

Chapter 7 - DEVELOPMENT
FOOTNOTE(S):

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Editor's note—Ord. No. 2369, § 1, adopted May 27, 1997, repealed former ch. 7, and various other provisions of the Code and enacted provisions designated as a new ch. 7 to read as herein set out. See the Code Comparative Table.

Cross reference— Asheville Downtown Commission, § 2-76; Asheville Tree/Greenway Commission, § 2-156; buildings and building regulations, ch. 4; historic preservation, ch. 8; licenses, permits and business regulations, ch. 9; nuisances, ch. 10; parks and recreation, ch. 12; solid waste management, ch. 15; taxicabs and vehicles for hire, ch. 18; trees, ch. 20

ARTICLE I. - AUTHORITY, PURPOSE, JURISDICTION, AND LEGAL STATUS PROVISIONS

Sec. 7-1-1. - Authority; title.

This chapter is adopted pursuant to the authority vested in the City of Asheville by the General Assembly of the State of North Carolina in provisions of the North Carolina General Statutes, which include, but are not limited to, Articles 8, 15, and 19 of Chapter 160A; Articles 4 and 14 of Chapter 113A; and Part 6 of Article 21 of Chapter 143 and in the Charter and Related laws of the City of Asheville.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-1-2. - Purpose.

These regulations have been adopted in accordance with the comprehensive plan for the City of Asheville, North Carolina, as adopted, in order to promote the health, safety, morals, good order, general welfare and diversity of the community; in order to encourage the most appropriate use of land throughout the city's jurisdiction; to provide for sound, orderly, systematic urban development; to create a balance between the rights of the community and the rights of the individual; to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to insure a fair and adequate distribution of light and air among buildings; to prevent the overcrowding of land while discouraging urban sprawl; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public services; to conserve the value of buildings and land; to promote the economic and industrial prosperity of the city, to preserve the city's unique scenic character; to conserve the natural and historic resources and environmental quality of the city; to encourage the continued use and reuse of existing buildings, to control accelerated erosion and sedimentation in order to prevent the pollution to water and other damage to lakes, watercourses, and other public and private property by sedimentation; to safeguard the natural resources of the city by regulating stormwater run-off; to minimize public and private losses due to flood conditions; and, to protect and conserve the heritage of the City of Asheville.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-1-3. - Jurisdiction.

- (a) *Jurisdiction; general.* The provisions of this chapter shall apply within the corporate limits of the City of Asheville, North Carolina, and within the city's extraterritorial jurisdiction, as identified on the map of the territorial jurisdiction of the City of Asheville. This territorial jurisdiction map will be, after the effective date of this chapter, recorded in the Office of the Register of Deeds for Buncombe County and filed in the Office of the city Clerk of the City of Asheville.
- (b) *Asheville Regional Airport.* All provisions of this chapter shall apply to that property which is known as the Asheville Regional Airport and which is more particularly described in 1979 N. C. Sess. Laws Ch. 256. The heights of any manmade structures on this property shall be governed and approved, however, by the applicable rules and regulations administered by the Federal Aviation Administration.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2860, § 1a, 10-10-01; Ord. No. 3381, §§ 1(a), (b), 7-25-06; Ord. No. 4233, § 1a, 9-24-13)

ARTICLE II. - OFFICIAL MAP, RULES OF CONSTRUCTION, AND DEFINITIONS

Sec. 7-2-1. - Official zoning maps; identification.

The boundaries of zoning districts are effective at the same time this chapter is effective by the adoption by the city council of a series of maps entitled "City of Asheville, North Carolina Official Zoning Maps," (hereinafter "zoning maps"). These zoning maps, together with all amendments adopted by the Asheville City Council, are incorporated herein by reference as if fully set forth herein. These zoning maps shall be retained permanently in the office of the planning and development department of the City of Asheville.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-2-2. - Interpretation of district boundaries.

The following rules of interpretation shall be applicable to the zoning maps:

- (1) *District designation.* A district name on the zoning maps indicates that the regulations pertaining to the district designated by that name, or abbreviation of same, extend throughout the whole area bounded by the district boundary lines within which such name, or abbreviation, is shown, except as otherwise provided.
- (2) *District boundary; determination.* Where uncertainty exists with respect to the boundaries of the various districts shown on the zoning maps, the following rules shall be used to interpret the zoning maps:
 - a. Where a district boundary is shown to coincide approximately with a property line or city limit line, the property line or city limit line shall be considered to be the district boundary, unless otherwise indicated.
 - b. In cases where a district boundary line is located within a street or alley right-of-way or easement, railroad or utility line right-of-way or easement, river, or stream, it will be considered to be in the center of the street or alley right-of-way or easement, railroad or utility line right-of-way or easement, river, or stream. If the actual location of such right-of-way, easement, river, or stream varies slightly from the location as shown on the zoning map, then the actual location shall control.
 - c. In cases where a district boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.
 - d. Where a boundary line is shown and its location is not fixed by any of the rules of this section, and no dimensions are shown, the location of the boundary shall be determined by use of the scale appearing on the zoning maps unless there exists a metes and bounds description of the boundary line. If such a metes and bounds description exists, it shall control.

- e. Where the zoning map shows a district boundary dividing a lot, each part of the lot shall conform with the standards established by this chapter for the zoning use or overlay district in which that part is located.
- f. In circumstances not covered previously in this section, the board of adjustment shall interpret the district boundaries.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-2-3. - General rules of construction.

(a) *Interpretation and application of these regulations.*

- (1) In the interpretation and application of this chapter, the provisions of the chapter will be construed to be the minimum requirements adopted to promote the purposes set forth in section 7-1-2
 - (2) The words "shall", "must", and "will", are mandatory in nature, implying an obligation or duty to comply with the particular provision. The word "may" is permissive in nature.
 - (3) Except where specifically defined in this chapter, all words shall carry the standard dictionary meanings.
 - (4) Words used in the present tense include the future tense.
 - (5) Words used in the singular number include the plural number and the plural number includes the singular number unless the context of the particular usage clearly indicates otherwise.
 - (6) Words used in the masculine gender include the feminine gender and vice versa.
 - (7) Any act authorized by this chapter to be carried out by a specific official of the city is, by implication, authorized to be carried out by a designee of such official.
- (b) *Fractional requirements.* When any requirement of this chapter results in a fraction of a unit, a fraction of one-half or more will be considered a whole unit and a fraction of less than one-half will be disregarded. When applying this requirement to the calculation of the number of units permitted on a parcel of land, the following rules shall apply:
- (1) This requirement shall apply only to multi-family residential development of five units or greater, not to duplexes, triplexes, and quadraplexes on individual parcels. However, it shall apply to any multi-family residential use (including two, three, and four-unit buildings) as part of a larger multi-family residential project or mixed-use development within the NCD and UR districts.
 - (2) In situations where the number of dwelling units allowed on a property is a fractional number, all fractions of one-half or greater will be rounded up to the nearest number. For example, a property on which 8.4 units could be constructed will be limited to eight units, while a property on which 8.5 units could be constructed will be allowed nine units.
 - (3) Such projects receiving increased density under this subsection must also comply with all development standards found elsewhere in this chapter.
- (c) *Relation of this chapter to any pending actions.* The adoption of this chapter shall not affect any action, suit, notice of violation, citation or proceeding which may be pending at the date this chapter becomes effective. All rights and liabilities that have been received or created and any violation that has occurred under any previous provisions of the Code of Ordinances of the City of Asheville which have been superseded by this chapter are still valid and may be preserved and enforced.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3208, § 1, 1-25-05)

Sec. 7-2-4. - Conflict or inconsistency with other laws, covenants, or deed restrictions.

- (a) *Relation of this chapter to other regulations.* This chapter is not intended to abrogate any other law, ordinance, or regulation. However, where conditions, standards, or requirements imposed by any provision of this chapter are either more restrictive or less restrictive than standards imposed by any other law, ordinance or regulation, the provisions which are more restrictive or which impose higher standards or requirements shall govern. In cases where reference is made to the North Carolina General Statutes, or any provision thereof, said reference shall be to the current language of said statute or provision. Whenever a process is prescribed by this chapter, and said process contains requirements in addition to those prescribed by state law, the process prescribed in this chapter shall be deemed supplemental; state law shall control.
- (b) *Conflicting provisions of this chapter.* In the event of any conflict between the limitations, requirements, or standards contained in different provisions of this chapter in applying them to an individual use or structure, the more restrictive provision shall apply. However, the regulations for overlay districts set forth in article IX of this chapter shall control in the event of any conflict between those regulations and regulations which are set forth in article VIII of this chapter for the underlying district. In the event of a conflict or inconsistency between the text of this chapter and any caption, figure, illustration, or map contained herein, the text shall control.
- (c) *Conflicts with covenants, deed restrictions, etc.* This chapter is not intended to abrogate any easement, covenant, or other private agreement. However, where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this chapter shall govern.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3306, § 1(a), 11-22-05)

Sec. 7-2-5. - Definitions.

[For the purposes of this chapter, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.]

A-frame sign means a two-sided sign, hinged or attached at the top of the sign panels, identifying, advertising, or directing attention to a business(es), product(s), operation(s), or service(s) sold or offered in the building in front of which the sign is located.

Abandoned sign or sign structure means a sign or sign structure which was erected on property in conjunction with a particular use, said use having been discontinued for a period of 90 days or more or a sign of which the contents pertain to a time, event or purpose which no longer applies or which has occurred.

Accelerated erosion means any increase over the rate of natural erosion as a result of land-disturbing activities.

Access means ingress and egress to land bordering streets and roads.

Accessory apartment means a separate and complete dwelling unit that is contained on the same lot as the structure of a single-family dwelling or business.

Accessory dwelling means a residence located on premises with a main nonresidential use and occupied only by a caretaker or guard employed on the premises and, as applicable, his or her family.

Accessory structure means a structure that is clearly incidental to and customarily found in connection with a principal building or use, is subordinate to and serves a principal building or use and is subordinate in areas, extent and purpose to the principal building or principal use served. An accessory structure must be on the lot on which the principal use is located. For the purpose of the flood protection regulations only, accessory structure is the same as appurtenant structure.

Accessory use means a use of a nature customarily subordinate or incidental to, and located on the same lot as, the principal use of any structure or property.

Accidental discharge means a discharge prohibited by this article into the City of Asheville Stormwater System or receiving waters, which occurs by chance and without planning or consideration prior to occurrence.

Acre means 43,560 square feet.

Adaptive reuse refers to the process of adapting old structures for new purposes while retaining some of the architectural details that make the building unique.

Addition for purposes of flood protection regulations, an addition is an extension or increase in the floor area or height of a building or structure. Additions to existing buildings shall comply with the height of a building or structure. Additions to existing buildings shall comply with the requirements for new construction, unless the addition, renovation or reconstruction to any building, that was constructed prior to the initial flood insurance study for that area, and the addition, renovation or reconstruction does not equal 50 percent of the present fair market value of the structure and the first floor area does not increase more than 20 percent. Where a fire wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and must comply with the standards for new construction.

Adequate erosion control measure, structure, or device means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

Administrative officer/official means one who performs ministerial or administrative functions for a department of the City of Asheville.

Adult day care home means a facility where an individual, agency or organization provides supervision or care in a home-like environment for a maximum of six adults in need of care because of physical or mental disability in a place other than their usual place of abode.

Adult day care centers means a facility where an individual, agency or organization provides supervision or care during the day time for more than six adults in need of care because of physical or mental disability in a place other than their usual place of abode.

Adult establishment means any structure or use of land that is an adult establishment as defined in N.C.G.S., sec. 14-202-10 (or its successor). This definition shall also include any operation that receives a majority of its gross income during any calendar month from the sale of sexually oriented devices as defined in N.C.G.S., sec. 14-202-10 or any operation which has sexually oriented devices as a preponderance (either in terms of the weight and importance or the volume of the materials to be sold) of its items for sale. This definition shall not include any bona fide therapeutic massage service offered by a licensed or registered medical professional or other person certified by a state or nationally recognized organization; nor shall this definition include any private or public fitness center or nonprofit community recreational facility and service organization, either of which provides massage therapy as a service incidental to the operation of a fitness center.

Agriculture means the use of land for agricultural purposes, including farming, dairying, pasturage agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or sorting the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities. Regulations addressing agriculture that does not include animals are governed by this chapter. Regulations addressing agriculture involving animals (such as but not limited to bees, dairying, pasturage agriculture, animal or poultry husbandry) are in [chapter 3](#). All agricultural practices may be subject to further state and federal regulations.

Airside (commonly referred to as "aeronautical surfaces" or "airfield") includes those areas and/or facilities on which aircraft operations are carried out including: runways, taxiways, hangars, apron and gate areas, and all areas between these features necessary for the safe and easy movement of the aircraft and support services. Airside includes the portion of the terminal facility that is past the security screening checkpoint and is not accessible to the general public without proper security credentials or an airline boarding pass. Airside areas outside the terminal facility are also usually access controlled and are not open to the general public. Airside may or may not include open green-space.

Alley means a public way which affords only a secondary means of access to abutting property.

Alteration means any change because of construction, repair, maintenance or otherwise to buildings located within an historic district or designated as an historic property.

Alternative structure means, for antenna-mounting purposes, a structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. The term "alternative structures" includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples and electric transmission towers.

American flag means the national flag of the United States of America which shall include thirteen horizontal stripes, alternate red and white; and the union of the flag shall be fifty stars, white in a blue field.

Amphitheaters and auditoriums. See Performance center.

Ancillary nonresidential use means employee or customer parking, landscaping and buffer areas, stormwater detention and related facilities associated with a principal non-residential use. The definition shall not include structures, outdoor storage, storage containers, display of goods, storage of abandoned or inoperable vehicles, or vehicles for sale.

Animated sign means any sign using flashing or intermittent lights, sound, color changes or other mechanical or electrical means to give motion to the sign or the impression of motion or movement to the sign or any sign with visible moving, revolving or relocating parts; provided, however, this shall not include time, date and temperature or electronic message signs as hereinafter defined.

Antenna means communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Antenna array means two or more antennas that operate as components of a complete antenna suite for a single wireless telecommunication facility.

Antenna, concealed means an antenna that is designed and erected on or in a building or alternative structure in such a way that it blends in with the existing facade and/or is located such that it is not readily visible to an individual at adjacent street level.

Antenna, dual-band/multi-band means an antenna with separate elements for two or more commercial wireless service frequency bands (example: Cellular and PCS or specialized mobile radio).

Appeal means a request for a review of the administrator's interpretation of any provision of this chapter.

Applicant means the party applying for permits or other approval required by this chapter.

Appraised value means the value assigned to a structure by the Buncombe County Tax Assessor or by an MAI-certified real estate appraiser.

Appurtenance means an accessory, something added to the main structure or land such as a stone wall.

Appurtenant structure means for the purpose of the flood protection regulations only, 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.

Aquaculture means the hatching, raising and breeding of fish or other aquatic plants or animals for sale or personal use.

Aquatic buffer means a linear strip of land, free of built-upon area, adjacent to a lake or natural water course.

Archeological resource means material evidence of past human activity which is found below the surface of the ground or water, portions of which may be visible above the surface.

Area of shallow flooding means a designated zone AO on a community's flood insurance rate map (FIRM) with base flood depths determined to be from one to three feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard: See "special flood hazard area (SFHA)."

Art gallery means a facility that contains a room or series of rooms where works of art are exhibited on a regular basis.

Assisted living facilities means a structure or structures containing two or more rooming units limited in occupancy and occupied by persons unable to live independently and may include spouses or partners (except for rooms or units occupied by resident staff personnel), and which provide indoor, conveniently located, shared food preparation service and major dining areas, and common recreation, social, and service facilities for the exclusive use of all residents.

For the purposes of this chapter, no facility offering independent dwelling units for habitation by those who are not resident staff to the facility, shall be considered an assisted living facility. For the purposes of this definition, an independent dwelling unit shall be any unit designed for human habitation which contains facilities for sleeping, bathing, and kitchens or food preparation areas consisting of a device for warming food, a sink to wash dishes and utensils, and a refrigerator.

ASTM means American Society for Testing and Materials.

Attached sign means any sign attached to, applied on, or supported by any part of a building, including, but not limited to, a wall, window, or projecting sign, or a sign on a canopy, awning or marquee.

Attic means habitable or uninhabitable space within a building situated within the structure of a pitched roof and above the uppermost regular story.

Authorized registered professional means a person registered, licensed, or certified pursuant to the North Carolina General Statutes and authorized by law to prepare the analysis, plans and specifications, and provide the certifications required by the various provisions of this chapter.

Automobile service station. See Motor vehicle service facility.

Auto repair establishment. See Motor vehicle service facility.

Auto salvage-wrecking yard means a lot or parcel of land on which the dismantling or wrecking of used motor vehicles or the storage, sale, or dumping of dismantled or wrecked vehicles or their parts occurs. The presence on any lot or parcel of land of two or more motor vehicles, which, for a period exceeding 30 days, have not been capable of operating under their own power and/or from which parts have been or are to be removed for reuse or sale, shall constitute prima facie evidence of an automobile salvage-wrecking yard. The use is not allowed in any zoning district in the City of Asheville.

Awning means a temporary hood or cover which projects from the wall of a building, and which may include a type which can be retracted, folded or collapsed against the face of a supporting building.

Bank means a mild to steep rise of land which borders and confines the flow of stormwaters or floodwaters and conveys them to some downstream discharge point; not a financial institution.

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:

- (1) For the flood protection regulations found in [section 7-12-1](#) of this chapter, basement shall mean the lowest level or story of a building which has its floor subgrade on all sides.
- (2) For all other provisions of this chapter, basement shall mean the lowest level or story of a building which has its floor subgrade on any side.

Bed and breakfast inn means a private, owner-occupied business with four to 20 guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the bed and breakfast inn is operated primarily as a business.

Berm means an earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise, or fulfill other such purposes.

Best management practices manual or BMP manual means the most recent version of the City of Asheville's manual of design, performance, and review criteria for stormwater management practices. Provided however, to the extent such a manual does not exist or its use has been discontinued, then the manual shall be the one adopted by the North Carolina Department of Environment and Natural Resources (NCDENR) and supplemented by the NCDENR Low-Impact Design Manual once adopted.

Block means a small section of the city enclosed by neighboring and intersection consecutive cross streets often rectangular in shape occupied by or intended for buildings for commercial, institutional or residential uses. Blocks in special circumstances may also include a length of street not bounded by a typical cross street but by significant topographic barriers or manmade features such as a ridge line, steep slope area, ravine, river, parks, bridges, cemeteries, un-subdivided acreage or other jurisdictional boundaries. This definition also includes the term "blockface".

