the health, safety, and welfare of the general public. Further, the board will determine if the change in use positively or negatively impacts the preservation of town property or the properties of upland and adjacent landowners.

(Code 1989, § 94.12; Ord. of 8-14-2007; Ord. of 12-22-2015; Ord. of 4-12-2016)

Sec. 6-59. Cluster mooring facilities.

(a) The lake structure administrator and the lake advisory board shall review each lake structure permit application for a cluster mooring facility. The application review will confirm that the proposed facility conforms to these regulations, evaluate its impact on the lake's carrying capacity, and determine that the location will not be adverse to navigation and boating safety or to any nearby residential area. A recommendation based on this review will then be submitted to council. The council shall approve or deny the request after examining the report.

(b) Cluster mooring facilities shall only be installed adjacent to upland lot zoned for resort or commercial use. The same requirements apply to cluster mooring facilities as do to all other lake structures except they shall have no walls or roofs. Canopies attached to or installed above boat lifts are considered roofs and are prohibited in cluster mooring facilities. Such facilities may not have more than three individual permanent moorings per 100 feet of measurable shoreline of lake front property that is owned by the applicant and that is free of any lake structures (other than sea walls and boardwalks). Existing private docks or boathouses must be removed prior to construction of a cluster mooring facility and no private docks or boathouses can be applied for or constructed adjacent to the upland lot for which a cluster mooring facility has been approved. All moorings shall be classified as permanent or temporary, numbered, and with signage that is viewable from the lake which indicates classification and number of each mooring.

(c) For areas with upland lots that are zoned for resort use, the lake front property that is used in the formula for determining the number of moorings must be contiguous with the site of the proposed cluster mooring facility and the same lake front property must be developed with roads and structures in place prior to review of the application. If any existing mooring facilities are to be included in the total moorings of the mooring facility, they will be factored into the total slips calculated with the above formula.

(d) For areas with upland lots zoned and utilized for commercial purposes, only temporary moorings shall be allowed. A maximum of three craft owned by the operators of the commercial establishment may be permanently moored at the establishment's cluster mooring facility.

(Code 1989, § 94.13; Ord. of 4-12-2005; Ord. of 8-14-2007; Ord. of 4-12-2016)

Sec. 6-60. Marinas.

(a) The lake structure administrator and the lake advisory board shall review each lake structure permit application for a marina, restricted and unrestricted. The review will confirm that the proposed facility conforms to these regulations, evaluate its impact on the lake's carrying capacity, and determine that the location will not be adverse to navigation and boating safety or to any nearby residential area. A recommendation based on this review will then be submitted to council. The council shall approve or deny the request after examining the report.

(b) Marinas must meet the following standards:

(1) Marinas shall only be installed adjacent to upland lot zoned for commercial or resort use.

(2) The same requirements shall apply to marinas as do to all other lake structures except individual slips or moorings shall not be enclosed or covered. Canopies attached to or installed above boat lifts are considered roofs and are prohibited in marinas.

(3) Such facilities may not have more than five permanent or temporary moorings for each 100 feet of shoreline that is owned by the applicant. The lakefront property that is used in the formula for determining the number of moorings must be contiguous with the site of the proposed marina.

(4) The shoreline must be free of any other lake structures that could be used specifically for the purpose of mooring boats. This does not include seawalls, boardwalks, docks, or gazebos that are used for access, protection from direct sun and rain, and as collection areas for users of the facility. Such structures must meet the following standards:

a. Shall not have any tie-up points or cleats that would allow a boat to be moored, thereby changing the structure's function.

b. Shall not exceed a height of 15 feet above the shoreline elevation of 990 feet MSL.

c. Shall not exceed 1,200 square feet.

d. Shall be completely open on all sides.

(5) Existing private docks or boathouses must be removed prior to construction of a marina and no private docks or boathouses can be applied for or constructed adjacent to the upland lot that are associated with a marina.

(6) All moorings shall be classified as permanent or temporary, numbered, and with signage that is viewable from the lake which indicates classification and number of each mooring.

(7) These limitations shall not apply to any marina owned by the town.

(c) Moorings shall only be rented or leased for the permanent mooring of any watercraft with a valid boat permit issued by the town for the current year. The town may assess the marina owner an annual commercial use fee for each permanent mooring leased or rented.

(d) Docks and piers at a marina may be either fixed or floating structures.

(e) Sale of fuel, lubricants, boats, marine accessories, bait and fishing supplies and repair of boats shall be permitted only at unrestricted marinas, provided the upland property is zoned for commercial use.

(Code 1989, § 94.14; Ord. of 10-20-1998; Ord. of 4-12-2005; Ord. of 7-11-2006; Ord. of 8-14-2007; Ord. of 3-11-2008; Ord. of 5-12-2015; Ord. of 4-12-2016)

Sec. 6-61. Prohibited uses.

The following uses or activities shall be prohibited unless written approval is given by the town council:

(1) Any activity such as dredging or filling at or below the shoreline without written permission from the town or any land disturbance which alters the shoreline other than as required by action of the town council.

(2) The cutting of standing trees at or below the lake boundary.

(3) Disposal of any trash, brush, leaves, or scrap building materials into the lake.

(4) Allowing any livestock or commercially raised animals to have access to the lake or its shoreline.

(5) Allowing a boat to remain on the lake bottom after sinking.

(6) Using the waters of the lake for commercial irrigation purposes.

(7) The permanent or temporary mooring of a boat or any other floating object in such a way that it extends beyond the boundaries established in section 6-51 and restrict the passage of boats.

(8) The permanent mooring of more than three motorized boats at any one lake structure or combination of lake structures, other than a marina or cluster mooring facility, adjacent to an upland lot with a measurable shoreline length of 100 feet or more.

(9) The permanent mooring of more than two motorized boats at any one lake structure or combination of lake structures, other than a marina or cluster mooring facility, adjacent to an upland lot of record with a measurable shoreline length of 35 to 100 feet.

(10) The permanent mooring of more than one motorized boat at any one lake structure, other than a marina or cluster mooring facility, adjacent to an upland lot of record with a measurable shoreline length of less than 35 feet.

(11) The permanent mooring at a cluster mooring facility of more than three motorized boats per 100 front feet at shoreline of upland lot adjacent to a cluster mooring facility.

(12) The permanent mooring at a marina of more than five motorized boats per 100 front feet at shoreline of upland lot adjacent to a marina.

(13) The permanent mooring of any boats licensed for commercial use at a lake structure with an upland lot that is not zoned in accordance with or having a special use permit to comply with section 1.59 of the lake use regulations requirements for lake commercial licensing and supporting criteria.

(14) The use of any lake structure as temporary or full-time living quarters.

(15) The rental of a mooring at a dock, boathouse or any other lake structures in the manner of a marina when the adjacent upland lot is zoned R-1.

(16) The commercial or multi-dwelling use of a lake structure adjacent to an upland lot that is zoned R-1 with the exception of lake structure approved by town council for commercial or multi dwelling use or

those lake structure that are approved as the permanent mooring address on an annual lake commercial license during the applicable calendar year.

(17) Any temporarily moored inflatable water recreation device larger than 80 square feet in area or ten feet in diameter, and any such device in the lake from December 1 through March 31.

(18) Sale of fuel, lubricants, boats, marine accessories, bait and fishing supplies and repair of boats shall be prohibited at restricted marinas.

(Code 1989, § 94.15; Ord. of 10-20-1998; Ord. of 4-12-2005; Ord. of 8-14-2007; Ord. of 4-12-2011; Ord. of 4-12-2016)

Sec. 6-62. Lake structure appeals board.

(a) *Membership.* The lake structure appeals board shall consist of five regular and three alternate members to be appointed by the town council. Members of the board shall serve a term of three years, provided that terms of office may be adjusted at the time of appointment in order that terms are 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. 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 lake structure appeals board.

(b) *Rules of conduct.* Board members shall comply with the following rules of conduct. Members may be removed by the town council for cause, including violation of the rules stated in the following subsections:

(1) 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) 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. 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.

(3) 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 lake structure administrator, any other member of the board, or the clerk prior to the hearing.

(4) Members of the board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(5) Members of the board shall give notice to the chairperson at least 48 hours prior to the hearing of any potential conflict of interest which he has in a particular case before the board.

(6) 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.

(c) *General proceedings.* The board shall annually elect a chairperson and a vice-chairperson from among its regular members. A clerk shall be provided by the town; however, when necessary, the chairperson shall appoint a clerk, who may be an employee of the town, a municipal officer, or a member of the lake structure appeals board. The chairperson, or any member acting as chairperson, and the clerk, may administer oaths. The chairperson, or any member 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. 160A-393(d)

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 lake structure appeals board. 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.

(d) *Meetings.* The board 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.

(1) *Cancellation of meetings.* Whenever there are no appeals, applications, 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.

(2) *Quorum.* A quorum shall consist of three members of the board, but the board shall not pass upon any questions relating to an appeal from a decision or determination of the lake structure administrator, or an application for a variance or decktop accessory structure when there are less than four members present.

(3) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in subsection (b)(2) of this section. The required vote to decide appeals and applications shall be as provided in subsection (h) of this section and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the board.

(e) *Powers and duties.* The powers and duties of the lake structure appeals board shall be as follows:

(1) *Administrative appeals.* To hear and decide appeals from any decision or determination made by the lake structure administrator in the enforcement of this article.

(2) *Variances.* Upon application, the lake structure appeals board may authorize in specific cases such variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in practical difficulty or unnecessary hardship. The variance may be permitted as long as the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. The lake structure appeals board shall not have authority to grant a variance when to do so would permit a use of land, building or structure which is not permitted within the applicable zoning district. In judging an application for a variance, the lake structure appeals board shall be guided by the following:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

b. 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.

c. A literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

d. The requested variance will be in harmony with the purpose and intent of this article and will not be injurious to the neighborhood or to the general welfare.

e. The special circumstances are not the result of the actions of the applicant.

f. The variance is the minimum necessary for the proposed use of the land, building or structure.

g. 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.

In granting any variance, the lake structure appeals board may prescribe appropriate conditions and safeguards in conformity with this article. 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 article and punishable under section 6-65.

(3) *Other matters.* The board shall hear any other matters specified in this article.

(f) *Procedure for filing appeals and applications.* No appeal shall be heard by the board unless written notice thereof is filed within 30 days after the interested party or parties receive the decision or determination by the lake structure administrator. Applications for variances or for other matters governed by this article may be filed at any time. Both appeals and applications shall be filed with the lake structure administrator, who shall act as clerk for the board in receiving this notice. 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. Once appeals and applications have been filed with the lake structure administrator, the lake structure administrator shall notify the chairperson of the board that such appeals or applications have been received.

(g) *Hearings.* Hearings before the board shall be governed by the provisions contained herein.

(1) *Time.* After receipt of notice of an appeal or a variance, the chairperson shall schedule a time for a hearing which shall be within 41 days from the filing of such notice of appeal or application.

(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; 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.

(3) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:

a. The chairperson, or such person as he shall direct, shall give a preliminary statement of the case.

b. The applicant shall present the argument in support of his appeal or application.

c. Persons supporting or opposed to the appeal or application shall present arguments for or against the application or appeal.

d. Both sides will be permitted to present rebuttals to opposing testimony.

e. Witnesses may be called and factual evidence may be submitted, but the board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The board may view the premises before arriving at a decision. All witnesses before the board shall be placed under oath. Attorneys representing any party may cross examine any witness.

(h) *Decisions.* A decision by the board shall be made within 35 days from the date of hearing. The 35-day period shall begin on the date the public hearing ends.

(1) *Form.* 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 written decision shall be signed by the chairperson or other duly authorized member of the board. The decision of the board shall be effective upon filing such 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.

(2) *Voting.* The concurring vote of four-fifths of the members of the board entitled to vote on a matter shall be necessary to reverse any decision or determination of the lake structure administrator, or to grant a variance or to approve any other request under this subsection.

(3) *Public record of decisions.* The decisions of the board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

(i) *Appeals of decisions of the board.* Decisions of the lake structure appeals board shall be final unless appealed by the applicant or an affected property owner to the town council within 30 days of such decision. The town council shall hold a hearing on the record within 45 days of the appeal, and council's decision shall be final.

(j) *Fees for applications and appeals.* The fee for an application for a variance or other matter regulated by this article, or for an administrative appeal shall be determined by resolution of the town council and shall be payable to the town.

(Code 1989, § 94.16; Ord. of 5-12-2009; Ord. of 11-12-2013)

Sec. 6-63. Injunctive relief.

(a) In the event any lake structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or used in violation of these regulations, the lake structure 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.

(b) Whenever the town council has reasonable cause to believe that any person is violating or threatening to violate this article or any rule or order adopted or issued pursuant to this article, or any term, condition, or provision of an approved lake structure permit, it may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the town for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county.

(c) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed in section 6-65 for violations of this article.

(Code 1989, § 94.17; Ord. of 4-12-2005; Ord. of 8-14-2007; Ord. of 4-12-2011)

Sec. 6-64. Inspections and investigations.

(a) *Inspection.* The lake structure administrator or a designee will periodically inspect lake structures to ensure compliance with this article, or rules or orders adopted or issued pursuant to this article. Notice of the right to inspect shall be included in the certificate of approval of each lake structure permit.

(b) *Willful resistance, delay or obstruction.* No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the town while that person is inspecting or attempting to inspect a lake structure under this article.

(c) *Notice of violation.* If it is determined that a person engaged in activities in violation of this article, or rules, or orders adopted or issued pursuant to this article, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. The notice shall specify a date by which the person must comply with this section, or rules, or orders adopted pursuant to this article, and inform the person of the actions that need to be taken to comply with this article, or rules, or orders adopted pursuant thereto. However no time period for compliance need be given for failure to submit a lake structure permit application for approval or for obstructing, hampering, or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this article.

(d) *Investigation.* The lake structure administrator shall have the power to conduct such investigation as may reasonably be deemed necessary to carry out the duties prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the site of any lake structure.

(e) *Statements and reports.* The town shall also have the power to require written statements, or filings of reports under oath, with respect to pertinent questions relating to lake structures.

(Code 1989, § 94.18; Ord. of 4-12-2011)

Sec. 6-65. Penalties.

(a) Generally. This section may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. 160A-175.

(b) Criminal penalties.

(1) All lake structures built after December 15, 1992 are required to have a permit prior to commencement of any construction or alteration for which a permit is required (see section 6-49). Any person who knowingly or willfully violates any provision of this section, or rule, or order adopted pursuant to this article, or who knowingly or willfully initiates or continues construction or alteration of a lake structure for which a permit is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 3 misdemeanor which may include a fine not to exceed $500.00 as provided in G.S. 14-4.

(2) Failure to receive a lake structure permit as required by this section prior to commencement of construction or alteration of a lake structure shall subject both the owner of the upland property and any contractor engaged for the purpose of performing the work to a fine not to exceed $500.00. If the illegal construction or alteration meets all requirements of this section, a permit and a lake structure certificate shall be issued upon payment of the fine and submittal of a completed application, including detailed plans, other required documentation, and fees. If the illegal structure or alteration does not

meet said requirements, the structure shall either be removed, be brought into compliance, or receive a variance (see section 6-62) prior to approval of a permit and receipt of the certificate.

(3) The owner of the illegal structure shall either apply for a permit or apply for a variance within 30 days or remove the structure within 60 days of receipt of notification that the structure is in violation of this section. Failure to comply with this requirement shall subject the owner to an additional fine, not to exceed $500.00, payable immediately upon notification.

(4) The fines imposed in subsection (b)(1) of this section shall be due and payable by the owner within 30 days of approval of a permit and due and payable by the contractor within 30 days of notification that the structure is in violation of this chapter.

(5) In the event that a petition for variance is submitted, the petitioner shall have 30 days in which to apply for a permit in conformance with the conditions of an order granting the variance or 60 days in which to remove the illegal structure if an order denying the variance is issued. Failure to comply with this subsection shall result in an additional fine, not to exceed $500.00, payable immediately upon notification.

(c) Civil penalties.

(1) Civil penalty for a violation. Any person who violates any of the provisions of this section, or rule or order adopted or issued pursuant to this article, or who initiates or continues construction or alteration of a lake structure for which a permit is required except in accordance with the terms, conditions, and provisions of an approved permit, is subject to a civil penalty. The maximum civil penalty amount that the town may assess per violation is $500.00. A civil penalty may be assessed from the date of violation. Each day of a continuing violation shall constitute a separate violation.

(2) Notice of civil penalty assessment. The lake structure administrator shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment, by written demand for a hearing (see section 6-62).

(3) Collection. If payment is not received within 30 days after it is due, the town may institute a civil action to recover the amount of the assessment. The civil action may be brought either in the superior court of the county or in a court in the location of the violator's residence of principal place of business, as the town shall elect. Such civil actions must be filed within three years of the date the assessment is due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(d) Any provision of this section that makes unlawful a condition existing upon or use made of any property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of civil procedure in general and rule 65 in particular. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; the fixtures, furniture or other movable property be removed from the building on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this policy or such ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, such defendant may be

cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the upland property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs to the town of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(e) The provisions of this section may be enforced by any one, all, or any combination of the remedies authorized and prescribed by this article.

(f) Except as otherwise specifically provided, each day's continuing violation of any provision of this section shall be a separate and distinct offense.

(Code 1989, § 94.99; Ord. of 10-20-1998; Ord. of 4-12-2011)

Secs. 6-66—6-88. Reserved.

ARTICLE IV. FABRIC STRUCTURES

Sec. 6-89. Permit required; applications.

A permit shall be required for all structures constructed of fabric, including tents, erected within the town which exceed 500 square feet in area. All fabric structures, regardless of size, erected longer than 30 days and visible from any street as defined by town regulations and/or the waters of the town also require a permit. The town manager may issue permits for such structures erected for 30 days or less in any one calendar year and having an area of less than 2,000 square feet. Fabric structures erected for longer than 30 days in any one calendar year and/or having an area of 2,000 square feet or more must be approved by the town council. Applications for a permit shall be submitted on a form obtainable from town hall. A site plan shall accompany the application detailing the dimensions of the lot and the location of the structure in relation to all property boundaries and existing structures. The site plan shall also include a description of any proposed land clearing and grading as well as proposed restoration of the site upon removal of the structure.

(Code 1989, § 97.01; Ord. of 5-8-2001; Ord. of 6-11-2002; Ord. of 10-13-2009)

Sec. 6-90. Standards and review.

Applications for fabric structure permits shall demonstrate compliance with the minimum standards set forth in this section:

(1) *Fire safety.* The fire chief or his designee shall review all applications for compliance with the standards for fabric structures set forth in the state fire code.

(2) *Zoning compliance.* The zoning administrator shall review all applications for compliance with the use requirements in the district for which the structure will be located as set forth in the town zoning regulations.

(3) *Land clearing and grading.* Land clearing for fabric structures shall be limited to the removal of non-significant trees and the removal of shrubbery without grubbing as defined by the zoning regulations. Grading shall be limited to minimal leveling within the footprint of the structure and the driveway, if

Chapter 7 RESERVED

Chapter 8 BUSINESSES AND BUSINESS REGULATIONS

ARTICLE I. IN GENERAL

Secs. 8-1—8-18. Reserved.

ARTICLE II. PEDDLERS

Sec. 8-19. Peddling prohibited.

(a) No person or itinerant merchant shall sell or offer for sale produce, merchandise, or other items of personal property or engage in the general business of peddling within the corporate limits of the town. The sale of produce, merchandise, and other items of personal property, and in general the carrying on of business of peddling from stands and other temporary structures, trucks, cars, or other vehicles, constitutes a nuisance and is dangerous to the health and safety of the citizens of the town.

(b) Nothing contained herein shall prevent property owners from conducting yard sales on their own property, as long as said yard sales are not held more frequently than one day per month.

(Code 1989, § 61.10; Ord. of 4-10-2018)

Sec. 8-20. Exemptions.

The following are exempt from the provisions of this article:

(1) The circulation of petitions for signature or lawful distribution of advertising materials, flyers, or materials expressing views on political, social or religious matters.

(2) The lawful promotion or expression of views concerning political, social, religious and other like matters.

(3) The selling or offering for sale of goods, wares, merchandise, food, periodicals or services by bona fide members or representatives of charitable, religious, civic, educational or fraternal organizations, and who receive no compensation of any kind for their services, and such sale or offering by children under the age of 18 years who are students in a public or private school for school activities.

(4) The solicitation of contributions or pledges thereof for bona fide nonprofit organizations.

(5) The selling or delivery of goods to business establishments.

(Code 1989, § 61.20; Ord. of 4-10-2018)

Sec. 8-21. Penalty.

Violation of this article shall be a misdemeanor and punishable on conviction by a fine not exceeding $50.00 or by imprisonment not exceeding 30 days, or both, as provided in G.S. 14-4.

(Code 1989, § 61.90; Ord. of 4-10-2018)

Secs. 8-22—8-45. Reserved.

ARTICLE III. CONTROLLED BUSINESSES

DIVISION 1. GENERALLY

Secs. 8-46—8-66. Reserved

DIVISION 2. MUSICAL ENTERTAINMENT

Sec. 8-67. Hours of operation of dance halls, concert halls, or other public musical entertainment.

It shall be unlawful to operate any public dance hall, concert hall, or other public musical entertainment in the town between the hours of 12:00 midnight and 10:00 a.m.

(Code 1989, § 62.01; Ord. of 7-9-1974)

Secs. 8-68—8-85. Reserved.

DIVISION 3. PUBLIC ENTERTAINMENT ENTERPRISES

Sec. 8-86. Permission to operate bowling alleys, pool rooms, or other public entertainment enterprises required.

It shall be unlawful for any person, firm, or corporation to operate a bowling alley, pool room, open air theatre, shooting gallery, or other public entertainment enterprise within the corporate limits of the town without first applying to the town board for permission to operate such facility and securing such permission pursuant to a formal resolution of the board.

(Code 1989, § 62.10; Ord. of 7-9-1974)

Sec. 8-87. Application; determination of board.

(a) The application to the board for permission to operate the businesses mentioned in section 8-86 which contain, at a minimum, information as to the following items:

(1) The proposed location and size of the business.

(2) Those persons who will be responsible for the operation of the business.

(3) That the business will be operated in a quiet and orderly manner.

(4) That the business will not be operated between the hours of 12:00 midnight and 8:00 a.m. nor between the hours of 8:00 a.m. and 1:00 p.m. on Sundays.

(5) That the premises will be kept sanitary and orderly.

(6) That adequate liability insurance will be provided.

(b) Upon review of the application, the board shall in its discretion, based upon the health and welfare of the community and the information contained in the application, make a determination upon the granting of a permit.

(Code 1989, § 62.11; Ord. of 7-9-1974)

Sec. 8-88. Permits subject to discretion of board; revocation.

(a) All permits for operation granted under this article shall be subject to and conditioned upon a statement filed by the owners and operators of the businesses described in section 8-86, placing the conditioned operation of the business in the sole discretion of the board of commissioners and further stating that it understands and agrees that at such time as the board of commissioners shall in its wisdom and discretion determine that the business is a public nuisance, or in any other way harmful to the community, they will cease operations upon 30 days' notice.

(b) If the town board shall see fit to revoke the permission for the operation of such business, the operators thereof shall cease operation within 30 days of written notice.

(Code 1989, § 62.12; Ord. of 7-9-1974)

Secs. 8-89—8-114. Reserved.

ARTICLE IV. LIQUOR CONTROL

Sec. 8-115. Consumption of malt beverages and unfortified wine, spirituous liquors, or mixed beverages.

No person shall consume malt beverages or unfortified wine, fortified wine, spirituous liquors, or mixed beverages, as defined in G.S. 18B-101, on or within the rights-of-way of the public streets, alleys, or sidewalks or community center, or on the town beach, or any other town-owned property (excluding the lake, on which state law concerning alcohol consumption will apply and be enforced) unless a permit is received therefor from the town. It is further provided an open container shall be prima facie evidence of consumption under this article.

(Code 1989, § 63.01; Ord. of 4-23-1991; Ord. of 5-10-1994)

Sec. 8-116. Permit.

The town manager and chief of police may jointly grant a permit allowing consumption of either malt beverages, unfortified wine, fortified wine, spirituous liquor and/or mixed beverages for special events on town property and the permit shall be in writing and describe the location, type of beverage to be served and the date and hours in which the operation of this article shall be temporarily suspended for said special event. If a party applies for a permit and the permit is denied by the town manager and/or chief of police, the denial may be appealed to the town council.

(Code 1989, § 63.02; Ord. of 4-23-1991; Ord. of 5-12-2015)

Sec. 8-117. Penalty.

Violation of this article shall be a misdemeanor and punishable on conviction by a fine not exceeding $50.00 or by imprisonment not exceeding 30 days, as provided by G.S. 14-4.

(Code 1989, § 63.99; Ord. of 4-23-1991)

Chapter 9 RESERVED

Chapter 10 ENVIRONMENT

ARTICLE I. IN GENERAL

Secs. 10-1—10-18. Reserved.

ARTICLE II. TREE PROTECTION

Sec. 10-19. Scope.

This article shall apply to the cutting or removal of trees and to those who provide such services for compensation.

(Code 1989, § 65.1; Ord. of 2-8-2011; Ord. of 4-1-2011)

Sec. 10-20. 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:

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.

Tree services means the removal of portions or the entirety of trees or other woody vegetation by any means, including, without limitation, cutting, trimming, topping, pruning, grading, and the application of chemicals.

Tree services provider means any person or entity who provides tree services for compensation.

(Code 1989, § 65.2)

Sec. 10-21. Prohibitions.

It shall be unlawful for any person or other entity to provide tree services within the town unless such services comply with applicable regulations contained in this Code. The excessive removal of trees, as defined herein, is likewise prohibited, except when done pursuant to a forest management plan prepared or approved by a forester registered in accordance with G.S. ch. 89B. A copy of such forest management plan shall be filed with the tree protection officer prior to the removal of trees.

(Code 1989, § 65.3)

Sec. 10-22. Licensure required for tree services providers.

No person or entity may be a tree services provider within the town without first obtaining a license to do so in accordance with this section.

(Code 1989, § 65.4)

Sec. 10-23. Application.

Any person or entity desiring to be a tree services provider in the town shall make application for a license to do so upon forms provided by the town and shall pay a license fee which shall be set by resolution of town council. Such person or entity shall be required to demonstrate knowledge of good tree management principles, particularly those contained in the town's tree management handbook, and with town regulations concerning trees and landscaping.

(Code 1989, § 65.4.1)

Sec. 10-24. Suspension or revocation.

The failure of a tree services provider to abide by town regulations concerning trees and landscaping or to follow the guidance of the tree management handbook shall, in addition to any other penalties provided by this Code, be grounds for the suspension or revocation of the license for such tree services provider.

(Code 1989, § 65.4.2)

Sec. 10-25. Exception.

The licensure required in this article shall not apply to a forester registered by the state pursuant to G.S. ch. 89B.

(Code 1989, § 65.4.3)

Secs. 10-26—10-53. Reserved.

ARTICLE III. ABANDONED VEHICLES[1]

Sec. 10-54. 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 motor vehicle means a motor vehicle that:

(1) Has been left upon a street or highway in violation of a law, provision of this Code, or other ordinance of the town prohibiting parking;

(2) Is left on property owned or operated by the town for longer than 24 hours;

(3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or

(4) Is left on any public street or highway for longer than seven days or is determined by law enforcement to be a hazard to the motoring public.

Junk motor vehicle means a motor vehicle that also:

(1) Is partially dismantled or wrecked;

(2) Cannot be self-propelled or moved in the manner in which it was originally intended to move;

(3) Is more than five years old and worth less than $500.00; or

(4) Does not display a current license plate.

Motor vehicle means all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(Code 1989, § 80.01)

Sec. 10-55. Duty of owners.

It shall be the duty and responsibility of the owner of any abandoned or junked motor vehicle to cause the removal thereof immediately and to pay all costs incident to the removal. It shall be unlawful for any person to allow a motor vehicle owned by him to remain after notice has been given to such person to have the vehicle removed.

(Code 1989, § 80.02)

[1]State law reference(s)—Removal, disposal of junked and abandoned motor vehicles, G.S. 160A-303.

Sec. 10-56. Liability of persons to owners.

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this article.

(Code 1989, § 80.03)

Sec. 10-57. Removal of abandoned vehicle by town.

Any junked or abandoned motor vehicle may be removed by the town to a storage garage or area. However, no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises, unless the town or a duly authorized town official or employee has declared that vehicle to be a health or safety hazard.

(Code 1989, § 80.04)

Sec. 10-58. Indemnification of town.

Any person requesting the removal of a junked or abandoned motor vehicle from private property shall indemnify the town against any loss, expense, or liability incurred because of the removal, storage, or sale of that vehicle.

(Code 1989, § 80.05)

Sec. 10-59. Notice.

When any junked or abandoned motor vehicle is removed, the town shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(Code 1989, § 80.06)

Sec. 10-60. Sale or disposal of abandoned vehicles; hearing procedure.

Regardless of whether a municipality does its own removal and disposal of motor vehicles or contracts with another person to do so, the town shall provide a hearing procedure for the owner. For purposes of this section, the definitions in G.S. 20-219.9 apply.

(1) If the town operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of G.S. ch. 20, art. 7A shall apply.

(2) If the town operates in such a way that it is responsible for collecting towing fees, it shall:

   a. Provide by contract or ordinance for a schedule of reasonable towing fees;

   b. Provide a procedure for a prompt fair hearing to contest the towing;

   c. Provide for an appeal to district court from that hearing;

   d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due; and

   e. Provide a sale procedure similar to that provided in G.S. 44A-4 through 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at

the sale and if the value of the vehicle is less than the amount of the lien, the town may destroy it.

(Code 1989, § 80.07)

Sec. 10-61. Exemptions.

Nothing in this article shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner, if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the town.

(Code 1989, § 80.08)

Chapter 11 RESERVED

Chapter 12 FIRE PROTECTION[1]

ARTICLE I. IN GENERAL

Secs. 12-1—12-18. Reserved.

ARTICLE II. FIRE DEPARTMENT

DIVISION 1. GENERALLY

Secs. 12-19—12-39. Reserved.

DIVISION 2. FIRE DEPARTMENT

Sec. 12-40. Organization.

(a) The fire department shall consist of the fire chief and a sufficient number of volunteer firefighters to maintain and operate the department.

[1]State law reference(s)—Town fire protection generally, G.S. 160A-291 et seq.; municipal authority to regulate or prohibit explosive and corrosive substances, G.S. 160A-183; city council may establish fire limits, G.S. 160D-1128.

(b) The chief is authorized and empowered at his discretion to appoint in any emergencies he deems necessary such temporary members of the department as he desires to serve as members temporarily, and each such member so appointed shall be entitled to the same rights and benefits as all other members of the department for the duration of such temporary service, no matter how limited his length of service may be.

(Code 1989, § 31.01)

Sec. 12-41. Duties of fire chief.

The fire chief shall:

(1) Have general control of the department, the personnel, apparatus, and fire alarm systems;

(2) Command the department and supervise the firefighting and extinguishing of all fires and shall have the authority to keep away from the vicinity of all fires any and all idle, disorderly, or suspicious persons;

(3) Inspect or cause to be inspected all trucks and other equipment of the fire department to ascertain that the equipment is being kept in proper condition; and

(4) Report annually to the council the condition of all equipment.

(Code 1989, § 31.02)

Secs. 12-42—12-70. Reserved.

DIVISION 3. FIRE CODE

Sec. 12-71. Enforcement.

The state fire code shall be enforced by the fire chief of the town.

(Code 1989, § 31.11)

Sec. 12-72. Definitions.

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

Alarm means any electrical or mechanical device which transmits an electronic alarm signal or recorded message to the county communications center indicating a fire or other incendiary occurrence.

False alarm means an activation of an alarm system, which elicits a response from the fire department when no situation requiring such a response does, in fact, exist. The term "false alarm" includes accidental, avoidable, and unnecessary alarm activation due to user error, equipment malfunction and improper or unsuited equipment, but does not include alarm activation caused by violent conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm user.

The terms "residential," "storage," "business," "assembly," "educational," "industrial," "mercantile," "hazardous" and "institutional" as used herein shall have the meanings as set forth more fully in the occupancy classification of the state building code as adopted and enforced from time to time.

(Code 1989, § 31.12)

Sec. 12-73. Modifications.

The fire chief shall have power to modify any of the provisions of the code hereby adopted on application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the fire chief thereon shall be entered on the records of the department and a signed copy shall be furnished the applicant.

(Code 1989, § 31.13)

Sec. 12-74. Appeals.

Whenever the fire chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the council within 30 days from the date of the decision appealed.

(Code 1989, § 31.14)

Sec. 12-75. Penalty.

(a) If the town fire department shall respond to more than two false alarms at the same premises or location within any calendar month, the fire chief may issue a civil penalty citation giving notice of the violation of this section for each such false alarm over two per month. The citation shall issue to the owner of record of the property, or to the person or entity having present control of such premises or location if different from the owner of record of the property. Citations may be served in person or mailed by certified mail, return receipt requested, to the person or entity charged.

(b) The amount of the penalty shall be $75.00 pertaining to false alarms to residential and storage properties, $100.00 pertaining to false alarms to business and assembly properties, and $150.00 pertaining to false alarms to educational, industrial, mercantile, hazardous, and institutional properties.

(c) Each citation shall impose the penalty described in subsection (b) of this section and shall be paid to the town finance director within 14 days of issuance in full satisfaction of the assessed civil penalty. If the civil penalty is not paid within the time prescribed in the citation, the town may initiate a civil action in the nature of debt to collect such penalty.

(d) Payments shall be deposited into the responding fire department's budget.

(Code 1989, § 31.99)

Chapter 13 RESERVED

Chapter 14 FLOOD DAMAGE PREVENTION[1]

ARTICLE I. IN GENERAL

Sec. 14-1. Statutory authorization.

The legislature of the state has delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

(Code 1989, § 95.001; Ord. of 5-13-2008)

Sec. 14-2. Findings of fact.

(a) The floodprone areas within the jurisdiction of the town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in floodprone areas of uses vulnerable to floods or other hazards.

(Code 1989, § 95.002)

Sec. 14-3. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions within floodprone areas by provisions designed to accomplish the following:

(1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

(5) Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 1989, § 95.003)

Sec. 14-4. Objectives.

The following are the objectives of this chapter:

[1]State law reference(s)—Floodplain regulations, G.S. 160D-923.

(1) Protect human life, safety, and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business losses and interruptions;

(5) Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in floodprone areas;

(6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas; and

(7) Ensure that potential buyers are aware that property is in a special flood hazard area.

(Code 1989, § 95.004)

Sec. 14-5. 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:

Accessory structure, appurtenant structure means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this article.

Area of special flood hazard. See *Special flood hazard area (SFHA).*

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means a determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a special flood hazard area, it may be obtained from engineering studies available from a federal, state, or other source using FEMA-approved engineering methodologies. This elevation, when combined with the freeboard, establishes the regulatory flood protection elevation.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Building. See *Structure.*

Chemical storage facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Disposal, as defined in G.S. 130A-290(a)(6), means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of

the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Elevated building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the effective date of the ordinance from which this section is derived.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; and/or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood boundary and floodway map (FBFM) means an official map of a community, issued by the Federal Emergency Management Agency, on which the special flood hazard areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the flood insurance rate map (FIRM).

Flood insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood insurance rate map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

Flood insurance study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMS) and flood boundary and floodway maps (FBFMs), if published.

Flood zone means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

Floodplain means any land area susceptible to being inundated by water from any source.

Floodplain administrator is the individual appointed to administer and enforce the floodplain management regulations.

Floodplain development permit means any type of permit that is required in conformance with the provisions of this chapter, prior to the commencement of any development activity.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. The term "floodplain management regulations" describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodprone area. See *Floodplain.*

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Freeboard means the height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The base flood elevation plus the freeboard establishes the regulatory flood protection elevation.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term "functionally dependent facility" does not include long-term storage, manufacture, sales or service facilities.

Hazardous waste management facility, as defined in G.S. 130A-290(a)(9), means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest adjacent grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic structure means any structure that meets one or more of the following criteria:

(1) It is listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register.

(2) It is certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of Interior to qualify as a registered historic district.

(3) It is individually listed on a local inventory of historic landmarks in communities with a certified local government (CLG) program.

(4) It is certified as contributing to the historical significance of a historic district designated by a community with a certified local government (CLG) program. Certified local government (CLG) programs are approved by the U.S. Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the state historic preservation officer as having met the requirements of the National Historic Preservation Act of 1966, as amended in 1980.

Lowest adjacent grade (LAG) means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal, by replacement cost depreciated for age of building and quality of construction (actual cash value), or by adjusted tax assessed values.

Mean sea level means the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

New construction means structures for which the start of construction commenced on or after the effective date of the ordinance from which the floodplain management regulations are derived and includes any subsequent improvements to such structures.

Non-encroachment area means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated in the flood insurance rate study report.

Post-FIRM means construction or other development for which the start of construction occurred on or after the effective date of the ordinance from which the flood insurance rate map is derived.

Pre-FIRM means construction or other development for which the start of construction occurred before the effective date of the ordinance from which the initial flood insurance rate map is derived.

Principally above ground means that at least 51 percent of the actual cash value of the structure is above ground.

Recreational vehicle (RV) means a vehicle which is:

(1) Built on a single chassis;

(2) 400 square feet or less in area when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light-duty truck; and

(4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference level is the top of the lowest floor for structures within special flood hazard areas designated as Zone A1-A30, AE, A, or A99.

Regulatory flood protection elevation means the base flood elevation plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In special flood hazard areas where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

Remedy a violation means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include:

(1) Protecting the structure or other affected development from flood damages;

(2) Implementing the enforcement provisions of this chapter or otherwise deterring future similar violations; or

(3) Reducing federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage yard means any nonresidential property used for the storage, collection, and/or recycling of any type of equipment, and including, but not limited to, vehicles, appliances and related machinery.

Solid waste disposal facility, as defined in G.S. 130A-290(a)(35), means any facility involved in the disposal of solid waste.

Solid waste disposal site, as defined in G.S. 130A-290(a)(36), means any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special flood hazard area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in section 14-7.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The term "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See the definition of the term "substantial improvement." The term "substantial damage" also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term "substantial improvement" includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term "substantial improvement" does not, however, include:

(1) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to ensure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

Threat to public safety and/or*nuisance* means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay stream, canal, or basin.

Variance is a grant of relief from the requirements of this chapter.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in sections 14-46, 14-47, 14-49, 14-72 and 14-73 is presumed to be in violation until such time as that documentation is provided.

Water surface elevation (WSE) means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. The term "watercourse" includes specifically designated areas in which substantial flood damage may occur.

(Code 1989, § 95.010)

Sec. 14-6. Lands to which this chapter applies.

This chapter shall apply to all special flood hazard areas within the jurisdiction, including any extra-territorial jurisdiction, of the town and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

(Code 1989, § 95.020)

Sec. 14-7. Basis for establishing the special flood hazard areas.

(a) The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the state and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for the county, dated July 2, 2008, which are adopted by reference and declared to be a part of this chapter.