Bluff means a steep headland, promontory, riverbank or cliff.

Board of adjustment means a board established by the Asheville City Council pursuant to N.C.G.S., sec. 160A-388 (or its successor).

Boardinghouse means an establishment where the owner or manager is a full time resident of said establishment, and which provides lodging for compensation to three or more tenants; is enclosed within one structure; which may have only one kitchen, a common dining room or study area, and no dining facilities or kitchens in the lodger's rooms; and where meals may be prepared and served; excludes hotels, motels, bed and breakfast homestays and bed and breakfast inns.

Borrow means fill material which is required for on-site construction and is obtained from other locations.

Broadcast tower means a structure situated on a lot that is intended for transmitting television or radio signals.

Buffer means an area of natural or planted vegetation, or an area of such vegetation in conjunction with berms, fences, or walls serving as a separation between two areas or land uses (see also "bufferyard").

Bufferyard means a linear strip of land combined with a vertical element such as plants, berms, fences, or walls, which physically separates and screens incompatible land uses.

Buffer zone means for the floor protection regulations found in [section 7-12-1](#) of this chapter, buffer zone shall mean the strip of land adjacent to a lake or natural watercourse, the width of which is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land disturbing activity containing natural or artificial means of confining visible siltation.

Building means any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals, property or business activity. 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. The connection of two buildings by an enclosed corridor connector where the buildings connected are not less than 50 feet apart at all points, and the connecting corridor is not less than 50 feet in length nor more than 15 feet in inside width, one story in height, and the outside walls of which contain not less than 30 percent glazing, shall not be deemed to make them one building provided the corridor has no other use than as a passage from one building to the next.

Building addition means new construction involving an existing building where the gross floor area of the structure is increased or where a portion of the gross floor area is relocated.

Building façade means the face of a building that delineates the edge of conditioned floor space.

Building frontage means for the sign regulations found in article XIII of this chapter, building frontage shall mean the linear length of only that portion of a building used by an individual tenant in a multiple tenant development and which faces a public street or alley.

Building frontage, primary signs means for the sign regulations found in article XIII of this chapter, building frontage, primary signs shall mean the linear length of only that portion of a building that serves as the individual tenant's primary entrance in a multiple tenant development.

Building frontage, secondary signs means for the sign regulations found in article XIII of this chapter, building frontage, secondary signs shall mean the linear length of only that portion of a building that serves as the individual tenant's secondary entrance in a multiple tenant development.

Building height means the vertical distance from the ceiling of the highest occupied floor to the primary level of fire department access; for the purposes of determining height in the central business district, height is the vertical distance measured from a single point beginning at the primary pedestrian entrance to the surface level of the highest occupied floor.

Building line means the line, parallel to the street line, that passes through the point of the principal building nearest the front lot line.

Building permit: See "permit, building."

Built upon area means that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel area such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool.

Business incubator means a facility or program operated by an organization, government agency, or institution that provides space, assistance, and training and/or services for start up businesses. The services may include, but shall not be limited to, shared resources for office management, copying, filing, reception duties, and similar support services. Space, services, and resources are provided to start up businesses for a limited time.

Caliper means a horticultural method of measuring the diameter of nursery stock. For trees less than four inches in diameter, the measurement should be taken at six inches above ground level. For trees greater than four inches in diameter up to and including 12 inches, the caliper measurement must be taken at 12 inches above the ground level. For trees greater than 12 inches in diameter, the trunk is measured at breast height (diameter at breast height or DBH), which is four and one-half feet above the ground.

Campground means an area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins and tents and which is primarily used for recreational purposes and retains an open air or natural character.

Camper-trailer park means any place, area, or tract of land maintained, offered, or used for the parking of two or more camper-trailers used or intended to be used for sleeping or non-permanent living.

Canopy means a permanent attached structure which projects from and is supported by a building, which serves as a cover providing shelter or decoration and which extends beyond the building.

Cemeteries, animal means a parcel of land, including associated buildings and/or structures, used for the interring of animal remains. This definition shall not be construed to include the private burial of family pets on private property.

Certificate of appropriateness means a document showing approval by the historic resources commission for work proposed in a historic district or on a historic landmark.

Certificate of compliance means a document issued by a building safety department upon satisfactory completion of a building, plumbing, mechanical, electric or gas system, and/or issued by the fire department upon satisfactory completion of a fire protection system. A certificate of compliance does not grant authority to occupy a building prior to issuance of a certificate of occupancy.

Certificate of occupancy means a document issued by the building safety department and the fire department upon final inspection of a new or remodeled/renovated building, or a change made in the occupancy, nature or use of a building or part of a building for compliance with the North Carolina State Building Code or the Asheville Fire Prevention Code and other applicable laws and ordinances. A certificate of occupancy is the sole authorization for occupancy of a building or part of a building as described herein.

Change of use means the act of eliminating the type of land use in a structure or on a lot and replacing it with another type of land use; or the act of adding another type of land use in a building or on a lot which did not previously exist there. A change of use may or may not involve any type of new construction or building renovation.

Changeable copy sign means any permanently unframed sign, illuminated or not, which is principally devoted to and designed for changeable copy text and graphics, but which specifically excludes time/date/temperature signs and electronic message signs as hereinafter defined. Changeable copy signs may involve either manual or automatic changeable copy. No changeable copy sign may have its copy changed more than two times in a 24-hour period. Any automatic changeable copy sign which changes more than two times in a 24-hour period shall be defined to be an electronic message sign. Portable or moveable signs are not considered changeable copy signs.

Channel means a natural or artificial watercourse of perceptible extent which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water. It has a defined bed and banks which serve to confine the water.

Channel alterations means a change of the water-carrying capacity or flow characteristics of a natural or artificial channel by clearing, excavation, bank stabilization or other means.

Channel stabilization means erosion prevention and velocity control in a channel using jetties, drops, revetments, vegetation, and other measures.

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.

Child day care centers means a facility operated by an individual, agency, or organization which provides supervision or care on a regular basis to children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adult.

Child day care homes means a facility run by an individual or family, which provides supervision or care on a regular basis in the individual's or family's home for children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adult. Maximum enrollment shall be eight children.

City means City of Asheville, North Carolina.

City of Asheville Stormwater System means the conveyance or system of conveyances (including roads with drainage systems, highways, right-of-way, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, detention ponds, and other stormwater facilities) which is (a) owned or operated by the municipalities of the City of Asheville; (b) designed or used for collecting or conveying stormwater, (c) not a combined sewer system; and (d) not part of a Publicly Owned Treatment Works (POTW).

Civic, social service, and fraternal organizations means facilities designed for a group of people formally organized for a common interest (usually cultural, religious, or entertainment) and who have regular meetings and formal written membership requirements, which may provide living quarters when oriented to college or university students.

Clean Water Act means the Federal Water Pollution Control Act, as amended, codified at 33 USC § 1251 et seq.

Clearance means the vertical distance from the established finished grade to the lowest edge of the sign.

Clinic, medical, dental, psychiatric, optical means a building or portion of a building designed and used for the diagnosis and treatment of human patients in fields such as (but not limited to) medical, dental, psychological, or chiropractic care that does not include overnight care facilities.

Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project provided there is no increase in the overall density of the development. This term includes non-residential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

Cluster home means the configuration of dwellings such that each single-family dwelling is on its own lot; and such that one or more of the building's sides is located directly on a lot line; and such that one or more of the sides of each building directly abuts one or more of the sides of adjacent buildings.

Clustering of buildings means a development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive areas.

Collector street means a street whose principal function is to carry traffic between cul-de-sac, local, and subcollector streets and streets of higher classification but which may also provide direct access to abutting properties.

Collocation means the installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks.

Combiner means a device which allows two or more wireless service providers to share an antenna or antenna array by combining signals being transmitted and separating signals being received.

Commemorative sign means any sign erected in remembrance of a historical person, place or event or which denotes, honors, celebrates or acknowledges a historical person, place or event.

Commercial wireless service provider means persons who operate radio systems requiring an FCC license and who employ those facilities to provide point-to-point microwave links for wireline communication services, fixed wireless (including microwave), or mobile wireless communication services to third parties for compensation. Commercial wireless service providers include, but are not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, competitive local exchange carriers (CLEC) utilizing point-to-multipoint microwave, and point-to-point microwave links for wireline communication services.

Common plan of development means a construction or land disturbing activity is part of a larger common plan of development if it is completed in one or more of the following ways: in separate stages; in separate phases; or in combination with other construction activities. It is identified by the documentation (including, but not limited to, a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, plats, blueprints, marketing plans, contracts, permit application, zoning request, or computer design) or physical demarcation (including, but not limited to, boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot; it can include one operator of many operators.

Community facilities means an area and/or structure where a group of people living in the same locality (community) and having common interests gather for neighborhood meetings and/or recreational activities. This includes community, non-profit facilities such as, but not limited to, places of worship, recreation/community centers (which may include ballfields), schools, libraries, and volunteer fire departments.

Community identification sign means any sign erected to identify a specific community in an area or locality for which boundaries and characteristics have been established by that community and recognized by the planning and development director for the city.

Compatibility means the characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict.

Comprehensive plan means the official public planning document adopted by city council as the long range advisory guide addressing the general, social, economic, and physical development of the community.

Commercial uses means service and retail facilities accessory to a multi-family development.

Commercial uses accessory to residential uses means service and retail facilities accessory to a multi-family development.

Conditional use means a use permitted only through approval of the city council under the standards of [section 7-16-2](#); that must also meet all regulatory standards for the applicable district as outlined in section 7-8.

Conditional use permit means permit authorizing the use of a property(ies) for a specific use which has been approved in accordance with the provisions set forth in [section 7-5-5](#) of this chapter.

Confined animal feeding operations means an operation or business where the animal (or poultry) is confined inside a building for at least 60 percent of its life with waste products collected from the building and treated and/or disposed of either on-site or off-site.

Construction means the erection of any on-site improvements on any parcel of ground whether the site is presently improved, unimproved or becomes unimproved by demolition, destruction of the improvements located thereon by fire, windstorm or other casualty.

Construction sign means a sign whose message is limited to identification of architects, engineers, contractors, and other persons involved with the construction project or to the name of the building being constructed, the intended purpose of the building and the expected completion date.

Controlled access facility means interstate, other freeway, expressway, or parkway links that provide for the expeditious movement of high volumes of traffic within and through urban areas.

Convention, conference, and/or exhibit center means a facility designed to accommodate significant numbers of persons and used for conventions, conferences, seminars, product display, recreation activities, and entertainment functions, along with accessory functions including food and beverage preparation and service for on-premises consumption.

Corner lot means a lot abutting on and at the intersection of two or more streets.

Cottage development means a cluster of small detached single-family residences constructed to specific design standards and arranged around common open space, generally at higher density than the underlying zoning would allow for traditional detached single-family residential development.

Cottage home means a small detached single-family residence constructed to specific design standards and arranged around common open space as part of a cottage development.

Crematories, animal means a facility designed for the cremation of animal remains.

Critical facilities means adult day care centers, child day care centers, assisted living facilities, hospitals, and medical centers.

Critical root zone means the minimum area beneath a tree which must be left undisturbed and protected from construction disturbance in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The critical root zone is delineated by a concentric circle with the tree trunk as the center. The radius of the critical root zone equals one foot for every one inch of tree diameter. Example: a 20-inch diameter tree will have a critical root zone radius of 20 feet.

Cul-de-sac means a short local street having one end open to traffic and the other end permanently terminated by a vehicular turnaround.

DBH: See "diameter at breast height."

Datum: See "regulatory flood datum."

Days means unless otherwise specified herein, calendar days.

Deciduous means a plant with foliage that is shed annually.

Demographic means the study of the characteristics of human populations, such as size, growth, density, distribution, and vital statistics.

Demolition means the complete or constructive removal of a building on any site.

Density means the number of dwelling units per acre of land.

Denuded area means any area deprived of its protective vegetative cover and left in that exposed condition.

Design storm means a soil conservation service Type II, 24-hour duration storm with a specified return or interval or as otherwise specified by the stormwater administrator.

Designated landscape buffer means a strip of real property with a minimum width of 20 feet where existing vegetation or new plantings are designed to mitigate adverse impacts between dissimilar zoning designations as described in subsection 7-11-3(d)1.

Designation means the creation of an historic district or an historic property through the passage of an ordinance by the appropriate governing body.

Detached house: See "dwelling, single-family detached."

Detached canopy means a disconnected, separate roof-like structure, including protective coverings over islands at gas stations.

Detention basin means a facility constructed or modified to restrict the flow of stormwater to a prescribed maximum rate, and to concurrently detain the excess waters that accumulate behind the outlet.

Developer means a person undertaking any or all the activities covered by this chapter, or for whose benefit such activities are commenced or carried on.

Development means any human change or alteration to the unimproved or improved state of land, including, but not limited to changes or alteration to vegetation, soil, geology, hydrology, buildings or other structures for any residential, commercial, industrial, utility, or other uses, including, but not limited to, all areas for vehicular access, circulation, and parking and including, but not limited to, mining, dredging, filling, grading, paving, excavating and drilling operations and any subdivision of land.

Development identification sign means a sign bearing only the name of the multiple tenant development.

Development, zero lot line means a type of development which allows a residential dwelling to be built with its outside edge close to, or immediately adjacent to the line delineating the property on which it is built from the property next to it. The intent of this development pattern is that, when done in multiples, such an arrangement should maximize yard use by each occupant, without compromising distances between dwelling units.

Diameter at breast height (DBH) means the standard measure of trees which are existing on a site. The diameter of the trunk is measured at four and one-half feet from the ground. If the tree splits into multiple trunks below four and one-half feet, the trunk should be measured at its most narrow point beneath the split.

Directional sign means a sign or guide whose sole purpose is to direct pedestrian or vehicular traffic on the premises on which it is displayed. Examples include: "in," "out," "entrance," "exit," and "driveway."

Director of building safety means the director of building safety for the City of Asheville, North Carolina or his/her staff member delegated with the authority and responsibility to carry out his/her duties.

Director of public works means the director of public works for the City of Asheville, North Carolina or his/her staff member delegated with the authority and responsibility to carry out his/her duties.

Director of public works and engineering means the person designated to serve as city engineer by the Asheville City Manager.

Discernible means, for purposes of regulating wireless telecommunication facilities, capable of being distinguished with the unaided eye from its surroundings as a telecommunication tower.

Discharge point means the point at which run-off leaves a tract of land.

Disposal means, as defined in NCGS 130A-290(a)(6), 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.

District means a division of an area or geographic unit marked out by law for a particular purpose.

Diversion means a channel or ridge or combination thereof which is constructed across sloping land either on the contour or at a predetermined grade which purpose is to intercept and divert surface runoff.

Dormitory means any facility that provides living accommodations with or without meals for persons not members of the same family group, in one room or a series of closely associated rooms, under joint occupancy and single management; and the use of which is associated with an institution or business which provides as its primary function, services, employment, or education to people who require temporary housing during the time of their association with said business or institution.

Drainage area means a contiguous area of land of such elevation and configuration, with respect to a given point on the earth's surface or a given station along a watercourse, that the entire surface run-off from it flows to that point, also referred to as a watershed.

Drive-through facility or establishment means a customer service facility located either within the principal structure or within an accessory structure, which is intended to enable the customer to transact business with a customer service person located within the principal structure (or with an automated service machine) without exiting the motor vehicle. It is presumed that the motor vehicle exits the premises immediately upon the transaction of business.

Driveway width means narrowest width of driveway measured parallel with the edge of the traveled way (street or highway).

Dwelling unit means one or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilets and facilities for cooking and sleeping. In no case shall a dwelling unit be rented or leased for intervals of less than one month.

Dwellings, multi-family means any building or buildings which contain more than one residential dwelling unit on a single lot including, but not limited to, apartment houses and condominiums. (See Fig. 2-1)

Dwellings, single-family detached means a single dwelling unit on its own lot that is developed with open yards on all sides, but excluding manufactured homes, mobile homes, recreational motor vehicles or trailers. (See Fig. 2-1)

Dwellings, single-family zero lot line means the location of a single-family dwelling on a lot so that one of the building's sides is located directly on a side lot line. (See Fig. 2-1)

Dwellings, townhouse means two or more single-family dwelling units having a common wall or zero setback separating units where land underneath each dwelling unit is sold with that unit. (See Fig. 2-1)

Dwelling, upper story means multifamily dwelling(s) in an upper story.

Easement means a grant of one or more property rights by the owner to, or for the use by, the public, a corporation, or another person or entity.

Eating and/or drinking establishment means an establishment (such as but not limited to a restaurant, pub, winebar, brewpub) that offers the sale of food and/or beverages (that may include alcoholic beverages) for consumption on or off the premises.

Eave line means the point where a cornice or projection occurs at the top of an exterior building wall.

Electric transmission towers means metal, wooden or concrete towers and poles used to suspend wires transporting electricity between generating plants and substations supplying electricity to distribution and feeder lines.

Electronic gaming operation means a business enterprise, whether principal or ancillary, where persons utilize electronic machines, including, but not limited to, computers and gaming terminals, to conduct games including, but not limited to, sweepstakes, lotteries, games and/or games of chance where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not value of such distribution is determined by electronic games played or be predetermined odds which have a finite pool of winners. This term includes, but is not limited to, internet cafes, internet sweepstakes, or cybercafes. Electronic gaming operations do not include operations associated with the official N.C. State Education Lottery or any nonprofit operation that is otherwise lawful under state law (for example, church or civic organization fundraisers) nor shall it include arcade games of skill.

Electronic message signs means signs which display changeable information in an easily comprehensible way and for which the message changes more than two times in a 24-hour period. All messages shall be visible for a minimum of three seconds and shall be kept accurate. Electronic message signs shall include tri-panel message systems. These will not be deemed to constitute changeable copy or animated signs and are permitted only on marquee signs.

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.

Elevation certificate the Elevation Certificate is an important administrative tool of the National Flood Insurance Program (NFIP). It is to be used to provide elevation information necessary to ensure compliance with [section 7-12-1](#) of this chapter, to determine the proper insurance premium rate, and to support a request for a Letter of Map Amendment or Revision (LOMA or LOMR-F). Elevation Certificates must be prepared and certified by a registered professional land surveyor, engineer, or architect who is authorized by commonwealth, state, or local law to certify elevation information. Community officials who are authorized by local law or ordinance to provide floodplain management information may also sign the certificate.

Encroachment means placement of a structure(s), paved or graveled areas, soil, and/or fill material or dumping of materials within a specified area. For the purposes of the flood protection regulations only, 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.

Energy dissipater 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.

Ephemeral streams mean watercourses without a well-defined channel that flow only in direct response to recent precipitation. Ephemeral streams are generally dry within 72 to 120 hours after a rainfall event. Any waters not determined to be perennial or intermittent under the definitions set forth in this section shall be deemed ephemeral waters.

Equipment enclosure means an enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

Erect means to construct, build, raise, assemble, install, place, replace, locate, relocate, affix, attach, display, alter, use, create, paint, draw, illuminate, or in any other way bring into being or establish.

Erosion means the wearing away of land surface by the action of wind, water, gravity or any combination thereof.

Evergreen means a plant with foliage that persists and remains green year-round.

Existing construction for purpose of flood protection regulation in the determination of rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures".

Existing manufactured home park or manufactured home subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots or spaces for rent or sale, for which the construction of facilities for servicing the lot on which the manufactured home is 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 either final site grading or the pouring of concrete pads and the construction of streets) is completed before the effective date of this chapter and for purposes of the flood protection regulations only, it shall be completed before the initial effective date of the floodplain management regulations.

Expansion means any construction that increases the size of a building or structure in terms of site coverage, height, length, width, or gross floor area.

Externally illuminated sign means any sign which reflects light from a source intentionally directed upon it, for example, by means of floodlights or externally mounted fluorescent light fixtures.

Exterior architectural features means the architectural style, general design and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of outdoor advertising signs, exterior architectural features shall be construed to mean the style, material, size and location of all such signs.

Extraterritorial jurisdiction means areas located outside the corporate limits of the City of Asheville which have been included as areas for planning and regulation of development of the City of Asheville pursuant to N.C. Gen. Stat. sec. 160A-360 (or its successor).

FAA means Federal Aviation Administration.

Façade means the exterior wall of a structure or building exposed to public view or that wall viewed by persons not within the building, including parapets and wingwalls.

Facade, RF-transparent means a facade used to conceal antennas and other components of a wireless telecommunication facility which is constructed of materials that allow the free passage of radio frequency or other electromagnetic signals.

Facility means a stormwater management facility, and shall include all land, materials, and appurtenances used in construction and operation of said facility. Facilities include, but are not necessarily limited to, detention and retention basins, open channels, and storm sewers.

Fall zone means the area in which a telecommunication tower may be expected to fall in the event of a structural failure, as measured by engineering standards.

Family care home means a residential dwelling unit provided by an agency, organization or individual with or without resident 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 with disabilities, as "person with disabilities" is defined in N.C. Gen. Stat. sec. 168-21 (or its successor). This definition shall include homes designed for the support of those in recovery from substance abuse or other homes for disabled persons that are not required licensing by the state.

Farm means land used for the production and activities relating to or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. See "agriculture."

Farmers market means an open air market that consists of individual vendors, who set up booths, tables or stands, to sell produce, meat products, fruits and sometimes prepared foods and beverages. The products sold at the market may include non-food items however, no more than 25 percent of the items sold shall be non-food items.

FCC means Federal Communications Commission.

Fill means the placing, storing or dumping of any material such as, but not limited to, earth, clay, sand, gravel, concrete, rubble, or waste of any kind, upon the ground, in depressions or in excavations, which tends to result in increasing the ground surface elevation; also material so placed.

Fire chief means the principal fire code enforcement official of the City of Asheville.

Fire official means the designee of the fire chief for purpose of enforcement of the Asheville Fire Prevention Code.

Fish hatchery, fish farm means a facility used for the production of fish, not including processing and packaging for consumption or use.

Flag lot means a lot with access provided to the bulk of the lot by means of a narrow corridor having a minimum width of 20 feet and a maximum length of 250 feet.

Flashing sign means a sign illuminated by direct or indirect artificial light that flashes on and off in regular or irregular sequences, including, but not limited to strobe light.

Flea market, outdoor means a commercial activity, not contained in a fully enclosed building, where two or more spaces, stalls, tables, or stands are made available for a fee to the general public. Such spaces, stalls, tables, or stands are used for the purpose of the display and sale, exchange, or barter of merchandise.

Flood or flooding means:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters;
 - b. The unusual and rapid accumulation of runoff or surface waters from any source; or
 - c. Mudslides (i.e. mudflows) which are proximately caused or precipitated by accumulations of water on or under the ground.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1)a. of this definition.

Flood control works means any manmade construction, such as, but not limited to, a dam, levee, groin, or jetty, designed to alter the flood potential of the body of water on or adjacent to which it is built.

Flood fringe area means the area of the floodplain lying outside the floodway but within the area of special flood hazard. A significant probability of damage due to flooding exists in this area.

Flood insurance means the insurance coverage provided under the National Flood Insurance Program.

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.

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 maps means the flood boundary and floodway maps for Asheville, N.C. as provided by the FEMA, including amendments and updates, pursuant to the Flood Disaster Protection Act of 1973 (Public Law 93-234) as amended.

Floodplain means any normally dry land area that is susceptible to being inundated by flooding. Includes both the floodway and the flood fringe area. The susceptibility of this area to flooding may pose hazards for building construction.

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 section, 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 section and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Flood profiles means a graph or longitudinal profile showing the relationship of the water surface elevation of a flood to a location along a river or stream, as provided by the Federal Emergency Management Agency, pursuant to the Flood Disaster Protection Act of 1973 (Public Law 92-234) as amended.

Floodprone area: See "Floodplain".

Flood zone means a geographic area shown on the flood insurance rate map that reflects the severity or type of flooding in the area.

Floodproofing means structural additions, changes, or adjustments to structures subject to flooding which will reduce or eliminate flood damages to the structure, building contents, water and sewer facilities, and utilities.

Floodway means the channel of a river or other water course and the adjacent land areas in which development must be restricted in order to permit the unrestricted flow of the waters of the regulatory flood.

Floor means the top horizontal surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. For the purposes of the flood protection regulations, found in [section 7-12-1](#) of this chapter, the term shall not include the floor of a garage used solely for parking vehicles.

Fraternalities and sororities. See Civic, social service, and fraternal facilities.

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".

Freestanding pole sign means a sign which is permanently affixed to the ground by a pole or other structure and which is not part of the building. This shall not be considered to include signs or canopies.

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 does not include long-term storage, manufacture, sales, or service facilities.

Functionally equivalent service means FCC-licensed providers of commercial mobile radio services (CMRS) classified as cellular, personal communication services (PCS), paging, specialized mobile radio (SMR) and enhanced specialized mobile radio (ESMR).

Funeral establishment means a building used for the activity of preparation of deceased human beings for burial or cremation is the primary use of the premises. Secondary uses may include the display of the deceased, consummation of rituals connected therewith before burial or cremation, the storage of funeral vehicles and funeral supplies necessary for the preparation of the dead for burial or cremation, and for the sale of caskets, urns, and other funeral supplies.

Gasoline sales means any building, structure, or area of land used for the retail sale of automobile fuels, oils, and accessories, which may also include the sale of propane or kerosene.

Gated community means a subdivision, neighborhood or residential community where any vehicular or defined pedestrian access to more than one parcel is unavailable to the general public as the result of a barrier that may include, but would not be limited to, gates, security personnel, fences or walls. This definition would not include gates or other barriers limiting access to an individual parcel.

Gift shop. See Retail sales.

Golf course means outdoor facility with at least nine holes, including par three courses, and including driving ranges as accessory uses, but not including putt-putt, miniature golf, or driving ranges as a principal use.

Governmental sign means any sign erected by or on the order of an authorized public official which includes, but is not limited to, traffic control signs, street name and identification signs, warning and directional signs, public notices or signs of a similar nature.

Governmental user means federal, state or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes.

Grade means, for the sign regulations found in article XIII of this chapter, the lowest point at which a sign is attached to the ground.

Grading means any operation intended for or resulting in the change of the surface elevation or contours of a site; to change the surface cover, either natural or manmade, of a site; to add, relocate, or remove buildings or other structures; to relocate watercourses or bodies of water, either natural or manmade; and shall include, but not be limited to, ditching, excavating, filling, trenching, dredging, tunneling, road building, clearing and grubbing of trees and stumps.

Grading means for the purposes of the Hillside Area Development standards (section of this chapter), grading shall mean any manipulation of the ground forms and the natural vegetation growing upon it.

Grading permit: See "permit, grading and stormwater."

Greenhouse means a building or structure constructed for the protection or cultivation of edible or ornamental plants. A greenhouse located in a residential district is subject to accessory structure size standards. Plants may be grown for sale or resale to an off-site commercial establishment only if deliveries are made directly from the site by the owner of the property; and no commercial traffic to or from the site may be allowed.

Greenway means a linear park established as an open space connector which may link other parks, nature reserves, cultural features, historic sites, and neighborhoods to each other.

Gross floor area means the sum of the total horizontal areas of the several floors of a building measured from the exterior faces of exterior walls and from the centerline of any party walls, if the portions of the building separated by such party walls are to be treated separately. The term gross floor area shall include any area with a ceiling height of seven feet or greater, all elevator shafts, stairway shafts, and other areas of the building except up to 1,000 square feet of the floor space occupied by mechanical, electrical, and communications equipment designed to serve only the occupants of the building shall not be included in the calculation of gross floor area when such devices are located in the basement, first floor, or penthouse of said building. Additionally, gross floor area includes areas covered by canopies and like structures under which an active use is occurring such as drive-through service, gasoline pumping, loading and/or storage of materials, and similar activities. Gross floor area does not include the floor area in parking structures/decks.

Ground cover means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Ground floor means the floor of a building that is at or nearest to the level of the ground around the building. It does not include the floor of a basement.

Ground sign means a freestanding sign flush to the ground and not elevated upon poles or stanchions and not attached to the building.

Groundwater recharge means the infiltration of water into the earth, which may increase the total amount of water stored underground or only replenish supplies depleted through pumping or natural discharge.

Group home means a residential home provided by an agency, organization or individual for persons who need sheltered living conditions for rehabilitation, but not including mentally ill persons who are dangerous to others as defined in N.C.G.S., sec. 122C-3(11)b (or its successor).

Guarantee in lieu of construction of improvements means cash, irrevocable letters of credit, bonds, or similar financial instruments deposited with and accepted by the city to insure that improvements required as part of a development will be satisfactorily completed.

Habitable structure means for the purpose of the flood protection regulations only, any structure which by virtue of its design, size, or appurtenances, is suitable for occupation as a residence or use for commercial purposes. This includes, but is not limited to, houses, condominiums, townhomes, restaurants, retail establishments, manufacturing buildings, commercial buildings, office buildings, manufactured homes, restroom facilities, and similar uses. Final decision as to whether any structure is considered habitable will be determined by the floodplain administrator.

Hardship means a practical difficulty in carrying out the requirements of this chapter. Unless otherwise indicated, financial difficulties, in and of themselves, do not constitute a hardship.

Hazardous material means (a) any substance defined under [Section 101\(14\)](#) of CERCLA; (b) any biological agent and/or other disease-causing agent as defined in [Section 101\(33\)](#) of CERCLA; (c) any substance listed by the U.S. Department of Transportation as a hazardous material in 49 CFT Part 172.101 and Appendices; and (d) hazardous wastes as defined in [40 CFR Part 261.3](#) or [49 CFR Part 171.8](#).

Hazardous materials storage means businesses manufacturing or storing materials listed as HI1 hazardous materials identified in the North Carolina State Building Code.

Hazardous waste management facility means, as defined in NCGS 130A, [Article 9](#), a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Height: See "building height."

Height means, for the sign regulations found in article XIII of this chapter, the vertical distance between the highest part of the sign or its supporting structure, whichever is highest, and the base of the sign at grade.

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.

High quality water zones means areas which are within one mile of and drain to high quality waters.

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 N.C.G.S., sec. 150B-14(c).

Historic district means an overlay district established by the Asheville City Council for an area deemed to be of special significance in terms of its history, prehistory, architecture, and/or culture, and to possess integrity of design, setting, materials, feeling and/or association.

Historic landmark means any individual site, building, structure, object or artifact, above or below ground or water, which is found to be of special significance in terms of its historical, prehistorical, architectural or cultural importance and to possess integrity of design, setting, workmanship, materials, feeling and/or association and which is designated a historic landmark by either the Asheville City Council or the Buncombe County Board of Commissioners following recommendation by the Historic Resources Commission of Asheville and Buncombe County.

Historic resources commission means a joint preservation commission established under Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes (or its successor), with members appointed by the Asheville City Council and by the Buncombe County Board of Commissioners.

Historic structure means, for flood protection regulations only, any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) 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 to qualify as a registered historic district; (c) individually listed on a state inventory of historic preservation programs that have been certified by either (1) an approved state program as determined by the Secretary of Interior; or (2) directly by the Secretary of Interior in states without approved programs; (d) designated pursuant to an ordinance adopted by the City of Asheville or Buncombe County.

Home occupations means an accessory use of a dwelling unit or an accessory structure for limited non-residential purposes which is clearly incidental and subordinate to the use of the dwelling unit as a residence.

Home occupation sign means a sign used for a home occupation as defined in [section 7-2-5](#) of this chapter.

Homestay (formerly known as "bed and breakfast homestay") means a private, owner-occupied residence with one to three guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building.

Housing certificate means a document issued by the building safety department upon satisfactory completion of an inspection of a dwelling or dwelling unit for compliance with the Asheville Minimum Housing Code.

Hydraulic: See "structure, hydraulic."

Identification sign means a sign used to identify, indicate or advertise the name, logo or other identifying symbol of a building, business, profession, institution, service, or entertainment conducted on the lot upon which the sign is located.

Illicit connection means a connection to the City of Asheville Stormwater System which results in a discharge that is not composed entirely of stormwater runoff except discharges pursuant to an NPDES permit (other than the NPDES permit for the City of Asheville MS4).

Illicit discharge means any activity not exempted herein which results in a discharge to the City of Asheville Stormwater System or receiving waters that is not composed entirely of stormwater.

Impervious means the condition of being impenetrable by water.

Impervious surface means any surface which in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but not be limited to, compacted earth, traffic-bearing gravel, concrete, asphalt, or other paving material, and all area covered by the footprint of buildings or structures. Uncovered slatted decks and the water area of a swimming pool, pond, or other water body are considered pervious.

Improper disposal means any disposal other than through an illicit connection that results in an illicit discharge, including, but not limited to the disposal of used oil and toxic materials resulting from the improper management of such substances.

Incidental sign means a single face 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.

Industrial uses means uses that involve the assembly, packaging, processing, production, and manufacturing of goods.

Industrial uses, light means uses that involve the assembly, packaging, processing, production, and manufacturing of goods if such activities are conducted wholly within an enclosed building; and if operated in a manner that prevents external effects of the activity such as (but not limited to) smoke, soot, dirt, vibration, odor from being detectable at any property line.

Infill development refers to new development that occurs within established urban areas where the site or area is either vacant or has previously been used for another urban purpose.

Initiate means to start work or construction of a project; by grading the site, preparing the site for foundation or footings, etc.

Inflatable balloon sign means a sign which is inflated with air or other gases. Self-propelling aircraft and hot air balloons not tethered to the ground or a structure which include advertising are specifically excluded.

Intermittent stream means a natural drainage way that is shown as a dashed blue line on the most recent version of the USGS 7.5-minute quadrangle maps or depicted as a dashed line on the most recent version of the maps of the Soil Survey of Buncombe County from the U.S. Department of Agriculture shall be considered an intermittent stream for the purposes of this section.

Internally illuminated sign means any sign designed to provide artificial light either through exposed lighting on the sign face or through transparent or translucent material from a light source within the sign.

Inundation means a covering of the ground surface with water.

Island or median means an unpaved area within a parking lot or street, usually surrounded by a curb or other raised element, which is surrounded by a paved or gravel surface on at least three sides.

Joint identification sign means a sign bearing the name of individual tenants located within a multiple tenant development and which may include the name of the multiple tenant development.

Junkyard means a parcel of land on which waste material or inoperative vehicles and other machinery are collected, stored, salvaged, or sold. The use is not allowed in any zoning district in the City of Asheville.

Jurisdictional perennial or intermittent surface waters means those surface waters shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States 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 Geological Survey (USGS)."

Kennel means any premises where domestic animals, such as dogs and cats, are boarded, trained, or bred for commercial or animal control purposes.

Lake or natural watercourse means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, 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 that results in a change in the natural cover (including cutting and removal of trees) or existing stable topography and that may cause or contribute to sedimentation.

Landside includes those parts of the airport serving passengers and general public including: roadways, parking facilities, surface transportation, the pre-security portion of the terminal, and other public areas of the airport buildings. Landside is generally open to public access and has no special security access requirements.

Landowner means any person who owns a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a plan or application under this chapter.

Lawn means an area that consists of open, grass-covered land and is maintained at a low, even height, in close proximity to a residential or commercial structure.

Letter of credit means a written instrument issued by a financial institution at the request of a customer where the financial institution promises to honor drafts or demands for payment from a person named in the instrument upon compliance with conditions set forth in the instrument.

Level spreader means a stormwater BMP consisting of a non-erodible linear structure constructed at virtually zero percent grade that serves the purpose of converting concentrated stormwater flow into diffuse sheet flow that discharges into a vegetated area. The main purposes of level spreaders are to prevent erosion and to increase the interaction between stormwater and the vegetation and soils in a filter strip or aquatic buffer. Under diffuse, sheet flow conditions, the vegetation and soils bring about pollutant removal via filtration, infiltration, sorption, and volatilization.

Light emitting diode (LED) means diodes (electronic components that let electricity pass in only one direction) that emit visible light when electricity is applied, much like a light bulb. When many LEDs are side-by-side, they can create pictures and images.

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 where the residential use of the space is secondary or accessory to the primary use as a place of work. For the purposes of applying density requirements, a live-work unit shall be regarded as the equivalent of 0.5 residential unit.

Loading and service area means an area which is used for trash or garbage collection, vehicular loading and unloading, outdoor storage or repair, or for covered storage where the structure has no walls to screen views.

Local government means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

Local street means a street whose primary function is to provide access to abutting properties.

Logo means a business symbol or trademark.

Lot means, for the sign regulations found in article XIII of this chapter, any number of contiguous lots or portions thereof, upon which one or more main structures for a single use are to be erected.

Lot coverage means the amount of land covered or permitted to be covered by a building, accessory building or impervious surface, usually measured in terms of percentage of a lot.