(b) In addition, upon annexation to the town or inclusion in its extra-territorial jurisdiction (ETJ), the special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) and/or produced under the cooperating technical state agreement between the state and FEMA as stated in subsection (a) of this section, for the unincorporated areas of the county, with accompanying maps and other supporting data are adopted by reference and declared to be a part of this chapter.

(c) The initial flood insurance rate maps are as follows for the jurisdictional areas at the initial date:

(1) The unincorporated area of the county, dated June 1, 1987.

(2) Town of Lake Lure, dated July 2, 2008.

(Code 1989, § 95.021)

Sec. 14-8. Establishment of floodplain development permit.

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of section 14-7.

(Code 1989, § 95.022)

Sec. 14-9. Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of these and other applicable regulations.

(Code 1989, § 95.023)

Sec. 14-10. Abrogation and greater restrictions.

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and others conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Code 1989, § 95.024)

Sec. 14-11. Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Code 1989, § 95.025)

Sec. 14-12. Warning and disclaimer of liability.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by manmade or natural causes. These regulations do not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the town, or any officer or employee thereof, for any flood damages that result from reliance on these regulations or any administrative decision lawfully made hereunder.

(Code 1989, § 95.026)

Sec. 14-13. Penalties for violation.

Any person who violates any of these regulations or fails to comply with any of their requirements shall be subject to the assessment of a civil penalty in accordance with the provisions of section 36-431(e), the terms of which are incorporated herein by reference. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation.

(Code 1989, § 95.027)

Secs. 14-14—14-44. Reserved.

ARTICLE II. ADMINISTRATION

Sec. 14-45. Designation of floodplain administrator.

The town designee, referred to as the floodplain administrator, is hereby appointed to administer and implement the provisions of this chapter.

(Code 1989, § 95.030)

Sec. 14-46. Floodplain development application, permit and certification requirements.

(a) *Application requirements.* Application for a floodplain development permit shall be made to the floodplain administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:

(1) A plot plan drawn to scale which shall include, but not be limited to, the following specific details of the proposed floodplain development:

a. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/paving areas, fill materials, storage areas, drainage facilities, and other development;

b. The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in section 14-7, or a statement that the entire lot is within the special flood hazard area;

c. Flood zone designation of the proposed development area as determined on the FIRM or other flood map as determined in section 14-7;

d. The boundary of the floodway or non-encroachment area as determined in section 14-7;

e. The base flood elevation (BFE) where provided, as set forth in section 14-7, 14-47 or 14-74;

f. The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

g. The certification of the plot plan by a registered land surveyor or professional engineer.

(2) Proposed elevation, and method thereof, of all development within a special flood hazard area, including, but not limited to, the following:

a. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

b. Elevation in relation to mean sea level to which any nonresidential structure in Zone AE or A will be floodproofed; and

c. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

(3) If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

(4) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include, but are not limited to, the following:

a. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

b. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with section 14-73(4)c.3 when solid foundation perimeter walls are used in Zones A, AE, and A1-30.

(5) Usage details of any enclosed areas below the lowest floor.

(6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

(7) Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.

(8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of section 14-73(6) and (7).

(9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on a plot plan) showing the location of the proposed watercourse alteration or relocation.

(b) *Permit requirements.* The floodplain development permit shall include, but not be limited to, the following:

(1) A description of the development to be permitted under the floodplain development permit.

(2) The special flood hazard area determination for the proposed development in accordance with available data specified in section 14-7.

(3) The regulatory flood protection elevation required for the reference level and all attendant utilities.

(4) The regulatory flood protection elevation required for the protection of all public utilities.

(5) All certification submittal requirements with timelines.

(6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

(7) The flood openings requirements, if in Zones A, AE or A1-30.

(8) Limitations of below-BFE-enclosure uses (if applicable) (i.e., parking, boathouses, building access and limited storage only).

(c) *Certification requirements.*

(1) *Elevation certificates.*

a. An elevation certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review

shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

b. An elevation certificate (FEMA Form 81-31) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level in relation to mean sea level. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

c. A final as-built elevation certificate (FEMA Form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(2) *Floodproofing certificate.* If nonresidential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(3) *Manufactured home.* If a manufactured home is placed within Zone A, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of section 14-73(3)b.

(4) *Watercourse.* If a watercourse is to be altered or relocated, the following shall be submitted by the permit applicant prior to issuance of a floodplain development permit:

a. A description of the extent of watercourse alteration or relocation;

b. A professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and

c. A map showing the location of the proposed watercourse alteration or relocation.

(5) *Certification exemptions.* The following structures, if located within Zone A, AE, or A1-30, are exempt from the elevation and floodproofing certification requirements specified in subsections (5)a and b of this section:

a. Recreational vehicles meeting the requirements of section 14-73(6)a;

b. Temporary structures meeting the requirements of section 14-73(7); and

c. Accessory structures with an area of less than 150 square feet meeting requirements of section 14-73(8).

(Code 1989, § 95.031)

Sec. 14-47. Duties and responsibilities of the floodplain administrator.

The floodplain administrator shall assume and perform all such duties and responsibilities as are necessary to administer these regulations including, without limitation, those listed herein.

(1) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to ensure that the requirements of this article have been satisfied.

(2) Review all proposed development within special flood hazard areas to ensure that all necessary local, state, and federal permits have been received.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(4) Ensure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

(5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of section 14-76 are met.

(6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of section 14-46.

(7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of section 14-46.

(8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of section 14-46.

(9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of sections 14-46 and 14-73(2).

(10) Make the necessary interpretation where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this section.

(11) When base flood elevation (BFE) data have not been provided in accordance with the provisions of section 14-7, obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with

floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to section 14-74(2)b, in order to administer the provisions of this article.

(12) When base flood elevation (BFE) data are provided but no floodway or non-encroachment area data have been provided in accordance with the provisions of section 14-7, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this article.

(13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.

(14) Permanently maintain all records that pertain to the administration of this article and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

(15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

(16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this article, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason for the stoppage, and the condition under which the work may be resumed. Violation of a stop-work order subjects the perpetrator to a civil penalty pursuant to section 14-13.

(17) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for the following reasons:

a. Any substantial departure from the approved application, plans, and specifications;

b. Refusal or failure to comply with the requirements of state or local laws; or

c False statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(18) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(19) Follow through with the corrective procedures of section 14-48.

(20) Review, provide input, and make recommendations for variance requests.

(21) Maintain a current map repository to include, without limitation, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of section 14-7, including any revisions thereto, including letters of map change, issued by FEMA. Notify the state and FEMA of mapping needs.

(22) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-Fs) and letters of map revision (LOMRs).

(Code 1989, § 95.032)

Sec. 14-48. Corrective procedures.

(a) *Violations to be corrected.* When the floodplain administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(b) *Actions in event of failure to take corrective action.* If the owner of a building or property fails to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating the following:

(1) That the building or property is in violation of the floodplain management regulations;

(2) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building or to remove fill as applicable.

(c) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed in subsection (b) of this section, the floodplain administrator shall find that a building or development is in violation of the flood damage prevention ordinance, he shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

(d) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(e) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a violation of these regulations punishable as provided by section 14-13. Furthermore, the town may seek equitable or other appropriate relief to compel compliance with such order.

(Code 1989, § 95.033)

Sec. 14-49. Variance procedures.

(a) The town board of adjustment, hereinafter referred to as the appeal board, shall hear and decide requests for variances from the requirements of this chapter.

(b) Any person aggrieved by a decision of the appeal board may appeal such decision to the superior court as provided in G.S. ch. 7A.

(c) Variances may be issued for the following:

(1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(2) Functionally dependent facilities if determined to meet the definition stated in section 14-5 and provided provisions of subsection (i)(2) and (5) of this section have been satisfied, and provided such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; and

(3) Any other type of development, provided it meets the requirements of this section.

(d) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and the following:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location, as defined under section 14-5, as a functionally dependent facility, where applicable;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(e) A written report addressing each of the factors listed in subsection (d) of this section shall be submitted with the application for a variance.

(f) Upon consideration of the factors listed in subsection (d) of this section and the purposes of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this article.

(g) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to

construct a structure below the BFE will result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(h) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state upon request.

(i) Additional standards for variances.

(1) Variances shall not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations, or ordinances.

(2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued prior to development permit approval.

(5) Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(j) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas, provided that all of the following conditions are met:

(1) The use serves a critical need in the community;

(2) No feasible location exists for the use outside the special flood hazard area;

(3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation;

(4) The use complies with all other applicable federal, state and local laws; and

(5) The town has notified the secretary of the state department of crime control and public safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

(Code 1989, § 95.034)

Secs. 14-50—14-71. Reserved.

ARTICLE III. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 14-72. General standards.

The following standards apply in all special flood hazard areas:

(1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this article, shall meet the requirements of new construction as contained in this article.

(9) Nothing in these regulations shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of the ordinance from which is section is derived and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, provided that such repair, reconstruction, or replacement meets all of the other requirements of this article.

(10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in section 14-49(j). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of section 14-46(c).

(11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1344.

(15) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

(16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.

(Code 1989, § 95.040)

Sec. 14-73. Specific standards.

In addition to the general standards contained in section 14-72, the following specific standards apply in all special flood hazard areas where base flood elevation (BFE) data have been provided, as set forth in section 14-7 or 14-74:

(1) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 14-5.

(2) *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 14-5. Structures located in A, AE, and A1-30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation, provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in section 14-46(c), along with the operational plan and the inspection and maintenance plan.

(3) *Manufactured homes.*

a. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in section 14-5.

b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the state regulations for manufactured homes adopted by the commissioner of insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

c. All enclosures or skirting below the lowest floor shall meet the requirements of subsection (4) of this section.

d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within floodprone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.

(4) *Elevated buildings.* Any fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor shall comply with the following requirements:

a. It shall not be designed or used for human habitation but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas.

b. It shall be constructed entirely of flood-resistant materials at least to the regulatory flood protection elevation.

c. In Zones A, AE, and A1-30, it shall include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;

2. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;

3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

4. The bottom of all required flood openings shall be no higher than one foot above adjacent grade;

5. Flood openings may be equipped with screens louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined in this subsection.

(5) *Additions/improvements.*

a. *Pre-FIRM structures.* Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure. When such additions and/or improvements constitute a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

b. *Post-FIRM structures.*

1. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

2. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction. When such additions and/or improvements constitute

a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(6) *Recreational vehicles.* Recreational vehicles shall either:

a. Be on site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

c. Meet all the requirements for new construction.

(7) *Temporary nonresidential structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:

a. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;

b. The name, address, and telephone number of the individual responsible for the removal of the temporary structure;

c. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

d. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

e. Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.

(8) *Accessory structures.* When accessory structures (sheds, boathouses, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:

a. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

b. Accessory structures shall not be temperature-controlled;

c. Accessory structures shall be designed to have low flood-damage potential;

d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

e. Accessory structures shall be firmly anchored in accordance with the provisions of section 14-72(1);

f. All service facilities such as electrical shall be installed in accordance with the provisions of section 14-72(4); and

g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of subsection (4)c of this section. An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or

floodproofing certifications are required for all other accessory structures in accordance with section 14-46(c).

(Code 1989, § 95.041)

Sec. 14-74. Standards for floodplains without established base flood elevations.

Within the special flood hazard areas established in section 14-7, where no base flood elevation (BFE) data have been provided by FEMA, the provisions contained herein shall apply in addition to those contained in section 14-72.

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:

a. When base flood elevation (BFE) data are available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of these regulations and shall be elevated or floodproofed in accordance with the standards in sections 14-72 and 14-73.

b. When floodway or non-encroachment area data are available from a federal, state or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of this section and sections 14-73, 14-75 and 14-76.

c. All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if the development is greater than five acres or has more than 50 lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with section 14-73 and utilized in implementing this article.

d. When BFE data are not available from a federal, state, or other source, as outlined in subsection (2)a of this section, the reference level shall be elevated or floodproofed (nonresidential) to or above the regulatory flood protection elevation, as defined in section 14-5. All other applicable provisions of section 14-73 shall also apply.

(Code 1989, § 95.043)

Sec. 14-75. Standards for riverine floodplains with base flood elevations but without established floodways or non-encroachment areas.

(a) All development along rivers and streams where base flood elevation (BFE) data are provided by FEMA or are available from another source, but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM, or in the FIS report, shall comply with the standards contained within sections 14-72 and 14-73.

(b) Furthermore, until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating

that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the town's planning jurisdiction.

(Code 1989, § 95.044)

Sec. 14-76. Floodways and non-encroachment areas.

Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in section 14-7. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. In addition to the standards contained in sections 14-72 and 14-73, the following additional requirements shall apply to all development within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

a. Hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of a floodplain development permit demonstrate that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood; or

b. A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) shall also be obtained upon completion of the proposed encroachment.

(2) If the provisions of this section are satisfied, all development shall comply with all applicable flood hazard reduction provisions of this article.

(3) Manufactured homes shall not be permitted except replacement manufactured homes in an existing manufactured home park or subdivision provided such development meets the anchoring and the elevation standards of section 14-73(3), as well as the no encroachment standard of subsection (1) of this section.

(Code 1989, § 95.045)

Chapter 15 RESERVED

Chapter 16 LAW ENFORCEMENT[1]

Sec. 16-1. Police department—Created.

The police department is created subject to the terms, authority, and conditions set out in sections 16-2 through 16-8.

(Code 1989, § 30.01)

Sec. 16-2. Police department—Composition.

The police department shall consist of a chief of police and officers, patrol officers, and police officers of designated grade as the council deems necessary.

(Code 1989, § 30.02)

Sec. 16-3. Duties of police officers.

(a) The chief of police and the members of the police department shall have the duty of enforcing all the ordinances of the town and the laws of the state within the town, and other duties as may be prescribed by ordinance.

(b) It shall be the duty of each member of the police department, on information furnished him, or on his knowledge of any violation of the ordinances of the town or of the laws of the state, to secure proper warrants for the arrest and trial of any and all offenders against any ordinances or laws.

(Code 1989, § 30.03)

Sec. 16-4. Personnel.

The council shall have the duty of hiring persons as may be necessary to man the police department and to provide the town with adequate police protection, together with the duty of discharging such members.

[1]State law reference(s)—Town law enforcement in general, G.S. 160A-281 et seq.

(Code 1989, § 30.04)

Sec. 16-5. Control and supervision over the department.

The chief of police, subject to the general supervision of the council, is held responsible for the discipline, good order, and proper conduct of the department.

(Code 1989, § 30.05)

Sec. 16-6. Conditions of employment.

(a) Members of police department shall be appointed by the town council after due examination by the council and based on the results of the examination.

(b) An appointee shall serve six months' probation, or as extended by the town council.

(Code 1989, § 30.06)

Sec. 16-7. Requirements.

Every person appointed as a law enforcement officer shall:

(1) Be a citizen of the United States;

(2) Be at least 20 years of age;

(3) Be of good moral character;

(4) Be fingerprinted and a search made of local, state, and federal fingerprint files;

(5) Not have been convicted of a felony or an offense involving moral turpitude;

(6) Have a high school diploma or its equivalent;

(7) Pass an examination conducted by a physician employed by the town; and

(8) Be certified in accordance with state law.

(Code 1989, § 30.07)

State law reference(s)—State law requires that law enforcement officers be certified by the criminal justice education and training standards commission, G.S. 17C-6.

Sec. 16-8. Specific duties of the chief of police.

(a) The chief of police commands the force under his order, and is responsible for its discipline and efficiency. Further, he shall recommend to the council the reforms and changes in the police department which practical experience shows should be instituted. The chief of police will be required to make out a quarterly statement of conduct of the affairs of the department and shall include therein any suggestions for the improvement in the service or personnel of the department.

(b) Additional, specific functions of the chief of police are:

(1) To issue to the force under his command such orders and directives as may be necessary to preserve the public peace, prevent crime, arrest offenders, and to protect public and private property and persons in the town;

(2) To enforce the laws, ordinances, police regulations, and executive orders applicable to his jurisdiction;

(3) To require the proper submission and handling of the necessary required reports.

(Code 1989, § 30.08)

Sec. 16-9. Auxiliary police.

(a) The town auxiliary police department made up entirely of volunteer members is hereby established.

(b) The board of commissioners shall have the duty of approval of volunteers to serve as auxiliary personnel, together with the duty of discharging such volunteer members.

(c) Auxiliary law enforcement personnel shall perform no duties on behalf of the town unless under orders or instructions of the chief of police of the town.

(d) Neither the town nor its police department shall be liable to the auxiliary law enforcement personnel for any additional fringe benefits, wages, other compensation, or insurance coverage, except as follows: while undergoing official training and while performing duties on behalf of the town pursuant to orders or instructions of the chief of police of the town, auxiliary law enforcement personnel shall be entitled to benefits under the North Carolina Workers' Compensation Act.

(e) Neither the town nor its police department shall be liable to any third parties for any actions, intentional or otherwise, malicious or not, including negligence and/or gross negligence, unless said auxiliary law enforcement personnel was engaged in the performance of duties on behalf of the town pursuant to orders or instructions of the chief of police of the town.

(f) Neither the town, the town manager, and/or the board of commissioners shall be held responsible for the discipline, good order, and proper conduct of the auxiliary law enforcement police department.

(g) Every person appointed as a volunteer auxiliary law enforcement department member shall:

(1) Be a citizen of the United States;

(2) Be at least 20 years of age;

(3) Be of good moral character;

(4) Not have been convicted of a felony or an offense involving moral turpitude;

(5) Have a high school diploma or its equivalent; and

(6) Must complete the basic law enforcement training, be certified as a law enforcement officer, and meet any additional law requirements.

(Code 1989, § 30.09; Ord. of 5-26-1989)

State law reference(s)—Authority to establish auxiliary police department, G.S. 160A-282.

Chapter 17 RESERVED

Chapter 18 NUISANCES

Sec. 18-1. "Nuisance" defined.

For the purpose of this chapter, the term "nuisance" means or refers to any condition or any use of property or any act or omission affecting the condition or use of property which threatens or is likely to threaten the safety of the public; adversely affects the general health, happiness, security or welfare of others; or is detrimental to the rights of others to the full use of their own property and their own comfort, happiness and emotional stability because of decreased property values and the unsightliness and decreased livability of neighborhoods.

(Code 1989, § 83.01; Ord. of 3-13-2012)

Sec. 18-2. Certain conditions declared as public nuisances.

The following enumerated and described conditions, or any combination thereof, are hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety, morals and general welfare of the inhabitants of the town and are found, deemed and declared to be public nuisances wherever the conditions may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

(1) Any weeds or other vegetation having an overall height of more than 24 inches above the surrounding ground, provided that the following shall not be considered to be a part of this condition: trees and ornamental shrubs; cultured plants; natural vegetation on undeveloped property that is not a threat to the character of surrounding properties; and flowers and growing and producing vegetable plants.

(2) Any accumulation of trash, garbage, food waste and other trash which is the result of the absence of, or overflowing of, or improperly closed trash or garbage containers, that attracts or is likely to attract mice and rats, flies and mosquitoes or other pests.

(3) An open or unsecured storage or collection place for chemicals, acids, oils, gasoline, flammable or combustible materials or flammable or combustible liquids, poisonous materials or other similar harmful or dangerous substances, gasses or vapors.

(4) An open place, collection, storage place or concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, or any other combustible materials collection.

(5) An open storage place for old worn out, broken or discarded machinery, car parts, junk, tire rims, furniture, stoves, refrigerators, appliances, cans and containers, household goods, plumbing or electrical fixtures, old rusty metal, fencing materials or other similar materials.

(6) Any accumulation of garbage, rubbish, trash, or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes, mosquitoes, or vermin prejudicial to the public health.

(7) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitance therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health.

(8) The open storage of any discarded ice box, furniture, refrigerator, stove, glass, building materials, building rubbish or similar items. The use of carports, open porches, decks, open garages and other outdoor areas that are visible from the street as a storage or collection place for boxes, appliances, furniture (not typical outdoor or yard furniture), tools, equipment, junk, garbage, old worn out broken or discarded machinery and equipment, cans, containers, household goods or other similar condition that increase the likelihood of a fire; may conceal dangerous conditions; may be a breeding place or habitat for mice, rats or other pests; or, create an unattractive condition or visually blighted property.

(9) A collection place for lumber, bricks, blocks, nails, building hardware, roofing materials, scaffolding, masonry materials, electrical supplies or materials, plumbing supplies or materials, heating and air conditioning supplies or materials or any other type of old or unusable building supplies (especially those with nails, staples or sharp objects and edges) unless such conditions are temporary in nature and caused by a current construction project in progress pursuant to a lawfully issued building permit.

(10) Any building or other structure which has been burned, partially burned or otherwise partially destroyed and which is hazardous to the safety of any person, is a continuing fire hazard or which is structurally unsound to the extent that the code enforcement officer or his designee can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises.

(11) A collection place, pool or pond of stagnant or foul water or persistent dampness caused by manmade dams, open ditches, overflowing pipes, foundation trenches or other impoundments of any kind.

(12) Barns or farm animal pens, pastures or enclosures for farm animals which are not kept sanitary and clean or otherwise become a collection place for animal waste and which, because of the conditions associated therewith, attract rats, mice, flies or other pests or emit foul odors that can be detected or noticed on adjacent properties or are otherwise not kept in a sanitary condition.

(13) Dog lots, pens, pet enclosures of all kinds, outdoor areas where dogs or other pets are chained or kept or areas where dogs and cats are permitted to roam which become a collection place for dog, cat or pet waste and excrement and which attract flies or other pests, emit foul odors which can be detected or noticed on adjacent property or are not kept in a sanitary condition.

(14) A collection place for sewage and sewage drainage or the seepage from septic tanks, broken or malfunctioning plumbing and sewer pipes or any other seepage of dangerous, hazardous or poisonous liquids.

(15) A collection place for tree limbs, dried brush, dead vegetation, stumps or other decayed wood and materials or other similar rubbish that is offensive by virtue of odors or vapors or by the inhabitance therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health.

(16) Any discharge into or polluting of any stream, creek, river or other body of water or the discharge of any dangerous substance or any other material likely to harm the water or any vegetation, fish or wildlife in or along the water or the storage of such harmful materials and substances in a manner so

that it is likely that such streams, creeks, rivers or other bodies of water will become polluted or adversely affected in any manner.

(17) Nuisance vehicle. A vehicle on public or private property that is determined and declared to be a health or safety hazard, including a vehicle found to be:

a. A breeding ground or harbor for mosquitoes, other insects, rats or other pests;

b. A point of heavy growth of weeds or other noxious vegetation which exceeds 24 inches in height;

c. A concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor;

d. An area of confinement which cannot be operated from the inside, such as, but not limited to, trunks or hoods;

e. So situated or located that there is a danger of it falling or turning over;

f. A collection of garbage, food waste, animal waste, or any other rotten or putrescent matter of any kind;

g. One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or

h. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the town council.

(18) Any condition detrimental to the public health which violates the rules and regulations of the county health departments.

(Code 1989, § 83.02)

Sec. 18-3. Complaint; investigation of public nuisance.

When any condition in violation of this chapter is found to exist, the code enforcement officer or such persons as may be designated by the town council shall give notice to the owner of the premises to abate or remove such conditions within 15 days. Such notice shall be in writing, shall include a description of the premises sufficient for identification and shall set forth the violation and state that, if the violation is not corrected within 15 days, the town may proceed to correct the same as authorized by this chapter. Service of such notice shall be by any one of the following methods:

(1) By delivery to any owner personally or by leaving the notice at the usual place of abode of the owner with a person who is over the age of 16 years and a member of the family of the owner.

(2) By depositing the notice in the U.S. post office addressed to the owner's address as reflected on the tax records of the county with regular mail postage prepaid thereon.

(3) By posting a copy of the notice, in placard form, in a conspicuous place on the premises on which the violation exists, when notice cannot be served by subsections (1) and (2) of this section.

(Code 1989, § 83.03)

Sec. 18-4. Abatement procedure.

If the owner of any property fails to comply with a notice given pursuant to this chapter, within 15 days after the service of such notice, he shall be subject to prosecution for violation of this chapter punishable as a misdemeanor as provided in G.S. 14-4 and each day that such failure continues shall be a separate offense. In addition, the town may have the condition described in the notice abated, removed or otherwise corrected and all

expenses incurred thereby shall be chargeable to and paid by the owner of the property and shall be collected as taxes and levies are collected. All such expenses shall constitute a lien against the property on which the work was done.

(Code 1989, § 83.04, Ord. of 6-14-2022)

Sec. 18-5. Procedure is alternative.

The procedure set forth in this chapter shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances. In addition to the remedies provided for herein, any violation of the terms of this chapter shall subject the violator to the penalties and remedies as set forth in section 1-10.

(Code 1989, § 83.05)

Chapter 19 RESERVED

Chapter 20 OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

Sec. 20-1. Discharge of firearms.

(a) It shall be unlawful for any person to fire or discharge any rifle, gun, pistol, pellet gun, air gun, air pistol, or air rifle within the town, on or off his premises, in sport or amusement. A violation of this section is punishable as a misdemeanor as provided by G.S. 14-4.

(b) Any person who shall knowingly and willfully permit his minor child under 18 years of age to discharge, fire, shoot, or operate within the town any such air rifle or pellet gun, shall be guilty of a misdemeanor punishable as a misdemeanor as provided by G.S.14-4r.

(Code 1989, § 84.01. Ord. of 6-14-2022)

State law reference(s)—Authority to regulate and restrict firearms, and pellet guns, G.S. 160A-189, 160A-190.

Sec. 20-2. Disturbing public meetings.

It shall be unlawful to behave in a boisterous or indecent manner or to create any disturbance at or near any public entertainment or meeting. A violation of this section is punishable as a misdemeanor as provided by G.S> 14-4.

(Code 1989, § 84.02, Ord. of 6-14-2022)

Sec. 20-3. Injuring town property.

It shall be unlawful to trespass upon, damage, deface, break, or injure any property belonging to the town. A violation of this section is punishable as a misdemeanor as provided by G.S. 14-4.

(Code 1989, § 84.03, Ord. of 6-14-2022)

Sec. 20-4. Possession of firearms on certain municipal property.

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

Firearm means a handgun, shotgun, or rifle which expels a projectile by action of an explosion.

Handgun means a pistol, revolver, or other gun that has a short stock and is designed to be held and fired by the use of a single hand.

(b) The possession of firearms, carried openly or concealed, is hereby prohibited within the following municipal buildings:

(1) The town police department located at 2950 Memorial Highway, Lake Lure, N.C.

(2) The town alcoholic beverage control (ABC) store located on Memorial Highway, Lake Lure, N.C.

(c) The possession of firearms, carried openly or concealed, is hereby prohibited within the following municipal buildings; however, this subsection shall not apply to a person who is legally carrying a concealed handgun and has a concealed handgun permit that is valid under G.S. 14, art. 54B (G.S. 14-415.10 et seq.), or who is exempt from obtaining a permit pursuant to that article. Open carry is still prohibited:

(1) Town hall located at 2948 Memorial Highway, Lake Lure, N.C.

(2) Lake operations located on Buffalo Shoals Road, Lake Lure, N.C.

(d) Appropriate decals or signs indicating that firearms are prohibited within, shall be conspicuously displayed at each entrance by which the general public can access the municipal buildings specified in subsections (b) and (c) of this section. Decals or signs shall not be posted at or on municipal properties not identified herein, or where no prohibitions exist.

(e) If this section or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given separate effect and to that end the provisions of this section are declared to be severable. All ordinances or parts of ordinances in conflict with this section are hereby repealed.

(f) This section shall be effective immediately upon adoption by majority vote of the town council.

(G) A violation of this section is punishable as a misdemeanor as provided by G.S. 14-4.

(Code 1989, § 84.04; Ord. of 6-14-2016, Ord. of 6-14-2022)

Secs. 20-5—20-26. Reserved.

ARTICLE II. NOISE REGULATION[1]

Sec. 20-27. Scope.

This article shall apply to all sound, sound vibration, and noise originating within the corporate limits of the town. Nothing in this article shall be construed to limit or prevent the town or any person from pursuing any other legal remedies for damages or the abatement of noises in the town.

(Code 1989, § 84A.01)

Sec. 20-28. 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:

Amplified sound means any sound or noise, including the human voice, that is increased in volume or intensity by means of mechanical and/or electrical power.

Construction means the erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

Decibel (dB) means a unit for describing the amplitude of sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

Motorized vehicle means any vehicle, as defined in G.S. 20-4.01(49), including, but not limited to:

(1) Excursion passenger vehicles as defined in G.S. 20-4.01(27)e.

(2) Common carriers of passengers as defined in G.S. 20-4.01(27)d.

(3) Motorcycles and mopeds as defined in G.S. 20-4.01(27)h and j.

(4) Truck tractors as defined in G.S. 20-4.01(48).

(5) Farm tractors as defined in G.S. 20-4.01(11).

Noise disturbance means any sound or noise which:

(1) Endangers or injures the health or safety of humans or animals;

(2) Endangers or injures personal or real property; or

(3) Disturbs a reasonable person of normal sensitivity or interferes with normal human activity.

Except as otherwise provided herein, a sound will be considered a noise disturbance if it exceeds the decibel level thresholds established by zoning district and time of day.

Person means any individual, association, firm, partnership, corporation, or business entity.

[1]State law reference(s)—Authority to regulate noises, G.S. 160A-184.

Sound means any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by reasonable persons of normal sensitivity.

Sound level meter means an ANSI standard S1.4 Type 0, I or II class instrument which includes a microphone, amplifier, RMS detector, integrator or time average (LEQ as defined below), output meter, and weighting network used to measure sound pressure levels.

(Code 1989, § 84A.02)

Sec. 20-29. General regulation.

Except as allowed in this article, no person shall willfully engage in any activity within the town, whether on private or public property, which activity produces or constitutes a noise disturbance on occupied neighboring premises or public area.

(Code 1989, § 84A.03)

Sec. 20-30. Exceptions.

Sound or noise associated with the following are excepted from the application of this article:

(1) Construction activity performed by an agency of government, provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition;

(2) Construction or repair work and regulated activities of utilities regulated by the state utilities commission;

(3) Construction activities associated with home improvements between the hours of 7:00 a.m. and 9:00 p.m. Monday through Sunday;

(4) Lawnmowers and turf management equipment operated between the hours of 6:00 a.m. and 9:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;

(5) Refuse collection vehicles operating during daylight hours;

(6) Safety signals, warning devices, emergency pressure relief valves, and church bells;

(7) Outdoor entertainment events only to the extent authorized in a special event permit issued by the town;

(8) Regularly scheduled athletic events at town parks, athletic facilities, and public or private schools;

(9) Film and video production activities for which permits have been issued by the town, provided all equipment such as generators are properly muffled;

(10) Lawful fireworks;

(11) Properly equipped aircraft operated in accordance with applicable federal rules and regulations; and

(12) Governmental emergency vehicles and firearms in the course of the performance of official duties.

(Code 1989, § 84A.04)

Sec. 20-31. Decibel standards—Generally.

It shall be presumed that a noise disturbance in violation of this article has occurred whenever any noise or sound is projected from one property in the town onto another or onto a public area if such sound, measured in accordance with section 20-32, exceeds the following decibel standards. The zoning classification of the property where the sound originates will be used to determine which standards apply.

(1) Residential districts R-2, R-4, L-1, M-1, S-1 and the various R-1 districts:

a. 7:00 a.m. to 11:00 p.m.: 65 dBA.

b. 11:00 p.m. to 7:00 a.m.: 55 dBA.

(2) Resort, commercial and all other zoning districts:

a. 7:00 a.m. to 11:00 p.m.: 65 dBA.

b. 11:00 p.m. to 7:00 a.m.: 55 dBA.

(Code 1989, § 84A.05)

Sec. 20-32. Decibel standards—Method of measurement.

Except as qualified by section 20-34, when measuring vehicular noise, this section describes acceptable methods and techniques for the measurement and reporting of noise for the purpose of determining compliance with the allowable noise levels listed in section 20-31.

(1) *Measurement location.* Measurement of sound shall be made at any point beyond (outside) the property line of the property where the noise originates; provided, however, when sound is measured on town property, the point of measurement shall be at least 50 yards from the property line of the property where the sound originates.

(2) *Calibration.* All sound level measuring devices shall be calibrated by a certified agency, at a minimum once each year.

(3) *Sound level meter.* Sound level measurement shall be made with a sound level meter using the A-weighting scale, set on "slow" response.

(4) *Use of sound level meters.* Sound level meters shall be at least Type II meeting American National Standard Institute (ANSI S1.4-1983) requirements. Persons using the sound level meters shall be trained in sound level measurement and the operation of sound level measurement equipment.

(5) *Measurement procedures.* The following procedures shall be followed to obtain representative sound level measurements:

a. Measurement location shall be at least three feet above the ground and not more than ten feet above ground.

b. Measurement shall be taken with line of sight to the noise source if possible.

c. Measurements shall be made with the sound level meter set for "A" weighting and "slow" response.

(6) *Data documentation.* A record of all sound level measurements shall be completed and signed by the person making the measurements. The record sheet should include the following:

a. Date.

b. Time of measurement.

c. Location (street address if possible).

d. Noise source.

e. Make, model and serial number of sound level meter and the date of last certification/calibration.

f. Field calibration results.

g. Name of complainant (if provided).

(Code 1989, § 84A.06)

Sec. 20-33. Quiet hour prohibitions.

In addition to the general prohibition set forth in section 20-29, the following quiet hours are established that further restrict noise-generating activities in order to support the community's expectation of a quiet sleeping period. The following activities are prohibited:

(1) Construction activities associated with home improvements between the hours of 9:00 p.m. and 7:00 a.m. Monday through Sunday.

(2) Lawnmowers and turf management equipment operated between the hours of 9:00 p.m. and 6:00 a.m.

(3) With the exception of construction activities associated with home improvements, which are addressed in subsection (1) of this section, the excavation, grading and/or the erection demolition, alteration or repair of any building or other structure within 500 feet of a residential district as established pursuant to chapter 36, between the hours of 7:00 p.m. and 7:00 a.m. Monday through Saturday, except by permit from the town manager when, in his opinion, such work will not adversely affect other persons. Following the issuance of such a permit, if the town manager shall determine that the building operations are adversely affecting others, he shall be authorized to modify or revoke the permit. The town manager may permit emergency work in the preservation of public health or safety at any time.

(4) Operation of outdoor amplified music or public address systems between the hours of 11:00 p.m. and 7:00 a.m.

(Code 1989, § 84A.07)

Sec. 20-34. Vehicular noise.

The following shall be prohibited as a public nuisance under this article:

(1) Operation of any motor vehicle so as to cause the tires to squeal or screech unnecessarily.

(2) Operation within the town limits any type of motor vehicle that exceeds a measured noise level of 92 decibels on the sound meter when measured 20 inches from the exhaust pipe at a 45-degree angle while the engine is operating at idle.

(3) Operation of any motor vehicle of any size and regardless of the year of manufacture that meets one or more of the following criteria:

a. It is not equipped with an adequate muffler in constant operation, free of defects and modifications, that prevents the escape of any excessive or unusual noise;

b. It has a muffler system that is equipped with a straight pipe exhaust system (regardless of the presence of baffles);

c. It has a hollow core muffler;

d. It has a muffler that is labeled for off-road course competition use;

e. It has a muffler system that has a cut-out, bypass, or similar device designed or so installed so that it can be used continually or intermittently to bypass or otherwise reduce or eliminate the effectiveness of a muffler or muffler system;

f. It has a muffler system that has been modified in a manner which will amplify or increase the noise emitted by the exhaust.

(4) Operation of any motor vehicle within the town limits so as to make any unreasonably loud noise that results from any one or more of the following actions by the operator:

a. Misuse of acceleration or braking power that exceeds tire traction limits, sometimes known as "burn-outs," "burning rubber," "laying down rubber" or "peeling rubber."

b. Excessive acceleration or deceleration while in motion where there is no emergency need.

c. Racing or revving of engines by manipulation of the accelerator, gas pedal, or carburetor in applying fuel to the engine in a greater amount than is necessary whether the vehicle is either in motion or standing still.

d. Use of an engine braking system which is in any way activated or operated by the compression of the engine of any motor vehicle or any part thereof, except in cases of emergency for the protection of persons and/or property. Such braking systems are commonly referred as compression brakes or jake brakes.

(Code 1989, § 84A.08)

Sec. 20-35. Animal noises.

Animal noise may constitute a noise disturbance even though they do not exceed the decibel levels established in section 20-31. Accordingly, the keeping of any dog which by prolonged or habitual barking, howling or whining or any other animal that frequently or for long periods of time makes noises which disturb the comfort or repose of any persons in the vicinity shall constitute a noise disturbance.

(Code 1989, § 84A.10)

Sec. 20-36. Non-exclusivity.

Nothing in this article shall be construed to prevent or limit any person from seeking any remedy available in law or equity for activities that are or may be subject to regulation by this article, or from pursuing said remedy simultaneously with proceedings under this article, nor shall any of the procedures specified herein be a condition precedent to the initiation of any legal action.

(Code 1989, § 84A.10)

Sec. 20-37. Enforcement.

(a) Violations of the provisions of this article shall be punishable as a misdemeanor as provided by G.S. 14-4. Violations of the provisions of this article shall also subject the offender to the civil penalties set forth in

Section 1-10. In addition to the penalties set forth therein, second or subsequent violations of the provisions of this article by the same person for the same activity occurring within one year of the first such violation shall be subject to civil penalties per section 1-10 as follows:

Violation	*Penalty*
First violation	$50.00
Second violation	$100.00
Third violation	$200.00
Fourth or subsequent violation, per offense	$300.00

(b) In addition to the penalties provided for in the table in subsection (a) of this section, the town may enforce the provisions of this chapter by appropriate equitable remedies.

(c) This article may be enforced by the town police department and by other employees of the town as designated by the town manager. Employees of an animal control agency working under contract with the town for the enforcement of animal control ordinances and who have been designated by the chief of police may enforce the provisions of this chapter relating to animals and animal noises.

(Code 1989, § 84A.11, Ord. of 6-14-2022)

Chapter 21 RESERVED

Chapter 22 PLANNING AND DEVELOPMENT

ARTICLE I. IN GENERAL

Secs. 22-1—22-18. Reserved.

ARTICLE II. SOIL EROSION AND SEDIMENTATION CONTROL

Sec. 22-19. Title.

This article may be cited as the town soil erosion and sedimentation control regulation.

(Code 1989, § 96.01; Ord. of 11-15-2005)

Sec. 22-20. Purposes.

This article is adopted for the purposes of:

(1) Regulating certain land disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and

(2) Establishing procedures through which these purposes can be fulfilled.

(Code 1989, § 96.02)

Sec. 22-21. 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:

25-year storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

Accelerated erosion means any increase over the rate of natural erosion as a result of land disturbing activity.

Act means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate erosion control measure, structure, or device means a measure, structure or device which controls the soil material within the land area under responsible control of the person conducting the land disturbing activity.

Affiliate means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

Being conducted means a land disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Borrow means fill material which is required for on-site construction and is obtained from other locations.

Buffer zone means the strip of land adjacent to a lake or natural watercourse.

Commission means the state sedimentation control commission.

Completion of construction or development means the point at which no further land disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Contractor means anyone performing work at the behest of a property owner, whether the contract is verbal or written.

Department means the state department of environment and natural resources.

Director means the director of the division of energy, mineral, and land resources of the department of environment and natural resources.