Lot of record means a lot whose existence, location, and dimensions have been legally recorded or registered in a deed or on a plat as of December 31, 1959.

Lot width means the horizontal distance between side lot lines, measured along the street frontage.

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, for the flood protection regulations found in [section 7-12-1](#) of this chapter, the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles and/or accessory storage in an area other than a basement area, is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

Maintain means for the sign regulations found in article XIII of this chapter, maintain shall mean to clean, paint, repair or replace defective parts of a sign in a manner that does not alter the basic design or structure of the sign.

Maintenance for the purposes of stormwater, soil erosion and sedimentation control, illicit discharge and connection regulations of [section 7-12-2](#) means any action necessary to preserve stormwater management facilities in proper working conditions, in order to serve the intended purposes set forth in this chapter and to prevent structural failure of such facilities.

Major subdivision: See "subdivision, major."

Major thoroughfare street means major streets that provide for the expeditious movement of high volumes of traffic within and through urban areas.

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 and which does not meet the standards established by the North Carolina Residential Building Code. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home subdivision means a parcel (or contiguous parcels) of land divided into two or more lots for sale for manufactured homes.

Manufactured home park (community) means a parcel of land under single ownership that has been planned and improved for the placement of manufactured homes for dwelling purposes. This definition shall include recreational buildings, service buildings, and areas necessary to provide laundry, sanitation, storage, vending machines, and other similar services provided by the facility operator for the use and convenience of the manufactured home occupants.

Map, official zoning: See "zoning map."

Marquee means a sign of a theater, auditorium, fairground or museum which advertises current and scheduled events. Marquees may include, incorporate or consist of electronic message signage.

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; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

Massing means the physical volume or bulk of a structure.

Maximum extent practicable means to control and treat stormwater runoff in the most effective way that can be obtained at a reasonable cost given the state of the art stormwater management and the specific conditions of the site and project. In no case shall maximum extent practicable represent a standard of management that is less effective than any applicable standard set forth in North Carolina law, including, but not limited to, 15A NCAC 2H .1008, 15A NCAC 2H .0126 and 15A NCAC 2H .1014, or in any applicable part of the City of Asheville's Best Management Practices Manual.

Mean sea level means the average height of the sea for all stages of the tide. For flood protection regulations only, 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.

Mechanical equipment means equipment, devices, and accessories, the use of which is related to water supply, drainage, heating, ventilation, air conditioning, and similar purposes.

Mezzanine means a low-ceilinged story between two main stories of a building; especially an intermediate story that projects in the form of a balcony.

Menu board means a freestanding or wall mounted sign primarily designed for the display of menu items and prices for the purpose of placing orders for such items in conjunction with a restaurant utilizing drive-through service.

Microbrewery means a small facility for the brewing of beer that produces less than 15,000 barrels per year. It may often include a tasting room and retail space to sell the beer to patrons on the site.

Microcell means a wireless telecommunication facility for which all electronics (if not located within an existing and approved building) are contained in equipment enclosures which occupy less than 40 cubic feet and for which all antennas are eight feet or less in height and have a combined surface area of less than 30 square feet.

Minor subdivision: See "subdivision, minor."

Minor thoroughfare street means minor thoroughfares perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system. Minor thoroughfares may be used to supplement the major thoroughfare system by facilitating a minor through-traffic movement and may also serve; abutting property.

Mixed use development means a development project integrating different types of land uses within one or more structures; for example residential units above office and retail facilities.

Mobile food site means an individual parcel where mobile food vending is permitted to occur on a permanent basis.

Mobile food vending means commercial food service sales by a mobile food vendor on a parcel of land outside of right-of-way areas. Sites approved for permanent mobile food vending are classified as a mobile food site.

Mobile food vendor means an individual who owns and operates a vehicle (truck or trailer with a maximum of two axles) that includes a mobile kitchen or similar facility that supports the sale and/or preparation of food and non-alcoholic beverages which is licensed and approved to walk-up customers. Use of the term "mobile kitchen" in the ordinance [chapter] will be understood to include mobile kitchens and similar facilities.

Mobile home: See "manufactured home."

Moderate slope means any constructed slope with a grade of 25 percent (4:1) to a grade of 50 percent (2:1).

Modification means, for purposes of regulating wireless telecommunication facilities, the addition, removal, repositioning (other than downtilt adjustments), alteration or other material change in the number or type of antennas employed in a wireless telecommunication facility; changes in the height, size, shape or appearance of telecommunication towers; and increases in the number or size of equipment enclosures or other improvements at an existing or approved wireless telecommunication facility.

Modular home means any structure intended to be used as a residential dwelling unit which is constructed away from the site for which it is ultimately intended, meets all standards established by the North Carolina Residential Building Code, is certified as a modular home by the North Carolina Department of Insurance, is transported to its ultimate destination, assembled, and placed on a permanent foundation, and is not designed to be readily moved from that site.

Motor vehicle and boat service and repair means a building, structure, or area of land designed and used for the care, repair, or maintenance of motor vehicles or recreational boats including both minor and major mechanical overhauling, paint, and bodywork.

Motor vehicle service facility means any building, structure, or area of land used for minor motor vehicle repairs and maintenance, including the incidental sale of oil and related accessories if allowed in the zoning district.

Movie theaters means an establishment devoted to showing motion pictures. Such establishments may include related services such as food and beverage sales and other concessions.

Mudslide (i.e., mudflow) means a condition where there is a river, flow, or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on or under the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the planning and development director only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

Multi-family residential building means a building containing two or more dwelling units.

Multiple tenant development means a development in which there exists a number of individual and separate occupiable spaces and in which there are appurtenant shared ancillary facilities (such as parking areas or pedestrian mall areas) with each space having a separate and operable public entrance opening onto or leading to the area of shared facilities.

National Geodetic Vertical Datum (NGVD) means a vertical control, corrected in 1929, used as reference for establishing varying elevations within the floodplain.

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.

Neighborhood contact person means representative of a neighborhood or area for the purpose of providing notice regarding proposed projects, hearings, and meetings, as required by this chapter. The representative must provide, in writing, to the planning and development department the neighborhood or area he/she represents and a map which clearly delineates the neighborhood or area represented.

New construction means structures for which the "start of construction" commenced on or after the effective date of this chapter. For the purposes of the flood protection regulations only, new construction means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

Nightclub means a place of entertainment generally open primarily in the evening offering entertainment such as music, space for dancing and/or a stage area; and usually serving alcoholic beverages and some food for consumption on the premises. Night clubs also include cabarets and lounges.

Nit means a unit of illuminative brightness equal to one candle per square meter, measured perpendicular to the rays of the source.

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 study report.

Non-residential development means all development other than residential development, agriculture, and silviculture.

Nonconforming occupied lot means a lot which contained a structure on the effective date of this chapter or at the time the lot was brought into the city's jurisdiction but which does not meet the minimum requirements for width, area, front, side, or rear yard, height and/or open space for the zoning district in which it is located.

Nonconforming open uses of land means an open use on a lot when the only structures are incidental and accessory to the principal open use which was in existence prior to the effective date of this chapter or at the time the lot was brought into the city's jurisdiction and which would not be permitted by this chapter in the zoning district in which it is located. Uses such as storage yards, used car lots, auto wrecking yards, and golf driving ranges are examples of open uses.

Nonconforming sign means any sign which does not conform with the standards of this chapter.

Nonconforming use of structure means a use of a structure which existed prior to the effective date of this chapter, or at the time the lot on which the structure is sited was brought into the city's jurisdiction, and which would not be permitted in the zoning district in which it is located.

Nonconforming vacant lot means a lot which does not meet the dimensional requirements for the zoning district in which it is located, but which was recorded prior to the effective date of this chapter or prior to the time the lot was brought into the city's jurisdiction. This definition shall not be interpreted to include lots recorded prior to the adoption of this chapter which were in violation of any prior subdivision regulation of the city.

NPDES permit means the permit for stormwater discharges issued to the City of Asheville or other entities, as applicable, pursuant to the Clean Water Act and the federal stormwater discharge regulations (40 CFR 122.26).

Off-premises sign means any sign used for the purpose of displaying, advertising, identifying or directing attention to business products, operations or services sold or offered at a site other than the site where such sign is displayed.

OHWM: See "ordinary high water mark."

Official zoning map: See "zoning map."

On-premises sign means any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, products, operations or services sold or offered on the lot site where the sign is located.

Open space means an area that is intended to provide light and air, and is designed for either environmental, scenic, or recreational purposes. Open space may include, but is not limited to, lawns, decorative planting, walkways, active and passive recreation areas, playgrounds, fountains, swimming pools, wooded areas, and water courses. Open space shall not be deemed to include driveways, parking lots, or other surfaces designed or intended for vehicular travel.

Ordinary high water mark (OHWM) means the point on the bank of the river to which presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristics.

Ordinary repairs and maintenance means work done on a building to prevent it from deterioration or to replace any part thereof in order to correct any deterioration, decay or damage to a building or any part thereof in order to restore such building as nearly as practical to its condition prior to such deterioration, decay or damage. *Outdoor storage* means outdoor storage means the outdoor placement or leaving of goods for a continuous period longer than 24 hours for future use, disposal, or preservation; often associated with the sale, rental, distribution, or utilization of products, supplies, and/or equipment. It is normally accessory to another use. This excludes hazardous material storage, warehousing and distribution, and outdoor retail sales.

Outfall for the purposes of [section 7-12-2](#) means the point where the City of Asheville Stormwater System discharges to waters of the United States.

Overlay district means a zoning district, as established in article IX of this chapter, which applies supplementary or replacement regulations to the underlying zoning district.

Owner means this term shall have the same meaning as the term "landowner."

Parapet means that portion of a building wall that rises above the roof line.

Park means any public or private land managed primarily as vegetated open space for recreational, aesthetic, or educational use.

Park (applicable to Central Business District) means one of the following sub-categories depending on the description below:

Large public park: An open space area with access to one or more streets that functions as a stand-alone green space. They may include active and passive uses, and usually have both hardscape features and planted landscapes. Large public parks often include a range of attractions and amenities such as public gathering areas, seating, performance areas, sculptural elements, fountains, and richly detailed landscapes. Large public parks provide crucial open space that improves the quality life for residents and visitors. Large public parks will be at least one acre in size. Pack Square Park is an example of a large public park in Asheville.

Small public park: An open space area with access to at least one street that functions as a stand-alone green space at a neighborhood scale. They may provide for active and passive use, and provide hardscape and planted landscape areas. Although they are smaller than large public parks, they can be expected to have one or more amenities for active or passive use. In the downtown Asheville Central Business District small public parks will be at least 5,000 square feet, and up to one acre in size. Pritchard Park and Triangle Park are examples of small public parks in Asheville.

Pocket park: A landscaped small area intended for passive use only that may include significant hardscape elements (such as - but not limited to - benches, artwork, fountains, and lighting) and other amenities geared toward pedestrians. They may be public or privately managed. In the urban environment pocket parks are often secondary spaces left over from development projects that may have limited access to a public street or provide a small respite area at an intersection of streets. Pocket parks provide important open spaces for residents and patrons of downtown. Sculpture and special uses are often appropriate for pocket parks. Pocket parks will be smaller than 5,000 square feet although many pocket parks are substantially smaller than this. Gracies' Garden at the corner of Lexington and Patton Avenues is an example of a pocket park in Asheville.

Plaza space: A structured open space with access to one or more streets with an emphasis on hardscape elements serving pedestrian needs. They may be public or privately owned and managed. Plaza spaces are often associated with a building or special use for which the plaza functions as an adjacent outdoor room. Landscape elements are secondary in a plaza space and are used to define the hardscape elements and streetscape. Seating, sculptural elements, shade trees and other pedestrian amenities should be included in plaza spaces. Plaza spaces will be at least 5,000 square feet in area.

Courtyard space: Open space that is generally privately managed and used by business patrons and residents of adjacent buildings. Most courtyards have access to a street although this is not a requirement. Courtyards are usually highly structured with hardscape features with landscaping used to enhance the space. Depending on the use, courtyards may have benches, tables, and other pedestrian amenities. The orientation of the courtyard space and buildings can often create a "heat island" effect that make mitigation by tree planting or shade structures important.

Peak discharge means the maximum instantaneous flow from a given storm condition at a specific location.

Pedestrian oriented design means development designed with and emphasis on pedestrian access and interest from adjoining streets and sidewalks. In pedestrian oriented design, buildings are generally placed close to the street and the main entrances are oriented to the street sidewalk; additionally, there are generally windows or display cases along building facades that face the street. Site characteristics of pedestrian oriented design typically include: site grading that enhances the relationship of the building to the adjoining street(s) and sidewalk(s) from the perspective of the pedestrian; parking facilities placed to the side or rear of the building; and the provision of pedestrian oriented amenities, such as outdoor dining areas, landscaping/hardscaping, and seating.

Perennial stream means streams or natural drainage ways that have essentially continuous flows or are shown as continuous blue lines on the most recent version of the USGS 7.5-minute quadrangle maps and depicted as a continuous line on the most recent version of the maps of the Soil Survey of Buncombe County from the U.S. Department of Agriculture shall be considered a perennial stream for the purposes of this section.

Performance center means an open, partially enclosed, or fully enclosed facility designed or intended for use for the gathering of people as an audience for presentations such as (but not limited to) music, lectures, or live theater. Performance centers include auditoriums and amphitheaters.

Performance guarantee: See "guarantee in lieu of construction of improvements."

Perimeter setback means for a tract or parcel of land in common ownership and developed according to a master plan, the distance from structures to the boundaries of the property.

Permanent habitation means occupation of a location structure(s), or building(s) by an individual(s) for residential purposes for more than 180 days.

Permit, building means a permit for work or construction which is regulated by the North Carolina State Building Code in any or all of its volumes.

Permit, grading and stormwater means the document issued by the city which allows grading and stormwater management operations to commence and to proceed in accordance with the requirements of this chapter.

Permit, provisional means the document issued by the city upon receipt of an apparently acceptable erosion control permit application showing the erosion control measures to be installed and which allows the applicant to install those measures as shown or if modifications are required, as modified.

Permitted use means a use permitted by right, that must still meet all development standards for the applicable district in section 7-8, which may limit the size or other characteristics of the use.

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 engaged in or conducting land-disturbing activity means any person who may be held responsible for a violation under [section 7-12-2](#) of this chapter, unless expressly provided otherwise by the Sedimentation Pollution Control Act of 1973, as amended.

Person responsible for the violation means as used in [section 7-12-2](#) of this chapter and in N.C.G.S., sec. 113A-64, the term means (a) the developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he has failed to comply with any provision of [section 7-12-2](#) of this chapter, the North Carolina Sedimentation Pollution Control Act of 1973, as amended (the "Act") and all rules and regulations adopted pursuant to the Act, or any order adopted pursuant to this chapter or the Act as it imposes a duty upon him.

Phase of grading means one of two types of grading, rough or fine.

Place of worship means a building(s) or structure(s) including, but not limited to, sanctuaries, accessory classrooms, meeting rooms, offices, and housing quarters for religious leaders, that are primarily intended for religious services and which operate as a private, non-profit, tax exempt institution. The term includes, but is not limited to, churches, synagogues, and temples. Child care centers, schools, recreational facilities, and other uses developed as a part of the place of worship shall meet the standards for these uses set forth for the zoning district in which they are located.

Planned community means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a planned community. "Ownership of a lot" does not include holding a leasehold interest of less than 20 years in a lot, including renewal options.

Planning and development director means the planning and development director of the City of Asheville, North Carolina, or his/her staff member delegated with the authority and responsibility to administer this chapter. Any act authorized by this chapter to be carried out by the planning and development director is, by implication, authorized to be carried out by a designee of the planning and development director.

Plant nursery means a business, usually wholesale, where edible or ornamental plants are grown and stored on open land and/or in an enclosed building awaiting transportation for replanting or resale.

Plant sales, nurseries and greenhouses means a place of business whose primary function is the sale of merchandise related to planting, maintenance, or harvesting of garden or ornamental plants and related products sold to the consumer in retail quantities, that may include a nursery or greenhouse.

Planting area means landscape area required for bufferyards, street trees, and parking lot trees.

Plat means a map, or representation on paper, of a piece of land subdivided into lots, with streets and alleys, usually drawn to scale.

Pollutant for the purposes of [section 7-12-2](#) means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Portable or moveable sign means any sign designed or intended to be readily relocated and not permanently affixed to the ground or to a building. This shall include signs on wheels, trailers, truck beds or any other device which is intended to be moved from one location to another.

Post-FIRM means construction or other development for which the "start of construction" occurred before the effective date of the initial flood insurance rate map.

Pre-development state means a site in its condition prior to any development activity.

Pre-FIRM means construction or other development for which the "start of construction" occurred on or after the effective date of the initial flood insurance rate map.

Primary public safety provider means an FCC licensed governmental user which uses wireless telecommunication facilities to provide primary communications for law enforcement, fire, ambulance or related emergency services. "Primary public service provider" does not include commercial wireless service providers who provide telecommunication services on a commercial basis to primary public safety providers or who deliver emergency calls from its customers to a public safety answering point (PSAP).

Principal structure(s) means the main or predominant structure(s) in which the primary use occurs. Parcels may support more than one principal structure when said structures do not vary in gross floor area by more than 20 percent.

Principally above ground means that at least 51 percent of the actual cash value of the structure is above ground.

Private business user means persons who operate radio facilities (including microwave) requiring an FCC license solely for intra-company communications and who do not employ those facilities to offer fixed or mobile wireless communication services, or point-to-point microwave links for wireline communication services, to third parties for compensation.

Private facility means any stormwater management facility not owned and operated by the city, the County of Buncombe or the State of North Carolina.

Private street means any paved or unpaved area not owned or maintained by a governmental entity, that is meant for the conveyance of vehicular traffic and is not a parking lot, although it may pass through a parking lot and be at times indistinguishable from said parking lot.

Projecting sign means a sign end-mounted or otherwise attached to an exterior wall of a building and which projects from the wall.

Proportion means balanced relationship of parts of a building, landscape, structures, or buildings to each other and to the whole.

Public dedications means land offered or dedicated to the public (open space, park land, etc.) for the public's use.

Public facility means any stormwater management facility not owned and operated by the city, the County of Buncombe or the State of North Carolina.

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.

Public street means a dedicated public right-of-way in which the roadway has been constructed to public standards for vehicular traffic and has been accepted for maintenance by a governmental entity, but does not include alleys.