Discharge point means that point at which stormwater runoff leaves a tract of land.

District means the county soil and water conservation district created pursuant to G.S. ch. 139.

Energy dissipator means a structure or shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Erosion means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

Erosion control officer means a town official working under the auspices of the community development administrator for the purpose of applying this article.

Ground cover means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

High quality water (HQW) zones means areas within one mile and draining to HQWs.

High quality waters means those waters classified as such in 15A NCAC 2B.0101(e)(5) - general procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).

Lake or natural watercourse means any stream, river, brook, creek, run, branch, wetland, waterway, and any reservoir, lake or pond, natural or impounded in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land disturbing activity 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.

Major erosion control plan means an erosion and sedimentation control plan for land disturbance of one acre or more approved by the town or the state department of environment and natural resources.

Minor erosion and sedimentation control plan means an erosion and sedimentation control plan approved by the town for land disturbance activities taking place on less than one acre.

Natural erosion means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Parent means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

Permit means written governmental permission issued by an authorized official, empowering the holder thereof to do some act not forbidden by law but not allowed without such authorization.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person conducting land disturbing activity means any person who may be held responsible for a violation unless expressly provided otherwise by this section or any order adopted pursuant to this article.

Person responsible for the violation means any developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity; or the landowner or person in possession or control of the land that has directly or indirectly allowed the land disturbing activity, or benefited from it or failed to comply with a duty imposed by any provision of this section, the Act, or any order adopted pursuant to this article or the Act.

Phase of grading means one of two types of grading — rough or fine.

Plan means an erosion and sedimentation control plan.

Sediment means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Sedimentation means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land disturbing activity or into a lake or natural watercourse.

Siltation means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land disturbing activity; and which has been deposited, or is in suspension in water.

Storm drainage facilities means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff means the direct runoff of water resulting from precipitation in any form.

Subsidiary means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

Ten-year storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

Tract means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Uncovered means the removal of ground cover from, on, or above the soil surface.

Undertaken means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Velocity means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Waste means surplus materials resulting from on-site construction and disposed of at other locations.

Working days means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

(Code 1989, § 96.03; Ord. of 6-12-2007; Ord. of 5-8-2018)

Sec. 22-22. Scope and exclusions.

(a) *Geographical scope of regulated land disturbing activity.* This section shall apply to all land disturbing activities, as defined, within the territorial jurisdiction of the town and to the extraterritorial jurisdiction of the town as allowed by the agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

(b) *Exclusions from regulated land disturbing activity.* Notwithstanding the general applicability of this section to all land disturbing activity, this section shall not apply to the following types of land disturbing activity:

(1) Activities undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in forest practice guidelines related to water quality, as adopted by the state department of environment and natural resources. If land disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with forest practice guidelines related to water quality, the provisions of this section shall apply to such activity and any related land disturbing activity on the tract.

(2) Activities for which a permit is required under the mining Act of 1971, G.S. ch. 74, art. 7 (G.S. 74-46 et seq.).

(3) Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

(4) For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).

(5) An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to, the following:

a. Forage and sod crops, grain and feed crops, tobacco, cotton and peanuts.

b. Dairy animals and dairy products.

c. Poultry and poultry products.

d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.

e. Bees and apiary products.

f. Fur-producing animals.

(6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under section 404 of the Clean Water Act.

(7) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetland functions of converted wetlands as defined in 7 CFR 12.2 (January 1, 2014 edition).

(c) *Plan approval requirement for land disturbing activity.* No person shall undertake any land disturbing activity subject to this article without first obtaining a plan approval therefor from the town.

(d) *Protection of property.* Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

(e) *More restrictive rules shall apply.* Whenever conflicts exist between federal, state, or local laws, this chapter, or rules, the more restrictive provision shall apply.

(f) *Plan approval exceptions.* Notwithstanding the general requirement to obtain a plan approval prior to undertaking land disturbing activity, a plan approval shall not be required for land disturbing activity that does not exceed the applicable threshold specified in section 22-23(a). In making this determination, lands under one or diverse ownership being developed as a unit will be aggregated.

(Code 1989, § 96.04; Ord. of 6-12-2007; Ord. of 5-8-2018)

Sec. 22-23. General requirements.

(a) *Permit required.*

(1) A land disturbance permit approved by the erosion control officer shall be required for all non-exempt land disturbing activities, except that no permit shall be required for land disturbing activity:

a. Where land disturbing activities are essential to protect human life and only for the duration of an emergency;

b. Where land disturbing activities are within 35 feet of a lake or natural watercourse and do not exceed 100 square feet in surface area; or

c. Where land disturbing activities are not within 35 feet of a lake or natural watercourse and do not exceed 2,000 square feet in surface area.

d. 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 and plan approval prior to commencing work shall result in double the normal application review fee.

(2) Where a major erosion control plan approved by the state department of environment and natural resources is required, such plan approval shall be a prerequisite to receiving a permit from the town.

(b) *Plans required.*

(1) *Minor plan submission.* A minor erosion and sedimentation control plan shall be prepared for all land disturbing activities subject to this section whenever more than 2,000 square feet (100 square feet if land disturbing activity is within 35 feet of a lake or natural watercourse) but less than one acre of land is to be uncovered. The plan shall be filed with, and accepted for review by the erosion control officer, ten or more working days prior to initiating the activity. Two copies of the plan shall be filed and upon approval, one copy, signed by the erosion control officer, shall be returned to the applicant.

(2) *Major plan submission.* A major erosion and sedimentation control plan shall be prepared for all land disturbing activities subject to this article whenever one acre or more is to be uncovered. Three copies of the plan shall be filed with the town, a copy shall be simultaneously submitted to the director of the division of water resources at least 30 days prior to the commencement of the proposed activity.

(3) *Financial responsibility and ownership.* Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible; the owner of the land; and any registered agents. If the person financially responsible is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this section, or rules or orders adopted or issued pursuant to this article. Except as provided in subsections (3)a and b of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation

control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land disturbing activity.

a. If the applicant is the owner of the land to be disturbed and the anticipated land disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

b. The town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The town may transfer a plan if all of the following conditions are met:

1. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.

2. The town finds all the following:

(i) The plan holder is one of the following:

A. A natural person who is deceased.

B. A partnership, limited liability corporation, or any other business association that has been dissolved.

C. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

D. A person who has sold the property on which the permitted activity is occurring or will occur.

(ii) The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

(iii) The successor-owner is the sole claimant of the right to engage in the permitted activity.

(iv) There will be no substantial change in the permitted activity.

c. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.

d. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

e. Notwithstanding changes to law made after the original issuance of the plan, the town may not impose new or different terms and conditions on the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the town from requiring a revised plan pursuant to G.S. 113A-54.1(b).

(4) *Environmental policy act document.* Any major plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 et seq.). Shall be deemed incomplete until a complete environmental document is available for review. The erosion control officer shall promptly notify the person submitting the plan that the 30-day time

limit for review of the plan pursuant to this article shall not begin until a complete environmental document is available for review.

(5) *Content.* The plans required by this section shall contain specific information as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Plan content may vary to meet the needs of specific site requirements.

a. A major plan shall contain the following:

1. A location map (showing and identifying nearby roads).

2. Either a certified copy of a survey or a copy of the tax maps showing the actual property which is subject to the application.

3. A site plan showing the following:

(i) Boundary and topographical surveys of the property including existing and proposed site conditions (buildings, streets, driveways, parking lots, utilities, grassed and landscaped areas, number of acres disturbed, watercourses and other features affecting stormwater runoff and management, etc.).

(ii) Offsite conditions (ownership use, drainage areas, lakes, and streams).

(iii) Lot lines and numbers, road names, easements, flood zones, utilities, and setbacks.

(iv) Stormwater systems (catchbasins, inlets, culverts, swales, ditches, and channels).

(v) Borrow and waste areas, access and haul roads, construction staging areas, topsoil stockpiles.

(vi) Disturbed area (clearly delineated).

(vii) Stream crossings.

(viii) Temporary and permanent sedimentation and erosion control measures (locations and dimensions of gravel entrances, diversion ditches, silt fences, sediment basins, velocity dissipaters, ditch lining, retaining walls, etc.).

(ix) Detailed drawings (sections, elevations, and perspectives of measures sufficient for construction).

(x) Construction sequence (permits, installation of measures, inspections and approvals, maintenance of measures, ground cover, and removal of measures after stabilization).

(xi) Statements concerning approval to discharge stormwater or perform off-site construction work.

(xii) Scale, legend, orientation (north arrow), seal and signature.

(xiii) Temporary and permanent seeding plans (seed bed preparation, fertilizer and lime rates, seeding schedule and rates, mulch and tack materials and rates).

(xiv) Underground utilities.

(xv) Dust control.

4. Calculations sufficient to support design for the entire stormwater system, including, but not limited to, the following:
    (i) Temporary devices (sediment storage volumes, Q10 capacities).
    (ii) Ditches, swales and channels (Q10 velocities and capacities).
    (iii) Velocity dissipators (Q10 velocities).
    (iv) Storm culverts and inlets (Q10 minimum).
5. Such other documents as may be requested by the erosion control officer to ensure compliance with this section.

b. A minor plan shall contain the following:
1. A location map (showing and identifying roads).
2. A sketch plan drawn to scale showing the following:
    (i) Boundaries and topography of the property including existing and proposed site conditions (buildings, streets, driveways, parking lots, utilities, setbacks, watercourses and other features affecting stormwater runoff and management, etc.).
    (ii) Offsite conditions (ownership use, drainage areas, lakes, and streams).
    (iii) Area to be disturbed (building footprint, access roads, graded surfaces, cut and fill slopes, etc.).
    (iv) Stormwater systems (catchbasins, inlets, culverts, swales, ditches, and channels).
    (v) Stream crossings.
    (vi) Temporary and permanent sedimentation and erosion control measures (locations and dimensions of gravel entrances, diversion ditches, silt fences, sediment basins, velocity dissipaters, ditch lining, retaining walls, etc.).
    (vii) Construction sequence (permits, installation of measures, inspections and approvals, maintenance of measures, ground cover, and removal of measures after stabilization).
    (viii) Temporary and permanent seeding plans (seed bed preparation, fertilizer and lime rates, seeding schedule and rates, mulch and tack materials and rates).
3. Either a certified copy of a survey or a copy of the tax maps showing the actual property which is the subject of the application.
4. Such other documents as may be requested by the erosion control officer to ensure compliance with this subsection.

(6) *Soil and water conservation district comments.* The district shall review the plan and submit any comments and recommendations to the town within 20 days after the district received the plan, or within any shorter period of time as may be agreed upon by the district and the town. Failure of the district to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(7) *Timeline for decisions on plans.* The erosion control officer will review the plan and within ten working days of receipt thereof for minor plans or 30 days for major plans, will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within the allocated time of receipt shall be deemed approval. The erosion control officer will review each revised plan and within five days of receipt thereof for minor plans or 15 days for major plans, will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a revised plan within the allocated time of receipt shall be deemed approval.

(8) *Approval.* The erosion control officer shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The erosion control officer shall condition approval of plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The erosion control officer may establish an expiration date, not to exceed three years, for plans approved under this article.

(9) *Disapproval for content.* The erosion control officer may disapprove a plan or draft plan based on its content. A disapproval based upon a plan's content must specifically state in writing the reasons for disapproval.

(10) *Other disapprovals.* The erosion control officer may disapprove a plan or draft plan if implementation of the plan would result in a violation of the rules adopted by the environmental management commission to protect riparian buffers along surface waters. The erosion control officer may disapprove a plan or disapprove a transfer of a plan under subsection (b)(3) of this section upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

a. Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the town or the commission pursuant to the Act and has not complied with the notice within the time specified in the notice;

b. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;

c. Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act;

d. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act.

In the event that a plan or a transfer of a plan is disapproved pursuant to this subsection, the town shall notify the director of the division of energy, mineral, and land resources of such disapproval within ten days. The town shall advise the applicant or the proposed transferee and the director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of section 22-35, the applicant may appeal the town's disapproval of the plan to the commission. For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

(11) *Notice of activity initiation.* No person may initiate a land disturbing activity before notifying the erosion control officer that issued the plan approval of the date that land disturbing activity will begin.

(12) *Preconstruction conference.* When deemed necessary by the erosion control officer, a preconstruction conference may be required.

(13) *Display of plan approval.* A plan approval issued under this article shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

(14) *Required revisions.* After approving a plan, if the erosion control officer, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the erosion control officer shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the erosion control officer. If following commencement of a land disturbing activity pursuant to an approved plan, the erosion control officer determines that the plan is inadequate to meet the requirements of this section, the erosion control officer may require any revision of the plan that is necessary to comply with this section.

(15) *Amendment to a plan.* Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the erosion control officer, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(16) *Failure to file a plan.* Any person engaged in land disturbing activity who fails to file a plan in accordance with this article, or who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this article.

(17) *Self inspections.* The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

(18) *Inspection required.* Where inspections are required by subsection (b)(17) of this section and G.S. 113A-54.1(e), the following apply:

a. The person who performs the inspection shall make a record of the site inspection by documenting the following items:

1. All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including, but not limited to, sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate, as defined in subsection (18)a.5 of this section, from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating, and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and

sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;

2. The completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating, and signing an inspection report;

3. The location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate, as defined in subsection (18)a.5 of this section, from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;

4. That maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general stormwater permit monitoring form may be used to verify the maintenance and repair requirements); and

5. Any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.

b. The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.

c. The inspection shall be performed during or after each of the following phases of a plan:

1. Installation of perimeter erosion and sediment control measures;

2. Clearing and grubbing of existing ground cover;

3. Completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113-57(2);

4. Completion of storm drainage facilities;

5. Completion of construction or development; and

6. Quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the town has been notified. If the financially responsible party has conveyed ownership or

control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.

(Code 1989, § 96.05; Ord. of 6-12-2007; Ord. of 5-8-2018)

Sec. 22-24. Objectives.

It is the intent of this section that the following objectives shall be met in the planning, permitting and execution of all land disturbing activities:

(1) *Identify critical areas.* On-site areas which are subject to severe erosion, off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, and areas of environmental concern must be identified and receive special attention.

(2) *Limit time of exposure.* All land disturbing activity must be planned and conducted to limit exposure to the shortest feasible time.

(3) *Limit exposed areas.* All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(4) *Control surface water.* Surface water runoff originating upgrade of exposed areas must be controlled to reduce erosion and sediment loss during the period of exposure.

(5) *Control sedimentation.* All land disturbing activity must be planned and conducted so as to prevent off-site sedimentation damage.

(6) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans must include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(Code 1989, § 96.06; Ord. of 6-12-2007)

Sec. 22-25. Standards for land disturbing activity.

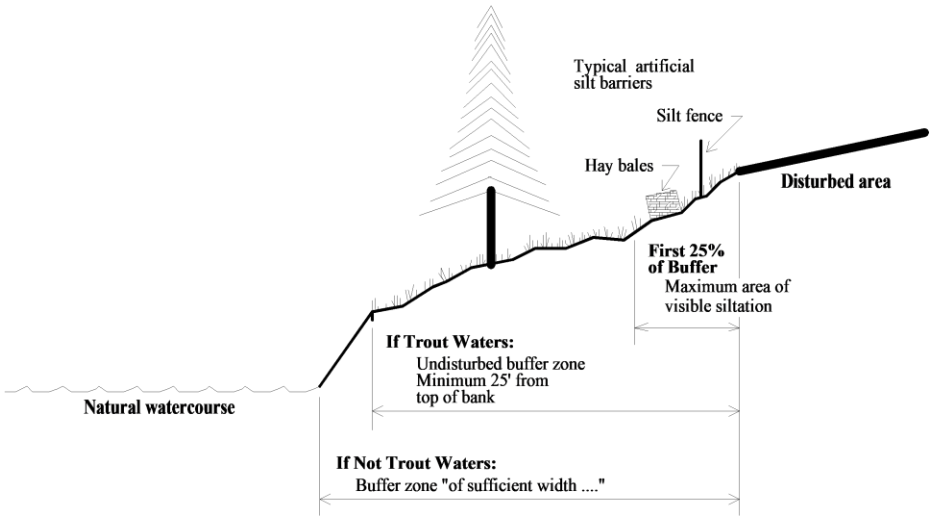
The following standards shall be met when undertaking any land disturbing activity:

(1) *Buffer zone.*

a. *Standard buffer.* No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity. Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area. The 25 percent of the strip nearer the land disturbing activity shall contain natural or artificial means of confining visible siltation.

b. *Trout buffer.* Waters that have been classified as trout waters by the environmental management commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity, whichever is greater; provided, however, that the commission may approve plans which include land disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal.

1. *Projects on, over or under water.* This subdivision shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
2. *Trout buffer measurement.* The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
3. *Limit on land disturbance.* Where a temporary and minimal disturbance is permitted as an exception to the trout buffer, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be disturbed such that there is no more than 100 linear feet of disturbance in each 1,000 linear feet of the buffer zone. Larger areas may be disturbed with the written approval of the director.
4. *Limit on temperature fluctuations.* No land disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211.



Buffer Zone Near or Not Near Trout Waters

(2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion upon completion of any phase of grading, within 21 calendar days. The angle for graded slopes must be demonstrated as stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

(3) *Fill material.* Unless a permit from the department's division of waste management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other biodegradable

materials, masonry, concrete, and brick in sizes exceeding 12 inches, and any materials which could cause the site to be regulated as a landfill by the state.

(4) *Ground cover.* Whenever land disturbing activity is undertaken which uncovers more than 100 square feet of land, the person conducting the land disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in section 22-26(b)(5), provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of any phase of grading, whichever period is shorter.

(5) *Prior plan approval.* No person shall initiate any land disturbing activity on a tract if more than 100 square feet is to be uncovered unless a plan is filed prior to initiating the activity and approved by the erosion control officer. If the area to be disturbed is one acre or less, a minor plan should be filed ten or more days prior to initiating the land disturbing activity. If the area to be disturbed is greater than one acre, a major plan should be filed 30 or more days prior to initiating the land disturbing activity. The erosion control officer shall forward to the director of the division of water quality a copy of each plan for a land disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

(6) *Approved erosion and sedimentation plan.* The land disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(Code 1989, § 96.07; Ord. of 5-8-2018)

Sec. 22-26. Design and performance standards.

(a) *Calculated runoff rate.* Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten-year storm or 25-year storm when projects will discharge into a lake or natural watercourse. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

(b) *HQW zones.* In High Quality Water (HQW) zones, the following standards shall apply:

(1) *Limit on uncovered area.* Uncovered areas in HQW zones shall be limited at any time to a maximum total area of 20 acres within the boundaries of the tract. Only the portion of the land disturbing activity within an HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the director.

(2) *Maximum peak rate of runoff protection.* Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of the state or the United States or any generally recognized organization or association.

(3) *Settling efficiency.* Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04 millimeter) size particle transported into the basin by the runoff of that two-year storm which produces the maximum peak runoff as calculated according to procedures in the USDA Soil Conservation Service's "National

Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of the state or the United States or any generally recognized organization or association.

(4) *Grade.* Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) *Ground cover.* Ground cover sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Code 1989, § 96.08; Ord. of 6-12-2007)

Sec. 22-27. Stormwater outlet protection.

(a) *Intent.* Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.

(b) *Performance standard.*

(1) Persons shall conduct land disturbing activity so that the post construction velocity of the 25-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

a. The velocity established by the Maximum Permissible Velocities Table set out within this subsection (b); or

b. The velocity of the 25-year storm runoff in the receiving watercourse prior to development.

(2) If conditions set forth in subsection (b)(1)a or b of this section cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the prior to development velocity by ten percent.

The following is a table for maximum permissible velocity for stormwater discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

Maximum Permissible Velocities Table*

Material	*Feet per Second (F.P.S.)*	*Meters per Second (M.P.S)*
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7

Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

*Source adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(c) *Acceptable management measures.* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The town recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

(1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;

(2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;

(3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;

(4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and

(5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

(d) *Exceptions.* This rule shall not apply where it can be demonstrated to the town that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(Code 1989, § 96.09; Ord. of 6-12-2007)

Sec. 22-28. Borrow and waste areas.

When the person conducting the land disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the department's division of solid waste management shall be considered as part of the land disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land disturbing activity.

(Code 1989, § 96.10; Ord. of 5-8-2018)

Sec. 22-29. Access and haul roads.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land disturbing activity shall be considered a part of such activity.

(Code 1989, § 96.11)

Sec. 22-30. Operations in lakes or natural watercourses.

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics. A permit from the U.S. Army Corps of Engineers and state division of water resources may be required prior to undertaking any such activity.

(Code 1989, § 96.12; Ord. of 6-12-2007; Ord. of 5-8-2018)

Sec. 22-31. Responsibility for maintenance.

During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this article or the Act or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(Code 1989, § 96.13; Ord. of 6-12-2007)

Sec. 22-32. Additional measures.

Whenever the erosion control officer determines that significant sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of protective practices, the person conducting the land disturbing activity will be required to and shall take additional protective action. The erosion control officer shall have the authority to suspend the land disturbance permit and any certificate of zoning compliance until such protective action is taken.

(Code 1989, § 96.14)

Sec. 22-33. Existing uncovered areas.

(a) All uncovered areas existing on the effective date of the ordinance from which this section is derived which resulted from land disturbing activity, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(b) The erosion control officer will serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this article, a rule or order adopted or issued pursuant to the Act by the commission or by the town. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in G.S. 1A-1, rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the erosion control officer shall take into

consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(c) The town reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

(d) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(Code 1989, § 96.15; Ord. of 5-8-2018)

Sec. 22-34. Fees.

(a) The town may establish a fee schedule for review and approval of plans.

(b) In establishing the fee schedule, the town shall consider the administrative and personnel costs incurred for reviewing the plans and for related compliance activities.

(Code 1989, § 96.16)

Sec. 22-35. Appeals.

(a) The disapproval or modification of any proposed erosion control plan by the erosion control officer may be appealed to the town council if the person submitting the plan submits written request for such appeal within 15 days after receipt of written notice of disapproval or modifications.

(b) The appeal held pursuant to this section shall be heard by the town council within 30 days after the date of the appeal upon which the town council shall render its final decision.

(c) If the town council upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the town's decision to the commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d).

(Code 1989, § 96.17)

Sec. 22-36. Inspections and investigations.

(a) *Inspection.* The erosion control officer or other qualified persons authorized by the town will periodically inspect land disturbing activities to ensure compliance with the Act and this section, or rules or orders adopted or issued pursuant to this article, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan.

(b) *Willful resistance, delay or obstruction.* No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the town while that person is inspecting or attempting to inspect a land disturbing activity under this section.

(c) *Notice of violation.* If it is determined that a person engaged in land disturbing activity has failed to comply with the Act or this section, or rules, or orders adopted or issued pursuant to this article, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act or this section, or rules, or orders adopted pursuant thereto, and inform the person of the actions that need to be taken to comply with the Act or this section, or rules or orders adopted pursuant thereto. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any

person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this article.

(d) *Investigation.* The erosion control officer shall have the power to conduct such investigation as may reasonably be deemed necessary to carry out the duties prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activity.

(e) *Statements and reports.* The town shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land disturbing activity.

(Code 1989, § 96.18; Ord. of 6-12-2007; Ord. of 5-8-2018)

Sec. 22-37. Injunctive relief.

(a) Whenever the town council has reasonable cause to believe that any person is violating or threatening to violate this article or any rule or order adopted or issued pursuant to this article, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the town for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county.

(b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this article.

(Code 1989, § 96.19)

Sec. 22-38. Restoration of areas affected by failure to comply.

The town council may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this article.

(Code 1989, § 96.20)

Sec. 22-39. Penalty.

(a) *Generally.* This article may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. 160A-175.

(b) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this article, or rule or order adopted or issued pursuant to this article, or who knowingly or willfully initiates or continues a land disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed $5,000.00 as provided in G.S. 113A-64.

(1) Failure to receive a land disturbance permit, as required by this article, for any form of land disturbance prior to commencement of said land disturbance shall subject both the owner of the property and any contractor engaged for the purpose of performing the work to a fine not to exceed $5,000.00. If the illegal land disturbance meets all requirements of this article, a permit shall be issued

upon payment of the fine and submittal of a completed application, including erosion control plan, if required, and fee. If the illegal land disturbance does not meet said requirements, the disturbed property shall either be restored or be brought into compliance prior to receipt of the permit.

(2) Failure to comply with the provisions of a land disturbance permit and the representations submitted as part of the application for the permit, including any erosion control plan, shall be cause for the erosion control officer to place a stop order on the work for which the permit was issued until such time as the land disturbance is altered to comply or until a revised land disturbance permit is approved. If the land disturbance is not brought into conformance or a revised land disturbance permit meeting the standards of this article, the owner of the property and the contractor shall each be subject to a fine not to exceed $5,000.00, assessed from the date of the violation.

(3) Any property owner or contractor previously found to be in violation of this article who is found in violation again shall be considered a repeat offender and shall be subject to a fine not to exceed $5,000.00.

(c) *Civil penalties.*

(1) *Civil penalty for a violation.* Any person who violates any of the provisions of this section, or rule or order adopted or issued pursuant to this article, or who initiates or continues a land disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty amount that the town may assess per violation is $5,000.00. A civil penalty may be assessed from the date of violation. Each day of a continuing violation shall constitute a separate violation.

(2) *Civil penalty assessment factors.* The erosion control officer shall determine the amount of the civil penalty based upon the following factors:

a. The degree and extent of harm caused by the violation;

b. The cost of rectifying the damage;

c. The amount of money the violator saved by noncompliance;

d. Whether the violation was committed willfully; and

e. The prior record of the violator in complying or failing to comply with this article.

(3) *Notice of civil penalty assessment.* The erosion control officer shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment, by written demand for a hearing.

(4) *Hearing.* A hearing on a civil penalty shall be conducted by the town council within 31 days after the date of the written demand for the hearing. The decision of the town council shall be final.

(5) *Appeal of final decision.* Appeal of the final decision of the town council shall be to the superior court of the county. Such appeals must be made within 30 days of the final decision of the town council.

(6) *Collection.* If payment is not received within 30 days after it is due, the town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of the county or the location of the violator's residence or principal place of business. Such civil actions must be filed within three years of the date the assessment is due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(7) *Credit of civil penalties.* Civil penalties collected pursuant to this article shall be credited to the civil penalty and forfeiture fund. Case law indicates that penalties assessed by local governments pursuant to a state delegation must be remitted to the civil penalty and forfeiture fund for the benefit of the local school boards pursuant to the state constitution's provision on state penalties, fines, and forfeitures.

(d) *Court jurisdiction.* Any provision of this section that makes unlawful a condition existing upon or use made of any property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of civil procedure in general and rule 65 in particular. In addition to an injunction, the court may enter an order of abatement as a part of the judgement in the cause. An order of abatement may direct that the property shall be restored to its original condition prior to disturbance, or that any other action be taken that is necessary to bring the property into compliance with this policy or such ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, such defendant may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs to the town of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of the superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(e) *Violations.* Except as otherwise specifically provided, each day's continuing violation of any provision of this article shall be a separate and distinct offense.

(Code 1989, § 96.999; Ord. of 6-12-2007; Ord. of 5-8-2018)

Secs. 22-40—22-60. Reserved.

ARTICLE III. DAM RESTRICTIONS

Sec. 22-61. Permit required for water impoundment facilities.

All persons, firms, or corporations which now own or operate an impoundment of water which lies in whole or in part within the corporate limits of the town, or any person wishing to construct facilities for the impoundment of water, when such impoundment will lie in whole or in part within the corporate limits of the town, shall obtain a permit from the town prior to taking any of the following actions:

(a) *In the event of new construction.*

(1) A building permit shall be required prior to construction;

(2) An additional permit shall be required prior to impoundment of any water;

(3) In the event permission is granted for the filing of said impoundment, a permit shall be required prior to the release of the impounded water other than what would normally be discharged over a spillway or other overflow device.

(b) *For impoundments now in existence.*

(1) If water is now impounded a permit shall be required prior to release of the impounded water, other than water which would normally be discharged over a spillway or other overflow device;

(2) If waters are not now impounded in said facility, a permit shall be required prior to reactivating the facility and impounding water.

(c) *Requirements.* Granting of a permit to do any of the above stated acts, shall be considered a permit to do that specific act alone, and on a specific occasion, and shall not constitute a permit required under the other subsections of this chapter at a later date. Penalty, see § 93.99

(Ord. of 10-11-77)

Sec. 22-62. Proposal to be submitted to the town.

All persons, firms, or corporations which desire a permit under this chapter shall submit to the town a detailed proposal stating all the pertinent information regarding said impoundment or release of water, including, among other things:

(a) The location of the impoundment;

(b) The reasons for the request for the permit;

(c) The date or dates upon which the occurrence is to take place;

(d) The person or persons who will be in direct control of the facilities at that time;

(e) A request that the Town Board issue the permit at its next regular meeting.

(Ord. of 10-11-77)

Sec. 22-63. Decision of town board.

The Town Board at its next regular meeting, following the request for a permit, may:

(a) Approve the request and authorize the Clerk to issue a permit;

(b) Deny the request;

(c) The Board may, after consideration, grant the request, subject to certain restrictions, and/or, conditions which the Board deems necessary.

(Ord. of 10-11-77)

Sec. 22-64. Penalty.

Any person, firm, or corporation violating any provision of this chapter, shall upon conviction, be guilty of a misdemeanor and shall be punished in accordance with G.S. 14-4. Each and every day or portion thereof that action has been taken in violation of this chapter shall constitute a separate offense.

(Ord. of 10-11-77)

Chapter 23 RESERVED

Chapter 24 SOLID WASTE

ARTICLE I. IN GENERAL

Secs. 24-1—24-18. Reserved.

ARTICLE II. GARBAGE AND REFUSE COLLECTION AND DISPOSAL[1]

Sec. 24-19. 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:

[1]State law reference(s)—Regulation of trash and garbage, G.S. 160A-303.1; municipal power to require use of solid waste services and to regulate accordingly, G.S. 160A-317(b).

Building material scraps means building material from the construction, reconstruction, remodeling, or repair of a building, walkway, driveway, sign, and other structure, including, but not limited to, excavated earth, tree stumps, rocks, gravel, bricks, plaster, concrete, lumber, or any other similar material used in construction or the containers or wrappings therefor.

Garbage means all putrescible wastes, including animal and vegetable matter, animal offal and carcasses, and recognizable industrial byproducts but excluding sewage and human wastes.

Refuse means all nonputrescible wastes.

Solid waste means garbage, refuse, rubbish, trash, and other discarded solid materials, including solid waste materials resulting from homes, businesses, industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents , dissolved materials in irrigation return flows or other common water pollutants.

Tree trimmings or grass means tree limbs, leaves, shrubbery, weeds, and plants.

(Code 1989, § 41.01)

Sec. 24-20. Approved containers.

It shall be unlawful for any person to throw, place, or deposit any garbage or refuse of any kind on any public or private property except in approved containers or as otherwise provided in this article.

(Code 1989, § 41.02)

Sec. 24-21. Burning or burying garbage.

It shall be unlawful to burn or set fire to any garbage for the purpose of disposal. In addition, it shall be unlawful to bury any refuse for the purpose of disposal unless a permit therefor has been granted by the fire chief.

(Code 1989, § 41.03)

Editor's note(s)—Extensive state regulations are in effect with respect to the open burning of trash and refuse; see department of environmental management; regulations governing the control of air pollution.

Sec. 24-22. Accumulation of garbage and refuse prohibited.

All garbage and refuse shall be collected and placed in containers as required by this article, and it shall be unlawful for any person to permit garbage or refuse to accumulate or remain on any premises longer than is reasonably necessary to remove and deposit same in approved containers as required herein.

(Code 1989, § 41.04)

Sec. 24-23. Containers required.

(a) The occupant of every building or premises where garbage and refuse does or may exist shall provide containers made of substantial galvanized iron, plastic, rubber, or other nonrusting material in which shall be deposited all garbage and refuse existing at such building or premises. Each container shall be provided with handles or bails and with a tightfitting cover made of the same material as the container.

(b) All containers shall be watertight and they shall be of a size that can be conveniently handled by the collectors, and no container shall be more than 30 gallons in capacity nor measure over 22 inches in diameter or 30 inches in height. All containers shall be kept in a reasonably clean condition.

(Code 1989, § 41.05)

Sec. 24-24. Pre-collection practices.

All garbage and refuse shall have the liquid drained therefrom and shall be wrapped in paper or other like material before it is placed in the container for collection. Ashes and cinders shall be placed in a separate container provided for that purpose and no ashes shall be deposited in any container until they are cold. Containers which fail to have a cover as required in section 24-23 or which have become rusted or broken and therefore are unable to contain garbage and refuse in a satisfactory manner shall not be used.

(Code 1989, § 41.06)

Sec. 24-25. Collection schedule.

Garbage and refuse will be collected by the town according to a collection schedule maintained in the clerk's office. Such schedule may be periodically revised and amended by action of the council.

(Code 1989, § 41.07)

Sec. 24-26. Unlawful to displace containers.

It shall be unlawful for any person to damage, displace, otherwise interfere with garbage containers or their contents the owner or on permission or at the request of the owner.

(Code 1989, § 41.08)

Sec. 24-27. Special or bulk collections regulated.

(a) No bulk trash, tree limbs, shrubbery cuttings, leaves, and other refuse will be collected without special charge unless such refuse can be placed in regulation type garbage cans.

(b) Any property owner desiring special bulk collections of loose matter not in closed containers or tied in bundles may request a special collection for which a special charge will be made. If sufficient manpower and equipment are available, town personnel are authorized to make such special collections, provided that person making the request agrees to pay for the labor and equipment used at the rate specified by the town.

(c) No collection shall be made from vacant lots nor shall any large rocks, tree trunks, tree stumps, tree limbs of more than six feet in length, or other heavy objects be collected by the town. No waste building materials or lot clearings shall be collected from houses or other structures under construction or recently completed.

(d) Material to be collected by special placed in neat piles and so located that such loaded on trucks for disposal.

(Code 1989, § 41.09)

Sec. 24-28. Penalty.

Any person, firm, or corporation violating any provision of this article shall, upon conviction, be guilty of a misdemeanor and shall be punished in accordance with G.S. 14-4. In addition, violations of this article may subject the violator to civil penalties as set forth in section 1-10.

(Ord. of 6-14-2022)

Secs. 24-29—24-57. Reserved.

ARTICLE III. LITTERING[2]

Sec. 24-58. General prohibition.

It shall be unlawful for any person to throw or deposit on any street or sidewalk, or around the lake area, or on any private property, except with written permission of the owner or occupant of the private property, any trash, refuse, garbage, building material, cans, bottles, broken glass, paper, or any type of litter.

(Code 1989, § 82.01)

Sec. 24-59. Thrown or deposited from vehicles.

It shall be unlawful for any person while a driver or a passenger in a vehicle to throw or deposit litter on any street or other public place within the town, or on private property.

(Code 1989, § 82.02)

Sec. 24-60. Maintenance of public areas.

Every owner, lessee, tenant, occupant, or other person in charge of any commercial establishment or premises which maintains any paved or unpaved areas for the use of the public, either for parking or as access areas and incident to the carrying on of the principal business of any commercial establishment or premises and which parking or access areas abut or lie within ten feet of any public street or other public way, shall keep and maintain the areas clean and free from trash, litter, rubbish, and any materials liable to be blown, deposited, or cast on the street or other public way.

(Code 1989, § 82.03)

Sec. 24-61. Receptacles.

Suitable receptacles may be provided in parking or access areas within the meaning of section 24-60. The receptacles shall be plainly marked and constructed to prevent scattering of any trash, litter, rubbish, or other materials deposited therein.

(Code 1989, § 82.04)

Sec. 24-62. Penalty.

Any person, firm, or corporation violating any provision of this article shall, upon conviction, be guilty of a misdemeanor and shall be punished in accordance with G.S. 14-4.

(Code 1989, § 82.99)

[2]State law reference(s)—Littering, G.S. 14-399.

Chapter 25 RESERVED

Chapter 26 STREETS, SIDEWALKS, AND OTHER PUBLIC PROPERTIES[1]

ARTICLE I. IN GENERAL

Sec. 26-1. Construction of public and private streets; acceptance by council.

(a) All public and private streets (see section 28-6 for definitions) constructed in the town shall meet the development standards set forth in section 28-105.

(b) Before any new street offered for dedication to the town is accepted as such and officially recognized as a town-maintained street, the council must give its approval, finding that the street complies with engineering standards set by the council, provided that any street constructed prior to April 9, 2002, shall have a minimum width along its entire course of not less than l6 feet, and that the best interests of the town would be served by accepting the street as a town street.

(Code 1989, § 40.01; Ord. of 4-9-2002)

Sec. 26-2. Excavations—Permit required.

No person shall make any excavation or opening or dig any ditch, trench, tunnel, or hole in, along, across, or under any street, sidewalk, or other public place for the purpose of laying or placing therein any pipe, wires, or poles or for any other purposes unless a written permit therefor has been issued by some officer of the town vested with proper authority, provided that a permit shall not be required where the work is performed under a contract with the town, but in the event the work requires a sidewalk or street to be wholly or partially obstructed, the party performing the work shall notify the town at least two hours before obstructing the sidewalk or street, unless prevented by sudden emergency.

(Code 1989, § 40.15)

Sec. 26-3. Excavations—Application; fees.

All persons desiring a permit to make an opening in any street or sidewalk, as set forth in section 26-2, shall make written application therefor, which application shall show the location of the proposed opening, the purpose therefor and the approximate number of square yards of surface to be cut. A fee may be required by the council for such permit.

(Code 1989, § 40.16)

Sec. 26-4. Excavations—Street, sidewalk repair.

When any part of any street, sidewalk, alley, or other public place of the town shall be torn or dug up for any purpose, the person making the excavation or opening shall have the duty of refilling the excavation or opening, and the refilling shall be done in accordance with the standards and specifications of the town.

(Code 1989, § 40.17)

[1]State law reference(s)—Establishment and control over town streets, G.S. l60A-296.

Sec. 26-5. Excavations—Leaving unprotected.

It shall be unlawful for any person, firm, or corporation who obtains a permit under the sections of this chapter to do any excavation of any kind which may create or cause a dangerous condition in or near any street, alley, sidewalk, or public place of the town without placing and maintaining proper guard rails three feet from the ground and signal lights or other warnings at, in or around the same, sufficient to warn the public of the excavation or work, and to protect all persons using reasonable care from injuries on account of the excavation or work.

(Code 1989, § 40.18)

Sec. 26-6. Streets not to be damaged by tractors or other construction equipment.

(a) It shall be unlawful for any person, firm, or corporation to drag or run, or cause to be dragged or run, any implement, engine, machine, or tool on any asphalt or other type of permanently paved street of the town which shall be likely in any way to injure or cut the surface thereof.

(b) Any person violating subsection (a) of this section shall be liable to the town for the cost of repairing any and all damage caused.

(Code 1989, § 40.19)

Sec. 26-7. Sidewalk construction.

No sidewalk of any description shall be built by any individual, firm, or corporation of any brick, wood, or other material without a written permit from the town.

(Code 1989, § 40.20)

Sec. 26-8. Heavy/oversize loads, moving of houses or modular/manufactured housing.