Public utility means any structure or facility transmitting a service provided by a utility company to include private systems such as telephone, electric, water and sewer, gas, power, etc. but not including utility substations, telecommunication towers, concealed telecommunication support structures, and other telecommunications devices.

Public utilities and related facilities means utility structures including, but not limited to, pumping stations, transformers, utility poles, transmission lines, and pipelines that require a specific location to provide service. No employees are housed in these facilities.

Receiving waters means the waters into which the City of Asheville Stormwater System outfalls flow and which are located within the jurisdictional boundaries of the City of Asheville and include, without limitation, the lakes, rivers, streams, ponds, wetlands, and groundwater of the City of Asheville.

Recreational uses, indoor. Indoor recreation means a for-profit establishment providing indoor exercise facilities and/or amusement games, either mechanical or electronic, that can be played by a customer for a fee and for which no money or prizes of significant value are paid out.

Recreational uses, governmental means facilities owned or operated by governmental agencies for public recreational use.

Recreational uses, related to residential development means recreational facilities developed in association with, and as an accessory to, planned residential developments and available for the exclusive use of the residents and their guests.

Recreational uses, restricted to membership, non-profit means recreational uses, such as country clubs, operated for recreational and social benefits of the members, guests or employees and not as a business for profit.

Recreational vehicle means, for flood protection regulations, a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use. A recreational vehicle is ready for highway use if its on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

Recycling and resource recovery. See Recycling operation.

Recycling center. See Recycling operation.

Recycling collection center means a structure or structures that serve(s) as a neighborhood drop off point for temporary storage of recoverable resources such as (but not limited to) plastic products, paper products, glass, and metal. Such centers are generally located in parking lots of commercial structures or on the property of public facilities or institutions, such as places of worship or schools.

Recycling operation means an indoor facility where recoverable resources (such as but not limited to) paper products, certain plastic products, textile products, vehicles, tires, glass and metal) are collected, stored, bought, sold, accumulated, exchanged, packaged, crushed, disassembled in order to prepare them to be processed to a reusable state.

Recycling plant means an indoor processing facility at which recoverable resources such as (but not limited to) plastic products, paper products, glass, and metal are received and processed in order to return such products to a raw, reusable state.

Redevelopment for the purposes of [section 7-12-2](#) means any development or land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development on the tract.

Reference level is the top of the lowest floor for structures within special flood hazard areas designated on the FIRM as zone A1-A30, AE, A, A99 or AO.

Regulation means any regulation, rule or requirement prepared by the city, and adopted by the City of Asheville Council pursuant to this article.

Regulatory flood means a flood event having a one percent chance of occurring in any given year, although the event may occur in any year (the 100-year flood).

Regulatory flood datum means an established plan of reference above the crest elevation of the regulatory flood.

Regulatory flood elevation means the crest elevation, in relation to mean sea level, expected to be reached by the regulatory flood at any given point in an area of special flood hazard.

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, for flood protection regulations, to bring the structure or other development into compliance with local floodplain management regulations, or, if this is not possible, to reduce the impact of noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of article XVIII of this chapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Renovation means the repair or remodeling of a structure in which the exterior walls, foundation and roof are maintained structurally intact.

Renovation costs: The following shall be considered when determining if the cost of work exceeds 75 percent of the structure's appraised value as determined by Buncombe County Tax Assessor or by an MAI-certified real estate appraiser; any structural work that required a building permit, cosmetic work such as but not limited to painting, carpeting, flooring, cabinet installation, facade work and reroofing. Exterior work such as landscaping and sidewalk installation shall not be included in the cost.

Replacement tower. See Telecommunication tower/support structure - replacement tower.

Research and technology production uses means uses such as medical, optical and scientific research facilities, software production and development, clinics and laboratories, pharmaceutical compounding and photographic processing facilities, and facilities for the assembly of electronic components, optical equipment, and precision instruments.

Residential development means a development consisting of buildings for residential uses such as attached and detached single-family dwellings, manufactured homes, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and home occupations.

Resort means a lodging facility that serves as a destination point for visitors. A resort generally provides recreational facilities for persons.

Restaurant. See Eating and/or drinking establishment.

Restricted mountain ridge means, for purposes of regulating wireless telecommunication facilities, a ridge whose elevation is 500 or more feet above the elevation of an adjacent valley floor.

Retail sales means stores selling retail goods such as, but not limited to: bakeries, bicycle shops, bookstores, candy and pastry etc., convenience stores, copying centers, delicatessens, florists, fruit/vegetable markets, gift shops, video rental stores. The size of such stores and other characteristics are governed by the development standards of the zoning district.

Retaining structure means a structure specifically designed to keep or hold an element in a particular place, condition, or position.

Retention basin means a basin designed to retain a permanent pool of water after having provided the planned detention of runoff during a storm event.

Ridge means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

Right-of-way means an area or strip of land, either public or private, on which an irrevocable right-of-passage has been recorded for use as a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or other special use.

Riparian means the characteristic of an ecological zone along bodies of water with distinct soils, plants, and wildlife characterized by an increase in moisture and different soil conditions.

River district design committee means an appointed committee having authority to review and approve requests for River District Design Major Works.

River resource corridor means a setback running approximately parallel to the sides and banks of the rivers defined and characterized by the location of critical riparian vegetation and habitat associated with the wash.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Roof sign means any sign erected, constructed or maintained on, upon or over the roof of any building structure and which is wholly or partially dependent upon the roof for support.

Running lights means lighting used in conjunction with the towing of manufactured housing.

Sanctuary means a room in or that section of a place of worship containing the altar and/or where regularly scheduled primary worship services are conducted. The room or part of the place of worship may be used for other purposes also.

Sandwich board signs means any portable sign which is single or double faced, which may readily be moved from place to place, and which is intended to be used on a sidewalk or pedestrian way.

Satellite dish antenna means a device incorporating surfaces that are either solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses. This definition is meant to include, but not be limited to, what are commonly referred to as satellite earth stations, TUROs, and satellite microwave antennas.

Scale means the proportional relationship of the size of the parts to one another and to the human figure.

School means a public or private institution offering a curriculum of education authorized by the State of North Carolina giving regular instruction at the primary and/or secondary level. This definition includes kindergartens, elementary schools, junior high schools, middle schools and high schools but does not include day care facilities, individual instruction, or classes in a specialized subject.

Screening means a structure or planting that conceals view from public ways or adjacent property.

Search ring means the area within which a wireless telecommunication facility must be located in order to meet service objectives of the wireless service provider using the wireless telecommunication facility or wireless support structure.

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.

Self-service storage facility means a building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual, compartmentalized, and controlled access stalls or lockers for the storage of customer's goods or wares.

Setback means:

- (1) The required minimum horizontal distance between the building line and the related front, side, or rear property line.
- (2) For the sign regulations found in article XIII of this chapter, setback shall mean the horizontal distance between the leading face of the curb of a street and the closest point of a sign or sign structure on such lot. Where there is no curb, the measurement shall be made from the edge of the pavement.

Severe slope means a constructed slope with a grade of greater than 50 percent (2:1).

Shared access means the mutual use of one or more points of ingress or egress by establishments on separate lots.

Shared parking means the development and use of parking areas on two or more separate properties for joint use by the businesses on those properties.

Shelter means a nonprofit, charitable, or religious organization providing boarding and/or lodging and ancillary services on its premises to primarily indigent, needy, homeless, or transient persons.

Shrub means a woody deciduous or evergreen plant which consists of a number of small branches from or near the ground.

Siding means the exterior wall covering of a structure.

Sign means any words, lettering numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric, or other material background structure designed to carry such devices, as are used to designate or attract attention. This definition shall not be interpreted to include awnings except for the portion of an awning that contains a message, logo, emblem, or similar wording or symbols and any background that highlights such message, logo, emblem, or similar wording or symbols. Furthermore, this definition shall not be interpreted to include architectural features of a building even when such features (i.e. roof style/color) are identifiable with a certain establishment. Further, this definition shall not include art or works of art provided the art or works of art do not include logos in their traditional form or the name of the business in a manner that would be considered by a reasonable person to advertise the business at whose location the art or works of art are located. The art and/or works of art shall not be located on the sign or sign panel.

Sign, cabinet means a sign that is mounted on the face of a building or on the ground that is typically rectangular in shape and provides for internal illumination and changing the message of the sign by replacing a single transparent or translucent panel.

Sign, off-premises digital means an off-premise sign display or device that changes the "static" message or copy on the sign by electronic means.

Sign structure means any structure which supports, has supported or is capable of supporting a sign, including any decorative cover for said sign structure.

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.

Single-family residential development means any development where 1) no building contains more than one dwelling unit; 2) every dwelling unit is on a separate lot; and 3) where no lot contains more than one dwelling unit.

Single tenant means a single business establishment, activity, or use which does not share any facilities such as parking, storage areas, entrances, etc. with another use.

Site means all contiguous parcels of land, including any contiguous bodies of water, under one or diverse ownership, contemplated for development or already developed as a unit, although not necessarily all at one time, and including such portions which the planning and development director determines, because of their characteristics, shall comply with the requirements of this chapter.

Site plan means a plan, prepared to scale, showing accurately all information required by these regulations with respect to the development proposal.

Site specific development plan means for the purposes of applying for zoning vested rights approval under [section 7-5-15](#) of this chapter, this term shall mean a plan of land development submitted to the City of Asheville by a landowner or agent for purposes of obtaining one of the following zoning or land use permits or approvals means:

- (1) Level III site plan approval as defined by [section 7-5-8](#) of this chapter. Said plan shall contain all items of information required by the provisions of [section 7-5-8](#)
- (2) Level II site plan approval as defined by [section 7-5-8](#) of this chapter. Said plan shall contain all items of information required by the provisions of [section 7-5-8](#)
- (3) Level I site plan approval as defined by [section 7-5-8](#) of this chapter. Said plan shall contain all items of information required by the provisions of [section 7-5-8](#)
- (4) Preliminary plat approval of a proposed subdivision as described in [section 7-5-7](#) of this chapter. Said plan shall contain all items of information required by the provisions of [section 7-5-7](#)

Notwithstanding the foregoing, neither a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan. Neither an application for nor granting of a variance shall constitute a site specific development plan.

Siting means the place where something was, is, or is to be located.

Small engine and appliance service and repair business means a business that functions for the purpose of providing repair and service for small engine equipment and appliances. Small engine equipment and appliances may include: lawn equipment, household appliances, kitchenware and electronics. Vehicles intended for human transportation (mopeds, scooters, etc) are not included in this definition.

Soffit means the underside of a structural component such as an arch, beam or cornice.

Soil erosion means any removal and/or loss of soil by the action of water, ice, gravity or wind, or any combination thereof. Erosion includes both the detachment and transport of soil particles.

Solid waste disposal facility means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

Solid waste disposal site means, as defined in NCGS 130A-290(a)(36), 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 (the 100-year flood), as determined in subsection (b)(2) of the flood protection regulations found in [section 7-12-1](#).

Special use means a use permitted by right that must meet any stated special additional standards for the use outlined in [section 7-16-1](#), as well as all development standards for the applicable zoning district in article VIII.

Stable (adjective) means, for the purposes of the soil erosion and sedimentation control regulations, found in [section 7-12-2](#) of this chapter, a characteristic of land, with or without mechanical restraints, which can be expected to remain in its original configuration. All fill slopes shall be compacted full depth to not less than 95 percent maximum density (Standard Proctor), shall be placed on a surface cleared of growth and debris, and properly benched and drained.

Stable (noun) means a building or land where animals are kept for remuneration, hire, sale, boarding, ride, or show.

Stadium or arena means a large open or enclosed space used for games or major events, and partly or completely surrounded by tiers of seats for spectators.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of 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.

Static means characterized by a lack of movement, animation, or progression.

Storage container means any container, storage unit, shed-like container or other portable structure that can be or is used for the storage of personal property of any kind and which is located for such purposes outside of an enclosed building other than an accessory building or shed which complies with all applicable building and land use requirements.

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.

Storm sewer means a closed conduit for conveying collected stormwater.

Stormwater BMP manual: See definition for Best management practices manual or BMP manual.

Stormwater discharge permit means the stormwater discharge permit issued by the city authorizing stormwater discharge activities in accordance with this chapter and applicable ordinances and regulations.

Stormwater management means the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to meet the objectives of this section and its terms, including, but not limited to measures that control the increased volume and rate of stormwater runoff and water quality impacts caused by manmade changes to the land.

Stormwater management facility means for quantitative and qualitative control, a system of vegetative and/or structural measures which control the increased volume and rate of surface run-off and pollutants carried in those waters caused by manmade changes to the land.

Stormwater management plan means a plan designed to control stormwater, submitted as a prerequisite to obtaining a stormwater discharge permit. The plan shall be prepared and designed in accordance with this chapter, city regulations, and applicable state and federal laws and regulations, including applicable standards and specifications.

Stormwater management program or SWMP means the set of drawings and other documents that comprise of all of the information and specifications for the programs, drainage systems, structures, BMPs, concepts, and techniques for the control of stormwater and which is incorporated as part of the NPDES permit for the City of Asheville and as part of this chapter.

Stormwater runoff means the direct runoff of water resulting from precipitation in any form.

Stormwater permit: See definition for Permit, grading and stormwater.

Stream alteration means a change of the water-carrying capacity or flow of a natural water course.

Stream bank means the location of the upper edge of the active stream above which the water spreads into the overbank areas on either side of the stream or the elevation of the average annual storm. Where the stream bank is not well defined, it shall be considered the edge of the waterline during a one-year frequency storm.

Streaming video means electronic video displays utilizing content in motion picture form similar to or otherwise depicting a television screen.

Street means a paved or unpaved route which provides the principal means of access to abutting property.

Street frontage means that portion of a lot abutting a publicly maintained street or alley.

Street right-of-way means a strip of land occupied or intended to be occupied by a travelway for vehicles and also available, with the consent of the appropriate governmental agency, for installation and maintenance of sidewalks, traffic control devices, traffic signs, street name signs, historical marker signs, water lines, sanitary sewer lines, storm sewer lines, gas lines, power lines, and communication lines. The location of any street planned, developed, or built after the effective date of this chapter must be shown on a legally approved plat recorded in the Office of the Register of Deeds for Buncombe County.

Street wall means a fenestration detail to improve pedestrian-oriented districts that allows for new development while reflecting the traditional scale of the commercial area and insures adequate air and light at the sidewalk. The street wall corresponds to the base portion of a building in the traditional organizing principle used for taller buildings: base - middle - cap. A variety of tools are available to determine the street wall height based on the location and scale of the district. These tools can include consideration of the relative heights of neighboring buildings or reflecting a one-to-one relationship to the width of the right-of-way. At the height of the street wall one should expect a visual demarcation such as a step back from the front or side of the facade, changes in fenestration details or other visual differentiation.

Streetscape means the scene as may be observed along a public street or way composed of natural and manmade components, including buildings, paving, planting, street furnishings, and miscellaneous structures.

Structural BMP means the physical structures requiring engineering design and engineered construction that are designed to remove pollutants from stormwater, runoff, reduce downstream erosion, provide flood control, and promote groundwater recharge.

Structure means that which is built or constructed. For flood protection regulations, a structure is a walled and roofed building, a manufactured home, a gas or liquid storage tank, or other manmade facility or infrastructure that is principally above ground.

Structure, hydraulic means an arrangement of materials intended or operating so as to modify the flow or other action of stormwater or the waters of rivers and streams, including but not limited to:

berms, breakwaters, catch basins, channels, conduits, culverts, curb inlets, dams, detention basins, dikes, diversions, end walls, flumes, gates, groins, headwalls, intake structures, jetties, levees, orifices, piers, pipes, riprap, sea walls, sediment basins, spillways, swales, weirs.

Studios, galleries and workshops for artists, artisans, and craftspeople - low impact means places for the creation and sale of artistic products whose creation involves little or no noise, vibrations, or use of heat that can be detected beyond the walls of the place.

Studios, galleries and workshops for artists, artisans, and craftspeople - high impact means places for the creation and sale of artistic products (such as but not limited to metal work, stone sculpture, glass work and sculpture, fired ceramics, or woodworking) whose creation involves a substantial level of noise, vibrations, or use of heat that can be detected beyond the walls of the place.

Subcollector street means a street whose principal function is to provide access to abutting properties but which is also designed to be used or is used to connect local streets with collector or higher classification streets.

Subdivider means any person, firm, corporation, or entity who subdivides or develops any land deemed to be a subdivision.

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:

- (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 city as shown in the city's subdivision regulations;
- (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 or for public transportation system corridors;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the city as shown in the city's subdivision regulations; and
- (5) The subdivision or recombination of land by public utilities.

In case of a conflict between this definition and state law (N.C.G.S. 160A-376, or any successor statute), state law shall control.

Subdivision, major means a subdivision which meets the specifications set forth in the definition of subdivision and involves the division of land into two or more lots where the extension of public streets or private streets built to City of Asheville standards is required.

Subdivision, minor means a subdivision of land that does not involve the construction of public streets or private streets built to City of Asheville standards.

Substantial damage means damage of any origin sustained by a structure 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. Improvements, modifications, and additions to existing buildings are counted cumulatively for at least five years. (See definition of substantial improvement). For the purposes of the flood protection regulations only, 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 "Substantial Improvement".

Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the structure before the start of construction of the improvement. When an existing building is structurally altered such that the first floor area is increased by more than 20 percent. Improvements, modifications, and additions to existing buildings are counted cumulatively for at least five years. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either: (1) any project of improvement of a structure to correct existing violations of state or local health, sanitary, or safety codes specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe conditions; or (2) any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure. For the purposes of the flood protection regulations only, 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. This term includes structures which have incurred "substantial damage", regardless of the actual repair work

performed. This term does not, however, include either: (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 assure safe living conditions; or (2) any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

Substantially improved existing manufactured home park or subdivision means where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced. Improvements, modifications, and additions to existing buildings are counted cumulatively for at least five years.

Surveyor means a person licensed and qualified as a registered land surveyor in North Carolina.

Suspended or transom 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.

Swale means an elongated depression in the land surface that is at least occasionally wet, may be heavily vegetated, and is normally without flowing water. Swales conduct stormwater into primary drainage channels and provide water quality treatment and groundwater recharge.

Tattoo parlor means an establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of placing designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments to contact or puncture the skin.

Taxi stand means a business where taxicabs are temporarily parked during hours of operation and including a building which houses the office of the taxi company and the dispatching equipment and/or where taxicabs wait to pick up patrons.

Telecommunication tower/support structure means a tower, pole, or similar support structure 20 feet or more high, used to mount or support one or more antennas for a wireless telecommunication facility which may be visible or concealed. These may include self-supporting lattice-framed towers, monopoles, or guyed towers. A concealed structure has all structural members concealed within a facade which matches or complements the architectural character of buildings and other structures located on the same parcel as the wireless telecommunication facility.

Telecommunication tower/support structure, concealed. See Telecommunication tower/support structure.

Telecommunication tower/support structure—Replacement tower means a telecommunication tower intended to replace an existing approved tower where such replacement tower is (1) at or within 100 yards of the existing tower base, and (2) no higher than the existing tower.

Temporary portable building means a building intended for nonresidential use for a limited time period, consisting of one or more modules constructed off the ultimate site of use and transported to that site either on its own wheels or otherwise.

Temporary portable building, construction-related means a temporary portable building directly related to the development of a lot and limited in duration to a time period extending from issuance of the initial zoning permit for such development to issuance of the final certificate of occupancy for the development.

Temporary sign means a sign with or without a structural frame, not permanently attached to a building, structure or the ground and intended for a limited period of display; provided, however, this shall specifically exclude portable or moveable signs which are hereinafter prohibited.

Temporary structure means a structure without any permanent foundation or footing which is intended to serve a specific temporary event or use/operation and is to be removed upon the completion of that event or use/operation.

Temporary use means an activity or use of land which is temporary in nature and, which, having met certain requirements and conditions, may be permitted for a period of limited duration, and which may utilize "temporary structures" for the duration of the event.

Ten-year storm means the surface run-off 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 run-off, for the watershed of interest, under average antecedent wetness conditions.

Thoroughfare plan means a plan for the development of existing and proposed major streets that will adequately serve the future travel needs of an area in an efficient and cost effective manner.

Through lot means a lot having its front and rear yards each abutting on a street.

Time/date/temperature sign means a sign containing numerals or letters, which may be alternately displayed, and which alternating portion only shows the time, date and/or temperature. This sign shall not be considered a flashing or an animated sign.

Tongue means a part of the towing apparatus used in transporting a manufactured home.

Top of bank: See definition for Stream bank.

Total maximum daily load (TMDL) means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL is a detailed water quality assessment that provides the scientific foundation for an implementation plan. The implementation plan outlines the steps necessary to reduce pollutant loads in a certain body of water to restore and maintain water quality standards in all seasons. The Clean Water Act, Section 303, establishes the water quality standards and TMDL programs.

Tower base means the foundation, usually concrete, on which the telecommunication tower is situated. For measurement calculations, the tower base is the actual or geometric center of the tower.

Tower height means the vertical distance measured from the tower base to the highest point on a telecommunication tower, including any antennas or other equipment affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment.

Tower site means the land area which contains, or will contain, a proposed telecommunication tower, and related equipment enclosures and other improvements.

Townhouse: See "dwellings, townhouse."

Toxic substance means any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off-spring or other adverse health effects. (See hazardous materials)

Tract means this term shall have the same meaning as the term "site."

Traffic engineer means the traffic engineer for the City of Asheville, North Carolina or his/her staff member delegated with the authority and responsibility to carry out his/her duties.

Trademark means a name, symbol, or other device identifying a product which is officially registered and legally restricted to the use by its owner.

Transition area means an area of a higher-intensity use district which is close to a lower-intensity use district, in which special design and other criteria are applied in order to protect the lower-intensity uses from effects of the higher-intensity uses.

Transmitter tower means a structure situated on a lot that is intended for transmitting or receiving television, radio, or telephone communications.

Transportation comprehensive plan means a document which through research and analysis has established current deficiencies or future needs of any system of roads, railways, airports, and paths, sidewalks, or other means or modes of conveyance, either separately or jointly, and which recommends actions to be undertaken for the alleviation of current deficiencies or the provision for future needs for any area or portion of a political jurisdiction.

Tree means any living, self-supporting woody perennial plant which normally obtains a trunk diameter of at least two inches and a height of at least ten feet, and typically has one main stem and many branches.

Tree, large means any tree whose height under average regional growing conditions will exceed 35 feet in height at maturity.

Tree, small or understory means any tree whose height under average regional growing conditions will be less than 35 feet in height at maturity.

Tree save area means required tree preservation and/or replanting areas.

Twenty-five year storm means the surface run-off 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 run-off, from the watershed of interest under average antecedent wetness conditions.

Two-story requirement means that for new construction, a second floor is provided as a full occupiable floor and a mezzanine level will not be sufficient to meet the requirement. Civic uses such as places of worship, arenas, auditoriums, theaters and performance centers will not be required to meet a two-story requirement.

Umbrella sign means a sign painted or printed on an umbrella.

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.

Upper story means any story above the ground story or floor.

Use by right means the use(s) of a piece of property identified as a permitted use(s) by this chapter in the zoning district in which the property is located.

Utility pole means a structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

Utility service area means area containing freestanding or surface mounted utility equipment which is not screened from the street by a building, is less than 100 feet from the street right-of-way; and which is more than five feet long along the side which faces the street or adjacent property. This includes equipment belonging to public and private utilities and privately owned equipment. Examples include: mechanical equipment, transformers which are part of underground systems, switchgear boxes, booster boxes, and utility boxes.

Utility substation means a structure or facility for transforming or transmitting a service provided by a utility company to include private utility systems such as telephone, electric, water, sewer, gas, power, etc., but not including telecommunication towers, concealed telecommunication support structures, or other telecommunication devices.

Vacation resort lodging means a lodging complex of self-contained individual rental housing units intended for short-term rentals.

Variance means a grant of relief to a person from the requirements of this chapter which grant permits construction in a manner otherwise prohibited by this chapter.

Vegetative canopy means trees which create a roof-like layer of spreading branches.

Vehicle salvage yard. See Recycling operation.

Vehicular use area (VUA) means all driving surfaces including: parking, drive aisles, driveways, loading areas, and maneuvering areas that are paved or gravel.

Velocity means the average speed 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.

Violation means the failure of a use, structure, or other development to comply with the regulations set forth in this chapter. A use, structure, or other development without the elevation certification, other certifications, or other evidence of compliance required is presumed to be in violation until such time as that documentation is provided.

Visible means capable of being seen by the unaided eye in the daylight.

Wall means an upright structure of masonry, wood, plaster or other building material serving to enclose, divide or protect an area.

Wall sign means any sign painted or attached flat against and parallel to the exterior wall or surface of a building or other structure and/or which projects from that wall or surface.

Waste means surplus materials resulting from on-site construction and disposed of at other locations.

Water dependent structure means any structure for which the use requires access to or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

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.

Water quality means those characteristics of stormwater runoff that relate to the physical, chemical, biological, or radiological integrity of water.

Water quantity means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Watershed means a geographical area comprised of one or more drainage areas, which serve a common point.

Watershed overlay zone means those areas as listed on the Watershed Overlay Zone Inventory and which is inclusive of all critical areas of water supply watersheds, high quality waters, outstanding resource waters as delineated by the state, and TMDL reports.

Wetland means areas that are inundated or saturated at a frequency and for a duration sufficient to support a prevalence of vegetative or aquatic life requiring saturated or seasonally saturated soil conditions for growth and reproduction. Those areas regulated under Section 404 of the Clean Water Act as identified under guidelines employed by the United States Army Corps of Engineers in evaluating permit applications under 33 USC 1344 and applicable federal regulations. Wetlands also include areas defined by the State of North Carolina as "isolated wetlands."

Wind sign means a suspended or tethered sign made of flexible material such as canvas, sailcloth, plastic, or waterproof paper, including but not limited to, banners, pennants, spinners, streamers, or balloons.

Window sign means a sign which is permanently painted on, permanently attached to or designed to be visible through a window, excluding displays of merchandise.

Wireless telecommunications facility means the set of equipment and network components, exclusive of the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area."

Wireless telecommunication facility, co-located means a wireless telecommunication facility located (or proposed to be located) upon or within a supporting structure or building which hosts one or more existing and approved wireless telecommunication facilities.

Wireless telecommunication facility, concealed means a wireless telecommunication facility with all antennas camouflaged to match or complement the color and architectural treatment of the surface upon which they are mounted, or which has all facility components concealed behind a facade or parapet wall.

Wireless telecommunication facility, microcell means a wireless telecommunication facility for which all electronics (if not placed within an existing and approved building) are contained in equipment enclosures which occupy less than 40 cubic feet and for which all antennas are eight feet or less in height and have a combined surface area of less than 30 square feet.

Wireless telecommunication facility, temporary means a vehicle-mounted or portable wireless telecommunication facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware.

Working days means days, exclusive of Saturday and Sunday, during which weather and soil conditions permit land disturbing activity to be undertaken.

Yard means any open space located on the same lot with a building, unoccupied and unobstructed from the ground up, except for such structures and projections as are expressly permitted in these regulations. The minimum depth or width of a yard shall consist of the horizontal distance between the lot line and the nearest point of the foundation wall of the main building. (see "setback").

Yard/garage sales means the sale or offering for sale of items of personal property to the general public on a lot containing a dwelling or dwelling units.

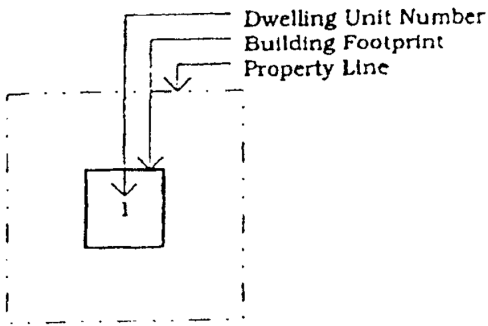
Zero lot line development. See Development, zero lot line.

Zoning permit means a permit issued by the City of Asheville stating that a particular development project, change in use, or addition, is in compliance with the ordinances of the city pertaining to use of the land on which such use is situated. A zoning permit is typically issued after all other approvals relating to chapter 7 have been obtained.

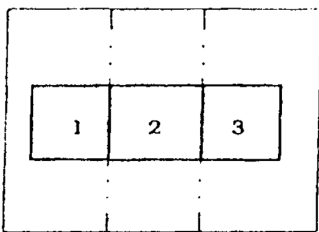
Zoning vested right means a right pursuant to N.C.G.S., sec. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(Ord. No. 2535, §§ 1, 2, 1-12-99; Ord. No. 2565, § 1, 4-27-99; Ord. No. 2662, § 1, 2-8-00; Ord. No. 2735, § 1a., 8-22-00; Ord. No. 2740, § 1(c), 9-12-00; Ord. No. 2741, § 1, 9-12-00; Ord. No. 2742, § 1(c), 9-12-00; Ord. No. 2860, § 1b., 10-10-01; Ord. No. 2902, §§ 1(a), 1(b), 3-12-02; Ord. No. 3002, § 1a, 2-25-03; Ord. No. 3010, § 1a, 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(1), 8-24-04; Ord. No. 3209, § 1a, 1-25-05; Ord. No. 3261, § 1(a), 7-12-05; Ord. No. 3262, §§ 1(a, b), 7-12-05; Ord. No. 3271, § 1(a), 8-9-05; Ord. No. 3272, § 1(a), 7-26-05; Ord. No. 3277, § 1, 8-9-05; Ord. No. 3329, § 1(a), 1-24-06; Ord. No. 3337, § 1(a), 2-28-06; Ord. No. 3390, § 1(a), 9-12-06; Ord. No. 3412, § 1(a), 12-12-06; Ord. No. 3436, § 1(a), 1-23-07; Ord. No. 3417, § 1(h), 11-28-06; Ord. No. 3466, § 1(c), 4-24-07; Ord. No. 3479, § 1(b), 5-22-07; Ord. No. 3480, §§ 1(d), (e), 6-12-07; Ord. No. 3483, § 1(a), 6-2-07; Ord. No. 3489, § 1(a), 6-19-07; Ord. No. 3521, §§ 1(a), (b), 8-21-07; Ord. No. 3571, § 1(a), 1-8-08; Ord. No. 3572, §§ 1(a)—(c), 1-8-08; Ord. No. 3579, § 1(e), 1-22-08; Ord. No. 3582, § 1(a), 2-12-08; Ord. No. 3619, § 1(a), 5-13-08; Ord. No. 3642, § 1a, 9-9-08; Ord. No. 3677, § 1a, 11-25-08; Ord. No. 3685, § 1a, 1-13-09; Ord. No. 3739, § 1b, 6-9-09; Ord. No. 3791, §

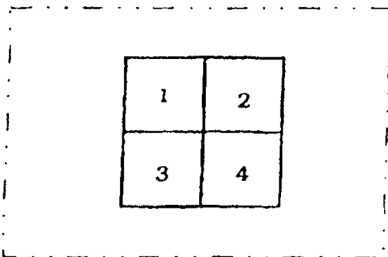
1k, 9-22-09; Ord. No. 3792, § 1a, 9-22-09; Ord. No. 3793, § 1e, 9-22-09; Ord. No. 3810, §§ 1, 2, 11-24-09; Ord. No. 3856, § 1a, 5-25-10; Ord. No. 3876, §§ 1, 2, 6-8-10; Ord. No. 3897, §§ 1(a), (b), 9-14-10; Ord. No. 3906, § 1a, 10-12-10; Ord. No. 3908, § 1a, 10-26-10; Ord. No. 3929, §§ 1c, d, 11-23-10; Ord. No. 3959, § 1a, 4-12-11; Ord. No. 4007, § 1a, 9-13-11; Ord. No. 4064, § 1f, 2-28-12; Ord. No. 4152, § 1a, 1-8-13; Ord. No. 4168, § 1a, 2-26-13; Ord. No. 4233, § 1b, 9-24-13; Ord. No. 4328, § 2a, 7-22-14; Ord. No. 4328, § 2a, 7-22-14; Ord. No. 4342, § 1b, 9-9-14)



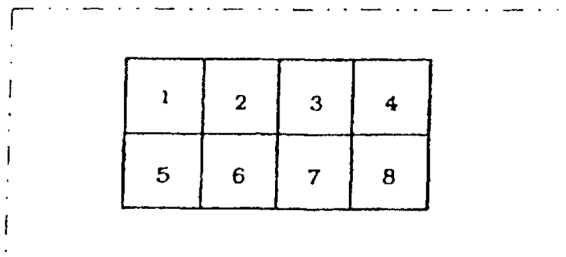
Dwelling, Single Family Detached



Dwellings, Townhouses



**Dwellings, Multi-family (4 units)
Apartments or Condominiums**



**Dwellings, Multi-family (8 units)
Apartments or Condominiums**

figure 2-1

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2407, §§ 1, 2, 9-23-97; Ord. No. 2428, §§ 1, 2, 11-11-97; Ord. No. 2436, § 1, 11-25-97; Ord. No. 2454, § 1, 2-24-98; Ord. No. 2469, § 1, 5-12-98; Ord. No. 2502, § 1, 7-28-98)

ARTICLE III. - DECISION-MAKING, ADMINISTRATIVE AND ADVISORY BODIES

Sec. 7-3-1. - Asheville City Council.

(a) *Powers and duties.* Without limiting any authority granted to the Asheville City Council by law or regulations, the Asheville City Council shall have the following powers and duties with respect to this chapter, to be carried out in accordance with the terms of this chapter:

- (1) To adopt new text for and amendments to the text of this chapter;
- (2) To adopt new zoning maps and amendments to the zoning maps;
- (3) To adopt amendments to the comprehensive plan and to adopt a new comprehensive plan;
- (4) To review and approve requests for conditional use permits;
- (5) To adopt River District Design Guidelines;
- (6) Such additional powers and duties as may be set forth for the Asheville City Council elsewhere in this chapter and in other laws and regulations.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2437, § 1(a), 11-25-97; Ord. No. 3032, 6-10-03; Ord. No. 3328, § 1(b), 1-24-06)

Sec. 7-3-2. - Asheville Planning and Zoning Commission.

(a) *Powers and duties.* Without limiting any authority granted to the Asheville Planning and Zoning Commission by law or regulations, the Asheville Planning and Zoning Commission shall have the following powers and duties, to be carried out in accordance with the terms of this chapter:

- (1) To review all new text for and proposed amendments to this chapter, and proposals to zone or change the zoning of all property regulated under this chapter, and to make recommendations to the Asheville City Council for final action thereon;
 - (2) To perform studies and surveys of the present conditions and probable future development of the city and its environs, including, but not limited to, studies and surveys of land uses, population, traffic, parking, and redevelopment needs;
 - (3) To formulate and recommend to the Asheville City Council the adoption or amendment of a comprehensive plan and other plans, as necessary, for the city and its environs;
 - (4) To review the terms of this chapter from time to time, as it deems appropriate, and to recommend to the Asheville City Council any changes that the Asheville Planning and Zoning Commission considers necessary to regulate properly the development and use of land, buildings, and structures;
 - (5) Such additional powers and duties as may be set forth for the Asheville Planning and Zoning Commission elsewhere in this chapter and in other laws and regulations.
- (b) *Membership; terms; vacancies.*
- (1) The Asheville Planning and Zoning Commission shall consist of seven members. Five members who are residents of the City of Asheville shall be appointed by the Asheville City Council. The remaining two members shall be residents of the extraterritorial area of the City of Asheville and appointed by the Buncombe County Board of Commissioners to represent the extraterritorial zoning and subdivision regulation areas of the City of Asheville. Provided, however, if there is an insufficient number of qualified residents of the extraterritorial area to meet the number of members who are to be appointed by the board of county commissioners, the commissioners may appoint as many other residents of the county as necessary to make up the requisite number. The county appointee(s) shall meet the standards for proportional representation of the city's extraterritorial zoning area established by N.C.G.S., 160A-362 (as amended). All members shall have equal rights, privileges, and duties regardless of whether the matter at issue arises within the city or within the extraterritorial jurisdiction of the city.
 - (2) All members shall serve three-year terms. All members shall serve a maximum of two terms.
 - (3) Officers of the Asheville Planning and Zoning Commission shall be elected in accordance with the rules of procedure for the Asheville Planning and Zoning Commission.
 - (4) Vacancies shall be filled by the Asheville City Council or the Buncombe County Board of Commissioners, as applicable, as they occur.
- (c) *Meetings.* The Asheville Planning and Zoning Commission shall meet at least monthly, on a day and at a time scheduled by the Asheville Planning and Zoning Commission.
- (d) *Rules and records.* The Asheville Planning and Zoning Commission shall formulate and adopt the rules of procedure under which it will operate. The Asheville Planning and Zoning Commission shall keep minutes of its proceedings.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3328, § 1(c), 1-24-06; Ord. No. 3572, § 1(d), 1-8-08)

Sec. 7-3-3. - Board of adjustment.