(a) Heavy loads, houses, modular homes or any other large load (as determined by the administrator) shall require a road closure permit to be issued by the town code enforcement officer.

(b) General requirements of the town are as follows, pursuant to G.S. 20-368:

(1) A road closure permit, issued by the town, shall be required.

(2) All applications for a road closure permit must be accompanied by an Acord® General Liability Insurance Policy (original) in the amount of $2,000,000.00 with the town named as the certificate holder.

(3) An NCDOT/Division of Highways oversize/overweight permit is required; if applicable, see G.S. 20-360.

(4) Transport of manufactured housing shall follow the guidance of Publication MH-2 as issued by the state department of transportation.

(5) A pre-transport meeting is required with the community development director or assigns, the chief of police, the fire chief, and the public works director.

(6) Any living trees or branches deemed as obstructions and requiring removal within the public right-of-way will be flagged in advance of removal and will be cleaned up by the transportation company within two business days. Any cutting of trees or branches on private property shall require the written approval of the property owner in advance of the trip. There are no exceptions to this requirement.

(7) The applicant shall provide a route map, illustrating and naming the roads through the town where the trip is proposed to take place. This route shall be followed on the day and date proposed only, unless a route change is authorized (see G.S. 20-364).

(8) The transportation company is responsible for the removal and replacement of any fixed obstacles, at their expense (see G.S. 20-363).

(9) The use of a pilot vehicle are required.

(10) Flagging crews are required at both ends of roadway (town owned roadways) and/or 100 yards before and behind structure.

(11) No application will be accepted any closer than 14 business days from the proposed move date.

(c) The town code enforcement officer has the authority to rescind the permit before or during the move if deemed necessary due to the applicant failing to comply with any requirement as listed in this section or if instructed to do so by the town chief of police for reasons of public safety.

(Code 1989, § 40.21; Ord. of 4-1-2015; Ord. of 5-14-2019)

Sec. 26-9. Damage to town property.

No person shall injure, tamper with, remove, paint on, or deface any bridge, culvert, ditch and drain, sign, signpost, streetlight, traffic signal, bulletin board, or other town property on the streets and sidewalks or elsewhere except employees of the town in the performance of their duties.

(Code 1989, § 40.22)

Sec. 26-10. Driveways; permit required.

No person shall begin to construct, reconstruct, repair, alter, or grade any driveway on the public streets, unless a written permit therefor has been issued by the town.

(Code 1989, § 40.23)

Sec. 26-11. Penalty.

Any person, firm, or corporation violating any provision of this artcle shall, upon conviction, be guilty of a misdemeanor and shall be punished in accordance with G.S. 14-4. In addition, violations of this article may subject the violator to civil penalties as set forth in section 1-10.

(Ord. of 6-14-2022)

Secs. 26-12—26-38. Reserved.

ARTICLE II. STREET NAMING AND ADDRESSING

Sec. 26-39. Purpose and intent.

The purpose and intent of this article is to ensure a uniform system of addressing for all buildings in the town in order to facilitate provision of adequate public safety and to minimize difficulty for emergency services and the general public in locating any building in town.

(Code 1989, § 42.1)

Sec. 26-40. 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:

Building means a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, chattels, or equipment. When separated by divider walls from the ground up without openings, each portion of such building may be deemed a separate building. For the purpose of this article, the term "building" may also include other manmade structures.

Developer means any person, firm, trust, partnership, association or cooperation engaged in the development of purposed development of a subdivision, commercial complex, mobile home park, or planned unit development.

House/building number means a number assigned to any house, business, structure or other structure or property in a sequential manner.

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 building, structures, vehicles or enclosures used or intended for as part of such mobile home park.

Roadway means any road, street, drive, land, easement, right-of-way, access area, thoroughfare, highway, boulevard, or any other corridor used for or having the potential use as a means of conveyance by a motor vehicle.

Rutherford county E911 department means the official department of the county charged with the administration of countywide addressing.

Street name means the official name of any roadway, approved by the town and the county E911 department.

Street sign/signage means signage placed at the roadway intersection, which indicates the street name, direction, and where appropriate, the state road number and block number.

(Code 1989, § 42.2)

Sec. 26-41. Street names.

(a) Every street in the town is assigned an official name and is entered in the county E911 department's database by the county addressing department. New street names or requested name changes inside the town will be reviewed and approved by the town before approval by the county E911 department. The review by town will be by a committee appointed by the town manager.

(b) New street names shall not be the same as or sound similar to existing street names in the county. Names recommended by property owners will be given consideration first if no conflicting street names exist.

(c) Request to change an existing street name must take the following issues into consideration:

  (1) At least 75 percent or more of property owners on this road must sign a petition to change the road name.

  (2) Suggested street name must not conflict with existing street names.

  (3) Reason to change name must outweigh the fact that changing name will make all existing maps inaccurate and could severely delay emergency services locating anyone on that street.

(4) If name is changed, property owners must bear cost of changing street signs, including labor. The town shall notify all emergency agencies responding in the town of the name change.

(Code 1989, § 42.3)

Sec. 26-42. Signage.

(a) The developers of new subdivisions shall erect signage consistent with town street signs.

(b) Existing signs installed by the town will be maintained by the town. Signs installed in new developments by the developer will be the responsibility of the property owners' association of that community. The property owners' association shall replace damaged or stolen signs within 60 days of receiving written notification from the town.

(c) Street signs and post shall be of aluminum construction to resist corrosion. Signs shall be green with white reflective letters. Letters shall be minimum of 3⅝ inches tall with minimum of one-half inch stroke letters. Optional color signs may be considered by town but shall have white letters.

(Code 1989, § 42.4)

Sec. 26-43. House/building numbering.

This article requires the owner of any residential, commercial, or other structure to post numbers on said structure for the health, safety, and general welfare of the citizens of the town. In the posting of numbers on structures the following standards shall be used:

(1) The height of the number for a one- or two-family dwelling shall be a minimum of three inches with a one-half stroke. The building number for multifamily dwellings and commercial structures shall be a minimum of six-inches with three-fourth-inch stroke. The number shall be placed facing the roadway, within three feet of the entrance, when the building is easily seen from the roadway. For buildings not visible or more than 75 feet from roadway centerline, numbers shall be posted at the roadway adjacent to the drive. Numbers shall also be posted on the structure to be visible as you travel along the driveway.

(2) For mobile home parks or properties having only one address and individual lots the entrance shall have six-inch numbers and each lot shall have three-inch numbers. The lot numbers shall be marked uniformly and easily visible from driveway.

(3) Numbers shall be mounted on contrasting background to be easily visible, and reflective numbers are recommended.

(4) The town may approve an alternate method of displaying address numbers on a case-by-case basis when these standards cannot be reasonably met.

(Code 1989, § 42.5)

Sec. 26-44. Boathouse numbering.

(a) All boathouses shall have the address assigned to the property posted on the boathouse.

(b) Boathouse addresses shall include the name of the street to which the property has access and number, due to the inability to determine the road from the lake (for example: 123 Charlotte Drive). Approved boathouse signs must be ordered through the town.

(c) Boathouse address signs will be aluminum construction with black finish, four-inches high and as short as the address allows. The letters and numbers shall be a minimum of three-inches tall and reflective.

(d) The address sign shall be posted on the boathouse a minimum of six feet above normal water level. For boathouses on the main channels, the sign must be on the side facing the channel. For boathouses in coves, the sign must face the main body of water in the cove.

(e) Signs shall be in place before the annual boat permit is obtained beginning in 2004 for existing structures. For new structures the sign must be in place before final inspection by the zoning official.

(f) The owner shall be responsible for maintaining this sign.

(Code 1989, § 42.6)

Sec. 26-45. General requirements.

It shall be unlawful without the written consent of the town for any person to:

(1) Name or designate the name of any public road, neighborhood public road, private subdivision street or private mobile home park road in the town.

(2) Erect any street sign on any public road, neighborhood public road, private subdivision street or private mobile home park road in incorporated areas of the town, without approval of the town.

(3) Erect any street sign on any roadway, public or private, in the town, which does not meet the current town street sign specifications.

(4) Remove, deface, damage, or obstruct a street sign.

(5) Number or assign a number to any structure without the approval of the town.

(6) Name a private street or road that duplicates or is substantially similar to the name of an existing street or road within the county.

(Code 1989, § 42.7)

Sec. 26-46. Enforcement.

(a) The fire inspector may withhold certificates of occupancy for new commercial structures until proper numbers are posted.

(b) The county building inspector or town zoning inspector may withhold certificates of occupancy for structures until proper addresses are posted.

(c) Owners or occupants of buildings already constructed which do not comply with this article will be notified and requested to meet the requirements within 60 days from the date of the notification. A warning notice will be issued after 60 days if the requirements have not been met. If the owner or occupant does not comply voluntarily with this article within 30 days of delivery of a warning notice by registered mail or by hand delivery to the building in violation, enforcement action pursuant to G.S. 160A-175 may be initiated.

(Code 1989, § 42.8)

Sec. 26-47. Penalty.

(a) Any person violating the provisions of this article shall be guilty of a misdemeanor and shall be subject to a fine of not more than $50.00 or imprisonment not more than 30 days, as provided by G.S. 14-4.

(b) Any violation of this article may be subject to civil remedies as set forth in G.S. 160A-175.

(Code 1989, § 42.9)

Sec. 26-48. Amendment procedure.

This article may be amended from time to time by the town as specified in section 1-8.

(Code 1989, § 42.10)

Chapter 27 RESERVED

Chapter 28 SUBDIVISIONS[1]

ARTICLE I. IN GENERAL

Sec. 28-1. Short title.

This chapter shall be known and may be cited as the "Subdivision Regulations of the Town of Lake Lure, North Carolina."

(Code 1989, § 91.01; Ord. of 3-22-1994)

[1]State law reference(s)—Regulation of subdivision of land, G.S. 160D-801.

Sec. 28-2. Authority.

The town council, pursuant to the authority conferred by an Act of the general assembly of the state (G.S. ch. 160D), does hereby ordain and enact into law these articles and sections.

(Code 1989, § 91.02; Ord. of 3-22-1994; Ord. No. 21-05-11A, 5-11-2021)

Sec. 28-3. Purpose.

The purpose of these regulations is to establish procedures and standards for the land clearing, land disturbance, development and subdivision of real estate within the jurisdiction of the town in an effort to, among other things, ensure proper legal description, identification, monumentation and recordation of real estate boundaries; further the orderly layout and appropriate use of the land; prevent the excessive removal of trees and native shrubs; minimize land disturbance; provide safe, convenient and economic circulation of vehicular traffic; provide suitable building sites which are readily accessible to emergency vehicles; assure the proper installation of streets and utilities; promote the eventual elimination of unsafe or unsanitary conditions arising from undue concentration of population; and help conserve and protect the physical and economic resources of the town.

(Code 1989, § 91.03; Ord. of 3-22-1994; Ord. of 10-10-2006; Ord. of 6-10-2008)

Sec. 28-4. Approval of plats.

All plats for the subdivision of land shall be submitted to the town's community development department for review by the zoning and planning board or by the subdivision administrator, as appropriate, and shall conform to the requirements of these regulations, and shall be submitted in accordance with the procedures and specifications established herein and shall be accompanied by fees as established by the schedule of fees adopted by resolution of the town council. No plat of a subdivision of land within the town shall be filed or recorded by the county register of deeds until it has been submitted and given final approval as provided herein, and until such approval is entered on the face of the final plat by the zoning and planning board or by the subdivision administrator, as appropriate.

(Code 1989, § 91.04; Ord. of 3-22-1994; Ord. of 10-10-2006)

Sec. 28-5. Certificates of zoning compliance.

No certificate of zoning compliance shall be issued for any building construction in any subdivision (except minor subdivisions) for which a plat is required to be approved until the final plat has been approved by the zoning and planning board. No certificate of zoning compliance shall be issued for any building construction in any minor subdivision for which a plat is required to be approved until the final plat has been approved by the subdivision administrator.

(Code 1989, § 91.05; Ord. of 3-22-1994; Ord. of 10-10-2006)

Sec. 28-6. 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:

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

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. Any width that may be specified for such a buffer strip shall be measured in the horizontal plane.

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 setback line means a line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Whenever the front, side or rear portion of a lot abuts a street right-of-way, setback lines shall be measured perpendicularly from said right-of-way line, or where no right-of-way exists, from a point 16 feet from the centerline of the street.

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

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

Clearcutting means the removal of over 70 percent of the existing trees on a property.

Collector street means a street that collects traffic from minor streets and lanes and provides access to arterial streets.

Common amenities means clubhouses, gazebos, tennis courts, swimming pools, amphitheater parks, or other facilities or structures accessory to one or more residential developments, intended to provide recreational, cultural or social enrichment to people residing in a residential subdivision and/or the general public.

Corner lot means a lot abutting upon two or more streets at their intersection.

Cul-de-sac means a street permanently terminated by a turn around.

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

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.

Double frontage lot means a continuous lot of the same depth as the width of a block containing two tiers of lots and which is accessible from both of the streets upon which it fronts.

Easement means a grant by the property owner for use, by the public, a corporation, or person, of a strip of land for specified reasons.

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.

Final significant tree density means the significant tree density following land clearing, land disturbance, and/or development. In terms of subdivision development, the term "final significant tree" means the significant tree density following completion of roads, utilities and common areas.

Forest coverage. The forest coverage of a piece of property refers to the extent of forestation on the property. The term "forest 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.

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

Green area means an area of land designated for conservation, preservation, landscaping, or reforestation.

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

Improvements guarantee means an agreement between the subdivider and the town, secured by a letter of credit or other security placed with the town, that improvements described in an approved subdivision plat will be carried out according to that plat, that tree and/or environmental protection measures shown on the plat will be properly installed and maintained, that trees and/or forest areas designated as protected on the plat will be undamaged at the conclusion of land clearing, land disturbance and/or development, that areas indicated on the plat as requiring grading will be graded as specified, and that areas indicated on the plat to be left ungraded will be untouched and undamaged at the conclusion of land clearing, land disturbance and/or development.

Independent community water system means a privately owned central water system constructed to town and state standards consisting of a source of potable water, a distribution system and, where needed, a water storage facility. Independent community water systems shall be operated and maintained by the owners of the area to be served or by a private entity with whom the owners shall contract for said service.

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

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

Initial significant tree density means significant tree density at the time of initial inspection and platting.

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

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.

Lane means a private street serving as primary access to not more than four lots and meeting a lessor standard than minor streets.

Lot means a portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership, for land clearing, for land disturbance, for development, or for all three. The term "lot" includes the term "plot" or "parcel."

Major subdivision means any subdivision of a tract of land into more than five lots, or any subdivision requiring the extension of public utilities and/or development or dedication of new streets.

Minor street means a public or private street serving as primary access to five or more lots.

Minor subdivision means any subdivision of a tract of land into five or fewer lots and involving no new public or private streets or roads, rights-of-way dedication, easements, or utility extensions.

Natural watercourse means any perennial or intermittent surface water approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the U.S Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Notwithstanding the foregoing, the subdivision administrator may determine that a water body does or does not qualify as a natural watercourse depending upon

the presence of surface waters in accordance with the provisions of 15A NCAC 2B.0233(3)(a) or other methods approved by the North Carolina Division of Water Quality. For purposes of these regulations, the term "natural watercourse" shall not include Lake Lure.

Official maps or plans means any maps or plans officially adopted by the town council as a guide for land clearing, for land disturbance and/or for the development of the town.

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

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.

Planned unit development means a development where more than one principal building is proposed to be constructed on a single tract, or any residential complex containing nine or more dwelling units on a single tract, or any building with a gross floor area of 25,000 square feet or more.

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."

Private street means a street which has not been dedicated to and accepted by the town but is instead owned and maintained by any other party.

Protected forest area means a green area consisting of existing forest designated for protection on a subdivision plat and in the associated tree protection plan. All significant trees within such an area are protected trees.

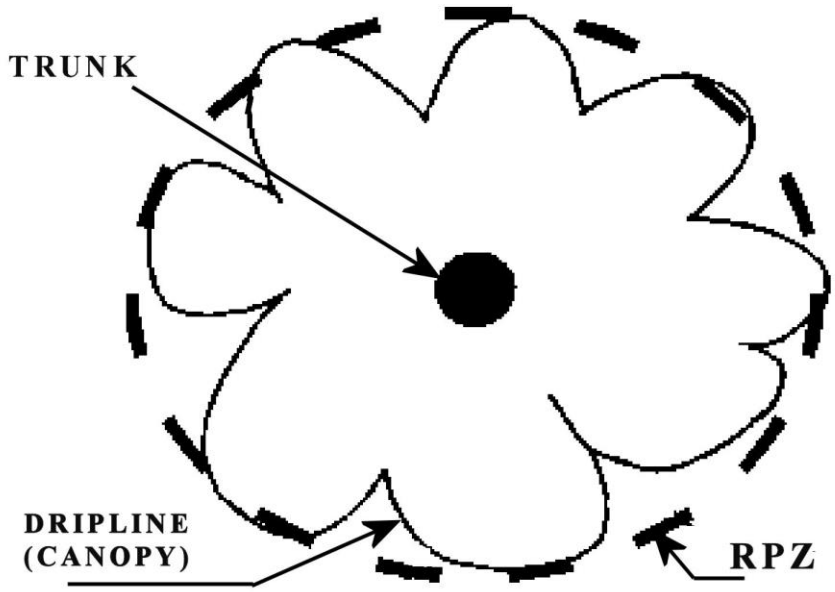
Protected tree means any tree marked for protection, or any significant tree not expressly marked for removal, in a tree protection plan.

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 street means a street which has been dedicated to and accepted by the town and which is maintained by the town.

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.

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.



Root Protection Zone: Trunk, Drip line (Canopy)

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 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.

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 section 28-193, or a tree of any other species with a dbh of six inches or greater.

Significant tree density means 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 tier lot means a lot which backs upon a limited access highway, a physical barrier, or a nonresidential use and to which access from the rear of the lot is usually prohibited.

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 means a right-of-way intended for vehicular traffic which affords the principal means of access to abutting properties.

Subdivider means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions, for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations of this chapter:

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

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

(3) The public acquisition by purchase of strips of land for the widening or opening of streets.

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

Subdivision administrator means the official responsible for the overall administration and enforcement of these regulations. Such individual shall be the community development director and/or such other person specifically designated as subdivision administrator by the community development director. The subdivision administrator may delegate duties under these regulations; however, the subdivision administrator shall remain responsible for their overall administration and enforcement.

Temporary construction road means a private access to a construction project or logging operation intended to be removed at the completion of the project or operation.

Tree means a woody plant with a well-developed main trunk of at least ten cm (almost four inches) dbh at maturity.

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

Tree protection plan means information provided as part of a sketch plan, preliminary plat, and/or final plat regarding protections provided to trees during land clearing, land disturbance, and/or development as well as the extent and condition of both the initial and final tree cover of the affected parcel.

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, encompassing all the natural beauty of the area.

Zoning administrator means an official or designated person of the town charged with administering this chapter. For purposes of this chapter, the office of the zoning administrator is designated a planning agency as referred to in G.S. 160-373.

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

(Code 1989, § 91.06; Ord. of 11-26-1996; Ord. of 11-13-2001; Ord. of 4-9-2002; Ord. of 10-10-2006; Ord. of 11-14-2006; Ord. of 10-9-2007; Ord. of 6-10-2008; Ord. of 11-18-2008; Ord. of 3-10-2009; Ord. of 5-10-2011; Ord. of 4-10-2012; Ord. No. 21-05-11A, 5-11-2021)

Secs. 28-7—28-30. Reserved.

ARTICLE II. PROCEDURE FOR REVIEW AND APPROVAL OF SUBDIVISION PLATS

Sec. 28-31. Approval.

No final plat of a subdivision within the town shall be recorded by the county register of deeds until it has been approved as provided herein. To secure such approval of a final plat, the subdivider shall follow the procedure established in this article. Furthermore, no street shall be maintained by the town nor street dedication accepted for ownership and maintenance, nor shall water, sewer or other public facilities or services be extended to or connected with any subdivision for which a final plat is required to be approved unless and until such approval has occurred as provided herein.

(Code 1989, § 91.15)

Sec. 28-32. Sketch plan.

(a) *General.* The subdivider may submit a sketch plan prior to submitting a preliminary plat. The purpose of submitting the sketch plan is to afford the subdivider an opportunity to obtain the advice and assistance of the town planning staff in order to facilitate the subsequent preparation and approval of the preliminary plat. This procedure does not require formal application or fee.

(b) *Suggested information.* It is suggested that the sketch design plan depict or contain the following information:

(1) A sketch vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads, and waterways;

(2) The boundaries of the tract and the portion of the tract to be subdivided;

(3) The total acreage to be subdivided;

(4) The existing and proposed uses of the land within the subdivision and adjoining it;

(5) The proposed street and lot layout and whether public or private;

(6) The name, address, and telephone number of the owner;

(7) Streets and lots of adjacent developed or platted properties;

(8) The zoning classification of the tract and adjacent properties, if applicable;

(9) The proposed water and sewer system; and

(10) Depiction of all forested areas proposed to be protected plus individual significant trees outside protected forest areas. Clear identification of those forest areas and individual trees proposed to be protected and those forest areas and individual trees proposed to be removed.

(Code 1989, § 91.16; Ord. of 10-10-2006; Ord. of 11-14-2006)

Sec. 28-33. Preliminary plat.

(a) *General.* For all major subdivisions, the subdivider shall submit seven copies of a preliminary plat containing all required information to the subdivision administrator.

(b) *Contents required.* The preliminary plat shall be clearly and legibly drawn at a scale sufficient to clearly indicate the necessary details. The preliminary plat shall be executed by a registered land surveyor and shall contain the following information:

(1) Vicinity map.

(2) Boundaries of the tract.

(3) Existing and proposed uses.

(4) Name, address and telephone number of owner.

(5) Streets and lots of adjacent properties.

(6) Zoning classification and adjacent zoning.

(7) Proposed water and sewer line location.

(8) Boundaries with bearings, distances and closures.

(9) Drainage channels.

(10) Any public or private easements.

(11) Setback lines, all shall comply with minimum requirements of chapter 36.

(12) Title, date, name and location of subdivision.

(13) Name of subdivider, registered surveyor and seal.

(14) Plans for water and sewer accompanied by written recommendations from the town engineer after thorough review.

(15) Location of any areas of environmental concern: wooded areas, steep slopes, or watercourses such as wetlands, marsh, trout streams, lakes, tributaries, etc.

(16) Copy of any covenants or deed restrictions that will affect land clearing, land disturbance and/or development standards.

(17) Tree protection plan. (See section 28-109.)

(18) Erosion control plans accompanied by written recommendations from the town erosion control officer after thorough review.

(c) *Subdivision plat requirements.* The following items shall be required information for review of a minor subdivision plat, in conjunction with any applicable standards referenced in section 28-35:

(1) Vicinity map showing location of subdivision in relation to neighboring tracts.

(2) Boundaries of tract and portion to be divided.

(3) Total acreage to be divided.

(4) Existing and proposed uses within the subdivision and existing uses of adjacent land.

(5) Existing street layout and right-of-way width, lot delineation and size.

(6) Name, address and telephone number of owner.

(7) Name of subdivision.

(8) All setback lines.

(9) Streets and lots of adjacent developed or platted property.

(10) Zoning classification of tract and adjacent tracts.

(11) Date of preparation, township, county and state.

(12) Proof of sewer and water utility permits.

(13) Tree protection plan. (See section 28-109.)

(d) *Town staff review procedure.*

(1) Upon submission of a preliminary plat to the subdivision administrator in accordance with subsection (a) of this section, the subdivision administrator shall circulate one copy of said plat to appropriate town staff for review of streets, utilities, and zoning.

(2) Within 14 days of receipt of a copy of the preliminary plat, the appropriate town staff shall submit written approval or disapproval to the subdivision administrator as follows:

a. The public works director shall approve or disapprove plans for the sanitary sewer and water distribution systems.

b. The public works director shall approve or disapprove plans for streets and drainage within the proposed subdivision.

c. The subdivision administrator shall approve or disapprove the preliminary plat based on conformity or nonconformity with all applicable elements of chapter 36.

(3) Any disapprovals submitted to the subdivision administrator shall be accompanied by a list of actions necessary to eliminate the reasons for such disapproval. Upon receipt of any disapproval from town staff, the subdivision administrator shall notify the subdivider in writing of such disapproval and the actions necessary to eliminate the reasons for such disapproval. The subdivision administrator and the staff member indicating any disapproval shall be available to work with the subdivider as he takes steps necessary to eliminate reasons for such disapproval.

(e) *Zoning and planning board review procedure.* When the subdivision administrator receives written approval from all staff as required in this section, he shall notify the chairperson of the zoning and planning board or his designee. At that time, copies of the preliminary plat shall be distributed to members of the zoning and planning board. First consideration of the preliminary plat shall be at the next regularly scheduled meeting of the zoning and planning board that follows at least seven days after the chairperson or his designee has received said notification from the subdivision administrator. The zoning and planning board shall approve or deny the preliminary plat at its first consideration or within 35 days of its first consideration. Failure to take official action within this timeframe shall constitute approval by the zoning and planning board unless the board extends its review time for reasons specified below.

(1) Before taking action on the preliminary plat, the zoning and planning board may refer copies of the plat and any accompanying material to those public and any private agencies concerned with new land clearing, land disturbance and/or development, provided that the zoning and planning board may extend the 35-day review period if within said time period it has not received information it deems necessary for a thorough review of the plat.

(2) If the zoning and planning board approves the preliminary plat, such approval shall be indicated in its minutes and such approval shall be shown on each copy of the plat by the following signed certificate:

Certificate of Approval

I certify that the preliminary plat shown hereon complies with the Lake Lure subdivision regulations and is approved by the Town of Lake Lure zoning and planning board.

Date	Chairman, Zoning and Planning Board

(3) If the preliminary plat is disapproved by the zoning and planning board, the reasons for such disapproval shall be stated in writing, specifying the provisions of this Code with which the preliminary plat does not comply. One copy of the reasons and one copy of the plat shall be retained by the zoning and planning board; one copy of the reasons and the remaining copies of the plat shall be transmitted to the subdivider. If the preliminary plat is disapproved, the subdivider may make such changes as will bring the plat into compliance and resubmit same for reconsideration by the zoning and planning board as provided in this article.

(4) Approval of the preliminary plat shall be valid for one year unless a written extension is granted by the zoning and planning board on or before the one-year anniversary of said approval. If the final plat is not submitted for approval within said one-year period or any period of extension, the said approval of the preliminary plat shall be null and void.

(f) *Erosion control plans.* No person shall initiate any land disturbing activity which disturbs more than one contiguous acre within the proposed subdivision without having an erosion control plan approved by the land quality section of the State Department of Natural Resources and Community Development and the subdivision administrator, as required by chapter 22. Written documentation shall accompany the preliminary plat.

(g) *Deposit of compliance.* A deposit of compliance that is refundable when all infrastructure has been approved by the subdivision administrator shall be required. In the event that any damages occur to town infrastructure and/or property, these funds may be seized to cover any costs associated with correcting said damages. The deposit of compliance shall be a certified or cashier's check in the amount set by the zoning and planning board. The zoning and planning board shall establish the amount of the deposit based on the degree of risk to town infrastructure and/ or property. This amount shall be no less than $1,000.00, and no more than $10,000.00.

(Code 1989, § 91.17; Ord. of 3-22-1994; Ord. of 11-13-2001; Ord. of 10-10-2006; Ord. of 11-14-2006; Ord. of 6-10-2008; Ord. of 11-10-2009)

Sec. 28-34. Begin development.

(a) *Generally.* Upon approval of the preliminary plat by the zoning and planning board, the subdivider may proceed with preparation of the final plat, the land clearing, the land disturbance and/or the installation of or arrangements for roads, utilities, and other improvements as specified in the approved portion of the preliminary plat that will be submitted for final approval.

(b) *Improvements guarantees.*

(1) *Agreement prior to final plat approval.* In lieu of requiring the completion, installation and dedication of all improvements prior to final plat approval, the town may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a reasonable time to be determined in said agreement. The guarantees under such an agreement shall include the following:

a. That water supply and distribution systems and sewer collection systems are installed in accordance with the Town Standard Specifications and Details for Construction;

b. That streets and the stormwater collection network are installed as specified in these regulations;

c. That soil erosion control measures are installed and maintained as specified in chapter 22;

d. That tree and/or environmental protection measures shown on the plat shall be properly installed and maintained throughout land clearing, land disturbance and/or development;

e. That areas of the subdivision specified on the plat to be graded shall be graded as specified or shall be so graded at the expense of the subdivider;

f. That areas of the subdivision specified on the plat to be left ungraded shall be left ungraded as specified or shall be returned as far as possible to the original condition at the expense of the subdivider;

g. That any significant trees cut without appropriate approvals, or damaged to an extent likely to cause the death of those trees, shall be replaced by healthy trees at the expense of the subdivider;

h. That 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 damaged to an extent likely to cause the death of those shrubs, shall be replanted with healthy shrubbery at the expense of the subdivider; and

i. That replacement trees and shrubbery shall be of species recommended in the Lake Lure Tree Protection Handbook, and at the "minimum dbh for replanting" sizes appropriate to the species as shown in section 28-193. They shall be planted in sufficient numbers to equal the total inches in dbh of the trees so damaged or removed, and/or to fully replant the area of shrubbery so damaged or removed.

(2) *Breaking final plat into phases.* The town may require that the final plat be broken into smaller phases when the required security exceeds $500,000.00, or when the town's interest (as determined by town council) would be served by an alternate phasing plan. The extent of the smaller phases shall be established by the applicant in cooperation with the subdivision administrator.

(c) *Preliminary plat approval requirements.* Once said agreement is signed by both parties and security required herein is provided, the final plat may be approved by the zoning and planning board provided it meets with the requirements of section 28-35. To secure this agreement, the subdivider shall provide, following the preliminary plat approval of the zoning and planning board, either one or a combination of the following guarantees not exceeding 1.75 times the entire cost as approved by the subdivision administrator, of installing required improvements, replanting, and repairs, as specified in subsection (b)(1) of this section, on the approved preliminary plat for that portion of the subdivision to be shown on the final plat.

(1) *Surety performance bond.* The subdivider shall obtain a performance bond with supporting references relative to our region from a surety bonding company authorized to do business in the state, and having a secure financial strength rating from the A.M. Best Company or an equivalent rating from a firm acceptable to the town. No bond in excess of $100,000.00 shall be accepted from any single surety bonding company with a rating from the A.M. Best Company lower than A- (or an equivalent rating from a firm acceptable to the town). The bond shall be payable to the Town Of Lake Lure. The duration of the bond shall be until such time as the improvements are approved by the town council.

(2) *Cash or equivalent security.* The subdivider 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. If cash or other instrument is deposited in escrow with a financial institution as provided in this subsection, then the subdivider shall file with the town council an agreement between the financial institution and himself guaranteeing the following:

a. That said escrow account and any accumulated interest shall be held in trust until released by the town council and may not be used or pledged by the subdivider in any other matter during the term of the escrow; and

b. That in the case of a failure on the part of the subdivider to complete any improvements or any required replantings or repairs, the financial institution shall, upon notification by the town council and submission by the town council to the financial institution of the subdivision administrator's determination of the amount needed to complete the improvements, replantings, or repairs, immediately either pay to the town the funds determined to be needed to complete the improvements, replantings, or repairs 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.* When a letter of credit is submitted, it shall be approved by the town attorney and the town council and deposited with the subdivision administrator; the following information shall be contained in said letter:

a. It shall be entitled "Irrevocable letter of credit."

b. It shall indicate that the town is the sole beneficiary.

c. The amount (of the letter of credit) as approved by the subdivision administrator.

d. The account number and/or credit number that drafts may be drawn on.

e. A list of improvements that shall be built that the letter is guaranteeing.

f. A list of conditions to be met with regard to tree and/or native shrub health and safety at the conclusion of land clearing, land disturbance and/or development, including replanting any replaced trees and/or shrubs not found in good health for the period specified in subsection (b)(1)i of this section.

g. Terms in which the town may make drafts on the account.

h. Expiration date of the letter.

(d) *Default.* Upon default, meaning failure on the part of the subdivider to complete the required improvements, replantings, and/or repairs in a timely manner as spelled out in the agreement in subsection (b)(1) of this section, 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, replantings, and/or repairs based on the subdivision administrator's determination. 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, replantings, and/or repairs. The town shall return to the surety or escrow account any funds not spent in completing the improvements, replantings, and/or repairs.

(e) *Release of guarantee security.* The town council may release a portion of any security posted as the improvements, replantings, and/or repairs are completed and recommended for approval by the subdivision administrator. Prior to release of all or any portion of the security posted, the subdivider shall:

(1) Submit signed and sealed statements from a licensed engineer and/or the tree protection officer that the improvements, replantings, and/or repairs for which the developer seeks release of funds have been installed in accordance with all applicable state and local specifications and according to the approved plans and that the property is properly stabilized.

(2) Obtain a two-year extension of the letter of credit in cases where trees and/or shrubs were required to be replaced, to assure replanting of any such trees and/or shrubs not found to be in good health at the end of the period specified in subsection (b)(1)i this section. This deposit shall be in an amount equal to 1.75 times the determined cost of replanting the failed replacement trees, as determined by the subdivision administrator.

(f) *Release of security.* At such time as these requirements have been met, and the subdivision administrator approves all improvements, replantings, and/or repairs placed in the subdivision as set forth by the zoning and planning board, then all security posted shall be immediately released.

(Code 1989, § 91.18; Ord. of 5-23-1995; Ord. of 10-10-2006; Ord. of 11-14-2006; Ord. of 1-9-2007; Ord. of 6-10-2008; Ord. of 11-10-2009; Ord. of 11-17-2009)

Sec. 28-35. Final plat.

(a) *General.* No final plat for a major subdivision shall be considered unless it has been preceded by a preliminary plat approved by the zoning and planning board. The final plat shall constitute only that portion of the preliminary plat which the subdivider proposes to record and develop at the time of submission. No final plat shall be considered unless and until the subdivider shall have installed in that area represented on the final plat all improvements required by this section as specified in the approved preliminary plat, or financial guarantees of said improvements have been arranged in accordance with section 28-34. No final plat shall be considered until any and all damages (caused as a result of the development of the subdivision) to public infrastructure and/or property has been corrected to the satisfaction of the town. The subdivider shall submit seven copies and one original of the final plat to the subdivision administrator. At the time of submission of the final plat, the subdivider shall pay such fee as established by the town and any fees incurred by the town during the plat review process.

(b) *Contents required.* The original of the final plat shall be at a scale of not more than 100 feet to one inch, on a sheet of a size and material that will be acceptable to the county register of deeds, and shall conform substantially to the preliminary plat as approved. The plat shall conform to the provisions of the G.S. 47-30, as amended. The final plat shall be executed by a registered land surveyor and shall show the following information:

(1) Subdivision name, north arrow, scale denoted graphically and numerically, date of plat preparation, and township, county and state in which the subdivision is located; and the name of the owner and the registered surveyor (including the seal and registration number).

(2) The exact boundary lines of the tract to be subdivided fully dimensioned by lengths and bearings, and the location of intersecting boundary lines of adjoining lands.

(3) The names and deed references (when possible) of owners of adjoining properties and adjoining subdivisions of record (proposed or under review).

(4) All visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.

(5) Sufficient engineering data to determine readily and reproduce on the ground every straight or curved boundary line, street line, lot line, right-of-way line, easement line, and setback line, including

dimensions, bearings or deflection angles, radii, central angles, and tangent distances for the centerline of curved streets and curved property lines that are not the boundary of curved streets.

(6) The accurate locations and descriptions of all monument markers and control points.

(7) The blocks numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each block.

(8) Minimum building setback lines.

(9) Street names and right-of-way lines of all streets, and the location and width of all adjacent streets and easements.

(10) The location and dimensions of all rights-of-way, utilities, or other easements.

(11) Forms for final certifications. The following certificates shall be lettered or rubber stamped on the final plat in such a manner as to ensure that said certificates will be legible on any prints made therefrom. Prior to final plat approval, the certificates referred to in subsections (b)(11)a through d of this section (if applicable) shall be signed by the appropriate person.

a. Certificate of ownership.

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish minimum building lines and minimum standards for all streets, sewers, water lines, alleys, walks, parks, and other sites. Further, I (we) certify the land as shown hereon is within the platting jurisdiction of the Town of Lake Lure, North Carolina.

Date	Owner
Owner	

b. Certificate of accuracy.

(As required under G.S. 47-30 as amended.)

Date	Registered Surveyor

c. Certification of approval of the installation and construction of streets, utilities and other required improvements, and of the protection and/or replacement of trees.

I hereby certify that streets, utilities, and other required improvements have been installed, and that existing trees have been successfully protected and/or have been replaced with trees of acceptable species, health, and size, according to an approved tree protection plan, or that a guarantee of such installation has been arranged as authorized in section 28-34, in accordance with the preliminary plat approved by the zoning and planning board, and according to town specifications and standards in the subdivision entitled

Date	Subdivision Administrator

d. One of the following certificates regarding ownership and maintenance of street rights-of-way in the subdivision must be lettered or stamped on the final plat indicating whether streets are to be private or dedicated to the public.

1. Certificate of ownership and maintenance of private streets.

I hereby certify that the streets shown on this plat of the subdivision entitled _____ are private streets, and the responsibility for maintenance shall not be with the Town of Lake Lure.

Date	Owner

2. Certificate of dedication to the public.

I hereby certify that the rights-of-way and design of all streets represented on this plat have been approved by the Town of Lake Lure and that said streets have been or will be constructed in accordance with town requirements for public streets. I hereby dedicate said rights-of-way to the town for use as public streets. Further, until such time that the town, by resolution, accepts said dedication, the responsibility for maintenance shall rest with .

Date	Owner

3. Certificate of dedication to the public.

I hereby certify that I dedicate to the public use all areas shown on this plat as streets, alleys, walks, parks, open space, and easements, except those specifically indicated as private. I hereby certify that the rights-of-way and design of all streets represented on this plat have been approved by the Town of Lake Lure and that said streets have been or will be constructed in accordance with town requirements for public streets. All property shown on this plat as dedicated for public use shall be deemed to be dedicated for any public use authorized by law when such other use is approved by the Town of Lake Lure Town Council in the public interest. Further, until such time that the town, by resolution, accepts said dedication, the responsibility for maintenance shall rest with .

Date	Owner

(c) *Subdivision administrator review and approval.* Upon receipt of the final plat in accordance with subsection (a) of this section, the developer shall submit a signed and sealed statement from a licensed engineer that all streets and water and sewer utilities have been installed in accordance with all applicable state and local specifications and according to the approved plans, unless a guarantee of such installations has been arranged in accordance with section 28-34. The subdivision administrator shall certify that the subdivision complies with all applicable elements of chapter 36. The subdivision administrator shall also receive approval of the water and/or sewer plans and/or installation as required in section 28-106. Upon receipt of said

written approvals, the subdivision administrator shall approve the final plat and sign the certificate of approval of the installation and construction of streets, utilities and other required improvements as required in subsection (b)(11)c of this section.