- (a) *Powers and duties.* The board of adjustment for the City of Asheville shall have the following powers and duties, to be carried out in accordance with the terms of this chapter:
- (1) To hear and decide applications for approval of variances from the terms of this chapter, in accordance with the procedures and standards set forth in section 7-6-1 of this chapter, except where this chapter places responsibility for hearing or considering such a variance with another body.
 - (2) To hear and decide appeals from any order, requirement, permit, decision, or determination issued or made by an administrative officer of the city in enforcing any provision of this chapter, in accordance with the procedures and standards set forth in section 7-6-2 of this chapter. (However, see section 7-12-2(q), Soil Erosion and Sedimentation Control, for special review procedures pertinent to appealing administrative decisions on erosion control plans and section 7-12-5, Stormwater Management, for special review procedures pertinent to appealing administrative decisions on stormwater management plans.)
 - (3) To serve as the city's housing code appeals board in accordance with the procedures and standards set forth in Chapter 4 of the Code of Ordinances for the City of Asheville, or its successor.
 - (4) Such additional powers and duties as may be set forth elsewhere in this chapter and in other laws and regulations.
- (b) *Membership; terms; vacancies.*
- (1) The board of adjustment for the City of Asheville shall consist of five regular members and seven alternate members. Four regular members and five alternate members who are residents of the City of Asheville shall be appointed by the Asheville City Council. The other regular member and two alternate members shall be appointed by the Buncombe County Board of Commissioners pursuant to N.C. Session Law 2013-30.
 - (2) All members shall serve three-year terms. All members shall serve a maximum of two terms.
 - (3) Officers of the board of adjustment shall be elected in accordance with the rules of procedure for the board of adjustment of the City of Asheville.
 - (4) Vacancies shall be filled by the Asheville City Council or the Buncombe County Board of Commissioners, as applicable, as they occur.
- (c) *Meetings and voting.*
- (1) Meetings and hearings of the board of adjustment for the City of Asheville shall be held at such times as are set by the board of adjustment.
 - (2) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari regarding the provisions of this chapter. For the purposes of this subsection, 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.
- (d) *Rules and records.* The board of adjustment for the City of Asheville shall formulate and adopt the rules of procedure under which it will operate. The board of adjustment shall keep minutes of its proceedings showing the vote of each member on each question. Final disposition of appeals shall be by recorded order indicating the reasons of the board therefore, all of which shall be a public record.
- (e) *Administering oaths and issuing subpoenas.* Pursuant to N.C. Gen. Stat. section 160A-388(f), the chairperson of the board, the acting chairperson, and the clerk to the board are authorized to administer oaths to witnesses appearing before the board in any matter. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor. The board, through the chair, or in the chair's absence anyone acting as chair, may also issue subpoenas and compel the production of evidence.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 4274, §1a, 1-28-14)

Sec. 7-3-4. - Historic resources commission.

- (a) *Powers and duties.* The Historic Resources Commission of Asheville and Buncombe County is designated as a "historic preservation commission" pursuant to Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes, or its successor, and shall have the following powers and duties, to be carried out in accordance with the terms of this chapter:
- (1) To undertake an inventory of properties of historical, archaeological, architectural, and/or cultural significance;
 - (2)

To recommend to the Asheville City Council areas to be designated by ordinance as "historic districts"; and to recommend to the Asheville City Council and the Buncombe County Board of Commissioners individual structures, buildings, sites, areas, or objects to be designated by ordinance as "landmarks";

- (3) To acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;
 - (4) To restore, preserve and operate historic properties;
 - (5) To recommend to the Asheville City Council that designation of any area as a historic district or part thereof, or to recommend to the Asheville City Council and the Buncombe County Board of Commissioners that designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;
 - (6) To conduct an educational program with respect to historic properties and districts within its jurisdiction;
 - (7) To cooperate with the state, federal, and local governments in pursuance of the purposes set forth in Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes, or its successor. The governing body of the commission, when authorized by the Asheville City Council or the Buncombe County Board of Commissioners, may contract with the state, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law;
 - (8) To enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;
 - (9) To prepare and recommend the official adoption of a preservation element as part of the city's comprehensive plan;
 - (10) To review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks;
 - (11) To negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate; and
 - (12) To adopt and amend guidelines for alterations, demolitions, and new construction within historic districts and for the alteration or demolition of designated landmarks.
- (b) *Membership; terms; vacancies.*
- (1) The Historic Resource Commission of Asheville and Buncombe County shall consist of 12 members. Six members who are residents of the City of Asheville shall be appointed by the Asheville City Council and six members shall be appointed by the Buncombe County Board of Commissioners. All members of the commission shall reside within the city or county. A majority of the members of the commission shall have demonstrated special interest, experience or education in history, archaeology, or architecture or related fields. All members shall have equal rights, privileges, and duties regardless of whether the matter at issue arises within the city or the county.
 - (2) All members shall serve three-year terms. Members may be reappointed for additional terms at the discretion of the appointing governing body, provided that all members serve a maximum of two terms.
 - (3) Officers of the historic resources commission shall be elected in accordance with the rules of procedure for the historic resources commission.
 - (4) Vacancies shall be filled by the Asheville City Council or the Buncombe County Board of Commissioners, as applicable, as they occur.
- (c) *Meetings.* The Historic Resources Commission of Asheville and Buncombe County shall hold meetings at such times as are set forth in the rules of procedure for the historic resources commission.
- (d) *Rules and records.* The Historic Resources Commission of Asheville and Buncombe County shall formulate and adopt the rules of procedure under which it will operate. The historic resources commission shall keep minutes of its proceedings.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 3896, § 1, 9-14-10)

Sec. 7-3-5. - Technical review committee.

- (a) *Powers and duties.* The technical review committee of the City of Asheville shall have the following powers and duties, to be carried out in accordance with the terms of this chapter:
- (1) To review and comment on all plans and applications for conditional use permits (see [section 7-5-5](#));
 - (2) To review and comment on all preliminary plats for major subdivision (see subsection [7-5-8](#));
 - (3) To review and comment on modifications to the subdivision standards (see subsection [7-5-8\(c\)](#));
 - (4) To review and comment on all plans and applications for proposed developments subject to Level III site plan review (see subsection [7-5-9\(a\)](#));
 - (5) To review and comment on all site plans for proposed developments subject to Level II site plan review (see [section 7-5-9\(b\)](#));
 - (6) To review and comment on all plans and applications for conditional zoning requests (see [section 7-7-8](#));
 - (7) To assist the staff of the planning and development department with any other plan reviews, land development studies, or other land development related matters as necessary; and
 - (8) Such additional powers and duties as may be set forth for the technical review committee of the City of Asheville elsewhere in this chapter and other laws and regulations in the city.
- (b) *Membership.*
- (1) The technical review committee of the city shall consist of one representative from each of the following city departments: planning and development, engineering, fire, building safety, public works, and water resources; a representative of the Metropolitan Sewerage District of Buncombe County, and a member of the Asheville Tree Commission.
 - (2) Representatives of the police department, North Carolina Department of Transportation, Progress Energy, Public Service Company of North Carolina, AT&T, other city departments, other governmental agencies and other area utilities may serve on the technical review committee in an ex-officio capacity. Representatives of city departments shall be appointed by the city manager, representatives of area utilities shall be appointed by that utility and representative of the tree commission shall be appointed by the tree commission or public works director.
 - (3) All members shall serve until a replacement is named according to the method of appointment set forth above.
 - (4) The city manager or his/her designee shall conduct the meetings of the committee in accordance with the established rules and procedures.
- (c) *Meetings.* The technical review committee of the City of Asheville shall hold at least two meetings in a given month and such other regular or special meetings as the committee deems necessary to conduct the business before it. Scheduled meetings may be canceled in the event that there is no business to come before the committee in a given month, or the scheduled meeting date falls on a recognized city holiday when city offices are closed.
- (d) *Rules and records.* The technical review committee shall formulate and adopt the rules and procedures under which it will operate. The technical review committee shall incorporate all review comments and recommended conditions of approval in the form of a staff report that shall be made available to the public.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2619, § 1(a), 9-28-99; Ord. No. 3032, § 1(b), 6-10-03; Ord. No. 3328, § 1(d), 1-24-06; Ord. No. 3572, § 1(e), 1-8-08; Ord. No. 3681, § 1, 12-2-08; Ord. No. 3984, § 1a, 6-14-11)

Sec. 7-3-6. - Specifications review committee.

- (a) *Powers and duties.* The City of Asheville's Specifications Review Committee shall have the following powers and duties, to be carried out in accordance with the terms of this chapter:
- (1) To hear appeals and recommend action to Asheville City Council on such appeals regarding the disapproval or modification by an administrative officer of the City of an erosion control plan;
 - (2) To determine the amount of civil penalty to assess in instances of violations of section 7-12-2 or section 7-5-13 in accordance with subsection 7-18-2(b)(2); and
 - (3) Such additional powers and duties as may be set forth for the City of Asheville's Specifications Review Committee elsewhere in this chapter and other laws and regulations.
- (b) *Membership; terms; vacancies.*
- (1) The City of Asheville's Specifications Review Committee shall consist of the planning and development director or his/her designee, the director of city engineering or his/her designee, the director of building safety or his/her designee, and the director of public works or his/her designee.
 - (2) All members shall serve until a replacement is named by the city manager or appropriate city department director.
- (c) *Meetings.*
- (1) The City of Asheville's Specifications Review Committee shall hold meetings as needed to hear appeals or set civil penalties.
 - (2) Meetings shall be scheduled at a time agreed upon by the committee, the planning and development department, and the person making the appeal or subject to the civil penalty.
 - (3) Meetings of the specifications review committee shall be open to the public.
- (d) *Rules and records.* The City of Asheville's Specifications Review Committee shall follow procedures for review as outlined in applicable sections of this chapter. Civil penalties shall be set in accordance with subsection 7-18-2(b)(2) of this chapter. The staff of the engineering department shall record relevant notes from the meetings.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2902, §§ 1(c), 1(d), 3-12-02)

Sec. 7-3-7. - Tree commission.

- (a) *Powers and duties.* The tree commission shall have the powers and duties as set forth in division 7 of article III of chapter 2 of this Code and such additional powers and duties as may be set forth for the tree commission in this chapter and in other laws and regulations.
- (b) *Membership; terms; vacancies.* The membership and term of office of and method of filling vacancies for the tree commission shall be as set forth in division 7 of article III of chapter 2 of this Code.
- (c) *Meetings.* The tree commission shall hold meetings in accordance with its adopted rules of procedure.
- (d) *Rules and records.* The tree commission shall formulate and adopt rules of procedure in accordance with the provisions of division 7 of article III of chapter 2 of this Code.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2619, § 1(b), 9-28-99)

Sec. 7-3-8. - Asheville Downtown Commission.

- (a) *Powers and duties.* The Asheville Downtown Commission shall have the powers and duties as set forth in Division 3 of article III of Chapter 2 of the Code of Ordinances of the City of Asheville. In addition, for purposes of this chapter, the Asheville Downtown Commission shall have the following powers and duties:
- (1) Review and make comment on major works projects within the Downtown Design Review Overlay District in accordance with the Downtown Design Review Guidelines;
 - (2) Adopt and amend guidelines for alterations, demolitions, and new construction in the Downtown Design Review area; and
 - (3) Such additional powers and duties as may be set forth for the Asheville Downtown Commission elsewhere in this chapter and in other laws and regulations.
- (b) *Membership; terms; vacancies.* The membership and term of office of and method of filling vacancies for the Asheville Downtown Commission shall be as set forth in Division 3 of article III of Chapter 2 of the Code of Ordinances of the City of Asheville.
- (c) *Meetings.* The Asheville Downtown Commission shall hold meetings in accordance with Division 3 of article III of Chapter 2 of the Code of Ordinances of the City of Asheville.
- (d) *Rules and records.* The Asheville Downtown Commission shall formulate and adopt rules of procedure in accordance with the provisions of Division 3 of article III of Chapter 2 of the Code of Ordinances of the City of Asheville.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-3-9. - City of Asheville Planning and Development Department.

- (a) *Powers and duties.* The city's planning and development department, under the direction and supervision of the planning and development director, shall have the following powers and duties, to be carried out in accordance with the terms of this chapter:
- (1) To review all applications for development approval for compliance with the terms of this chapter;
 - (2) To serve on and coordinate the activities of the technical review committee established in section 7-3-5
 - (3) To provide the city council, the planning and zoning commission, the board of adjustment, the historic resources commission of the city and Buncombe County, the tree commission and the downtown commission with reports and recommendations regarding matters before those bodies, either as required by this chapter, other laws and regulations, or upon the request of the body;
 - (4) To enforce compliance with the terms of this chapter in accordance with article XVIII of this chapter;
 - (5) To provide final review and approval of plans, plats, and permits as set forth in this chapter; and
 - (6) Such additional powers and duties as may be set forth for the city's planning and development department elsewhere in this chapter and other laws and regulations of the city.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2619, § 1(c), 9-28-99)

Sec. 7-3-10. - Asheville Area Riverfront Redevelopment Commission.

- (a) *Powers and duties.* The city's Asheville Area Riverfront Redevelopment Commission shall have the powers and duties as set forth in division 13 of article III of chapter 2 of the Code of Ordinances of the City of Asheville. In addition, for purposes of this chapter, the Asheville Area Riverfront Redevelopment Commission shall have the following powers and duties:
- (1)

To review and make comment on major works projects within the River District Design Review Map Area which includes River District zoned parcels as well as parcels of other zoning classifications within the riverfront area, in accordance with the River District Design Review Guidelines. A map and guidelines document shall be adopted by the city council and shall be made available to the public through the development services center; and

- (2) Such additional powers and duties as may be set forth for the Asheville Area Riverfront Redevelopment Commission elsewhere in this chapter and other regulations of the city.
- (b) *Membership; terms; vacancies.* The Asheville Area Riverfront Redevelopment Commission shall follow the membership requirements set forth by city council in division 13 of article III of chapter 2 of the Code of Ordinances of the City of Asheville.
- (c) *Meetings.*
- (1) The city's Asheville Area Riverfront Redevelopment Commission shall hold meetings as needed to review requests for river district design review/major works projects in the River District Design Review Area.
- (2) Meetings shall be scheduled at a time agreed upon by the committee, the staff member in charge of coordinating river district design review, and the person(s) presenting the request for river district design review of a major works project.
- (d) *Rules and records.* The Asheville Area Riverfront Redevelopment Commission shall follow procedures for review as outlined in section 7-5-18 of this chapter, and may adopt its own rules and procedures, including the requirements of this chapter. The staff member in charge of coordinating river district design review shall record relevant notes from the meetings
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2437, § 2, 11-25-97; Ord. No. 4264, § 1, 1-14-14; Ord. No. 4265, 1-14-14)

Editor's note— Ord. No. 4265, adopted Jan. 14, 2014, deletes § 7-3-10 which pertained to River District Design Review Committee and derived from Ord. No. 2369, § 1, adopted May 27, 1997; and Ord. No. 2437, § 2, adopted Nov. 25, 1997. Ord. No. 4265 dissolved the River District Design Review Committee and transferred duties/function to the Asheville Area Riverfront Commission.

ARTICLE IV. - COMPREHENSIVE PLAN

Sec. 7-4-1. - Role of the comprehensive plan.

It is the intent of the City of Asheville to administer this chapter in accordance with the city's current, adopted comprehensive plan. This plan sets forth the goals and policies which serve as the basic policy guide for development in the City of Asheville and its extraterritorial jurisdiction. These goals and policies may be amended from time to time to meet the changing requirements of the city and its extraterritorial jurisdiction.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-4-2. - Review of and amendments to the comprehensive plan.

- (a) *Annual review.* The comprehensive plan for the City of Asheville will be monitored and reviewed annually by the planning and development department and a report submitted following this review to the Asheville Planning and Zoning Commission and the Asheville City Council. If the commission or council determines that the report raises issues which merit an amendment to the plan, then the council may initiate an amendment in accordance with the provisions set forth in (b) below.
- (b) *Amendments to the comprehensive plan.* Amendments to the City of Asheville comprehensive plan shall be made in accordance with the following procedures:
- (1) An amendment to the comprehensive plan may be approved only by the Asheville City Council, either on its own initiative or at the request of the Asheville Planning and Zoning Commission or any other person or agency.
- (2) Asheville City Council and the Asheville Planning and Zoning Commission shall hold at least one public hearing (jointly or separately) on each amendment or group of amendments initiated. Notice of the public hearing shall be provided and the public hearing shall be conducted in accordance with section 7-5-20 of this chapter. Nothing in this chapter shall be construed as preventing this public hearing from being held at the same time as a public hearing for the rezoning of a particular tract or parcel affected by the amendment.
- (3) In considering the amendment, the Asheville Planning and Zoning Commission and Asheville City Council shall review the proposed amendment, the factors set forth in subsection 7-4-2(b)(4) below, and any oral and written comments received before or at the public hearing. Based on this information, the Asheville Planning and Zoning Commission shall submit a report and recommendation to the Asheville City Council regarding whether or not the proposed amendment should be adopted.
- (4) In deciding whether to recommend or adopt a proposed amendment to the comprehensive plan, the Asheville Planning and Zoning Commission and the Asheville City Council shall consider whether the amendment is necessary based on one or more of the following factors:
- There has been a change in projections or assumptions (such as demographic trends or the availability of public facilities) on which the comprehensive plan is based;
 - Issues or needs have been identified which are not adequately addressed in the comprehensive plan; or
 - The amendment will promote the health, safety, and welfare of the City of Asheville.
- (5) Upon receiving the report and recommendation of the Asheville Planning and Zoning Commission, the Asheville City Council may:
- Adopt the proposed amendment;
 - Revise and adopt the proposed amendment;
 - Reject the proposed amendment;
 - Refer the matter back to the Asheville Planning and Zoning Commission for further consideration or hearing; or
 - Conduct an additional hearing on the proposed amendment.

(Ord. No. 2369, § 1, 5-27-97)

ARTICLE V. - DEVELOPMENT REVIEW PROCEDURES

Sec. 7-5-1. - Permits and approvals.