(d) *Zoning and planning board review and approval.* When the final plat is approved by the subdivision administrator, he shall submit the plat to the zoning and planning board for final approval. The zoning and planning board shall consider the final plat at the next regularly scheduled meeting that follows at least seven days after submission by the subdivision administrator. The zoning and planning board shall take action on the final plat at its first consideration or at any regular or special meeting within 35 days of the plat's first consideration. The zoning and planning board may extend the review period if it deems necessary in order to obtain additional information necessary for a thorough review of the plat.

(e) *Disposition of copies.* If the final plat is approved by the zoning and planning board, the original tracing and one print shall be retained by the subdivider, and one print shall be filed with the subdivision administrator.

(f) *Certificate of approval.* After approval by the zoning and planning board, the following certificate shall be lettered or rubber stamped on the final plat in such a manner as to ensure that said certificate will be legible on any prints made therefrom:

Certificate of approval

I certify that the final plat shown hereon complies with the town subdivision regulations and is approved by the zoning and planning board for recording in the county register of deeds office.

Date	Chairman, Zoning and Planning Board

(Code 1989, 91.19; Ord. of 9-27-1994; Ord. of 5-23-1995; Ord. of 10-10-2006; Ord. of 11-14-2006; Ord. of 11-10-2009)

Sec. 28-36. Recording of the final plat.

Within 60 days after the final plat has been approved by the zoning and planning board, it shall have been recorded with the county register of deeds. Should the 60-day time limit expire before the plat is recorded, it must be resubmitted in accordance with the provisions of this article. Upon adoption of this article, the county register of deeds shall not thereafter file or record a plat of a subdivision located within the town until said plat has been approved by the zoning and planning board. Without the approval of the zoning and planning board, the filing or recording of a subdivision plat shall be null and void.

(Code 1989, § 91.20)

Sec. 28-37. Effect of plat approval on dedications.

The approval of a final plat shall not be deemed to constitute or effect the acceptance by the town of the dedication of any street, public utility line, or other public facility as shown on the plat. The town council shall pass a resolution in order to accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes.

(Code 1989, § 91.21)

Sec. 28-38. Minor subdivisions.

(a) No preliminary plat is required for minor subdivisions. Final plat for a minor subdivision must contain all information required by section 28-35(b) and shall be presented to the subdivision administrator at least three working days prior to offering any portion for recording in the office of the register of deeds. Additional information may be needed by zoning staff in order to evaluate the proposed subdivision to see if the subdivision meets the requirements of this section. Once the additional information is received by zoning staff, the three-day review period will begin. If the minor subdivision complies with the following standards, the subdivision administrator shall provide the approval in writing on the face of the deed or plat. Once the deed or plat has been approved, the owner or the owner's agent may record the deed or plat in the office of the register of deeds.

(b) The following are the standards for approval of minor subdivisions:

(1) Minor subdivisions may be approved, provided that the subdivision:

a. Does not violate any adopted plan, policy, or ordinance of the town;

b. Does not create any new public streets;

c. Does not block or impede the extension of a public street located within a subdivision recorded on a final plat in the office of the register of deeds or a public street shown on a preliminary subdivision which is on file in the zoning office;

d. Does not leave an implied division of property which would not meet the requirements of chapter 36 or any other land regulatory ordinances; or

e. Does not land lock any tract of land.

(2) If a minor subdivision lies within a preliminary subdivision which has been approved by the zoning and planning board, then official action must be taken by the zoning and planning board to withdraw the subdivision or any portion thereof before a minor subdivision can be approved.

(3) There may be only one minor subdivision in one tract of land, or contiguous tracts of land owned by an individual, group of individuals, or partnership or a company or any combination thereof. All minor subdivisions shall be reviewed in accordance with the provisions in this article. However, if the owner leases, holds an option on or holds any legal or equitable interest in any property to be subdivided, the subdivision shall not qualify under the abbreviated minor plat procedure. Furthermore, the abbreviated procedure may not be used a second time within three years on any property less than 1,500 feet from the original property boundaries by anyone who owned, had an option on or any legal interest in the original subdivision at the time the subdivision received preliminary or final plat approval.

(Code 1989, § 91.22; Ord. of 11-13-2001)

Sec. 28-39. Planned unit development.

Non-traditional subdivisions may be developed as planned unit developments as described in section 36-104. Planned unit developments are permitted as a special use in most zoning districts.

(Code 1989, § 91.23; Ord. No. 21-05-11A, 5-11-2021)

Secs. 28-40—28-66. Reserved.

ARTICLE III. GENERAL REQUIREMENTS

Sec. 28-67. Conformity to existing maps or plans.

The location and width of all proposed streets, trails, and paths, and the location of proposed green areas shall be in conformity with official plans and maps of the town.

(Code 1989, § 91.35; Ord. of 3-22-1994; Ord. of 10-10-2006)

Sec. 28-68. Continuation of adjoining street system.

The proposed street layout shall be coordinated with the street system of the surrounding area. Where possible, existing principal streets shall be extended.

(Code 1989, § 91.36)

Sec. 28-69. Access to adjacent properties.

Where, in the opinion of the zoning and planning board, it is desirable to provide for street access to an adjoining property, proposed streets shall be extended by dedication to the boundary of such property and a temporary turn around shall be provided.

(Code 1989, § 91.37)

Sec. 28-70. Large tracts or parcels.

Where land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow for the opening of future streets, trails, paths, and green areas, and logical further resubdivision.

(Code 1989, § 91.38; Ord. of 3-22-1994; Ord. of 10-10-2006)

Sec. 28-71. Alleys.

Alleys shall be provided to the rear of all lots used for other than residential purposes. All dead-end alleys shall be provided with a turn around.

(Code 1989, § 91.39)

Sec. 28-72. Private drives.

No private drives shall serve more than one lot, except that driveways may be permitted to serve up to three residential lots provided each lot fronts a public or private street and after a determination by the subdivision administrator that reasonable access from the street to said lots cannot be achieved due to topography or natural features. Driveways shall have a travelway width of not less than ten feet and shall be surfaced with gravel or pavement. Driveways which intersect with a state road shall require a permit from the state department of transportation. Private drives will not be maintained by the town.

(Code 1989, § 91.39A; Ord. of 11-26-1996; Ord. of 4-9-2002)

Sec. 28-73. Street names.

Proposed streets which are obviously in alignment with existing streets shall bear the assigned name of the existing streets. Streets shall be named under the procedure found in section 26-41.

(Code 1989, § 91.40; Ord. of 11-26-1996)

Sec. 28-74. Surveying and placement of monuments.

"The Manual of Practice for Land Surveying," as adopted by the state board of registration for professional engineers and land surveyors, under provisions of G.S. ch. 89C, shall apply when conducting surveys.

(Code 1989, § 91.41; Ord. of 11-26-1996)

Sec. 28-75. Preparation of plans by a registered surveyor or engineer.

(a) All plans for streets and drainage as required in this article shall be executed by a registered engineer or a registered surveyor. The engineer's or surveyor's seal shall be affixed to such plans.

(b) All plans for water and sewer (except individual water or sewer systems) as required in this article shall be executed by a registered engineer. The engineer's seal shall be affixed to such plans.

(Code 1989, § 91.42; Ord. of 11-26-1996)

Sec. 28-76. Preservation of water areas.

(a) *Intent.* It is the intent of these regulations both to safeguard existing and potential land clearing, land disturbance and/or development in appropriate locations and to preserve and promote a desirable ecological balance. Insofar as is reasonably practicable, subdivisions shall, therefore, be located, designed and improved to accomplish the following:

(1) Preserve important natural water areas and related vegetation and wildlife habitats;

(2) Avoid creation of upstream impoundments or downstream runoff harmful to such complexes or to existing or potential development in appropriate locations; and

(3) Maintain desirable groundwater levels.

(b) *Maintenance of natural watercourses.* Standards for maintenance of natural watercourses are as provided herein.

(1) Where a proposed subdivision is traversed by or includes in whole or in part a natural watercourse, as defined herein, the following requirements shall apply:

a. Such natural watercourse shall be maintained in its natural state except for those vehicular or utility crossings which are necessary and deemed unavoidable by the approving authority.

b. Bordering lands within 25 feet of the edge of any natural watercourse shall be maintained in a naturally vegetated and unaltered state.

c. Bordering lands likely to be inundated at the period of high water during periods of rainfall of ten-year return frequency shall be maintained in a naturally vegetated and unaltered state.

(2) The subdivision administrator, as a condition for plat approval, may make such requirements as are reasonable for the protection of such areas, including the following:

a. The subdivision administrator may require that streets and/or parkways shall border such areas, setting them apart from residential or other intensive uses; or

b. The subdivision administrator may require that all or part of such area shall be platted as part of residential or other lots.

(3) In making decisions concerning such requirements, the subdivision administrator shall consider topography, drainage patterns, soil types, character of existing and potential upland uses, ground cover, erosion control requirements, character of the area to be protected, the adequacy of proposed filter areas, and the like.

(c) *Minor incursions for recreational purposes.* Minor incursions into areas protected under this section may be permitted for the purpose of providing pedestrian and bicycle access for passive recreational activities. Such incursions shall be permitted only if shown on the preliminary and final plats and approved by the subdivision administrator.

(Code 1989, § 91.43; Ord. of 10-9-2007; Ord. of 6-10-2008)

Sec. 28-77. Conservation design.

The requirements in this section are intended to provide for a subdivision design that is more efficient and better suited to the natural features of the land. Conservation design allows smaller and less costly networks of roads and utilities, encourages closer-knit and potentially safer neighborhoods, preserves sensitive farmland, woodlands, scenic views and open space, and reduces the amount of impervious surface and resulting stormwater runoff. The open space provided by conservation design can be used to provide recreational opportunities for the subdivision's residents or employees, to conserve and protect significant natural areas and environmentally sensitive areas, to conserve important historic resources, and/or to conserve productive farming and forestry uses.

(1) *Compliance required.* Subdivisions containing 20 or more acres shall utilize conservation design in accordance with the requirements of this section. Notwithstanding the foregoing, subdivisions of land situated entirely within the R-1 zoning classification containing at least five contiguous acres may utilize conservation design but are not required to do so.

(2) *Contiguous subdivisions.* It is the intent of this section to preclude any attempt to avoid conservation design by the sequential subdivision of land into two or more subdivisions containing less than 20 acres. To that end, two or more subdivisions shall be aggregated and treated as a single subdivision under this article when they are contiguous to property owned or controlled by person owning or controlling the land to be subdivided.

(3) *General design requirements.* In addition to the other standards contained in these regulations, conservation design subdivisions shall comply with the following design requirements:

a. *Minimum conservation design subdivision site size.* The minimum land area within a parcel to create a conservation design subdivision shall be at least five contiguous acres.

b. *Maximum number of lots in conservation design subdivision.* The maximum number of lots allowed within a conservation design subdivision shall be determined by dividing the total acreage in the tract, excluding state road and town street rights-of-way and primary conservation areas, by the lot size requirement for zoning classification of the property contained in section 36-70.

c. *Lot design and dimensional requirements for subdivisions.* Lots shall be clustered in one or more contiguous areas. Furthermore, provided the arrangement, design and shape of lots is such that lots provide satisfactory and desirable sites for building and contribute to the overall

preservation of open space and all other requirements in this section and applicable local, state and federal requirements are met, the minimum lot area, lot width and yard requirements as shown in section 36-70 for the applicable zoning classification may be reduced as stated herein. Any reduction in the yard requirements as shown in section 36-70 shall be approved by the zoning and planning board during the preliminary and final plat process and clearly stated on the final plat for the approved conservation subdivision. If the reduced setback is not stated on the final plat, the standard setbacks noted in section 36-70 shall apply.

1. The minimum lot area shall not be less than 75 percent of the lot area required in the underlying zoning district, or 10,000 square feet, whichever is greater.
2. The minimum lot width requirement at the building site may be reduced by 50 percent, but shall not be less than 45 feet.
3. The minimum front yard requirement may be reduced by 40 percent.
4. The minimum rear yard requirements may be reduced by 40 percent, but shall be no less than ten feet.
5. The minimum side yard requirements may be reduced to zero feet.
6. When buildings are separated, they shall be separated a minimum of 20 feet.
7. Yards abutting the perimeter boundaries of a conservation subdivision shall be no less than the minimum requirements contained in section 36-70.

(4) *Required open space.* Land within the subdivision site that is not contained in lots or in rights-of-way or parcels devoted to accommodating necessary streets and utilities shall be in one or more connected parcels dedicated or reserved as permanent open space as specified herein. Lands identified as primary conservation areas pursuant to subsection (5)a of this section shall be deemed permanent open space in accordance with this article. In addition to primary conservation areas, 25 percent of the remaining land area of the subdivision shall be included in permanent open space. Secondary conservation areas shall be included in open space to the extent they do not exceed 25 percent of the remaining land area. In the event secondary conservation areas do not equal or exceed 25 percent of the remaining land area of the subdivision, additional open space shall be designated so that at least 25 percent of the remaining land area of the subdivision is made permanent open space.

(5) *Open space use, location and design.* Design requirements for open space use, location and design are contained in this section.

a. Primary conservation areas. The following areas are considered primary conservation areas and shall be designated as open space on the plat of any major subdivision:

1. Natural watercourses and any adjoining areas required to be maintained in a natural vegetated and unaltered state by this article.
2. Any identified sensitive natural area as defined herein.
3. Other areas specified in section 28-76(a)(1).

b. Secondary conservation areas. The following areas are considered secondary conservation areas and should be considered for designation as open space on the plat of any conservation design subdivision:

1. Any environmentally sensitive areas where land clearing, land disturbance and/or development might threaten water quality or ecosystems (e.g., stream buffers, groundwater recharge areas).
2. Any identified important historic resources (e.g., homesteads, mills, barns, archeological sites) identified from a local archeological or architectural survey or an individual site survey.
3. Productive farmland or forest land intended for continued agricultural and/or forestry use.
4. Steep slopes (those exceeding 30 percent).

c. Open space which is not situated within a primary conservation area may be used to provide active and/or passive outdoor recreation opportunities (e.g., ballfields, playgrounds, tennis courts, swimming pools, basketball courts, bikeways, walking trails, nature trails, and picnic areas), either for the general public or for the subdivision's residents or employees and their guests. Note: This does not preclude a membership requirement or monetary charge for use of recreation facilities, such as a swim or tennis club, as long as subdivision residents have an opportunity to join the club or pay to use club facilities. No more than ten percent of such additional open space shall be covered with impervious surfaces.

d. Open space situated within a primary conservation area may be used for limited passive recreational activities, such as nature trails, so long as such activities do not impair the functionality of the area.

e. Sidewalks may be provided by the developer, if approved by the subdivision administrator, as leading to a pedestrian destination point, such as a school, park, etc., and may constitute part of the open space requirements.

f. The location, size, character, and shape of required open space shall be appropriate to its intended use (e.g., open space proposed to be used for recreation, particularly active recreation, shall be located and designed so as to be conveniently and safely reached and used by those persons it is intended to serve, and open space proposed to be used for ballfields, playing fields, or other extensive active recreational facilities should be located on land that is relatively flat and dry).

g. Phasing. When a conservation design subdivision is developed in phases, it shall be designed and developed in such a manner that total open space is never less than 25 percent of the total land area in any such phase and all previously approved phases.

h. No portion of any required primary or secondary areas may be used for septic drain fields.

(6) *Open space dedication or reservation.* Open space shall be dedicated or reserved in accordance with the standards contained herein.

a. Subdivision occupants shall be ensured direct access to and use of the subdivision's open space, by conveying that portion of open space to a homeowners' association, property owners' association, or similar legal entity or to a public agency or nonprofit organization that is organized for, capable of, and willing to accept responsibility for managing the open space for its intended purpose and that will ensure subdivision occupants direct access to and use of the open space. Any other open space provided may be conveyed to such organizations or to any agency, organization, person, or other legal entity that is organized for, capable of, and willing to accept responsibility for managing the open space for its intended purpose, provided such conveyance is restricted to ensure continued open space use and maintenance.

b. Each dedicated or reserved open space parcel shall be shown on all subdivision plans and on a record plat recorded with the county register of deeds, with a notation of its area and its intended open space use, as identified herein. The owner of an open space parcel may rededicate or re-reserve the parcel for another open space use allowed under this subsection by recording a record plat showing the parcel and its new intended open space use.

c. The land clearing, land disturbance and/or development area for any lot in a conservation design subdivision shall be delineated on subdivision plats. Those areas described in subsection (4) of this section shall not be included in the area of any lot intended for development and shall be set aside for the common use and enjoyment of occupants of the subdivision, and arrangements for maintenance by a homeowners' association, management group or other acceptable arrangement shall be made. These areas shall be designated for permanent protection on the subdivision plat and recorded deeds, with appropriate recorded deed restrictions for the use and protection of these areas stipulated, and all management responsibilities set forth in homeowners' association bylaws or other appropriate and binding documents for the development.

(7) *Open space maintenance.* The owner of the open space shall be responsible for maintaining the open space so that it continues to effectively function for its intended use, and any dedication or conveyance of an open space parcel shall provide for such responsibility. Where the subdivision is located within a watershed protection district, retention of undeveloped open space in a vegetated or natural state shall be ensured by maintenance provisions filed with the county register of deeds, either as part of recorded documentation providing for establishment of a homeowners' association or similar legal entity that is to be responsible for maintenance and control of open space or in a maintenance agreement recorded with the property deeds.

(8) *Design procedure.* The following conservation design procedures shall be used in evaluating conservation design subdivision applications:

a. *Existing features/site analysis.* An existing features/site analysis map shall be submitted to the planning director. The map shall indicate all features that exist on the subject site as described in this subsection (8).

b. *Identification of open space conservation areas.* Open space areas shall be identified. Guidance as to which parts to classify as open space areas shall be based upon the following three factors:

1. On-site visits by the subdivision administrator, the subdivider and the site designer.

2. The open space standards contained in this section.

3. The evaluation criteria as shown in subsection (9) of this section.

c. *Principal structure setback from open spaces.* Any principal structures must be set back a minimum of 30 feet from all open space lot lines. Provided, however, the planning director may reduce this setback requirement when, due to soil types, topography or other site considerations, strict compliance would result in practical difficulty or unnecessary hardship and when adequate assurances have been given for the protection of the open space.

d. *Street, trail and sidewalk locations and alignments.* All streets, sidewalks and trails shall be located and aligned on the site in the most reasonable, economical, and environmentally protective manner. Trails shall be provided from housing clusters to the designated open space.

(9) *Evaluation criteria.* For any given site, resources may vary widely by importance. Likewise, for each type of resource, there should be examples of greater or lesser significance. In evaluating the layout of

a site, the following evaluation criteria will be considered in determining the site's features and allowing for site design flexibility:

a. The open space shall be reasonably contiguous and shall abut existing open space on adjacent sites.

b. Wetlands, flood hazard areas and natural watercourses with associated stream buffers shall not be cleared, filled or graded except as authorized by state, federal and other applicable regulations and as may be approved by the planning director. Water features shall constitute no more than 50 percent of the open space area.

c. Dwellings shall be located in unwooded parts of the site to prevent unnecessary clearing practices. Exceptions may be made when a site investigation reveals all or part of wooded areas are not worth saving due to tree decay/disease or unsightly overgrowth.

d. The impacts on larger woodlands over two acres shall be minimized as much as practical.

e. Where farmland preservation is the goal of a site design, dwellings shall be located away from active farming areas, as is practical.

f. Where preserving scenic views is the goal of a site design, such scenic views shall remain unblocked and uninterrupted. In wooded areas, where enclosure (i.e., a tree canopy) is a feature to be maintained, a no-cut and no-build buffer strip shall be considered along the public roadway.

g. Where historic or archeological preservation is the goal of a site design, new streets, driveways, fences and/or utilities shall not interfere with the historic site. Building designs of the new homes shall reflect the qualities and designs of the historic buildings, as much as is practical.

h. Where power line rights-of-way are proposed to be included as part of the open space, the right-of-way shall not exceed 50 percent of the required permanent open space.

(10) *Estate lot subdivisions.* Estate lot subdivisions exist as an alternative to conservation design subdivisions as regulated herein. In addition to other applicable standards of this article and other applicable regulations, estate lot subdivisions shall comply with the standards contained in this subsection.

a. *Minimum lot size.* Each lot within an estate lot subdivision shall contain at least five acres of land area.

b. *Maximum disturbed area.* No more than 25 percent of the area of a lot within an estate lot subdivision may be cleared of natural vegetation or otherwise disturbed.

c. *Maximum impervious surface.* No more than ten percent of the area of a lot within an estate lot subdivision may be covered with impervious surfaces.

d. *Protection of primary conservation areas.* Primary conservation areas, as specified in subsection (5)a of this section shall be protected in accordance with the standards of this article with the exception that such areas need not be included within the open space of the subdivision and may be included within the boundaries of an estate lot.

e. *Plats and restrictive covenants.* The plat of an estate lot subdivision shall bear a notation concerning the maximum disturbed area, the maximum impervious surface and the protection of primary conservation areas, and restrictive covenants so limiting the use, land clearing, land disturbance and/or development of any such lot shall be recorded in the office of the county

register of deeds. The restrictive covenants shall be reviewed and approved by the town prior to recordation.

(Code 1989, § 91.44; Ord. of 10-9-2007; Ord. of 6-10-2008)

Sec. 28-78. Common amenities.

When common amenities are intended for subdivisions, they shall be placed in the interior of the development. When it is impractical to locate such places in the interior of the development, they shall be separated from adjacent properties by a wooded buffer at least 50 feet in width. Such buffer shall not be required for common amenities adjacent to, and functionally associated with, that body of water known as Lake Lure. This requirement shall not apply to golf courses.

(Code 1989, § 91.45; Ord. of 8-12-2008)

Sec. 28-79. Easements.

Easements shall be provided for all utilities if they are outside the dedicated street right-of-way. Access to open or piped storm drainage channels shall be guaranteed to the town by granting an easement no less than 20 feet wide (to be shown on plat).

(Code 1989, § 91.46; Ord. of 1-13-2009)

Sec. 28-80. Permanent open space lots.

In some instances, property owners may wish to permanently designate land as open space for conservation and preservation purposes. It is the intent of this section to allow for subdivision of permanently restricted open space lots while relaxing specific standards, provided that a plat note is added to the plat and a deed restriction or a conservation easement is recorded with the county register of deeds that prohibits development of the property in perpetuity. The plat note, deed restriction and conservation easement may allow limited passive recreational activities. In conjunction with these activities, development on the property is limited to trails, walkways, steps, foot bridges, parking areas and retaining walls necessary for erosion control, provided that said development does not exceed five percent of the lot area. A copy of the recorded deed restriction or conservation easement shall be submitted to the subdivision administrator. Provided that the open space lot complies with the above provisions, evidence of adequate water and sewer services is not necessary.

(Code 1989, § 91.47; Ord. of 4-10-2012)

Secs. 28-81—28-103. Reserved.

ARTICLE IV. IMPROVEMENTS REQUIRED; MINIMUM STANDARDS OF DESIGN

Sec. 28-104. Suitability of land.

(a) Where land to be subdivided is found by the zoning and planning board to be subject to the conditions of flooding, or improper drainage, or of severe erosion or slides, particularly on steep slopes or to have other characteristics which pose an ascertainable danger to health, safety or property, the subdivider shall take measures necessary to correct said conditions and to eliminate said dangers.

(b) It should, however, be noted that due to severe topographic conditions, inadequate road access, distance from services, sensitive natural areas, soils that do not easily support soil drainage systems, or the proximity

to existing and incompatible land uses, all land may not be suited to be subdivided for the purpose of dense development.

(c) Steep slopes.

(1) No residential lot shall be created pursuant to this article unless the average slope of such lot is less than 30 percent or, in the alternative, unless such lot contains a building and grading envelope with an average slope of less than 30 percent.

(2) The preliminary plat shall demonstrate compliance with this subsection (c) in the following manner:

a. A note indicating the topographic survey confirms all lots in the proposed subdivision have average slopes of less than 30 percent;

b. A note, based on the topographic survey, identifying which lots have average slopes of 30 percent or greater and confirming that all other lots have average slopes of less than 30 percent; or

c. Lots with average slopes of 30 percent or greater shall have depicted thereon a building and grading envelope meeting the requirements of chapter 36, article XII.

(3) No development activities shall take place outside the bounds of any such building and grading envelope except as authorized by chapter 36, article XII.

(4) For the purpose of demonstrating compliance with this subsection (c), the formula contained in section 36-398(7) shall be used to determine slope.

(Code 1989, § 91.55; Ord. of 3-22-1994; Ord. of 10-10-2006; Ord. of 6-10-2008; Ord. of 11-18-2008)

Sec. 28-105. Streets and roads.

(a) All lots to be platted shall have access to a street, and all proposed streets shall be installed or financially guaranteed as provided in section 28-34, and in accordance with the requirements below, prior to final plat approval.

(b) All streets shall be designated as either public or private on both the preliminary and final plats. If streets are designated as private, the developer shall submit a written statement with the preliminary plat specifying plans for ownership and maintenance of said streets. In addition, said statement shall appear on the original of the final plat in such a manner that it will be legible on any copies made therefrom. If streets are designated as public, the town may, by resolution, in accordance with section 28-37, accept said streets for ownership and maintenance. If requested by the developer and at the option of the town council, streets may be accepted by the town for ownership and maintenance in stages as planned by the developer in order to save undue expense to the developer as well as the town. The town council may, at its option, delay acceptance of a street for up to one year from completion to establish the quality of the construction. In no case will the streets be accepted for ownership and maintenance by the town until the following minimum standards have been met or financially guaranteed as provided in section 28-34(b). All public and private streets shall meet the following minimum standards:

(1) Development standards.

Street Type	*Right-of-Way*	*Travelway Width*	*Surface Material*
Temporary construction road	None	12'	Gravel
Lane	30'	16'	Gravel

Minor street	40'	18'	Pavement
Collector street	50'	20'	Pavement
Arterial street	60'	Per state D.O.T. standards	

(2) All grading and ditching shall be done to meet town specifications.

(3) All drainage pipe shall be installed at the expense of the developer. The pipe size shall be determined by the town, but in no case will anything less than 15-inch pipe be permitted.

(4) The amount of right-of-way to be graded may vary depending on the drainage method selected by the developer. For standard double-ditch drainage, it will be necessary to clear a minimum of 32 feet from ditch to ditch. When alternative drainage methods are used (i.e., curb and gutter, drainage to one side of the road, inverted crown road, etc.) grading of less than 32 feet may be possible. See section 28-190 for illustrations of drainage methods.

(5) Curb and gutter is optional, but the town would encourage that it be installed. Total cost of curb and gutter is to be paid by the developer.

(6) All classes of streets except temporary construction roads shall have stabilized shoulders of at least three feet in width on each side of the travelway.

(7) Within 14 days after road grading and excavation work has been completed, all banks, shoulders (if grass) and ditches created shall be seeded by the developer to prevent erosion and to cover ecological scars.

(8) On any banks or shoulders seeded in subsections (b)(6) and (7) of this section, continued effort must be made by the developer to establish a good growth of grass and to take any action necessary to prevent erosion until a good grass growth is established.

(c) (1) An approved turn around shall be provided where access is a dead-end. The town encourages use of a cul-de-sac for such a turn around. Minimum paved radius for a cul-de-sac is 40 feet to allow for adequate turning room for emergency vehicles. Alternative turn around styles, including T-shaped and Y-shaped turn arounds, will be considered but must be approved by the town fire coordinator.

(2) A temporary turn around, temporary for no more than 12 months, shall be installed on any street which will later be extended. The 12-month period may be extended upon request of the developer and approval of the subdivision administrator. If permission to extend this period is not sought or is not given, the turn around must be converted to a permanent turn around which meets the minimum requirements. At a minimum, the temporary turn around shall consist of six inches of compacted stone and shall provide adequate turning room for emergency vehicles. See section 28-191 for examples and dimensions of permanent and temporary turn arounds.

(3) Where the combined width of paving and stabilized shoulders required by this section is determined to be impractical due to topographical or other extreme physical conditions, the zoning and planning board may authorize a lesser width after special review.

(4) Street paving shall consist of a six-inch compacted stone base and two-inch I-2 bituminous plant mix. Lanes shall have not less than two inches of compacted gravel. Temporary construction roads shall have not less than four inches of compacted ballast stone.

(5) The total cost of paving shall be paid by the developer. The paving may be arranged by the developer, with the contract being approved by the town, or, should the developer request, paving may be arranged by the town.

(6) The grade of roads shall not exceed 15 percent because of the difficulty of operating vehicles on such a steep road and the high potential for erosion of the travelway and ditches. Provided, however, roads may exceed a 15 percent grade only after review by the fire coordinator and approval of the zoning and planning board. Where possible, to avoid environmental impact, yet commensurate with safety, roads should be constructed along the contour of the land to avoid steep grades.

(7) At the option of the town council, streets and roads may be accepted as part of the town's street system provided they have been paved to the standards in this section or the developer has submitted funds to the town for such paving as part of the improvements guarantee in accordance with section 28-34(b).

(Code 1989, § 91.56; Ord. of 7-26-1994; Ord. of 1-24-1995; Ord. of 5-23-1995; Ord. of 4-9-2002)

Sec. 28-106. Water and sewer systems.

The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal. The installation of all said systems except wells or septic tanks serving only one connection shall be required prior to final plat approval unless financially guaranteed according to section 28-34(b). Said systems may be owned and operated by a public or private entity. Any well or septic tank or alternative sewer disposal system serving only one connection shall be approved by the county health department prior to final plat approval. For all new systems or expansion of existing systems serving two or more connections, approval shall be according to state statutes. All major subdivisions shall install water lines of six inches or greater to be able to serve property owners when water service becomes available. Subdivisions having ten or more lots of under two acres in area shall be connected to the town water system or shall be served by an independent community water system. Said system shall be designed to provide minimum fire protection as required by the town manager. Where access to the town water distribution system is available within one-half mile of any new subdivision or the extension of an existing subdivision, said subdivision or extension of an existing subdivision shall be connected to the town system. Where an independent community water system is established, such system shall be connected to the town system and dedicated to the town at such time as the town is able to provide service to the subdivision. The preliminary plat shall be accompanied by written assurance from the developer that plans for said new or expansion of existing systems have been submitted for approval to the appropriate state and/or local agencies. If the developer wishes to install said new or expanded systems prior to final plat approval, then submission of the final plat shall be accompanied by written approval of the installation of said systems by the appropriate state and/or local agencies. Prior to final plat approval, if the developer wishes to financially guarantee the installation of said systems, then submission of the final plat shall be accompanied by written approval of plans for said systems from the appropriate state and/or local agencies. In addition, the town will require that all water and sewer installations meet the following requirements. Whenever any conflict occurs between these requirements and those of the appropriate state and/or local agency, the stricter of the two requirements shall apply.

(1) *Water lines.*

a. All contractors must be approved by the town, and approval shall not be unreasonably withheld, and if total cost of the project exceeds $30,000.00, the contractor must be licensed by the state.

b. The size and material of water lines to be installed will be determined by the town manager, subdivision administrator, and public works director.

c. The subdivider will be responsible for all costs of water pipe, fittings, fire hydrants, and installation. All fittings and fire hydrants must be approved by the town for installation. Where a water line six inches or greater in diameter is required in a public system, and the system has been designed and approved by the division of health services of the state department of human

resources to provide fire protection, fire hydrants shall be installed on said line. The hydrants shall be spaced so that coverage to all building sites along said line may be provided with not more than 500 feet of hose, and shall be located to facilitate access, hose laying, and drainage. The developer or his contractor shall contact the fire coordinator so that he may inspect fire hydrants during and after installation.

d. If the water system is to be connected to the town water system, then when all water line installation has been completed and water connection fees paid, the town's water department will make the water connections and set water meters on each of the building lots. (Copy of current water connection fees available.)

e. Main water line is to be installed 16 feet from center of the road or five feet from the edge of pavement, or at other distances approved by the public works director and shall include a connector line to serve each building lot, extending across the road where needed, prior to paving the road.

f. Warranty. The contractor will be responsible for material and workmanship for a period of 12 months from the date accepted by the town.

g. Water lines will not be extended until permits for such extensions have been obtained in order to comply with state law.

h. No work shall be covered up before being inspected by the town's representative.

i. Minimum cover on water lines shall be 36 inches or as otherwise required by the public works director.

j. Compaction shall be approved by the public works director.

k. In a situation where the subdivision is located along an existing road and an existing water main, it will be the responsibility of the new lot owner to decide whether to have a well or pay to connect and tap on to the existing water system pursuant to the other ordinances and policies of the town in existence at that time.

(2) *Sewer lines.* Where collector sewer mains are available, the following requirements must be met:

a. All contractors must be approved by the town, and approval shall not be unreasonably withheld, and if the total cost of the project exceeds $30,000.00, the contractor must be licensed by the state.

b. The size and material of sewer pipe to be used will be determined by the town manager, subdivision administrator, and public works director.

c. The cost of sewer pipe, manholes, materials, and cost of installation will be borne by the developer. All sewer lines should be laid in the center of the roadway with stub outs at every manhole to each side of the road. The minimum cover shall not be less than 36 inches measured from finished grade. Grades shall be such that the lowest lot in the subdivision can receive adequate sewer service on the ground floor and shall be established by transit levels. In no case shall the grades be less than four-tenths of one percent.

d. Sewer lines will not be extended until permits have been obtained for such extension in order to comply with state law.

e. No work shall be covered up before being inspected by the town's representative.

(3) *Utility improvements outside town limits.* Any extension of water and sewer lines outside the town limits must be under contract between the town and the developer. The developer must provide all right-of-way easements in providing utility services to the subdivision, and provide the following requirements:

a. The developer must purchase water and sewer pipe and have it installed at his cost.

b. Water pipe size and material are to be determined by the town manager, subdivision administrator, and public works director.

c. Sewer line size and material are to be determined by the town manager, subdivision administrator, and public works director.

d. Water and/or sewer lines will not be extended until permits have been obtained for such extension in order to comply with state law.

e. It will be necessary to have a profile of water and/or sewer lines to submit to the state for permit application.

f. The cost for profile sheets will be borne by the developer.

(Code 1989, § 91.57; Ord. of 1-24-1995; Ord. of 5-23-1995; Ord. of 1-14-2002)

Sec. 28-107. Stormwater drainage.

(a) It shall be the responsibility of the developer to provide a drainage system which is designed to meet the following objectives:

(1) Connect onto an existing storm sewer system, where feasible.

(2) Provide for adequate drainage from all roads, parking lots, and other developed areas.

(3) Prevent both the unnecessary impoundment of natural drainageways and the creation of areas of standing water.

(4) Ensure that existing drainageways serving adjacent properties are maintained.

(5) Ensure that natural runoff levels are not substantially increased in order to prevent harmful flooding downstream and to maintain desirable groundwater levels.

(6) Prevent inundation of surface water into the sanitary sewer system.

(7) Protect all roads, driveways, utilities and other types of land clearing, land disturbance and/or development from damages caused by improper drainage control.

(b) The drainage system shall be executed by a registered engineer or registered surveyor in conjunction with the street plans and shall be installed or financially guaranteed as provided in section 28-34(b) prior to final plat approval.

(Code 1989, § 91.58; Ord. of 6-10-2008)

Sec. 28-108. Sedimentation control.

In order to prevent soil erosion and sedimentation pollution of streams, springs, flat water bodies or other drainage networks, and when there are plans for a land disturbing activity of one acre or more, the subdivider shall show proof with the preliminary plat of an erosion and sedimentation control plan which has been approved by

the state agency having jurisdiction in accordance with the North Carolina Administrative Code, Title 15, as adopted by the state sedimentation commission, January 11, 1978, as amended.

(Code 1989, § 91.59)

Sec. 28-109. Tree protection.

(a) *Prohibited cutting.* Any cutting of trees in excess of the percentages permitted by the Forest Coverage Table (see section 28-192) is prohibited unless such excess cutting is shown in the approved tree protection plan in subsection (c) of this section and compensated for by replacing such trees, as described in subsection (b) of this section. Land clearing for subdivision development is prohibited except as permitted under the provisions of these regulations and chapter 22.

(b) *Land clearing and use.* Land clearing permitted under these subdivision regulations shall be limited to the minimum necessary for the construction of roads, utilities, and structures or open green areas intended for common use of residents, and shall not include clearing for individual lots, whether for home sites, structures, driveways, individual wells or septic systems, landscaping, or development of views. One exception shall be that in cases where it is determined by the subdivision administrator that two or three homesites can reasonably be served by a single driveway, such driveway may be platted, approved, and constructed subject to all the usual provisions of town regulations. Structures or open green areas intended for common use of residents shall, to the extent that is possible, utilize preexisting open spaces for this purpose. Clearing in common areas intended to be maintained in a forested state shall be limited to the development of trails, bicycle paths, small picnic areas, and other common amenities.

(c) *Replacement trees.* Any significant tree cut in excess of the number allowed by the Forest Coverage Table (see section 28-192), or without an approved tree protection plan, or in violation of an approved tree protection plan, or that is damaged during land clearing, land disturbance and/or development 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 his agent, as follows: Such trees shall be replaced by species recommended in the Lake Lure Tree Protection Handbook, at the "minimum dbh for replanting" sizes appropriate to the species as shown in section 28-193, 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 subdivider. Such replacement trees and/or shrubs shall be planted in the approximate location of the originals that were damaged or unlawfully removed, or in areas specified 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 or his agent.

(d) *Tree protection plan.* Overall land clearing shall be governed by the forest coverage existing on the site prior to development (see section 28-192). To this end, a tree protection plan shall be prepared as part of any subdivision plat, and shall include at least the information listed below regarding the trees and/or shrubs to be removed for the purposes approved in subsection (c) of this section, and the protection of all other trees on the property. Estimated forest coverage both before and after tree removal shall be provided by a survey provided by a qualified licensed professional for individual forested areas as well as for the subdivision as a whole. Plans shall include:

(1) Location and extent of all forested areas.

a. Forest areas intended for later sale as building lots shall be designated on the plat and shall not be developed in any way, except for driveways that serve two or three homesites as provided in subsection (b) of this section, until certificates of zoning compliance have been issued.

b. Forest areas intended to be maintained as common forest areas shall be marked as protected on the plat except for those areas marked to be cleared for trails, paths, and the like.

c. All forest areas not marked for construction of roads, common utilities, or common areas, or future sale as building sites except as noted in subsection (b) of this section, shall be marked as protected on the plat.

(2) Location and extent of all areas proposed for tree removal and/or land clearing.

(3) Location and nature of tree protection measures to be installed.

(4) Location, size, and species of any trees and/or shrubs to be planted at the direction of the tree protection officer.

(5) Estimated significant tree density of each individual forested area as well as of the subdivision as a whole, both before and after permitted land clearing and replanting.

(6) Location of any steep slopes, or other areas that may not be suited for land clearing, land disturbance, and/or dense development, and any specifications for their particular management, as discussed in section 28-104.

(7) Any additional documentation that the tree protection officer may require.

(e) *Trout buffer.* An undisturbed stream buffer, as defined and illustrated in the town 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.

(f) *Protective boundaries.* Protective boundaries shall be shown on the plat surrounding individual protected trees and their root protection zones and lying along the boundaries of all protected forest areas, especially where areas marked for tree removal abut areas where trees are to be protected, unless physical characteristics of the area render additional protections unnecessary. Such barriers shall be installed prior to any land clearing, land disturbance and/or development activity and maintained until such development is complete. All workers in the area shall be clearly informed that trees and forest areas so marked are to be protected from cutting, girdling, any damage by construction equipment, and any disruptions of their root protection zones including trenching, dumping of excavated soil, spilling of toxic materials, vehicle parking or drive-over, the storage of equipment or materials, and addition of any impervious material.

(g) *Inspections and remedies.* The tree protection officer shall inspect all subdivision projects prior to any permit approvals and at intervals throughout land clearing, land disturbance and/or development. In the course of these visits said officer may provide assistance with estimates of forest coverage and the steepness of slopes, assist in evaluating the suitability of steep slopes for land clearing and development, and approve the entire tree protection plan, including protective boundaries and any required replanting.

(h) *Tree protection officer.* The tree protection officer is authorized to issue a stop-work order at any time that any of the following is determined:

(1) Tree removal has commenced prior to obtaining subdivision plat approvals.

(2) A significant deviation from pre-approved plans/permits has occurred.

(3) Systematic or habitual removal of or damage to protected trees or their root protection zones.

(i) *Approved methods.* Following a stop-work order the tree protection officer shall provide the property owner and/or subdivider with detailed descriptions of approved methods, protective barriers, and the repairs

and/or replantings needed to correct the damage. The tree protection officer shall verify that those measures have been implemented before work is allowed to resume.

(j) *Forestry lands.* Where the land to be subdivided was previously taxed on the basis of present-use value as forestry land under G.S. ch. 105, art. 12 (G.S. 105-274 et seq.), or has been logged under a forestry plan prepared or approved by a registered forester, the town may deny a certificate of zoning compliance or refuse to approve a site or subdivision plan for a period of three years after harvest if the land has been cleared in violation of these regulations; five years if the land clearing was a willful violation. Reference G.S. 160D of the General Assembly of North Carolina.

(Code 1989, § 91.59; Ord. of 10-10-2006; Ord. of 11-14-2006; Ord. of 6-10-2008; Ord. No. 21-05-11A, 5-11-2021)

Sec. 28-110. Lots.

The requirements of chapter 36 shall govern lot size and standards.

(Code 1989, § 91.60)

Sec. 28-111. Building setback lines.

The requirements of chapter 36 shall govern the location of the minimum building setback lines.

(Code 1989, § 91.61)

Secs. 28-112—28-135. Reserved.

ARTICLE V. AMENDMENTS

Sec. 28-136. Amendment procedures.

(a) This chapter may be amended from time to time by the town council as herein specified, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the zoning and planning board for review and recommendation. The zoning and planning board shall have 35 days from the date of presentation to the zoning and planning board within which to submit its report. If the zoning and planning board fails to submit a report within the specified time, it shall be deemed to have approved the amendment.

(b) Before enacting an 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 nor more than 25 days prior to the fixed date of the public hearing. In computing such period, the day of the 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 nature of the change or amendment.

(Code 1989, § 91.70; Ord. of 11-26-1996)

Secs. 28-137—28-155. Reserved.

ARTICLE VI. LEGAL PROVISIONS

Sec. 28-156. Separability.

Should any section or provision of this chapter be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

(Code 1989, § 91.80)

Sec. 28-157. Abrogation.

This section shall neither repeal, abrogate, annul, impair nor interfere with any existing subdivision, the plats of which are properly recorded in the office of the register of deeds prior to the effective date of the ordinance from which this chapter is derived nor with the existing easements, covenants, deed restrictions, agreements or permits previously adopted or issued pursuant to law prior to the effective date of the ordinance from which this chapter is derived.

(Code 1989, § 91.81)

Sec. 28-158. Penalty.

(a) After the effective date of the ordinance from which this chapter is derived, any person who, being the owner or agent of the owner of any land located within the territorial jurisdiction of these regulations, thereafter subdivides his land in violation of these regulations or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of these regulations and recorded in the office of the county register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The town may bring an action for injunction of any illegal subdivision, transfer, conveyance or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision regulations.

(b) This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. 160A-175.

(c) Fines.

(1) Failure to receive plat approvals as required by this chapter prior to commencement of any form of land clearing, land disturbance and/or development shall subject the subdivider to a civil fine not to exceed $500.00 per day of violation, 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 land clearing, land disturbance and/or development is found to meet all requirements of this chapter, plat approvals shall be issued upon payment of the fine and submittal of the appropriate documents, including fees. If the land clearing, land disturbance and/or 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 plat approvals.

(2) Failure to comply with the provisions of an approved plat and the representations submitted as part of the application for the plat shall be cause for the subdivision administrator to place a stop-work order on the land clearing, land disturbance and/or development for which the plat was approved until such time as the land clearing, land disturbance and/or development is altered to comply or until a revised plat is approved. If the land clearing, land disturbance and/or development is not brought into conformance, or a revised plat meeting the standards of this chapter is not submitted within 30 days of the original notice of violation, the subdivider shall be subject to a fine not to exceed $500.00 for each day of delay beyond the 30-day period.

(3) In addition to the details in subsection (c)(2) of this section, the removal of significant trees, or native shrubbery with their stumps and roots, without prior inspection of the site and an approved tree protection plan, as required by this chapter, shall subject the subdivider 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, fines shall be levied on estimates based upon the average densities of significant trees and/or native shrubbery on nearby undeveloped properties. In addition to these fines, illegally removed significant trees and shrubs shall be replaced at the expense of the owner and/or subdivider as set forth in section 28-109.

(d) Violation of any provision of this chapter may subject the offender to a civil penalty which would be determined, assessed and recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within a reasonable period of time prescribed by an administrative officer of the town after such offender has been cited for such violation.

(e) Any provision of this chapter that makes unlawful a condition existing upon or use made of any property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of civil procedure in general and G.S. 1A-1, rule 65 in particular. In addition to an injunction, the court may enter an order of abatement as a part or the judgment in the cause. An order of abatement may direct that improvements or repairs be made and/or trees and/or shrubs be replanted as specified herein; or that any other action be taken that is necessary to bring the property into compliance with this policy or such ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, such defendant may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and material man's lien. The defendant may secure cancellation of an order of abatement by paying all costs to the town of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of the superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

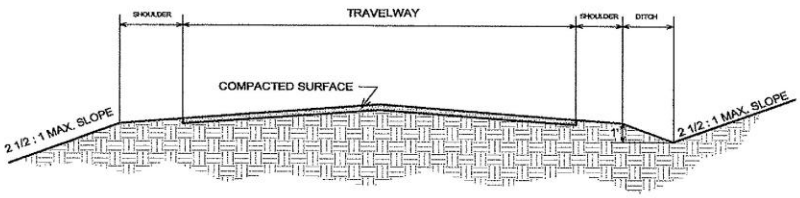
(f) Except as otherwise specifically provided, each day's continuing violation of any provision of this chapter shall be a separate and distinct offense.

(Code 1989, § 91.99; Ord. of 10-10-2006; Ord. of 11-14-2006; Ord. of 6-10-2008)

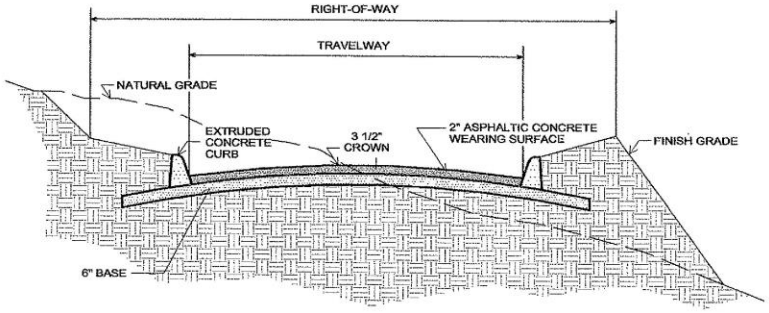
Secs. 28-159—28-189. Reserved.

ARTICLE VII. ATTACHMENTS

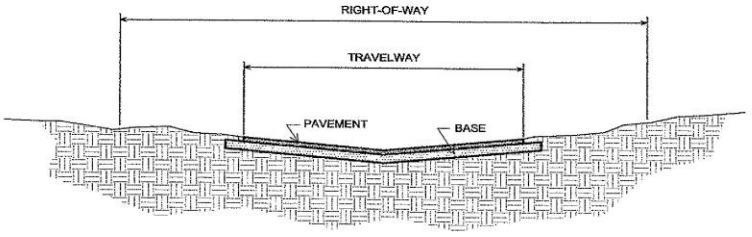
Sec. 28-190. Attachment A.



Drainage to One Side of Road



Curb and Gutter

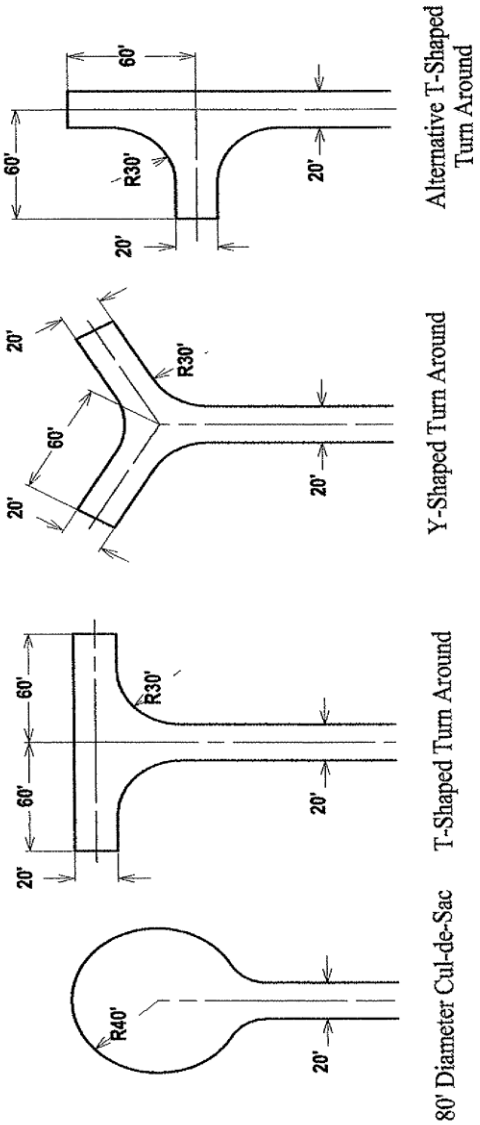


Inverted Crown

Typical Street Drainage Methods

(Code 1989, ch. 91, attach. A)

Sec. 28-191. Attachment B.



Minimum Dimensions for Cul-de-Sacs and Alternate Turn Around Arrangements

(Code 1989, ch. 91, attach. B)

Sec. 28-192. Attachment C.

Forest coverage can be estimated in one of the following methods, 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.

The ground survey significant tree density. 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 before clearing, and report the significant tree density. Significant trees, and/or significant forest areas, shall be marked on the plat for protection or removal as described in section 28-109. Estimates of significant tree densities that will remain after land clearing, land disturbance and/or development shall be 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.

The aerial survey canopy coverage. A property with steep topography or 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 attachment.

The combined ground and aerial survey. When an 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 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.

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.

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 these 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.

Forest 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. For a 200-acre subdivision development with an average initial significant tree density of 25 significant trees per acre, the final significant tree density (after accounting for roads, facilities, homes and driveways) shall average 20 significant trees per acre (.80 x 25).

Canopy coverage example. For a 200-acre subdivision development with an initial canopy coverage of 25 percent, the minimum final canopy coverage (after accounting for roads, facilities, homes and driveways) shall be 20 percent of the 200-acre development (.80 x 0.25).

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 1.0 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 zero percent 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:

$\frac{(a \times 1)}{X}$	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.

$\frac{(b \times 0.75)}{X}$	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.

$\frac{(c \times 0.50)}{X}$	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	=	(?)%

For the 0 percent 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

$\frac{(a \times 1)}{x} \times 100 = (?)\%$ $\frac{(b \times .75)}{x} \times 100 = (?)\%$ $\frac{(c \times .5)}{x} \times 100 = (?)\%$

$\frac{(100 \times 1)}{140} \times 100 = (?)\%$ $\frac{(10 \times .75)}{140} \times 100 = (?)\%$ $\frac{(15 \times .5)}{140} \times 100 = (?)\%$

$\frac{100}{140} \times 100 = (?)\%$ $\frac{7.5}{140} \times 100 = (?)\%$ $\frac{7.5}{140} \times 100 = (?)\%$

.71 x 100 = **71%** .053 x 100 = **5.3%** .053 x 100 = **5.3%**

$\frac{(d \times .25)}{x} \times 100 = (?)\%$ $\frac{(e \times 0)}{x} \times 100 = (?)\%$

$\frac{(10 \times .25)}{140} \times 100 = (?)\%$ $\frac{(5 \times 0)}{140} \times 100 = (?)\%$

$\frac{2.5}{140} \times 100 = (?)\%$ $\frac{0}{140} \times 100 = (?)\%$

.0179 x 100 = **1.8%** 0 x 100 = **0%**

71.0%
5.3%
5.3%
1.8%
+ 0.0%
83.4% Total Canopy

The estimated canopy coverage is **83.4%**.

Canopy Coverage Estimation of Site

(Code 1989, ch. 91, attach. C)

Sec. 28-193. Attachment D.

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"
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. 91, attach. D)

Chapter 29 RESERVED

Chapter 30 TRAFFIC AND VEHICLES

ARTICLE I. IN GENERAL

Secs. 30-1—30-18. Reserved.

ARTICLE II. TRAFFIC REGULATIONS[1]

Sec. 30-19. Traffic and parking regulations.

(a) Town traffic and parking regulations will be established by ordinance and the council. When a new traffic or parking ordinance is adopted, the chief of police shall make certain that the appropriate sign, traffic control signal, or other markings are made to give proper notice of the regulation.

(b) A list of all town traffic and parking regulations shall be maintained in the office of the clerk. The current list of regulations is incorporated by reference into this chapter.

(Code 1989, § 70.01)

Sec. 30-20. Obedience to signs, markers, or devices.

Any person failing or refusing to comply with the directions indicated on any sign, marker, or device for the control of direction of traffic or regulation of parking erected or placed in accordance with the provisions of this article, when so placed or erected, shall be guilty of an infraction or misdemeanor. This section shall not be construed to apply when the driver of a vehicle is otherwise directed by a police officer, or when an exception is granted to the driver of an authorized emergency vehicle under section 30-26.

(Code 1989, § 70.02)

Sec. 30-21. Signs as prerequisite to enforcement.

No provisions of this article for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to an ordinarily observant person.

(Code 1989, § 70.03)

Sec. 30-22. Display of unauthorized signs.

(a) No person shall place, maintain, or display on or in view of any street or highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic control

[1]State law reference(s)—Regulation of traffic on streets and public ways, G.S. 160A-300; city may remove junked and abandoned motor vehicles, G.S. 160A-303; municipality not authorized to regulate or license transportation network company regulated pursuant to state law, G.S. 160A-194(c).

device, sign, or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device, sign, or signal.

(b) No person shall place or maintain nor shall any public authority permit on any street or highway any traffic sign or signal bearing thereon any commercial advertising.

(Code 1989, § 70.04)

Sec. 30-23. Interference with official traffic control devices.

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control device, sign, or signal or any inscription, shield, or insignia thereon, or any other part thereof.

(Code 1989, § 70.05)

Sec. 30-24. Authority of police and fire department officials.

(a) It shall be the duty of the officers of the police department to enforce all street traffic laws and all of the state vehicle laws applicable to street traffic.

(b) Officers of the police department are authorized to direct all traffic by voice, hand, or signal in conformance with traffic laws, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(c) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

(d) Officers of the state highway patrol and the county sheriff's department are authorized to enforce all street traffic laws and all state vehicle laws within the town.

(Code 1989, § 70.06)

Sec. 30-25. Obedience to police and fire department officials.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer or fire department official.

(Code 1989, § 70.07)

Sec. 30-26. Authorized emergency vehicles.

The provisions of this chapter regulating the operation, parking, and standing of vehicles shall apply to authorized emergency vehicles, except as provided under state law.

(Code 1989, § 70.08)

State law reference(s)—Emergency vehicles, exceptions to right-of-way rules, G.S. 20-156.

Secs. 30-27—30-55. Reserved.

ARTICLE III. PARKING VIOLATIONS; ENFORCEMENT

Sec. 30-56. Unlawful parking.

No person shall stand or park a vehicle upon any street for the principal purpose of:

(1) Displaying it for sale.

(2) Washing, greasing, or repairing such vehicle, except repairs necessitated by an emergency.

(3) Storage of any detached trailer, or van, when the towing unit has been disconnected or for the purpose of transferring merchandise, or freight, from one vehicle to another, or parking for any purpose a vehicle of one-ton capacity or greater for a period longer than two hours.

(4) Storage thereof by garages, dealers, or other persons when such storage is not incident to the bona fide use and operation of such automobile or other vehicle.

(5) Advertising any goods or merchandise for sale.

(Code 1989, § 71.01; Ord. of 7-9-1974)

Sec. 30-57. Stopping, standing, or parking prohibited in specified places.

No person shall stop, stand, or park a vehicle except when necessary to avoid conflict with other traffic, or in compliance with the direction of a police officer or a traffic control device in any of the following places:

(1) On the sidewalk.

(2) Within an intersection.

(3) On a crosswalk.

(4) Within 30 feet of any flashing beacon, stop sign, or traffic control signal located at the side of a street or roadway.

(5) Alongside or opposite any street excavation or obstruction, when such stopping, or standing, or parking would obstruct traffic.

(6) Upon any bridge or other elevated structure, or within any underpass.

(7) Within 15 feet in either direction of the entrance to a hotel, theater, hospital, sanitorium, or other public building.

(8) Upon any area designated as a no parking area when said areas are appropriately marked.

(9) Upon any town property between the hours of 10:00 p.m. and 8:00 a.m. without permission to do so.

(10) Upon any town property at any time for the purpose of camping, unless prior written permission is secured from the board of commissioners.

(11) In a parking space designated for a specific purpose, (e.g., “vehicles with trailers only”) unless it is being used for the designated purpose.

(Code 1989, § 71.02; Ord. of 7-9-1974; Ord. of 7-8-1975)

Sec. 30-58. Parking parallel to curb.

Where not otherwise directed by law, and where the streets are not marked to show how vehicles shall park, all vehicles shall park parallel to the curb and not more than 12 inches therefrom.

(Code 1989, § 71.03; Ord. of 7-9-1974)

Sec. 30-59. Vehicles backed up to curb.

In no case shall a vehicle remain backed up to a curb, except when loading or unloading.

(Code 1989, § 71.04; Ord. of 7-9-1974)

Sec. 30-60. Left side to curb not permitted.

No vehicle shall stop with its left side to the curb, and all vehicles shall stop, stand, or park so as to be headed in the direction of traffic.

(Code 1989, § 71.05; Ord. of 7-9-1974)

Sec. 30-61. Parking within lines where provided.

On any street or town owned public vehicular area which is marked with lines indicating the parking space for vehicles, all vehicles shall be parked within said lines as indicated.

(Code 1989, § 71.06; Ord. of 7-9-1974; Ord. No. 21-06-08, 6-8-2021)

Sec. 30-62. Parking and use of electric vehicle charging stations.

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

Charging means an electric vehicle parked at an electric vehicle charging station and is connected to the charging station equipment.

Electric vehicle means any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on board for motive purpose.

Electric vehicle charging station means a public parking space that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle.

(b) *Electric vehicle charging stations on public property.* Public electric vehicle charging stations that are located on public property are reserved for parking and charging electric vehicles only. When a sign provides notice that a space is a designated public electric vehicle charging station, no person shall park any nonelectric vehicle in that space. Any nonelectric vehicle is subject to the penalties set forth in section 30-68 and subject to towing at the owner's expense. Any electric vehicle in any designated public electric vehicle charging station spaces on public property that is not electrically charging shall be subject to the penalties as set forth in section 30-68 and subject to towing at the owner's expense.

(c) *Signage required.* Where public electric vehicle charging stations are constructed and installed on property owned by the town, the town shall cause appropriate signs and markings to be placed in and around the parking spaces of said stations, indicating prominently thereon the parking regulations. The signs shall state

that the parking space is reserved for charging purposes and that there is a four hour charging limit. A second sign shall provide information on how owners of towed vehicles may retrieve the same.

(d) *Enforcement.* A violation of this section shall be enforceable pursuant to the procedures for penalties in section 30-63.

(Code 1989, § 71.07; Ord. of 3-13-2018; Ord. of 10-10-2023)

Sec. 30-63. Penalty.

Any person, firm, or corporation violating any of the provisions of this article, or failing or neglecting or refusing to comply with same, shall be issued a civil penalty citation in an amount not to exceed $50.00, as set by the Town Council, payable at the Lake Lure Town Hall within thirty (30) days of issuance. Each day that any of the provisions of this article are violated shall constitute a separate offense. Civil penalty citations become past due if not paid within thirty (30) calendar days of the issuance of the citation, and the offender shall be assessed an additional penalty of $25.00 and thereafter, every 30 day period the citation remains will result in an additional assessment of $50.00. Citations and corresponding late fee(s) that remain unpaid after 30 days of issuance may be recovered by the Town in a civil action in the nature of a debt. Parking in violation of any or the provisions of this article shall make the vehicle and/or other property left thereon subject to towing.

(Code 1989, § 71.99; Ord. of 7-9-1974; Ord. of 12-13-2022)

Secs. 30-64—30-94. Reserved.

ARTICLE IV. TRAFFIC SCHEDULES

Sec. 30-95. Schedule I speed limits.

(a) Based upon an engineering and traffic investigation pursuant to authority granted by G.S. 20-141(f), the town does hereby declare the following speed limit modifications on the following described portion of a state highway system street:

Speed Limit	*Ordinance Number*	*Description*
25	1073278	Between a point 0.34 miles east of SR 1304 and a point 0.93 miles east of SR 1304
35	800200032	SR 1306 from a point 0.50 miles west of the eastern corporate limits eastward to the eastern corporate limits

(b) Streets in town that are not a part of the state highway system:

Speed Limit	*Ordinance Number*	*Description*
25		All streets unless otherwise posted
15		

(c) Nothing in this section shall be interpreted to permit any person to drive a vehicle at a speed greater than is reasonable and prudent under the conditions then existing.

(Code 1989, ch. 72, sched. I; Ord. of 4-24-1991; Ord. of 11-13-2018; Ord. of 11-14-2023)

Secs. 30-96—30-118. Reserved.

ARTICLE V. GOLF CARTS[2]

Sec. 30-119. Purpose.

The purpose of this article shall be to establish a golf cart ordinance to allow the operation of golf carts within certain areas of the town hereinafter designated to promote the health, safety and welfare of persons operating golf cart within the town and to protect the safety of their passengers and other users of roads.

(Code 1989, § 74.01; Ord. of 8-14-2018)

Sec. 30-120. Policy statement and liability disclaimer.

Golf carts are not designed or manufactured to be used on public streets, roads and highways, and the town in no way advocates or endorses their operation on roads. The town, by regulating such operation is merely trying to address obvious safety issues, and adoption of this article is not to be relied upon as a determination that operation on designated roads is safe or advisable if done in accordance with this article. All persons who operate or ride upon golf carts on designated roads do so at their own risk and peril and must be observant of and attentive to the safety of themselves and others, including their passengers, other motorists, bicyclists, and pedestrians. The town has no liability and assumes no liability under any theory of liability for permitting golf carts to be operated on designated public roads pursuant to the statutory authority of G.S. 160A-300.6. Any person who operates a golf cart must procure liability insurance sufficient to cover the risks involved in using a golf cart on the designated roads of the town.

(Code 1989, § 74.02; Ord. of 8-14-2018)

Sec. 30-121. 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:

Controlled access facility means a state highway, or section of state highway, especially designed for through traffic, and over, from or to which highway owners or occupants of abutting property, or others, shall have only a controlled right or easement of access.

Driver's license means a valid license to operate a motor vehicle issued by the state or any other state.

Financial responsibility means liability insurance coverage on a golf cart in an amount not less than required by state law for motor vehicles operated on public highways in the state.

Golf cart means a vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 mph as set forth in G.S. 20-4.01(12b).

Operator means only persons over 16 years of age and holding a valid driver's license may operate a golf cart on roads.

(Code 1989, § 74.03; Ord. of 8-14-2018)

[2]State law reference(s)—Municipal regulation of golf cart operation, G.S. 160A-300.6.

Sec. 30-122. Operation on public streets and highways within certain areas; exceptions.

(a) *Allowed; registration and authorization required.* The operation of golf carts on the public streets, roads and highways within certain areas of the town so designated for that purpose and on property controlled by the town, if so designated, shall be permitted in compliance with the provisions of this article; however, it shall be unlawful to operate any golf cart that is not properly registered with the town or to operate any golf cart at any place or in any manner not authorized herein.

(b) *Exceptions.* The operation of golf carts is not subject to the provisions of this article under the following circumstances:

(1) The operation of golf carts at golf courses, private clubs or on private property, with the consent of the owner;

(2) The operation of golf carts on private streets within gated communities;

(3) The operation of golf carts that complies with and are regulated by the requirements of state motor vehicle law, which makes it a street legal golf cart and/or low speed vehicle and is therefore eligible for usage on public roads as prescribed by law;

(4) The operation of golf carts in connection with a parade, festival, or other special event provided the consent of the event sponsor is obtained and provided such use only occurs during the event; or

(5) The use of golf carts by the town in its official capacity or business on town-controlled property.

(Code 1989, § 74.04; Ord. of 8-14-2018)

Sec. 30-123. Manner of operation.

Golf carts shall not be operated on the public streets, roads and highways of the town except in full compliance with the provisions of this article.

(1) Golf carts shall not be operated on or alongside public roads or streets with a posted speed limit greater than 35 miles per hour.

(2) Golf carts may cross a road with a posted speed limit greater than 35 mph. However, once this segment of road has been traversed, the golf cart is still required to travel only on or along a roadway with a speed limit of 35 mph or less. Golf carts must cross in a manner that is the most direct route in order to decrease crossing distance, i.e., no riding along a road or crossing at an angle. Under no circumstance is a golf cart allowed to cross a controlled access facility other than at bridges which cross over or under a controlled access facility.

(3) Golf carts may be driven on approved public roads and streets so designated by the town from sunrise until sunset. Golf carts may be driven after sunset when equipped with operational headlights and taillights. Golf carts may not be operated when fog, smog, smoke, inclement weather or other conditions reduce visibility so that the golf cart is not visible for a minimum distance of 250 feet.

(4) Golf carts are authorized for use on the following roads within the town limits:

a. Buffalo Creek Road (State Road 1314) (App. B).

b. A portion of Buffalo Creek Road (State Road 1306) (App. B).

c. A portion of Buffalo Shoals Road (State Road 1306) (App. B).

d. A portion of Cut Away Road (App. A).

e. Village Boulevard (App. A).

f. Winesap Road (State Road 1308) (App. B).

g. Storm Ridge Road (App. C).

h. A portion of Charlotte Drive between the two intersections with Storm Ridge Road (App. C).

The maps for this article are located in section 30-126.

(5) Golf carts authorized for use under the provisions of this article shall not be operated on any other public streets or roads within the town.

(6) Any person who operates a golf cart must be responsible for all liability associated with operation of the golf cart and must have liability insurance coverage which will cover the use of a golf cart in an amount not less than the minimum required by state law for motor vehicles operated on public highways in the state.

(7) Any person who operates a golf cart must be at least 16 years of age. No person may operate a golf cart unless that person is licensed to drive upon the public streets, roads and highways of the state and then, only in accordance with such valid driver's license's restriction. Golf cart operators must carry their driver's license on their person at all times while operating a golf cart on public roads. For the purpose of this article, a learner's permit shall not be considered as a valid driver's license nor shall any license that has been revoked, temporarily, or otherwise, or suspended for any reason be considered as a valid driver's license during the period of revocation or suspension.

(8) Any person who operates a golf cart on public streets and roads must adhere to all applicable state and local traffic laws, regulations and ordinances, including, but not limited to, those banning the possession and use of alcoholic beverages, and all other illegal drugs. In addition, no golf cart containing any open container of alcohol shall be operated on public roads.

(9) The operator of the golf cart shall comply with all traffic rules and regulations adopted by the state and the county/town/city which governs the operation of motor vehicles.

(10) An operator of a golf cart on designated streets may not allow the number of people in the golf cart at any one time to exceed the maximum capacity specified by the manufacturer. The operator shall not allow passengers to ride on any part of a golf cart not designed to carry passengers, such as the rear of a golf cart designed to carry golf bags.

(11) In no instance shall a golf cart be operated at a speed greater than 20 miles per hour. No golf cart may be operated at a speed greater than reasonable and prudent for the existing conditions.

(12) Golf carts must be operated at the right edge of the roadway and must yield to all vehicular and pedestrian traffic.

(13) Golf carts must park in designated spaces in such a manner that multiple golf carts can utilize the space. All parking rules and limits apply. Golf carts shall only park in handicapped parking spaces if the driver or at least one passenger has a valid handicap parking placard and such placard is properly displayed in the cart. No parking on sidewalks is allowed.

(Code 1989, § 74.05; Ord. of 8-14-2018)

Sec. 30-124. Required equipment.

(a) Golf carts must have the basic equipment supplied by the manufacturer, including a vehicle identification or serial number. Such equipment must include all safety devices as installed by said manufacturer, including rear view mirror and a rear triangle reflector of the same type required by state law.

(b) Golf carts driven after sunset must have a minimum of one operating headlight, and two operating taillights, one on each side of the rear of the cart. All lights must be visible from a distance of 250 feet.

(c) A low-speed caution triangle, with a minimum size of 12 inches or greater on all three sides, that shall be made of reflective material and mounted on the rear of the vehicle and permanently installed.

(d) If a mechanical turn signal indicator is installed, it shall be operational. If a mechanical turn signal indicator is not installed, then hand signals are required for turns.

(Code 1989, § 74.06; Ord. of 8-14-2018)

Sec. 30-125. Registration and fee prior to usage.

(a) All golf cart owners who intend to operate the golf cart on designated roads must complete a golf cart registration application and submit to the town at town hall for approval. Before driving on designated public roads, the operator of a golf cart must have a valid issued registration.

(b) The cost for the registration of the golf cart shall be in accordance with the fee schedule adopted annually by the town council. Registration fees are due at the time of registration and registrations must be renewed every calendar year.

(c) Each owner must have proof of ownership, liability insurance, and a completed waiver of liability releasing the town from liability that may arise as a result of operation of a golf cart within the town limits. These documents must be in the golf cart at all times while in operation on public roads or streets.

(d) All golf carts must meet the requirements or minimum standards of safety equipment as set forth in section 30-124.

(e) All golf cart operators must present a valid driver's license while operating a golf cart on a public street or road.

(f) The registration sticker shall be valid for no more than one year and must be displayed on the lower corner of the driver's side windshield or in case of no windshield, the driver's side front quarter panel of the golf cart and easily visible by law enforcement personnel.

(g) Lost or stolen permit/stickers are the responsibility of the owner and must be replaced before the golf cart is operated on a public road.

(Code 1989, § 74.07; Ord. of 8-14-2018)

Sec. 30-126. Denial, revocation and enforcement.

(a) If any person shall violate the provisions of this article, he shall be guilty of a Class 3 misdemeanor and shall be subject to the remedies and penalties found in section 1-10.

(b) The town may refuse to register and issue a permit for the operation of a golf cart, or may revoke a previously issued permit, if the application contains any material misrepresentation; if equipment required by this article, has been removed from the golf cart; if the liability insurance requirements have not been met; or the vehicle identification or serial number is removed.

(c) The town may refuse to register and issue a permit for the operation of a golf cart, or may revoke a previously issued permit for cart owners who have received at least two citations involving the golf cart since their last registration renewal.

(d) Any person who knowingly allows an underage driver to operate a golf cart shall have their permit revoked. In addition, the town may also refuse to issue a future permit to someone who allowed an underage driver to operate a golf cart on public roads or streets.

(e) All-terrain vehicles, four-wheeled utility vehicles and other similar utility vehicles which are not manufactured for operation on a golf course may not be registered as a golf cart nor shall such vehicles be operated on the public roads or streets within the town unless such vehicles are otherwise used in conjunction with and authorized for emergency service operations.

(f) Any violation of the motor vehicle laws of the state shall be charged the same as any other driver of any registered vehicle in the state.

Town of Lake Lure

Golf Cart Registration Application

In accordance with the Town of Lake Lure General Ordinance, Chapter 30 Traffic and Vehicles, Article V, Golf Carts, a Golf Cart Registration may be issued to operate a golf cart on the designated streets of the Town of Lake Lure. Golf cart operators shall submit an application in person to the Town of Lake Lure to obtain its own individual permit/decal to be placed on the front windshield area of the cart so as to be fully visible when the cart is in operation. Golf carts shall have all the required equipment listed in the ordinance. All drivers of the golf cart shall have a valid driver's license.

A golf cart registration authorizes the operation of a golf cart on approved public streets or roads within the corporate limits of the Town and whose posted speed limit is 35 mph or less. It is the responsibility of the golf cart operator to know what roads are designated as permissible for the operation of golf carts.

As with any other form of transportation, all persons who operate golf carts do so at their own risk and must be observant of and attentive to the safety of themselves and others. The Town has no liability under any theory of liability and the Town assumes no liability for permitting golf carts to be operated on certain designated public streets.

The owner of the golf cart must provide evidence of liability insurance at the time of application and must continuously maintain insurance for the entire time the golf cart is registered in the Town of Lake Lure. A golf cart registration fee of $15.00 for each cart, as well as $5.00 for each permit/decal, shall be payable at the time of registration and inspection. Registration shall expire on December 31st of the year printed on the permit and will not be prorated due to date of issuance

Please Print or Type:

Applicants Name: _____ Telephone Number: _____

Address:

Mailing Address if different from above:

Driver's License Number: State Issued:

Serial Number of Golf Cart: Year: Make/Model:

Color: _____

Name of Insurance Company: Policy Number:

By signing this application below, the applicant acknowledges that he/she has received, read and understands the provisions of the Golf Cart ordinance and agrees to abide by all rules and regulations governing the operation of his/her golf cart in the town. The applicant further declares, under penalties of perjury, this vehicle is insured with the company named above and he/she will maintain liability insurance throughout the registration period.

Signature of Applicant	Date

****

For Town Use Only: Fee Paid: Receipt #: Date:

Registration Sticker # Issued: Date Issued:

Expiration Date: _____

Date Inspected: Approved: Denied:

If Denied, Reason:

Town of Lake Lure

Summary of Golf Cart Regulations

And

Waiver of Liability

This is a summary of the rules and regulations for the operation of a golf cart on the streets/roads within the Town of Lake Lure. Additional information regarding the regulations for operating a golf cart on specified Town streets along with violation penalties is found in the copy of the Town of Lake Lure Ordinance Regulating the Operation of Golf Carts on Certain Public Streets.

- Golf carts must have the basic equipment supplied by the manufacturer, including all safety devices installed by the manufacturer.
- Golf carts shall not be operated on or alongside public roads or streets with a posted speed limit greater than 35 miles per hour.
- Golf carts may be driven on approved public roads and streets so designated by the town from sunrise to sunset. A list of the approved roads/streets authorized for use is found in section 30-123.
- Golf cart drivers must adhere to all applicable state and local traffic laws, regulations, and ordinances.
- Golf carts may not be operated when fog, smog, smoke, inclement weather or other conditions reduce the visibility so that the golf cart is not visible from a minimum distance of 250 feet.
- Golf carts authorized for use under the provisions of this article shall not be operated on any other public streets or roads within the town.
- Golf cart drivers shall have a valid driver's license and in no case be under the age of 16 years.
- Golf cart drivers shall stay on the far right of the road and shall yield the right-of-way to overtaking vehicles.
- Golf carts shall not be operated at a speed greater than 20 miles per hour.
- Golf carts must park in designated spaces.
- Golf carts may not be used for the purpose of towing another cart, trailer, vehicle of any kind, including a person on roller skates, skateboard, bicycle or similar device.
- Lost or stolen permit/stickers are the responsibility of the owner and must be replaced before the golf cart is operated on a public street or road.
- The town may refuse to register and issue a permit for the operation of a golf cart, or may revoke a previously issued permit for cart owners who have received at least two citations involving the golf cart since their last registration renewal.
- Any violation of the motor vehicle laws of the state shall be charged the same as any other driver of any registered vehicle in the state.

Liability Disclaimer

Golf carts are not designed or manufactured to be used on public streets, roads and highways, and the Town of Lake Lure in no way advocates or endorses their operation on roads. The Town of Lake Lure, by regulating such operation, is merely trying to address obvious safety issues, and adoption of this ordinance is not to be relied upon as a determination that operation on designated roads is safe or advisable if done in accordance with this chapter. All persons who operate or ride upon golf carts on designated roads do so at their own risk and peril and must be observant of and attentive to the safety of themselves and others, including their passengers, other motorists, bicyclists, and pedestrians. The Town of Lake Lure has no liability and assumes no liability under any theory of liability for permitting golf carts to be operated on designated public roads pursuant to the statutory authority of

G.S. 160A-300.6. Any person who operates a golf cart must procure liability insurance sufficient to cover the risks involved in using a golf cart on the designated roads of the town.

Serial Number of Golf Cart: Year: Make/Model:

Color: _____

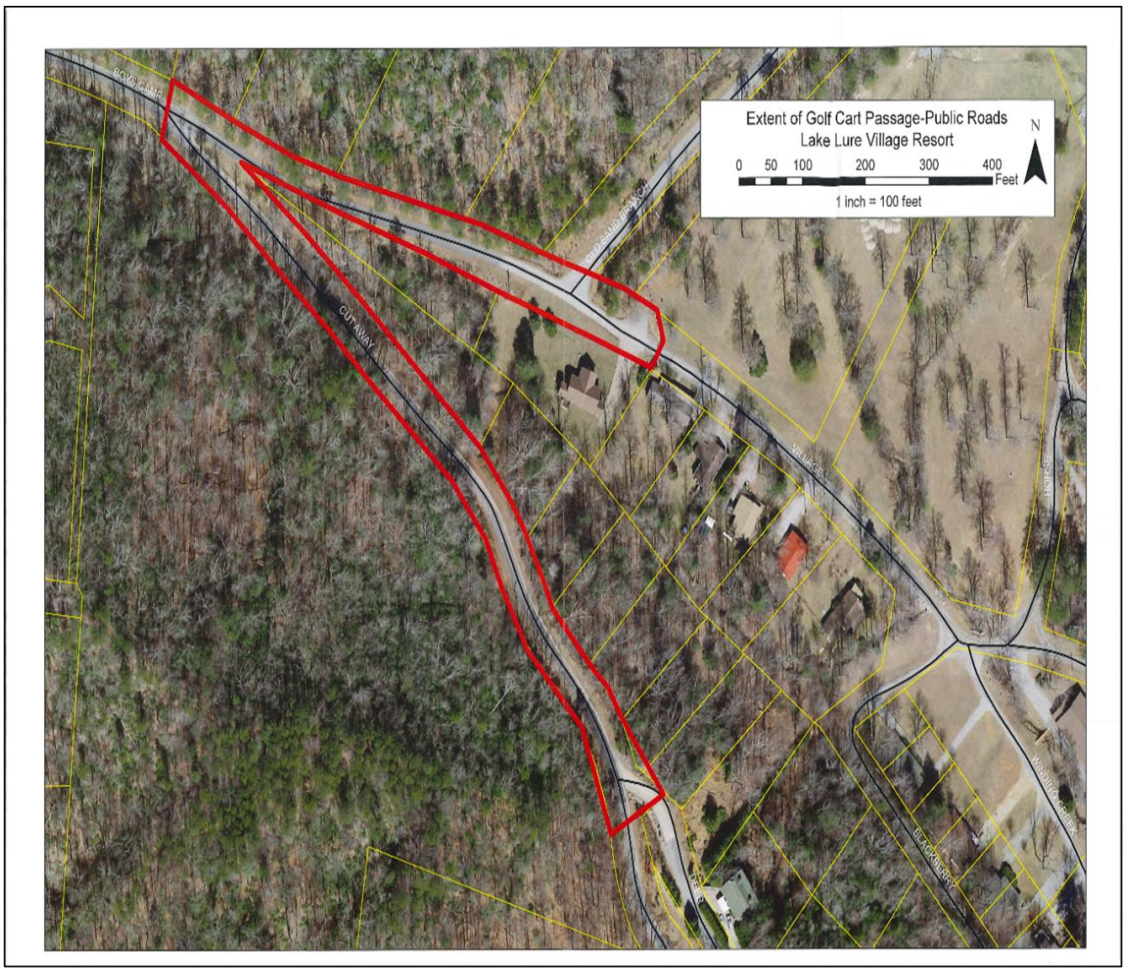
Registration Number: _____

Acknowledgement

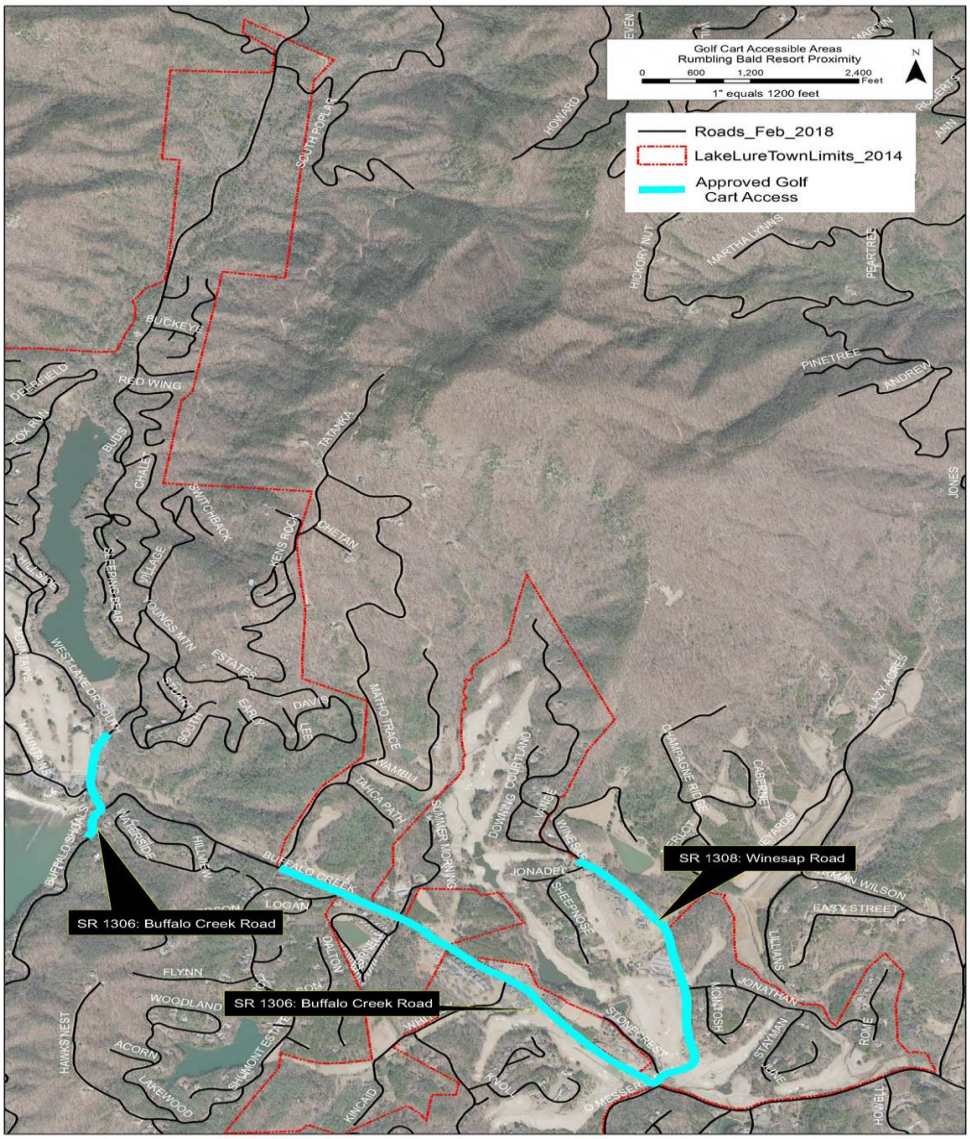
I have read and understand the above requirements and acknowledge receipt of the Town of Lake Lure Ordinance Regulating the Operation of Golf Carts on Certain Public Streets in the Town of Lake Lure. I have paid the registration fee. I acknowledge that I have liability insurance sufficient to cover the risk involved in using this cart on the designated streets and roads and am fully responsible for the operation of the above cart on these streets and roads. I also acknowledge that the Town of Lake Lure, in providing this privilege, is in no way endorsing the operation of this cart on streets and roads nor assumes any liability in the operation of the cart. I agree to indemnify and hold harmless the Town of Lake Lure for any and all liability arising from the use of this registered golf cart. I certify that the above identified cart has the required mirrors, and reflective low speed caution triangle. I will ensure that copies of the proof of ownership, liability insurance, and this completed waiver of liability are in the golf cart at all times while in operation on public roads.

Signature of Applicant/Owner	Date

Map A


Extent of Golf Cart Passage-Public Roads
Lake Lure Village Resort
0 50 100 200 300 400
Feet
1 inch = 100 feet
N
BOATHOUSE ROAD
CUTAWAY
VILLAGE
BLACKBERRY

Map B


Golf Cart Accessible Areas
Rumbling Bald Resort Proximity
0 600 1,200 2,400 Feet
1" equals 1200 feet
N
Roads_Feb_2018
LakeLureTownLimits_2014
Approved Golf Cart Access
SR 1306: Buffalo Creek Road
SR 1308: Winesap Road
SR 1306: Buffalo Creek Road

Map C

(Code 1989, § 74.08; Ord. of 8-14-2018)

Chapter 31 RESERVED

Chapter 32 UTILITIES

ARTICLE I. IN GENERAL

Secs. 32-1—32-18. Reserved.

ARTICLE II. WATER SYSTEM[1]

Sec. 32-19. Service contracts.

All pertinent provisions of this chapter shall govern the terms and conditions of the contracts under which the town furnishes water service to any person, or whereby the town makes any water connections or performs any work of any kind in connection with the furnishing of water service.

(Code 1989, § 50.01)

[1]State law reference(s)—Acquisition and operation of utilities as public enterprises, G.S. 160A-311 et seq.; local governments providing public water service must prepare local water supply plan, G.S. 143-355(l).

Sec. 32-20. Supervision by council.

The water system shall be under the supervision of the council, and the duty of enforcing full compliance with all rules regulations governing all connections with the mains shall be vested in the director of public works.

(Code 1989, § 50.02)

Sec. 32-21. Director of public works; duties.

The director of public works shall perform the following duties:

(1) He shall have general supervision over all the operations of the water system.

(2) He shall see that all rules and regulations of the town are enforced.

(3) He shall see that water rates and assessments are correctly made.

(Code 1989, § 50.03)

Sec. 32-22. Water connections required; separate connections.

All owners of improved property located within the corporate limits and on or within a distance of 200 feet of any town water line shall connect their premises with the town water system. Nothing in this section shall prohibit the continued use of water from private wells for any purpose other than domestic use. There shall be no cross-connection of the town water system with any private well or any other source of water supply.

(Code 1989, § 50.04)

Sec. 32-23. Connections to be made under supervision.

The construction of laterals for water connections, and the necessary excavation therefor, shall be done by the town, or, if done by a licensed plumber, it shall be done under the supervision of the town.

(Code 1989, § 50.05)

Sec. 32-24. Applications for connections.

Every application for a water connection shall be made on a form provided by the town, shall be signed by the applicant, shall be accompanied by the proper fee for making the connections, and shall be filed with the director of public works.

(Code 1989, § 50.06)

Sec. 32-25. Connection charges.

Charges for connection to the town water system will be as established by the council.

(Code 1989, § 50.07)

Sec. 32-26. Right of entry.

Whenever it becomes necessary to enter any premises, store, or dwelling, for the purpose of inspecting water pipes, fixtures, or meters, town employees may do so during reasonable hours. Should the employee be

refused admittance, the supply of water shall be cut off until the examination is made and the required information is obtained, or until repairs and alterations are made.

(Code 1989, § 50.08)

Sec. 32-27. Water meters.

(a) Any water meters furnished by the town shall remain the property of the town.

(b) At the request of any consumer, the town will test the accuracy of a water meter alleged to be recording improperly. If the meter is found to be inaccurate, the consumer's water bill may be adjusted accordingly. If the meter is found to be accurate, the consumer will be charged a fee that is listed in the village fee schedule.

(Code 1989, § 50.09)

Sec. 32-28. Connections outside of town.

No connection of any water line or system outside of the town shall be made to any part of the town water system without special permission from the council on such terms as the council shall prescribe.

(Code 1989, § 50.10)

Sec. 32-29. Unauthorized use of water.

Only authorized town employees may connect or reconnect water service. If water is found to be in use without being turned on by an authorized town employee, or if water is used for any other purpose than that paid for, the consumer of the water shall be guilty of a misdemeanor punishable in accordance with G.S. 14-4.

(Code 1989, § 50.11, Ord. of 6-14-2022)

Sec. 32-30. Leaks.

If a break occurs, or a defect is found in any pipe or fixture, causing or permitting a leakage or waste of water, it shall be the duty of the owner of the premises or the consumer to have the break or defect repaired.

(Code 1989, § 50.12)

Sec. 32-31. Water for use of consumers only.

It shall be unlawful for any consumer to permit any person, except the members of his family or employees living on the premises as a part of the household, or visitors in the home to remove water from the premises for any purpose except in case of fire or other emergency. Any person unlawfully receiving or using water shall be guilty of a misdemeanor, and if it is shown that the unlawful use has been made with the knowledge and consent of the consumer, the consumer shall be deemed equally guilty.

(Code 1989, § 50.13)

Sec. 32-32. Water for building purposes.

Any person desiring water for building purposes shall make application to the town for a permit. He shall state the time when the work will be completed, and shall pay in advance for the water at the regular rates. At the

completion of the work, the estimate will be revised and any additional amount will be collected, or surplus refunded, as the case may be. This section shall apply where the consumption of water is not rated by a meter.

(Code 1989, § 50.14)

Sec. 32-33. Injury to property and fixtures.

It shall be unlawful for any person to injure, deface, or destroy the building, machinery, fences, trees, or other property of the town water system, or in any way to contaminate the town water supply. Violations of the provisions of this article shall be punishable as a misdemeanor as provided by G.S. 14-4.

(Code 1989, § 50.15, Ord. of 6-14-2022)

Sec. 32-34. Tampering with meters.

It shall be unlawful for any person, after the water has been turned off for failure to pay the water bill, to turn the water on at the meter or to bypass the meter or in any manner to obtain water at no cost. Violations of the provisions of this article shall be punishable as a misdemeanor as provided by G.S. 14-4.

(Code 1989, § 50.16, Ord. of 6-14-2022)

Sec. 32-35. Continuity of service.

The town will not be liable for any damages that may result to consumers from the shutting off of water service for any cause whatever, even in cases where no motive is given, and no deduction from bills will be made in consequence thereof.

(Code 1989, § 50.17)

Sec. 32-36. Water rates and charges.

The rates and charges for water service shall be as established by the council and shall be due and payable monthly. A copy of the current rates and charges shall be kept on file at all times in the office of the clerk.

(Code 1989, § 50.18)

Sec. 32-37. Meter reading; billing; collecting.

(a) Meters will be read and bills rendered monthly, but the town may vary dates or length of period covered, temporarily or permanently, if necessary or desirable.

(b) Bills for water will be figured in accordance with the rate schedule then in effect and will be based on the amount consumed for the period covered by the meter readings, but the amount payable for each billing period shall not be less than the minimum charge prescribed in the schedule of rates.

(c) Charges for service commence when the meter is installed and connection is made, whether used or not.

(d) Bills for water service are due when rendered and are delinquent after the tenth day of the following month. In the event the bill for water service is not paid in 15 days after it was rendered, a penalty of ten percent of the outstanding balance shall be added and shall be paid by the consumer.

(e) Delinquent notices will be mailed to the consumer, and if not paid within five days after date of delinquency mailing, water service may be discontinued.

(f) Failure to receive bills mailed or notices shall not prevent the bills from becoming delinquent nor relieve the consumer from payment.

(Code 1989, § 50.19)

Sec. 32-38. Suspension of service.

(a) Service discontinued for nonpayment of bills will be restored only after bills are paid in full and payment of a reconnection service fee is made.

(b) The town reserves the right to discontinue water service without notice for any one or more of the following additional reasons:

(1) To prevent fraud or abuse;

(2) Consumer's willful disregard of the town's rules and regulations;

(3) Emergency repairs;

(4) Insufficiency of supply due to circumstances beyond the town's control;

(5) Legal process;

(6) Direction of public authorities; or

(7) Strike, riot, fire, flood, accident, or any unavoidable cause.

(c) The town may, in addition to prosecution by law, permanently refuse service to any consumer who tampers with a meter or other measuring device.

(Code 1989, § 50.20)

Secs. 32-39—32-65. Reserved.

ARTICLE III. SEWER SYSTEM[2]

Sec. 32-66. Sewer service authority.

The town, by virtue and authority granted by its Charter and by G.S. ch. 160A, art. 16 (G.S. 160A-312 et seq.), is authorized and empowered to acquire, provide, construct, establish, maintain and operate a sewer system for the town and to extend the system beyond the corporate limits.

(Code 1989, § 51.00; Ord. of 11-13-2018)

Sec. 32-67. Management and control.

(a) *Generally.* The management and control of the sewer system is vested in the town manager, to be governed by the provisions of this article and the policies established and modified from time to time by the town council and all in compliance with the laws of the state.

[2]State law reference(s)—Authority to operate public enterprises including water and sewer regulations, G.S. 160A-311; authority to regulate public utilities, G.S. 160A-312; municipal power to require connections to water or sewer service, G.S. 160A-317; local industrial wastewater pretreatment programs, 15A NCAC 02H.0901.

(b) *Collection system.* The town manager shall appoint an operator in responsible charge (ORC) who shall have, or can obtain, state qualifications to operate the town's sewer collection system under the general supervision of the town manager.

(c) *Treatment system.* The town manager shall appoint an operator in responsible charge (ORC) who shall have, or can obtain, state qualifications to operate the town's wastewater treatment plant (WWTP) under the general supervision of the town manager.

(d) *Customer service and financial operations.* The town manager shall appoint a customer service representative and a finance director who are authorized to administer the daily customer service and financial operations of the sewer system under the general supervision of the town manager.

(e) *Ordinance interpretation and grievance.* Interpretation of this article and/or any person aggrieved by a decision of the ORC, the customer service representative, or the finance director shall have the right of appeal to the town manager, who shall have authority to make a final decision on any ordinance interpretation and appeal. The manager may defer such appeal to the town council for a final decision.

(Code 1989, § 51.01)

Sec. 32-68. Purpose and scope of sewer ordinance.

(a) The town's overall operating philosophy for its sewer system starts with the uniqueness of the collection system itself. The system was installed prior to the flooding of the lake, and is located on the lakebed, with perimeter manholes on the lake shore to provide access for sewer customers. Therefore, the town's basic philosophy is that the town owns, operates and maintains this underwater sewer system up to and ending at the lake perimeter manholes. The town does own, operate and maintain some isolated sewer lines outside the lake, but these are very limited.

(b) In all cases, the town does not own, operate or maintain any sewer laterals or service lines beyond town-owned manholes. Laterals and service lines that serve one, two or several customers are the full responsibility of the customers being served. Costs for operation and maintenance of these laterals and service lines are the shared responsibility of the customers receiving sewer service. The town may get involved only as a facilitator between the regulatory authority and customer should a lateral or service line break or leak results in environmental damage or contamination to the lake.

(c) This article is adopted by the town in compliance with the terms and provisions of public funds used in the construction, installation, operation, maintenance and capital improvements of the town sewer system, and is intended to ensure beneficial service to users of such system, the prevention of abuse thereof, and a manner of equitably distributing the costs of services among the users thereof, recognizing that the physical facilities of the sewer system, including the trunk sewers, pump stations and force mains, the treatment plant and other support appurtenances are intended to transport, convey and treat domestic sanitary wastewater and compatible industrial wastewater to produce a treated wastewater and byproduct residuals which may be released into the environment without adverse environmental impact, all within the regulatory requirements of permits issued by the state for operation of the sewer system and WWTP.

(d) The objectives of this article and its elements are as follows:

(1) Elimination of uncontaminated water, groundwater and stormwater which do not require extensive treatment from the system.

(2) Elimination of waste which will damage the system, or cause excessive wear, rapid deterioration or depreciation or excessive maintenance thereof, or which will endanger the safety of maintenance workers or the general public by its presence, or which cannot be economically treated, and/or which

will cause a malfunction or breakdown of the treatment process and result in the water effluent and byproduct sludge being an environmental hazard from the system.

(3) To ensure a fair allocation of the cost among the users of the system based upon voluntary contributions of wastewater of equal strength, recovery of capital cost contributions of public monies from industrial and commercial users of the system, and the imposition of a surcharge for loads of industrial or commercial wastewater which are higher in concentration than sanitary wastewater.

No statement contained in this section shall be construed as prohibiting any special agreement or arrangement between the town and other persons whereby an industrial waste of unusual strength or character may be admitted into the system.

(Code 1989, § 51.02)

Sec. 32-69. 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:

Action level means the concentration based numeric value that the grease interceptor effluent, at the device's outlet tee and prior to mixing with any other wastewater from the contributing establishment's property, are expected to achieve on a consistent or stipulated basis.

Allocation, sewer allocation, or sewer capacity allocation means conditional designations of estimated sewer treatment capacity to a specific owner and project, subject to all of the provisions of this policy and any document of approval.

Approval authority means the director of the state department of natural resources and community development, division of environmental management.

BOD (biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at 20 degrees Celsius, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys it to a sewer service line, beginning five feet (1.5 meters) outside the inner face of the building wall.

Common interceptor means one or more interceptors receiving FOG laden wastewater from more than one establishment. Common interceptors may be located at shopping centers, malls, entertainment complexes, sporting arenas, hotels, multi-tenant "flex" spaces, mixed use spaces, and other sites where multiple establishments are connected to a single grease interceptor. The owner of the property on which the common grease interceptor is located shall be primarily responsible for the maintenance, upkeep, and repair of the common interceptor.

Compatible wastewater means wastewaters with only those polluting constituents which are susceptible to adequate treatment in the treatment system works, without harm to the sewerage system. The term "compatible constituents" has like meaning with reference to individual wastewater parameters.

Connecting sewers means public sewers connecting to the public sewer system.

Connection fee means a fee charged to defray the cost of the connection of a customer's service line to a sewer main.

Contingent allocations means conditional designations of estimated sewer treatment capacity that become effective only upon the occurrence of specific events.

Critical, essential, or highly desirable community services means commercial, institutional, or public services that have been identified by an official planning document or which are found by the town council to be vital, under-provided needs for the residents of the town.

Evaluation criteria means the factors and findings by which applications for sewer capacity allocations are analyzed and evaluated to assist in decisions regarding allocations.

Fats, oils, and greases means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CRF 136, as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases" or "FOG."

Food service establishments or *"FSE"* means those establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs and that use one or more of the following preparation activities: Cooking by frying (all methods), baking (all methods), grilling, sauteing, rotisserie cooking, broiling (all methods), boiling, blanching, roasting, toasting, or poaching, and infrared heating, searing, barbecuing, and any other food preparation or serving activity that produces a consumable food product in or on a receptacle requiring washing to be reused.

FOG enforcement response plan means the document and written plan and procedures by which the ORC implements an enforcement strategy applicable to the FOG control and management program established herein. The plan applies to FOG program violations and matters of program noncompliance. Stipulated penalties for specific and programmatic infractions are addressed in the plan and set forth in the town's annual budget ordinance. The ORC shall make site and case specific determinations of program non-conformance in accordance with this article.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Grease trap or *interceptor* means a device for separating waterborne greases and grease complexes from wastewater and retaining such greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps also serve to collect solids that settle, generated by and from activities that subject users to this section, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps and interceptors are sometimes referred to herein as "grease interceptors."

Impact fee means a fee levied to recover past or future capital cost required to provide increased capacity of water or sewer facilities.

Improved property means any property which has been altered from its natural state, or its current state, by the construction, erection or rehabilitation of a structure or facility, located upon the ground; and if such completed structure has been improved for human habitation and/or use and results in the generation of wastewater which requires treatment.

Incompatible wastewater means wastewater containing constituents or characteristics which render it unsuitable for transport or treatment in the sewerage system. The terms "incompatible constituents" and "incompatible characteristics" have like meaning with reference to individual wastewater parameters. Incompatible constituents and characteristics include water parameters and the elements listed in prohibitions, and may include other elements so identified by the manager and specified in the user's service permit.

Industrial wastes and *high strength wastes* mean the liquid wastes from industrial manufacturing processes, trade or business, or any high strength wastewater, as distinct from sanitary wastes. Sanitary wastes are defined as wastewaters originating from domestic sources.

Infill means building or development that is significantly surrounded by existing improved property, particularly developed property located within the town limits.

Infrastructure installations means improvements (such as streets, sidewalks, water and sewer mains, and stormwater conveyance or mitigation facilities) required by town subdivision regulations and/or other major facilities improvements required to prepare the property for building improvements.

Manager means the town manager.

Minimum design capability means the design features of a grease interceptor and its ability or volume required to effectively intercept and retain greases and settled solids from grease-laden wastewaters discharged to the public sanitary sewer.

Municipality means the town.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

Non-cooking establishments means those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking, but that may produce a consumable food product in or on a receptacle requiring washing to be reused.

Non-municipal means any user of sewer service other than a customer discharging normal sanitary (domestic) wastewater.

Onsite grease interceptor treatment (sometimes onsite treatment) means mechanisms or procedures utilized by a user to treat grease interceptor contents on the user's site, followed by the reintroduction of such treated wastewater back into the interceptor. Onsite grease interceptor treatment may only be accomplished by a user if the user or the user's contract service provider is permitted by the state division of waste management as a septage management firm or service provider.

ORC means the operator in responsible charge of the town's sewer system.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Public sewer means a sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

Refractory, in reference to chemical wastewater constituents, means resistant to treatment or difficult to degrade by biochemical processes.

Sanitary sewer means a sewer which carries sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

Scavenger wastes means contents of privies, septic tanks or cesspools, industrial wastes, chemical compounds and sludges which are hauled by truck or other mobile conveyance.

Scheduling means designation of a specific time or time period during which a sewer capacity allocation is available for use.

Service provider means any third party not in the employment of the user that performs maintenance, repair, and other services on a user's grease interceptor at the user's directive.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater, surface water and stormwater as may be present.

Sewage treatment plant means any arrangement of devices and structures used for treating sewage.

Sewer means a pipe or conduit for carrying sewage.

Sewer service line means the extension from a building drain to the public sewer or other place of disposal; also, a lateral connection.

Sewerage system means all facilities for collecting, pumping, treating and disposing of wastewater.

Slug means any discharge of water, sewage or industrial waste which, in concentration of any given constituent, or in quantity of flow, exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration of flows during normal operation.

Storm drain and *storm sewer* means a sewer which carries stormwater and surface water and drainage, but excludes sewage and industrial wastes other than unpolluted cooling water.

Surcharge means a monetary charge for treatment of industrial waste loads at concentrations higher than normal for sanitary wastewaters. The term "hydraulic surcharge of sewers," meaning overloading, is not used in this article.

Suspended solids means solids that either float on the surface of or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

System means the sewerage system of the town.

Tap means the connection made at the customer's service line (including meter or cleanout) to a sewer main.

Town means the Town of Lake Lure, Rutherford County, North Carolina.

User means any person using the services of the town for conveyance or treatment of wastewater.

WWTP means the town wastewater treatment plant.

Wastewater means any waterborne suspension, slurry or solution of any materials in water which serves the purpose of carrying away unwanted materials from the source.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

(Code 1989, § 51.03)

Sec. 32-70. Administrative procedures; enforcement; penalties; damaging or tampering with facilities.

(a) *Duties and authority.* The duties and authority of town code enforcement employees and inspectors are as follows:

(1) The town manager, his designees, and other duly authorized employees, hereinafter referred to as inspectors, properly identified by credentials of appointment and identification shall perform code enforcement and/or inspections. Inspection shall also be allowed by appropriate state and federal agencies. It shall be the duty of the inspector to make inspections, observations, measurements, sampling and testing in accordance with the provisions of this article. Such inspectors shall have no authority to inquire into any industrial process or to require or request the disclosure of any trade

secrets beyond that point having a direct bearing on the kind or source of discharge to the sewers or waterways or other facilities of the town.

(2) Such inspectors shall have the right to enter upon real property over and through which the town has acquired an easement for the installation and maintenance of the sewer lines and facilities, and, in addition, they shall have, along with proper municipal inspectors, the right to go upon the property of individuals or industrial users of the system as provided in the utility service agreement mentioned in this section, for the purpose of determining compliance with the provisions of this article. All non-municipal sewer users shall execute, as a requirement for service, an agreement allowing sewer inspectors to enter upon the premises for the purpose of inspecting individual sewer collector lines, during reasonable times, so as to verify compliance with the terms and conditions of such service.

(3) While performing the necessary work on private properties referred to in this section, any inspector shall observe all safety rules applicable to the premises established by any commercial or industrial user.

(b) *Damaging or tampering with facilities.* It shall be unlawful and a violation of this section for any person to damage, destroy or tamper with any gauges, meters, lines, manholes and their covers, equipment, pumps, electrical connections, lift stations, or any appurtenances to the sewer lines of the town, and, in addition to the civil responsibility for any damage caused or occasioned by such person, such offender shall be liable for imposition of the penalties as provided in this article. It shall likewise be a violation of this section for any person to aid, assist, abet or permit a minor child to violate the provisions of this article, and such person shall be liable as a principal and subject to the identical penalties as to which any violator of this article would be liable.

(c) *Penalties.* If any person shall violate the provisions of this section, the town manager, his designee or the code enforcement officer shall give notice to the owner or to any person in possession of the subject property in writing and served by personal delivery or the most expeditious means possible, directing that all unlawful conditions existing thereupon be abated within ten days from the date of such notice; provided, that if, in the opinion of the town manager, his designee, or the code enforcement officer the unlawful condition is such that it is of imminent danger or peril to public, the public services department may, without notice, proceed to abate the same, and the cost thereof shall be charged against the property. The penalty for the violation of any provisions of this article shall be as prescribed by G.S. 14-4(a) Class 3 misdemeanor with a fine not to exceed $500.00. In addition to the criminal penalty, there shall also be levied a civil penalty (as provided in the same chapter) per separate offense per day plus any amount the town council shall find appropriate in case of damage to the system or the environment for the purpose of repairs or cleanup.

(d) *Additional rules and regulations.* In order to carry out the terms of this article, the town may promulgate such rules and regulations as deemed necessary, and the town manager is likewise vested, subject to ratification of the town council, with authority to act on behalf of the town in providing for the safety, maintenance, good order and proper function of the facilities of the town.

(Code 1989, § 51.04; Ord. of 11-13-2018)

Sec. 32-71. Connection to sewer system required.

(a) All improved property within the town limits with a structure that generates wastewater, and such structure is located within 200 feet of a town owned sewer line, shall be connected therewith, and the property owner shall be charged the prescribed connection fee for all such connections. Such connection shall be made in accordance with the provisions of this section within 90 days after the date of official notice to connect.

(b) Improved property served by wells and annexed by the town shall be connected to the sewer systems, if within 200 feet, within two years of the effective date of annexation; provided, however, that no connection to the sewer system shall be permitted without also connecting to the town's water system.

(c) The manager or town council may delay or waive the requirement for connection where a determination is made that it is impractical to connect due to topography or other just causes. New construction shall be required to connect to an existing sewer line prior to receiving a certificate of occupancy.

(d) Except as provided in this article, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage. If improved property is currently connected to a town sewer, it shall be unlawful to disconnect.

(e) If improved property is connected to a town-owned sewer line, or to a privately owned line that has access to the public sewer system, it shall be unlawful to disconnect from public sewer except as allowed for in this section.

(Code 1989, § 51.05; Ord. of 1-10-2017; Ord. of 11-13-2018)

Sec. 32-72. Connections outside of town limits.

(a) All improved property outside the town limits that request town water service and located within 200 feet of a town owned sewer line shall connect to the town sewer. This shall be a condition to connect to town water. The property owner shall be charged the prescribed connection fee for all such connections. Such connection shall be made in accordance with the provisions of this section within 90 days after the date of official notice to connect.

(b) Improved property served by wells, or other water source, outside town limits may, at the discretion of the property owner, and upon approval of the ORC, be connected to the town sewer system. The property owner must provide written documentation that there is legal access for the service line connecting the improvement to the town sewer.

(Code 1989, § 51.06)

Sec. 32-73. Application for connection; service agreement/permit.

(a) Application for connection to the town sewer system shall be made on the town's form, together with supporting reports and data sufficient to ensure compliance with relevant terms of this article. The minimum requirement shall be that all information requested on the application be supplied, and all irrelevant information blanks be marked as "not applicable." The town manager, or his designee, may request any additional information deemed necessary, within the scope and intent of this article. Persons requiring guidance in making application may consult the town manager. The approval of a sewer connection application shall constitute the issuance of a service agreement.

(b) An approvable service permit or information necessary to support an approvable application must be submitted to the town manager before approval will be issued to any person proposing to discharge industrial wastewaters to public sewers.

(c) Service permits shall specify quantities and characteristics of industrial wastewaters which may be sewered and shall be limiting where so specified. Service permits may specify special conditions and agreements between the user and the town. Service permits shall serve as a contract between the user and the town. If deviation from the terms of a service permit is anticipated or experienced by the user or the town, each party shall immediately notify the other, in writing, specifying the nature and extent of the change in

sufficient detail that a new or modified service permit may be issued, or the service permit cancelled, whichever may be appropriate.

(d) Permits for any users, other than normal sanitary wastewater, shall be issued for a specified time period not to exceed five years. The user shall apply for permit reissuance a minimum of 180 days prior to expiration.

(Code 1989, § 51.07)

Sec. 32-74. Connections to be made under town supervision.

(a) All connections to the town's sewer main lines, or sewer manholes, shall be performed only by a state-licensed plumber or licensed utility contractor and/or performed by one of their employees under their direct supervision.

(b) Sewer connections will not be made to any existing vacant substandard property or any substandard property becoming vacant until such time as the property has been inspected and brought into compliance with the town, county and state codes and a certificate of occupancy issued.

(c) If an existing sewer connection to a property that for one reason or another becomes uninhabitable, the sewer service line will be cut and plugged at the property line by the town and billing stopped and the account will be closed. If the uninhabitable property is brought into compliance with codes and a certificate of occupancy is issued, then the sewer service line may be re-connected to the property, but will be considered as a new account, new tap and an application with fees shall have to be completed and paid.

(d) No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer, manhole or appurtenance.

(e) All required permits (town, county, state or federal), contractor connection costs, and other expenses incidental to the installation and connection of a sewer service line shall be borne by the owner. This may include costs for obtaining road cut permits, road repair, easements, costs of inspection from third party entities, a pump and storage tank if required for the service connection and other associated costs.

(f) Unless otherwise authorized by the ORC, a separate and independent sewer service line shall be provided for every building; except, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway. The sewer service line from the front building may be extended to the rear building and the whole considered as one sewer service line.

(g) Old sewer service lines may be used in connection with new buildings only when they are found upon examination and test by the ORC to meet all requirements of this article.

(h) The size, slope, alignment and materials of construction of a sewer service line, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the state building and plumbing codes or other applicable rules and regulations of the town and the state. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in the town's utility construction standards shall apply.

(i) Whenever possible, the sewer service line shall be brought to the building at an elevation below the basement floor. In all buildings in which any building sewer drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be pumped by an individual pump and discharged to the sewer service line. In such case a pump is required; a shut off valve shall be installed at the connection point to the town's sewer. If a pump and storage tank is required, the system shall be pre-approved by the ORC.

(j) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains or other sources of surface runoff or groundwater to a sewer service line or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(k) The connection of the sewer service line into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town and state. All such connections shall be made watertight. Any deviation from the prescribed procedures and materials must be approved by the town manager or ORC.

(l) The applicant for a sewer connection shall notify the ORC or customer service representative prior to installation of the sewer service line to schedule a field inspection and approval of the location of service line and connection point to the town's sewer. The actual connection to the town's sewer shall be made under the supervision of the ORC. No sewer service pipe or connection shall be backfilled or covered up without prior inspection from the ORC or his representatives. In a case where a state road has to be cut for installation of a sewer service and connection to the town's sewer, the NCDOT shall be notified and perform an approved inspection.

(m) All excavations for sewer service line installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town.

(n) If the town discovers through inspections and/or testing an unauthorized sewer connection, the town shall notify in writing the owner of the property that the unauthorized connection serves and request the owner to complete a sewer application form, pay a doubled connection fee and two years of back charges, or 100 percent of back charges since the owner obtained title to the property if less than two years. Failure to complete an application may result in further penalties in accordance with section 32-70.

(Code 1989, § 51.08)

Sec. 32-75. User charges.

(a) *Generally.* Sewer user charges are based upon the proposition that costs of service be distributed equitably among users of the services. There will be two rates for payment for services by users:

(1) Basic users rate, generally for all residential and commercial users.

(2) High strength waste surcharges, usually for industrial and specialty users.

(b) *Residential sewer customers.* Persons discharging only domestic sanitary wastewater into the town's sewer system will be charged a flat fee per dwelling unit. Such flat fee rates shall be set forth in the schedule of fees and charges of the annually adopted budget ordinance for the town.

(c) *Commercial sewer customers.* Commercial customers discharging only domestic sanitary wastewater into the town's sewer system will be charged a flat fee per commercial user size. Such user size is based upon the annual projected flow discharged into the town's sewer system and is determined by the town based upon the type and size of the commercial customer. flat rate fees for each user size shall be set forth in the schedule of fees and charges of the annually adopted budget ordinance for the town.

(d) *Adjustments.* Normally all requests for sewer flat fee rate adjustment will not be considered. An appeal may be considered if it can be demonstrated that the flat fee is substantially different from the proposition that costs of service be distributed equitably among users of the services. The town manager is authorized to make an adjustment in the flat fee rate.

(e) *High strength waste surcharge.* Persons discharging high strength wastes, normally industrial, will be charged for loads of BOD and suspended solids in the wastewater in concentrations in excess of those normal for domestic sanitary sewage and allowed for in the basic users rate. For purposes of establishing the lower limits of the user charge surcharges, normal domestic wastewater shall be characterized according to the following concentrations for domestic waste parameters:

(1) BOD_5: 220 mg/L.

(2) Suspended solids: 220 mg/L.

(f) *Surcharge rates.* Surcharge rates will be stated in terms of dollars per pound for each parameter. Quantities of surchargeable materials will be determined by flow measurements (or estimates), sampling, analyses and calculations. Sampling and analyses will be done by the town using 24-hour composite samples, taken during a representative operating day of the user. The minimum sampling frequency will be one day for each four-month billing period. Wastewater analyses will be performed according to procedures of the latest edition of Standard Methods for the Examination of Water and Wastewater, APHA, AWWA, WPCF. Average results of sample analyses will be used for calculating surcharges for each parameter over the billing period according to the following example calculation:

(1) Assume Average Measured BOD = 600 mg/L = (600 lb./10^6 lb. WW).

(2) Assumed measured Volume = 900,000 gal./quarter.

(3) Limit of Base Rate BOD 220 mg/L = (220 lb./106 lb. WW).

(4) Assume BOD Surcharge = ¢/lb.

(5) BOD Surcharge = 600-200 × 0.9 × 8.34 × ¢/lb.

(6) $10^6 \times 100$ = $/quarter.

(g) *Administration billing.* Administration for the high strength waste monitoring program and billings to such accounts will be made by the town and will include statements of base rate billings, surcharge billings and the basis of billings.

(h) *Alternate method sampling.* The town will enter into agreement with high strength users specifying alternate methods of sewage flow determination and sampling as conditions of a service permit.

(i) *Rate schedules.* If required, a schedule of surcharge rates to be charged for the collection and treatment of high strength wastewater shall be set forth in the schedule of fees and charges. Rate schedules will be revised from time to time to reflect the changing number of users and the varying operation costs.

(j) *Separate rate agreement.* The town may negotiate a separate rate agreement for high volume and/or high strength users.

(Code 1989, § 51.09; Ord. of 11-13-2018)

Sec. 32-76. Deposits.

Customer deposits shall not be required for sewer service apart from deposits required for the town's water system. The customer deposits are set forth in the schedule of fees and charges of the annually adopted budget ordinance for the town.

(Code 1989, § 51.10)

Sec. 32-77. Sewer connection charges.

(a) Applicable sewer connection and capital impact fees shall be paid in advance of the establishment of any sewer connection, including, but not limited to, the extension of pipe, the tapping of a sewer main, or the establishment of a new use on an existing connection. The specific policies and procedures for the assessment and collection of sewer connection and capital impact fees shall be established by the schedule of fees and charges in each year's annual budget ordinance.

(b) No water from the town's water system shall be supplied to any person who has caused a sewer tap to be made until the connection fee has been received by the town.

(c) All residents of areas statutorily annexed to the town, where the town extends the sewer to the newly annexed area, shall qualify for waiver of the standard sewer connection fees and charges, provided such residents follow proper application, installation and complete connections within 12 calendar months of the date sewer utilities are available for tapping. The town manager shall provide written certification to town council of the date such utility lines become available for connection, thereby, fixing the date from which residents are allowed to connect without payment of connection charges. All residents who do not connect within the 12-month waiver period must pay all connection fees and charges as prescribed herein.

(d) Sewer connection and impact fees are intended to fund the town's capital reserve fund. The purpose of the impact fee is to reimburse existing customers for having to finance expansion-related projects in advance of growth; recover carrying costs of capacity because capacity must be developed in advance of growth; and create a fund for the upgrading of the sewer collection and treatment system required due to obsolescence or increased regulatory requirements.

(e) For purpose of assessing residential sewer capital impact fees, the assumed usage for a residential unit shall be 375 gallons per day. The term "residential unit" shall be deemed to be an individual single-family living unit whether such unit shall be a freestanding house, an apartment, a condominium or any other residential structure.

(f) Nonresidential users will be assessed sewer capital impact fees based on the number of 375 GPD units of water consumed and will pay the full cost for any fraction of a residential equivalent. Sewer capital impact fees may be assessed utilizing the best available information, including, but not limited to, historical use data for similar uses, and an engineer's signed and sealed estimate of projected water use. In the absence of such information, the town manager shall base sewer capital impact such fees upon 15A NCAC 02T.0114, Wastewater Design Flow Rates.

(Code 1989, § 51.11)

Sec. 32-78. Responsibility for payment of charges.

(a) The town bills bi-monthly for sewer service to the address set forth on the application for service. The person who signs the application for service is responsible for paying the bi-monthly bills in accordance with the schedule of rates and fees. Should bills not be paid, the charges for services remain with the property. If the property's title is transferred, through a sale, foreclosure, bankruptcy, inheritance, or other means; responsibility for unpaid balances for service transfer to the new title owner pursuant to the authority of the town Charter, House Bill 282, ch. 194, ratified May 15, 1987, which provides in article V, section 5.1 that, "in case any charges for water or sewerage service due and owing to the town are not paid, then such charges and any penalties assessed for nonpayment shall become a lien upon the property served or in connection with which service is used."

(b) Where there is not provided a separate service connection for each building situated on any given lot or parcel of land, the owner of such lot or parcel of land shall be responsible for the payment of charges for sewer to all such buildings on the lot or parcel.

(c) Where separate service connections are not provided to every occupancy unit or tenant within a multitenant building, the owner of the building shall be responsible for the payment of all charges for sewer service to the building.

(d) Where more than one dwelling unit, or separate structures are provided service through a single service connection, the charges for service shall be the total number of dwelling units or structures served times the minimum charge as shown in the current sewer rate plus the total volume rate. The number of minimum charges is defined as the same number of separate electrical meters required to serve the dwelling units or structures.

(e) Failure to receive bills mailed or notices shall not prevent the bills from becoming delinquent nor relieve the consumer from payment.

(Code 1989, § 51.13; Ord. of 11-13-2018)

Sec. 32-79. Suspension of service.

(a) The town reserves the right to suspend service, with notice, for nonpayment of bills. Notices and suspension of service shall be in accordance with the town manager's directives.

(b) When it is not practical to disconnect sewer service for nonpayment (i.e., several customers share a private sewer lateral that connects to the town's system and one of those customers does not pay their bill), service cannot be terminated to all customers due to one customer's delinquent actions. In these and similar cases, the town will allow the delinquent account to accumulate to a balance of approximately $1,000.00, and then proceed with legal liens on the property and small claims court to secure a judgment. Costs associated with liens and small claims court, and all delinquent service fees will be added to the judgment claim.

(c) The town reserves the right to suspend service, without notice, for the following conditions:

(1) To prevent fraud or abuse.

(2) Customer's willful disregard of the town's rules and regulations.

(3) Emergency repairs.

(4) Legal process.

(5) Strike, riot, fire, flood, accident or any unavoidable cause.

(Code 1989, § 51.14)

Sec. 32-80. Permissive use of system.

(a) Customers in or outside town limits are subject to regulations of the town, the county department of health, and the state department of environmental and natural resources (NCDENR) for proper handling of wastes and wastewaters accepted into the public sewers.

(b) Such customers may apply to the town for discharge of sanitary and compatible wastewaters into the sewerage system, by procedures outlined in this article.

(Code 1989, § 51.15)

Sec. 32-81. Prohibited discharges.

No person shall discharge or cause to be discharged any incompatible wastewaters or wastes to any public sewers, including the following:

(1) The discharge of sanitary wastewater into a storm sewer system. This is prohibited without exception.

(2) Stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer. Unpolluted cooling waters may, upon written application and approval by the town manager, be discharged to storm sewers or storm drains.

(3) Waters or wastes containing substances which are not amenable to treatment or removal by the waste treatment processes employed or are amenable to treatment only to such degree that the waste treatment plant effluent and residuals outputs cannot meet the requirements of the NCDENR permits applicable to plant operations.

(4) Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, or create a public nuisance.

(5) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquids, solid or gas.

(6) Any waters or wastes having a pH lower than 5.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the WWTP.

(7) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the WWTP, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, wood, un-ground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(Code 1989, § 51.16)

Sec. 32-82. Restricted discharges.

No person shall discharge or cause to be discharged the following described prohibited substances, materials, waters or wastes if it appears likely, in the opinion of the town manager, that such wastes can harm either the sewers, sewage treatment process or equipment, can have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the manager will give consideration to such factors as quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capital of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are as follows:

(1) Any liquid or vapor having a temperature higher than 104 degrees Fahrenheit (40 degrees Celsius).

(2) Any wastes or waters containing fats, wax, grease or oil in excess of 100 mg/L (per NCDENR), as determined by results of the Freon extractable test, and the reasonable interpretation of test results, and/or auxiliary tests, to exclude from the measurement values which do not represent fats, wax, grease and oil.

(3) Any garbage other than ground residential garbage from residential kitchen sinks.

(4) Any acidic or alkaline wastewaters having pH values outside the range of 5.0 to 10.0.

(5) Heavy metals and toxic, refractory or organic chemicals in concentrations or quantities sufficient to limit treatment plant capability or efficiency, to adversely affect effluent quality by their presence or effects, or to limit the means of disposal or utilization of treatment plant sludge by their presence. The manager may issue lists of prohibited metals and toxic chemicals and guidelines and criteria for limiting their acceptance as required for operation of the treatment system.

(6) Any radioactive wastes or isotopes of such half-life or concentration as may exceed public safety limits or cause the plant effluent or sludge to exceed any applicable state or federal regulations.

(7) Any materials which exert or cause:

a. Unusual oxygen demand or chlorine demand in such amounts as to constitute a significant load or an operating problem.

b. Excessive discoloration of treatment plant effluent.

c. Unusual odors in the treatment plant effluent or unusual odors in the sewerage system.

(Code 1989, § 51.17)

Sec. 32-83. Fat, oil and grease (FOG).

(a) Scope and purpose. The objective of this section is to aid in preventing the introduction and accumulation of fats, oils, and greases into the municipal wastewater system which will or tend to cause or contribute to sanitary sewer blockages and obstructions. Food service establishments and other industrial or commercial establishments generating wastewater containing fats, oils or greases are subject to this section. This section regulates such users by requiring that grease interceptors and other approved strategies be installed, implemented, and maintained in accordance with the provisions hereof.

(b) Definitions. See section 32-69.

(c) Grease interceptors shall be installed and maintained at the user's expense, when a user operates a food service establishment. Grease interceptors may be required in non-cooking or cold dairy and frozen foodstuffs establishments and other industrial or commercial establishments when the establishment generates wastewater containing fat or grease and the ORC determines an interceptor is necessary to prevent contribution or accumulation of grease to the sanitary sewer collection and treatment system. Upon notification by the ORC or designee that the user is subject to the terms of an enforcement action, said user shall not allow wastewater discharge concentration from subject grease interceptor to exceed an establishment action level of 100 milligrams per liter, expressed as hexane extractable material. All grease interceptors shall be of a type, design, and capital approved by the ORC and shall be readily and easily accessible for maintenance, and repair, including cleaning and for town inspection. All grease interceptors shall be serviced and emptied of accumulated waste content as required in order to maintain minimum design capability or effective volume of the grease interceptor, but not less often than every 60 days or as permitted in a valid program modification. Users who are required to pass wastewater through a grease interceptor shall:

(1) Provide a minimum hydraulic retention time of 24 minutes at actual peak flow between the influent and effluent baffles, with 25 percent of the total volume of the grease interceptor being allowed for any food-derived solids to settle or accumulate and floatable grease derived material to rise and accumulate, identified hereafter as a solids blanket and grease cap respectively.

(2) Remove any accumulated grease cap and solids blanket as required, but at intervals of no longer than 60 days at the user's expense, or in accordance with the valid program modification or other ORC's requirements. Grease interceptors shall be kept free of inorganic solid materials, such as grit, rocks,

gravel, sand, eating utensils, cigarettes, shells, towels, rags, etc., which could settle into this solids blanket and thereby reduce the effective volume of the grease interceptor.

(d) If the user performs onsite grease interceptor treatment pursuant to a modification granted below, the user shall:

(1) Prior to commencement of onsite treatment, obtain written approval by and from the ORC of all processes utilized in said onsite treatment.

(2) Meet the criteria contained in subsection (d)(3)c of this section if any pumped wastes or other materials removed from the grease interceptor are treated in any fashion onsite and reintroduced back into the grease interceptor as an activity of and after such onsite treatment.

(3) Attain and adhere to the criteria listed:

a. After 30 minutes of setting time, not more than 3.0 mg/L of settleable solids, as measured in a one-liter Imhoff cone shall be allowed.

b. Within and not more than 24 hours after onsite grease interceptor servicing, not more the two inches of settable solids and/or grease shall be allowed to have accumulated therein as a result of said operations.

c. Service vehicles and equipment used in onsite grease interceptor servicing shall be registered with the public works and utilities department, and as required by the state division of waste management.

d. When servicing grease interceptors, service vehicles and equipment shall have onboard, at all times, a certificate of approval for the operations and methods used, issued by the ORC.

e. Any tanks, tankage, or vessel associated with a modification shall be empty upon arrival at the initial FSE user site for which this modification is intended to be applied. Operate and maintain the grease interceptor to achieve and consistently maintain any applicable grease action level. Consistent shall mean any wastewater sample taken from such grease interceptor must meet the terms of numerical limit attainment described in subsection (d)(3)a of this section. If a user documents that conditions exist (space constraints) on their establishment site that limit the ability to locate a grease interceptor on the exterior of the establishment, the user may request an interior location for the interceptor. Such request shall contain the following information:

1. Location of town sewer main and easement in relation to available exterior space outside building.

2. Existing plumbing layout at or in a site.

3. A statement of understanding, signed by the user or authorized agent, acknowledging and accepting conditions the ORC may place on permitting an identified interior location. Conditions may include requirements to use alternative mechanisms, devices, procedures, or operations relative to an interior location.

4. Such other information as may be required by the ORC.

(e) The use of biological or other additives as a grease degradation or conditioning agent is permissible only upon prior written approval of the ORC. Any user using biological or other additives shall maintain the trap or interceptor in such a manner that attainment of any grease wastewater, action level, solids blanket or grease cap criteria, goal or directive, as measured from the grease interceptor outlet of interior, is consistently achieved.

(f) The use of automatic grease removal systems is permissible only upon prior written approval of the ORC, the lead plumbing inspector of the county, and the Rutherford Polk McDowell District Health Department or the U.S. Department of Agriculture. Any user using a grease interceptor located in the interior of the site shall be subject to any operational requirements set forth by the state division of waste management. Any user using equipment shall operate the system in such a manner that attainment of the grease wastewater discharge limit as measured from the unit's outlet, is consistently achieved as required by the ORC.

(g) The ORC may make determinations of grease interceptor adequacy need, design, appropriateness, application, location, modification, and conditional usage based on review of all relevant information regarding grease interceptor performance, facility site and building plan review by all regulatory reviewing agencies may require repairs to, or modification or replacement of grease interceptors. The user shall maintain a written record of grease interceptor maintenance for three years. All such records will be available for inspection by the town at all times. These records shall include:

(1) FSE name and physical location.

(2) Date of grease interceptor service

(3) Time of grease interceptor service.

(4) Name of grease interceptor service company.

(5) Name and signature of grease interceptor service company agent performing said service.

(6) Established service frequency and type of service: full pump-out, partial pump-out, onsite treatment (type of nature of operations.)

(7) Number and size of each grease interceptor serviced at FSE location.

(8) Approximated amount, per best professional judgment of contract service provider, of grease and solids removed from each grease interceptor.

(9) Total volume of waste removed from each grease interceptor.

(10) Destination of removed wastes, food solids, and wastewater disposal.

(11) Signature and date of FSE personnel confirming service completion.

(12) Such other information as required by ORC.

No non-grease-laden sources are allowed to be connected to sewer lines intended for grease interceptor service.

(h) Access manholes shall have an installed diameter of 24 inches, a maximum weight of 50 pounds, and shall be provided over each chamber, interior baffle wall, and each sanitary tee. The access penetrations, commonly referred to as risers into the grease interceptor shall also be, at a minimum, 24 inches in diameter. The access manholes shall extend at least to finished grade and be designed and maintained to prevent water inflow or infiltration. The manholes shall also have readily removable covers to facilitate inspection, grease removal, and wastewater sampling activities.

(i) A user may request a modification to the following requirements of this article. Such request for a modification shall be in writing and shall provide the information set forth in subsection (j) of this section.

(j) The user's grease interceptor pumping frequency. The ORC may modify the 60 days grease interceptor pump out frequency when the user provides data, and performance criteria relative to the overall effectiveness of a proposed alternate and such can be substantiated by the ORC. Proposed alternatives may include grease interceptor pumping or maintenance matters, bioremediation as a complement to grease interceptor

maintenance, grease interceptor selection and sizing criteria, onsite grease interceptor maintenance, and specialized ware washing procedures.

(k) Grease interceptor maintenance and service procedures. The ORC may modify the method or procedure utilized service a grease interceptor when the user provides data, and performance criteria relative to the overall effectiveness of a proposed alternate method or procedure and such can be substantiated by the ORC. If a modification to maintenance and service procedures is permitted it shall be a conditional discharged permit approval.

(l) Any modification must be approved by the ORC in written form before implementation by the user or the user's designated service provider.

(Code 1989, § 51.18)

Sec. 32-84. Limitations on compatible wastes.

(a) No person may discharge large quantities of compatible wastewaters to public sewers which, by reason of volume, flow rate, concentration or total load of compatible constituents, are in excess of the capital of a part of the sewerage system or are inconsistent with the most beneficial use of the system in the opinion of the manager. In consideration of these factors, the town manager will limit the following:

(1) Volume and flow rate from any individual source to the capital of sewers, pump stations and force mains and the treatment system, less the capital committed to serve the general public and other users and the reserve capital to serve anticipated needs of the general public until the time of a planned expansion of the facilities.

(2) Loads of compatible pollutants, such as BOD, suspended solids, nitrogen and phosphorus, from any individual source to the capital of the treatment facilities, less the capital committed to serve the general public and other users and the reserve capital to serve the anticipated needs of the general public until the time of a planned expansion of the treatment facilities.

(b) The town manager may require flow equalization or pretreatment for load reduction as a condition of a service permit or may decline to receive high loads or highly concentrated wastewaters into the system if in the town manager's opinion this would not be the most beneficial use of the system, by reason of the cost of services, technical considerations relating to operation and maintenance of the system or conflicting alternatives for the provision of services.

(Code 1989, § 51.19)

Sec. 32-85. Compliance with federal and state standards.

(a) *Applicability of federal pretreatment standards.* Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this article for sources in that subcategory, shall immediately supersede the limitations imposed under this article.

(b) *Modification of federal pretreatment standards.* Where the town's WWTP achieves consistent removal of pollutants limited by federal pretreatment standards, the town may apply to the approval authority for modification of specific limits in the federal pretreatment standards. For purposes of this section, The term "consistent removal" means a reduction in the amount of a pollutant or alteration of the nature of the pollutant by the wastewater treatment system to a less toxic or harmless state in the effluent which is achieved by the system in 95 percent of the samples taken when measured according to the procedures set forth in 40 CFR 403, "General Pretreatment Regulations for Existing and New Sources of Pollution," section

403.7(b)(2), promulgated pursuant to the act. The town may then modify pollutant discharge limits in the federal pretreatment standards if the requirements contained in 40 CFR 403.7 are fulfilled and prior approval from the approval authority is obtained.

(c) *Applicability of state requirements.* State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this article.

(d) *Dilution of discharge.* No user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards, or in any other pollutant-specific limitation improved by the town or the state.

(Code 1989, § 51.20)

Sec. 32-86. Accidental discharges.

(a) *Facilities and procedures.* Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this article. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the town for review, and shall be approved by the town before construction of the facility. All existing users, if applicable, shall complete such a plan within 180 days of adoption of this article. No user who commences contribution to the system after effective date of the ordinance from which is section is derived shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the town. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this article. In the case of accidental discharge, it is the responsibility of the user to immediately telephone and notify the treatment plant of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

(b) *Written notice to manager.* Within five days following an accidental discharge, the user shall submit to the manager a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the system, fish kills or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this article or other applicable law.

(c) *Notice to employees.* A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of an accidental or dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(Code 1989, § 51.21)

Sec. 32-87. Wastewater monitoring facilities.

All persons discharging or proposing to discharge industrial wastewaters to the public sewer shall provide facilities for access to the sewer service line carrying industrial wastewater for the purposes of flow measurement and sampling by the town, as required by the town manager. A person discharging industrial wastes shall install a suitable control manhole, together with such necessary meters and other appurtenances, in the sewer service line to facilitate observation, sampling and measurements of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the town manager.

The manhole shall be installed by the owner at his expense, and shall be maintained by the owner so as to be safe and accessible at all times.

(Code 1989, § 51.22)

Sec. 32-88. Wastewater pretreatment facilities.

(a) Persons desiring to discharge to the public sewer industrial wastewaters which are incompatible with the system shall construct and operate pretreatment facilities to bring the wastewater to a condition and quality which is compatible with the sewerage system prior to discharge to the sewer. Facilities such as grease and oil interceptors, grit traps, and flow equalization basins and controls shall be considered pretreatment facilities, as well as all other facilities designated to eliminate incompatible characteristics and/or reduce wastewater loads of compatible characteristics.

(b) The user shall obtain approval from the manager of the plans and specifications for the pretreatment facilities prior to construction of pretreatment facilities, shall construct such facilities at his expense, and shall operate and maintain such facilities to meet conditions of his approved sewer connection service permit.

(Code 1989, § 51.23)

Sec. 32-89. Acceptance of septage from private, corporate, and HOA systems.

The town does not own, or have access to, facilities for pre-treatment of scavenger wastes (a.k.a. septage). These wastes from private, corporate wastewater companies, an HOA, or any other source and hauler shall not be accepted for disposal into the town's system. Any discharge of such wastewater, or scavenger wastes, as defined by this article, into the town's system shall constitute a violation of this article and be subject to such penalties as described in this article.

(Code 1989, § 51.24)

Sec. 32-90. Private sewage disposal systems.

(a) When vacant property is to be improved, or existing improvements upgraded, and sewer service is required, and a town sanitary sewer is not available, the sewer service line shall be connected to a private sewage disposal system complying with the regulations of the state and county.

(b) At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in this section, a direct connection shall be made to the public sewer in compliance with this section at the time of the first malfunction of the private system; and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(c) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the town.

Sec. 32-91. Sewer capacity and allocation.

(a) *Background.* The town owns and operates a wastewater collection system and a treatment plant. The town desires to ensure that any available wastewater treatment capacity is allocated and utilized in a manner that best serves the interests of the citizens of the town. Thus, when new residential, commercial or industrial planned developments are submitted to the town's planning department and a sewer extension is required, a sewer allocation shall have to be obtained as part of the development approval process. Infill residential improvements located where sewer is available are exempt from obtaining a sewer allocation. The form for

requesting a sewer allocation, is the NCDENR Flow Tracking/Acceptance for Sewer Extension Applications, (FTSE 08-13) is available on the NCDENR website.

(b) *Purpose.* This sewer capacity allocation policy is designed to utilize a valuable and limited resource to achieve the following:

(1) Protection of public health, elimination of failing septic tanks, and protection of the environment.

(2) To encourage the development and availability of essential and desirable community services.

(3) To promote the financial health and stability of the town government.

(4) To ensure the orderly growth and development of the community.

(5) To encourage high quality, attractive development.

(6) To avoid committing large amounts of allocation to projects which are phased over several years or which will not likely result in utilization of services in a timely manner.

(c) *Evaluation criteria.* Requests for the allocation of sewer capacity shall be evaluated on the following criteria (in descending order of preference):

(1) Location of the project within the town's corporate boundaries.

(2) Location of the project near the lake or other water source.

(3) The project's provision of critical, essential, or highly desirable community services.

(4) A high ratio of added property tax base in relation to the estimated cost of town services.

(5) Significant generation of other, additional revenues to help support town services.

(6) Location of the project on a site that promotes needed infill, compact growth of the town boundaries, and efficient, cost-effective provision of municipal services.

(7) Consistency with and/or advancement of the town's comprehensive plan.

(8) The provision of desirable, high-quality community amenities.

(9) The provision of desirable public facilities, easements, or rights-of-way.

(10) Agreement to develop the property in a specific fashion that exhibits high quality site, building, and landscaping design.

(11) Preservation of key resources or structures that are part of the unique character of the town.

(12) Preservation and/or protection of natural resources, such as water quality or vegetation.

(13) Evidence of the project's ability to utilize the requested allocation in an expeditious manner.

(14) Mitigation of significant, identified public health or environmental problems.

(15) A demonstrated history of high quality development by the owner or developer.

(16) A demonstrated history of expeditious project completion by the owner or developer.

(17) Willingness to furnish performance bonds or other substantial guarantees of any promises and commitments contained in the application.

(18) The availability of and/or investment in significant infrastructure required to support building, occupancy, and use. To be considered, any investments must be pursuant to approval of required plans and permits by the town or other appropriate agency.

(d) *Applications.*

(1) *General.* All applicants are encouraged to carefully review the criteria set forth in this policy and the application requirements before submitting an application.

(2) *Form.* The owner of any project or property who desires to apply for an allocation of sewer capacity shall submit a written application, in the form: NCDENR Flow Tracking/Acceptance for Sewer Extension Applications, (FTSE 08-13), (is available on the NCDENR website), which provides key ownership, property, and project information, which indicates the amount of capacity being requested, which sets forth the proposed timetable for the project, and which provides sufficient factual information to address the evaluation criteria set forth in this policy. All applications and any approvals shall be subject to the standard terms and conditions set forth in this policy. No letters or other communications may be substituted for submission of a proper and complete application.

(3) *Fees.* Sewer allocation applications shall be accompanied by nonrefundable allocation fees, based on a schedule of fees set by the town council from time to time.

(4) *Review.* Applications will be reviewed and evaluated by the town staff to ensure completeness of needed information and to determine the extent to which the application addresses the evaluation criteria.

(5) *Approval or denial.* After required application information and the initial evaluation are complete, applications shall be considered for approval or denial as follows:

a. *Town council reviews.* The town council shall review and make decisions on all applications with the following characteristics:

1. Projects which require or may require a daily flow allocation of over 1,000 gallons.

2. Projects located outside the corporate boundaries of the town.

3. Projects that are subject to special zoning or development review requirements, such as special uses, planned unit developments, or projects located in overlay or conditional zones.

b. *Management reviews.* The town manager may review and make decisions on applications located within the corporate boundaries of the town that require a daily flow allocation of 1,000 gallons or less. In considering such minor applications, the town manager shall keep in view the evaluation criteria set forth in this policy, but such minor allocations may not be required to have evaluation ratings as high as major projects. Denials of minor applications may be appealed, as a new application, to the town council.

(6) *Re-application.* Applications which are denied may not normally be re-submitted for at least 90 days and should submit evidence of significant changes in their applications that may justify reconsideration.

(e) *Terms and conditions.* All approvals of sewer capacity allocation shall be subject to the following conditions and any other conditions set forth in the action of approval:

(1) *Form of approval.* Any approved allocations shall be issued in writing and shall be subject to all of the terms, conditions, and provisions of this policy, as well as any specific conditions related to project that are stipulated by the town council. Such conditions may include requirements for expeditious completion of projects or other requirements which, if not fulfilled, will cause the allocation to become null and void.

(2) *Annexation.* All approvals of sewer capacity allocations for properties outside of town limits will be conditioned upon submission of an irrevocable petition for voluntary annexation.

(3) *Nature of allocations.* Approved allocations of sewer capacity are conditional distributions based on estimated or expected plant capacity, but are not unconditional guarantees or rights to service capacity. All allocations made by the town are contingent on the actual availability of capacity at the time of property improvement and connection. All rights to sewer capacity subject to distribution by the town shall remain at all times the property of the town, and no person shall acquire any interest in property as a result of a sewer capacity allocation. The town may, in some circumstances, elect to approve allocations that are explicitly contingent upon the availability of future capacity, the expiration, lapse, or release of existing allocations, and/or the occurrence of other events.

(4) *Order of service.* If limited actual capacity is available at the time of proposed connection, the approval of actual connections, among those owners or projects with approved allotments, shall be on a first-come, first-served basis.

(5) *Expeditious completion.* In order to ensure that other potentially worthwhile projects are not unreasonably prevented from obtaining allocations of this scarce resource, allocations will be made with the expectation that capacity will be utilized in a timely manner. All approved allocations require vigorous and expeditious prosecution of the proposed project. Allocations may not be "banked" for use beyond the duration of the allocation.

(6) *Partial or limited allocations.* In considering applications for multi-unit projects or developments, sewer allocations may be limited to and made for a portion of the total amount requested, in order to:

a. Encourage expeditious utilization of allocated capacity;

b. Encourage demonstration of project completion ability; and

c. Protect available capacity against over-allocation and non-utilization.

(7) *Scheduled availability.* Sewer allocations may also be made on a scheduled basis, in which the availability of capacity, especially in projects with multiple units or phases, is scheduled for specific dates or periods of time. Allocations that are not accompanied by scheduling shall be for a specific period of time (see subsection (e)(13) of this section) beginning at the date of approval.

(8) *Other permits and approvals.* Approval of a sewer capacity allocation does not confer or imply any other approvals required by the town, county, state, or other agencies (such as the health department or state department of environment and natural resources). The town shall bear no cost, liability, or responsibility if other needed approvals for a project are denied or withheld.

(9) *Vested rights.* The approval of a sewer capacity allocation is, as indicated herein, conditional and does not imply or create a vested right. All applications for sewer capacity allocations shall be based on this understanding and condition, and all applicants shall agree that no claim of a vested right, guarantee, or property interest may be made based on any allocation of sewer capacity.

(10) *Agreements.* Any specific promises or commitments made by the applicant and considered in the evaluation process shall be set forth, if an allocation is approved, in specific agreements between the town and the applicant.

(11) *Transferability.* Applications are evaluated based on information and commitments provided by a specific applicant with regard to a specific property and project. Approved allocations of sewer capacity may not be transferred by the applicant to any other person, owner, entity, organization, corporation, property, project, or location. Allocations are valid only for the named applicant and project. If the recipient of an approved allocation desires to request transfer of an approved allocation to any other

person or entity, an updated application must be presented for evaluation and consideration by the same reviewer (town council or town manager) that conducted the original review. In a residential subdivision, sale of individual lots to an individual builder or owner for the purpose of construction of homes is not considered a transfer up to a maximum of five lots, but any associated capacity allocation remains subject to the duration and conditions of the original allocation.

(12) *Changes in use, design, or location.* Allocations are limited to the project use, design, and location described in an approved allocation. Proposed changes in use, design, or location require submission of and evaluation of a new application.

(13) *Duration and expiration.* All approved allocations shall be for a period of 24 months from the date of approval (unless availability is scheduled for a specific date or period of time in the future). After the standard allocation duration or other time period specified in the approval, the allocation will expire (unless extended) and the allocation will be subject to re-allocation.

(14) *Extensions.* Updated applications are required to consider any extensions of allocations, and requests for extensions will be based on updated conditions at the time of the request. All requests for extensions shall be based on substantial justification of the need for the extension and a substantial explanation of the applicant's failure to complete the project in an expeditious manner. The reviewer (town council or town manager) may, if such extensions are approved, make approvals conditional on terms or conditions different from those in the original approval. Extensions, if approved, shall normally be for a period of six months only.

(15) *Capacity accounting.* Calculation of availability of sewage treatment capacity is, by its nature, an inexact science, due to the dynamic nature of wastewater flow and treatment, weather, seasonal use, the regulatory environment, and other factors. The town will make its best efforts to track the amount of capacity that may be available for allocation, but any calculations or reports shall not be construed as a policy statement, commitment, or guarantee of the amount of capacity available for allocation.

(16) *Actions adversely affecting capacity.* Any allocation approvals are subject to potential actions of legislative bodies or regulatory agencies that may affect the actual availability of capacity. Wastewater treatment capacity may also be adversely affected by operational practices, severe storms, other acts or God, and acts of intentional or unintentional damage to facilities. The town assumes no responsibility for actions or events beyond its control that have an adverse effect on actual treatment capacity.

(17) *Cancellation.* Failure to comply with the specific terms and conditions of any allocation and/or of this policy shall render an allocation null and void.

(f) *Previous allocations.*

(1) In consideration of any requested extensions, it is the intent of the town to give priority to projects or portions of projects for which infrastructure installations are complete at the time of allocation expiration. Portions of planned projects for which infrastructure is not complete will be fully subject to the terms, conditions, and criteria of this policy and may, if re-approved, be subject to:

a. Scheduling of any re-approved allocations; and/or

b. Reapproval as contingent allocations.

(2) The town fully intends to honor all allocations of record for two years effective the date of the ordinance from which this section is derived is passed. Allocations not used by the end of this two-year period shall self-terminate. If the owner of the allocation desires to extend the unused allocation, a new allocation submission shall be required.

(Code 1989, § 51.25)

Chapter 33 RESERVED

Chapter 34 VEHICLES FOR HIRE

ARTICLE I. IN GENERAL

Secs. 34-1—34-18. Reserved.

ARTICLE II. TAXICABS[1]

Sec. 34-19. Permit required for taxicabs.

All drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets within the corporate limits of the town shall be required to obtain a permit from the town prior to engaging in said business activity. Excepted from this article are taxicabs licensed by other municipalities based and operating in that municipality.

(Code 1989, § 73.01)

Sec. 34-20. 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:

Chief of police means the chief of police or his designee.

[1]State law reference(s)—Municipal regulation of taxis, G.S. 160A-304.

Permit means a permit for the operation of a taxicab issued to a driver in accordance with the provisions of this article, unless otherwise defined herein.

Taxicab means any motor vehicle seating nine or fewer passengers operated on any street or highway on call or on demand, accepting or soliciting passengers indiscriminately for hire between such points along streets or highways as may be directed by the passenger so being transported.

(Code 1989, § 73.02)

Sec. 34-21. Application.

The application required of applicants to drive a taxicab shall be made upon forms furnished by the town for such purposes and shall, among other things, state the name, address, physical condition, physical description, former employer, court record, and state chauffeur's license number, for each driver. Such application shall be signed and sworn to by the applicant and all of his drivers. The applicant and all of his drivers shall further appear at the office of the police department for the purpose of having their fingerprints taken and photograph made, both of which shall constitute a part of the application.

(Code 1989, § 73.03)

Sec. 34-22. Investigation.

The chief of police is hereby charged with the duty of investigating the facts stated in such application, and shall report his findings and recommendations to the town council.

(Code 1989, § 73.05)

Sec. 34-23. Conditions of permit; issuance and fee.

(a) If the town council finds that the applicant has not been convicted of a felony; a violation of any federal and state statutes relating to the use, possession, or sale of intoxicating liquors; any federal or state statute relating to prostitution; any federal or state statute relating to the use, possession or sale of narcotic drugs; and has not been a habitual violator of traffic laws, the town council may issue a permit to the applicant to drive a taxicab upon receipt of an annual fee listed in the village fee schedule, which shall be renewed each year thereafter.

(b) No permit shall be issued unless the applicant first files with the town proof of financial responsibility as required by G.S. 20-280.

(Code 1989, § 73.06)

Sec. 34-24. Revocation.

At any time after the issuance of a permit to any person to drive a taxicab, the town council may revoke such permit, if the person holding such permit, or any driver employed by such person is convicted of:

(1) A felony;

(2) A violation of any federal or state statute relating to use, possession or sale of intoxicating liquors;

(3) A violation of any federal or state statute relating to the use, possession or sale of narcotic drugs;

(4) Repeated violations of traffic laws and ordinances;

(5) A violation of any state or federal statute relating to prostitution; or if the person holding such permit, or any driver employed by such person;

(6) Becomes a habitual user of intoxicating liquors or narcotic drugs; or

(7) Fails to maintain a policy of liability insurance as required as G.S. 20-280.

(Code 1989, § 73.07)

Sec. 34-25. Grounds for refusal or revocation.

(a) The following factors shall be grounds to refuse to issue a permit or to revoke a permit already issued:

(1) Conviction of a felony against the state or conviction of any offense in another state which would have been a felony if committed in the state.

(2) Violation of any federal or state law relating to the use, possession or sale of alcoholic beverages or narcotic or barbiturate drugs.

(3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs.

(4) Violation of any federal or state law relating to prostitution.

(5) Non-citizenship in the United States.

(6) Habitual violation of traffic laws or ordinances.

(7) Failure to obtain and maintain a policy of liability insurance as required by G.S. 20-280.

(b) These factors apply to the person requesting the permit, any drivers to be employed by such person, the person holding the permit, and any drivers employed by such person.

(Code 1989, § 73.08)

Sec. 34-26. Display of permit; schedule of fares; driver's photograph.

All drivers and operators of taxicabs shall prominently display in each taxicab, so as to be visible to the passengers, the town taxi permits, the schedule of fares, and a photograph of the driver.

(Code 1989, § 73.09)

Sec. 34-27. Signs identifying vehicle as taxi.

Every person operating taxicabs shall have permanent signs at conspicuous places on each taxicab showing that it is a taxi.

(Code 1989, § 73.10)

Sec. 34-28. Nontransferability of permit.

A permit is not transferable without the consent of the town council.

(Code 1989, § 73.11)

Sec. 34-29. Penalties.

A violation of any provision herein shall be a misdemeanor, punishable on conviction by a fine not exceeding $50.00 and/or by imprisonment not exceeding 30 days. Each day's continuing violation shall be a separate and distinct offense.

(Code 1989, § 73.12)

Chapter 35 RESERVED

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.

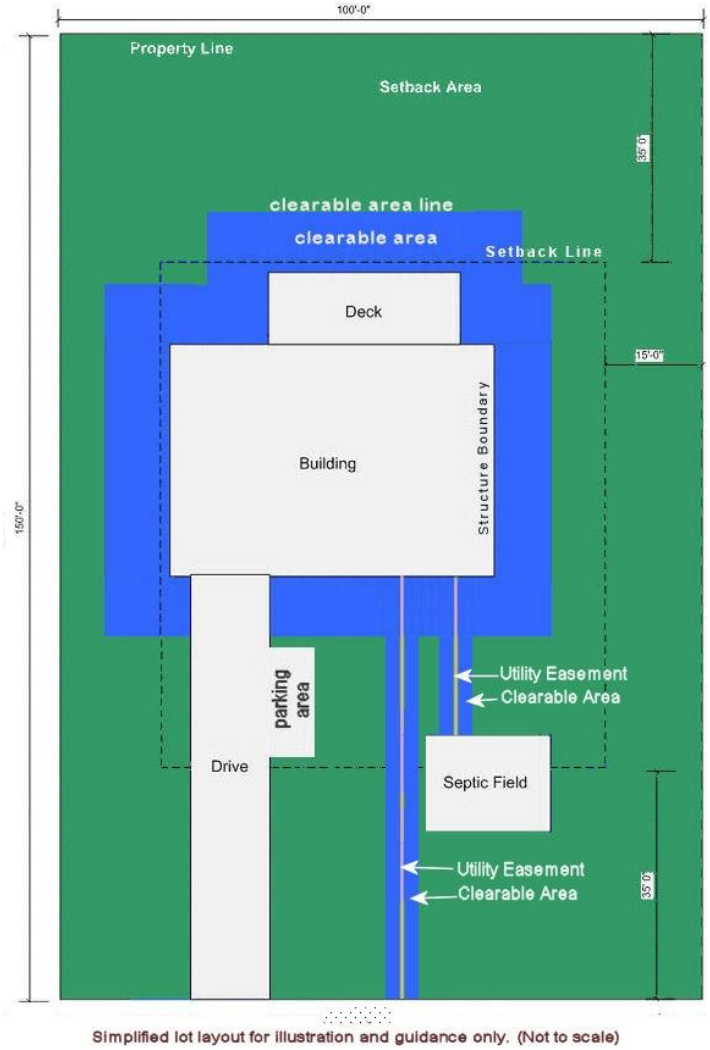


Figure 1: Individual Lot Parameters

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.

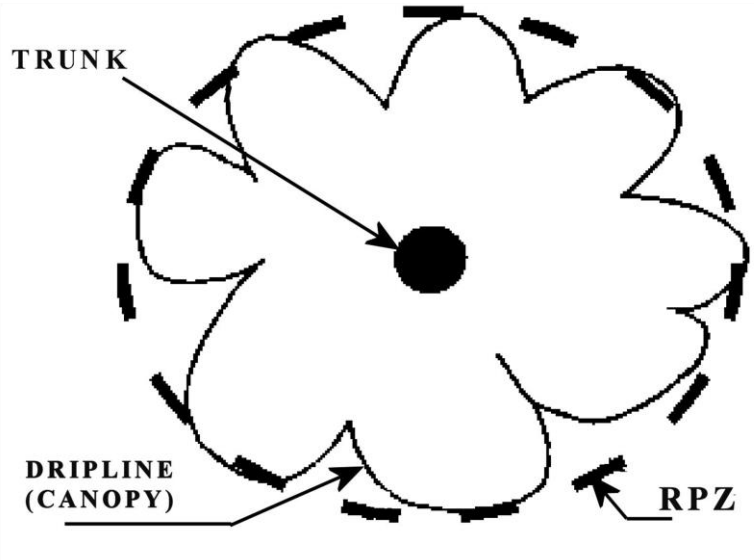


Figure 2: Root Protection Zone

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.

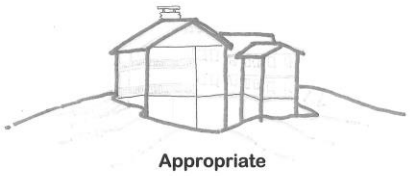
(c) *Building location.* To the extent practicable, each building shall be located so as to minimize its visual impact.

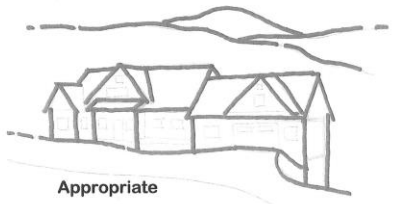
(d) *Partial screening.* A portion of natural on-site vegetation shall be retained sufficient to partially screen (along 50 percent of the building face, or that achieves 50 percent opacity or more along the building face) the building, structure, use, or activity from views from public roads not serving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

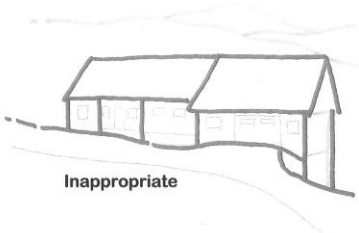
be installed and designed to partially screen the building, structure, use, or activity from views from public roads, or other measures have been included in the project and approved by the director to reduce the visual impacts of such development from views from public roads. View corridors from the 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)

CODE COMPARATIVE TABLE
1989 CODE

This table gives the location within this Code of those sections of the 1989 Code which are included herein. Sections of the 1989 Code not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances and other legislation adopted subsequent thereto, see the table immediately following this table.

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