- (a) *Permits and approvals.* Any development within the planning and regulation jurisdiction of the City of Asheville and its area of extraterritorial jurisdiction may require one or more of the following permits and approvals in order to ensure that the development is consistent with the goals and purposes of this chapter and with the public health, safety, and general welfare. Permits and approvals include, but are not necessarily limited to, the following:

Zoning permits (section 7-5-2)

Temporary use permits (section 7-5-3)

Use by right, subject to special requirements, (section [7-5-4](#))

Conditional use approvals (section [7-5-5](#))

Manufactured housing rental community approval (section [7-5-7](#))

Subdivision plat approvals (section [7-5-8](#))

Site plan review (section [7-5-9](#))

Downtown design review (section [7-5-10](#))

Certificate of appropriateness approval (section [7-5-11](#))

Floodplain development (section [7-5-12](#))

Erosion and sedimentation control plans (section [7-5-13](#))

Stormwater permits (section [7-5-14](#))

Zoning vested rights approvals (section [7-5-15](#))

Sign permits (section [7-5-16](#))

Driveway access permits (section [7-5-17](#))

Riverfront design review (section [7-5-18](#))

Certificate of occupancy (section [7-5-19](#))

Procedures are set forth in this article for reviewing and granting of these permits and approvals.

Applications for all permits identified above may be made at the City of Asheville Development and Permitting Center, unless otherwise specified. All required permits may be applied for simultaneously at the development and permitting center and all required fees may be paid at this location. Development and permitting center staff shall process the application(s) and distribute the plans to the appropriate staff persons for review and approval. Staff of the development and permitting center serve as the primary contact for information regarding the approval status of the requested permits.

The review procedures described in article V are those required by the City of Asheville. Other agencies, specifically the Metropolitan Sewerage District of Buncombe County (MSD), have separate procedures which must be followed in order to obtain plan approval and/or acceptance of improvements. These agencies must be contacted to obtain information regarding the proper procedure for approval of plans and of construction.

(b) *Relationship between different permits and approvals.* Building permits and certificates of occupancy are typically the final forms of approval for most development within the City of Asheville and its area of extraterritorial jurisdiction. Issuance of building permits and certificates of occupancy may be contingent upon the applicant previously having received one or more other permits or forms of approval. For example, site plan approval is required prior to the issuance of a zoning permit to assure that all requirements of this chapter are being met and erosion control plan approval is required prior to issuance of a grading permit. Zoning and building permits will be issued for a development project only after all conditions precedent to the construction of the development imposed under the provisions of this chapter have been met. Each section of this article describes a different type of permit or approval which may be required for a particular project.

(c) *Simultaneous processing of applications.*

- (1) This section intends to accommodate, where possible, the simultaneous processing of applications for different permits and approvals which may be required for the same project, in order to make the review process as short as possible. Possibilities for concurrent filing and processing of applications include, but are not limited to, the following:
 - a. A site plan along with a use by right, subject to special requirements;
 - b. A site plan along with a variance request;
 - c. A preliminary subdivision plat along with an erosion control plan;
 - d. A site plan along with a certificate of appropriateness request;
 - e. A site plan along with a downtown design review application; and
 - f. A site plan along with a traffic impact study.
- (2) No application for the rezoning of property shall be accepted or processed while an application for any of the approvals or permits listed in [section 7-5-1\(a\)](#) above is pending for the same property or vice versa.
- (3) Some forms of approval depend upon the applicant having previously received another form of approval. Approvals such as site plan approval require the applicant to take certain action within some time period following the approval to avoid having the approval lapse. The applicant should note that each of the permits and approvals set forth in this section has its own review sequence and should take this into consideration when planning the development.
- (d) *Application and review fees.* Requests for review of various permit and approval applications required by this section are subject to the payment of various fees in order to defray the city's administrative costs. The fees for different types of permits and approvals are set forth in the City of Asheville Fees and Charges Manual. These fees are determined by the Asheville City Council and are periodically revised by the council.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, § 3, 11-11-97; Ord. No. 3328, § 1(e), (f), 1-24-06)

Sec. 7-5-2. - Zoning permits.

- (a) *Purpose.* A zoning permit shall be required for the construction or development of any new use within the planning and regulation jurisdiction of the City of Asheville. In addition to new uses a zoning permit shall also be required for expansions of existing uses, as well as for changes of use. The procedure set forth below shall be followed to obtain a zoning permit for the construction of single-family and duplex residential development and for other uses which do not require permits and/or approvals, other than a driveway access permit and a soil erosion and sedimentation plan approval for projects disturbing less than 10,000 square feet, as set forth elsewhere in this article.
- (b) *Pre-application procedure.* No pre-application conference is required prior to applying for a zoning permit. Applicants are encouraged to call or visit the planning and development department prior to requesting a zoning permit to determine what information is required for the application.
- (c) *Plan submittal.*

- (1) *Filing of application.* An application for a zoning permit may be filed by the owner of the property or by an agent, specifically authorized by the owner to file such application. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a zoning permit shall be filed with the development and permitting center on a form provided by the center.
- (2) *Fees.* An application fee, as established by the City of Asheville Fees and Charges Manual, shall be due and payable when the application is submitted.
- (3) *Information required.* Each application for a zoning permit shall contain the information required on the application form, including a site plan showing the dimensions of the proposed use and its location on the property or site. Other information necessary to show that the use or structure complies with the standards set forth in this chapter shall also be provided.
- (d) *Staff review.* The planning and development director shall review the application and determine whether it is complete within ten working days of its submittal. If the application is found to be incomplete, the planning and development director shall notify the applicant of any deficiencies. No further steps shall be taken to process the application until the applicant corrects the deficiencies. The planning and development director shall issue a zoning permit only upon finding that the proposed use or structure satisfies the requirements set forth in article VIII of this chapter. Provided the application is complete, failure by the planning and development director to determine completeness of the application within ten working days shall result in the refund of any application fee paid. The refund of the application fee due to the expiration of the ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application.
- (e) *Public notification.* No public notification is required for zoning permit requests.
- (f) *Formal review.* No formal review of zoning permit requests is required. Requests shall be reviewed by appropriate city staff to assure compliance with all applicable regulations and requirements.
- (g) *Variances.* Requests for variances from the requirements requiring zoning permits set forth in this chapter shall be heard by the board of adjustment under the procedures established in [section 7-6-1](#)
- (h) *Appeals.* Appeals of the decisions of the planning and development director shall be heard by the board of adjustment under the procedures established by [section 7-6-2](#)
- (i) *Permit validity.* Upon the approval of a zoning permit, the applicant shall have one year to obtain the required building permit(s). Failure to commence building permits within this time shall render the zoning permit void. The planning and development director may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Upon issuance of a building permit(s), the zoning permit shall remain valid as long as a valid building permit exists for the project. Any unapproved change in the approved plans shall render the zoning permit invalid.
- (j) *Violations.* Violations of the conditions of the zoning permit shall be considered a violation of this chapter and shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-5-3. - Temporary use permits.

- (a) *Purpose.* To insure that proposed temporary uses comply with the requirements of this chapter, no use that is classified as a temporary use in the zoning district in which it is located shall be placed or established on the property without first receiving a temporary use permit from the planning and development department.
- (b) *Pre-application procedure.* No pre-application conference is required prior to applying for a temporary use permit. Applicants are encouraged to call or visit the planning and development department prior to requesting a temporary use permit to determine what information is required for the application.
- (c) *Plan submittal.*
 - (1) *Filing of application.* An application for a temporary use permit may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Where an agent, files the application, the agent shall provide the planning and development director with documentation that the owner of the property has authorized the filing of the application. The application for a temporary use permit shall be filed with the development and permitting center on a form provided by the center.
 - (2) *Fees.* A permit fee, as established by City of Asheville Fees and Charges Manual, shall be submitted with the application. In addition, a permit shall be obtained from the fire department as required by the fire prevention code. If the temporary use is deemed an event of public interest or will require the expenditure of money or use of resources by the city (beyond routine administrative costs) in connection with the implementation of the public safety plan described in subsection (3) below, the applicant shall pay for these expenses prior to the initiation of the temporary use or provide a bond or other satisfactory security for the payment thereof, as identified and estimated by the city. These expenses may include, but are not limited to, the pro-rated salary of city or other government employees necessary for the conduct of the temporary use. City-sponsored or co-sponsored events may be exempt from these fee requirements. City council may also waive fees for events deemed to have special economic development benefits.
 - (3) *Information required.* Each application for temporary use permit shall contain the information required on the application form. The application shall be accompanied by a sketch plan showing the boundaries of the property, the use of adjacent properties, the location of the temporary use or structure on the property, access and parking provisions, restroom facilities, and other information sufficient to show that the temporary use or structure complies with the standards set forth in this chapter and [chapter 4](#) of the fire prevention code.
 - a. Persons seeking issuance of a temporary use permit for an event shall file an application with a minimum of ten days prior to the proposed event date, unless this time frame is reduced by the planning and development director.
 - b. Persons seeking issuance of a temporary use permit for an event of public interest shall file an application with a minimum of 21 days prior to the proposed event date, unless this time frame is reduced by the planning and development director. For uses involving the expected congregation of 100 or more persons at any one time (otherwise described as "assembly" uses in the building code), the event shall be deemed an event of public interest and shall also provide an approved public safety plan identifying the means by which public safety will be ensured during the conduct of the temporary use. This public safety plan may include, but is not limited to, such information as: ingress and egress to and from the site; fencing, screening or buffering to control noise and/or crowds; provisions for parking and/or overflow parking; staffing for security and crowd control at the event; and any additional information that may be required by the police or fire chief. The applicant shall be responsible for public expenses associated with the public safety plan as provided in subsection (2) above. If determined necessary by the police chief or fire chief, the public safety plan will be coordinated with other affected agencies involved in public safety operations, including but not limited to the Buncombe County Sheriff, the Buncombe County Emergency Management Director, appropriate rural fire district personnel and the North Carolina Division of Alcohol Law Enforcement.
 - c. Persons seeking issuance of a temporary use permit for an event on public property shall file an application with the parks and recreation department in accordance with the City of Asheville Special Events Guideline.
- (d) *Staff review.* The planning and development director shall review the application and determine whether it is complete within ten working days of its submittal. If the application is found to be incomplete, the planning and development director shall notify the applicant of any deficiencies. No further steps shall be taken to process the application until the applicant corrects the deficiencies. Provided the application is complete, failure by the planning and development director to determine the

completeness of the application within ten working days shall result in the refund of any application fee paid. The planning and development director shall issue a temporary use permit only upon finding that the proposed use satisfies the requirements set forth in [section 7-14-2](#) of this chapter.

- (e) *Public notification.* No public notification is required for temporary use permit requests.
 - (f) *Formal review.* No formal review of temporary use permit requests is required. Requests shall be reviewed by appropriate city staff to assure compliance with all applicable regulations and requirements.
 - (g) *Variances.* Requests for variances from the requirements set forth in this chapter shall be heard by the board of adjustment under the procedures established in [section 7-6-1](#).
 - (h) *Appeals.* Appeals of the decisions of the planning and development director shall be heard by the board of adjustment under the procedures established in [section 7-6-2](#).
 - (i) *Permit validity.* The temporary use permit shall be valid only for the time period stated on the permit, as set forth in [section 7-14-2](#).
 - (j) *Violations.* Violations of the conditions of the temporary use permit shall be considered a violation of this chapter and shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.
 - (k) *Public emergencies.* In the event of a natural disaster, catastrophic event or public emergency the city manager or her/his designee may waive any temporary use permit procedures and authorize the placement of temporary use facilities which are deemed necessary or desirable in conjunction with the management of the emergency.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2535, § 3, 1-12-99; Ord. No. 3162, § 1, 9-14-04; Ord. No. 3480, § 1(c), 6-12-07)

Sec. 7-5-4. - Uses by right, subject to special requirements.

- (a) *Purpose.* Uses by right, subject to special requirements, are uses permitted by right, provided that the special requirements set forth in subsection [7-16-1](#) are met. The special requirements are intended to insure that the uses fit the intent of the zoning districts within which they are permitted, and that the uses are compatible with other development permitted within the zoning districts. Review and approval of these uses are handled by the planning and development director, who has no discretion to modify the special requirements.
- (b) *Pre-application procedure.* A pre-application conference is not required for approval of uses by right, subject to special requirements. Applicants are encouraged, however, to contact the planning and development director to discuss the special requirements.
- (c) *Plan submittal.*
 - (1) *Filing of application.* An application for a permit for a use by right, subject to special requirements, may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a permit for a use by right, subject to special requirements, shall be filed with the development and permitting center on a form provided by the center.
 - (2) *Fees.* A permit fee, as established by the City of Asheville Fees and Charges Manual, shall be submitted with the application.
 - (3) *Information required.* Each application for a permit for a use by right, subject to special requirements, shall contain all information described in Appendix B (Checklists for applications). The application shall be accompanied by a site plan meeting the requirements for site plans set forth in Appendix A (Map and Plan Standards).
- (d) *Staff review.* The planning and development director shall review the proposed use and determine if the special requirements for that use have been met. If the special requirements have been met, the use shall be approved. Failure to meet all the special requirements shall result in denial of a permit for the proposed use. The planning and development director shall approve or deny the proposed restricted use or request more information, if needed, within ten working days of submittal. If the application is found to be incomplete, the planning and development director shall notify the applicant of any deficiencies. No further steps will be taken to process the application until the applicant corrects the deficiencies. The planning and development director shall approve the use only upon finding that the proposed use satisfies all applicable requirements set forth in this chapter. Provided the application is complete, failure by the planning and development director to review the application within ten working days shall result in the refund of any application fees paid.
- (e) *Public notification.* Public notification is not required.
- (f) *Formal review.* Formal review is not required.
- (g) *Variances.* Variances from the special requirements constitute "use variances" and shall not be permitted.
- (h) *Appeals.* Appeals of decisions of the planning and development director regarding applications for a use by right, subject to special requirements, shall be heard by the board of adjustment under the procedures established in [section 7-6-2](#).
- (i) *Permit validity.* The permit for a use by right, subject to special requirements, shall be valid for one year from the date of its issuance. Failure to initiate construction or otherwise begin the permitted use within this time shall render the permit void. The planning and development director may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.
- (j) *Violations.* Failure to establish or maintain the special requirements is considered a violation of this chapter and shall subject the offender to the enforcement and penalty provisions of article XVIII of this chapter.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-5-5. - Conditional use approvals.

- (a) *Purpose.* Conditional uses are established to provide for the location of those uses which are generally compatible with other land uses permitted in a zoning district but which, because of their unique characteristics or potential impacts on the surrounding neighborhood and the city as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may also call for the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. Any use identified in article VIII of this chapter as a conditional use in a zoning district shall not be permitted without the approval of the city council in accordance with the requirements and procedures set forth in this subsection [7-5-5](#).
- (b) *Pre-application procedure.*
 - (1) *Conference.* Every applicant for a conditional use is required to meet with the planning and development director in a pre-application conference prior to the submittal of a request for approval of a conditional use. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.
 - (2) *Neighborhood meeting.* It is highly recommended that the developer meet with representatives of the neighborhood in which the proposed conditional use will be located. This meeting, which should be held at the pre-application stage, will allow the developer to explain the proposed use and to be informed of the concerns of the neighborhood.
- (c) *Plan submittal.*
 - (1)

Filing of application. An application for a conditional use permit may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a conditional use permit shall be filed with the development and permitting center on a form provided by the center.

- (2) *Fees.* A permit fee, as established by the City of Asheville Fees and Charges Manual, shall be submitted with the application.
 - (3) *Information required.* Each application for a conditional use permit shall contain all information described in Appendix B (Checklists for Applications); and a notation of the pertinent deed number of the subject property with book and page reference from the Buncombe County Register of Deeds.
- (d) *Staff review.*
- (1) *Planning and development staff review.* Following submittal of the application and site plans for the conditional use, they shall be reviewed by the planning and development director for compliance with the requirements of this chapter. Provided the application and site plan are complete, failure by the planning and development director to review the application and site plan within ten working days shall result in the refund of any application fees paid.
 - (2) *Submittal of plans to technical review committee ("TRC").* The planning and development director shall present the site plans for the conditional use to the TRC at its next regular meeting. The TRC shall review the site plan for compliance with existing federal, state, and local regulations. This review shall be made by the members of the TRC and by any other agencies or officials as determined by the planning and development director.
 - (3) *Action by technical review committee.* Upon submittal and review of a complete application for a conditional use permit, the TRC may make one of the following recommendations:
 - a. *Approval.* If the TRC recommends approval, the planning and development director shall forward the recommendation and the conditional use application to the Asheville City Council for all applications except Level III site plan projects, development standard bonuses for residential districts, and applications for ancillary nonresidential uses in residential districts. The recommendation and conditional use application for Level III site plan projects, development standard bonuses for residential districts, and applications for ancillary nonresidential uses in residential districts shall be forwarded to the Asheville Planning and Zoning Commission.
 - b. *Approval with conditions.* If the TRC recommends approval with conditions, the applicant may revise the plan to meet the conditions of the approval and resubmit it. The revised plan shall be reviewed by the planning and development director and, if it meets all of the conditions, the conditional use application for all requests, except Level III site plan projects, development standard bonuses for residential districts, and applications for ancillary nonresidential uses in residential districts, shall be scheduled for a public hearing at the next available meeting of the Asheville City Council. Applications for Level III site plan projects, development standard bonuses for residential districts, and applications for ancillary nonresidential uses in residential districts shall be scheduled for a public hearing at the next available meeting of the Asheville Planning and Zoning Commission. If the plan is not revised to meet conditions within 60 days after action by the TRC or the applicant does not request a public hearing by providing written notice to the planning and development director, the request shall be deemed denied.
 - c. *Denial.* If the TRC recommends denial of the request, the reasons for denial shall be provided in writing to the applicant. The site plan may be revised to address the reasons for denial and resubmitted in accordance with the provisions of this chapter. A recommendation for denial by the TRC shall be considered final action on the request unless, within 30 days from receiving the written recommendation of the TRC, the applicant requests a public hearing by providing written notice to the planning and development director. The applicant may revise the site plan to address the reason for denial and resubmit the revised plan or the applicant may appeal the decision of the TRC to the planning and zoning commission. The applicant may not resubmit the revised site plan and appeal the TRC decision.
 - d. *Timing.* The TRC shall make its recommendation within ten working days of reviewing the application and site plan. Provided the application and site plan are complete, failure by the TRC to make its recommendation within ten working days of reviewing the application and site plan shall result in the refund of any application fees paid.
 - e. *Formal review.*
 1. *Public hearing.* Upon receipt of a notice from the planning and development director or the applicant requesting a public hearing on the application and site plan for a conditional use permit, a public hearing shall be scheduled. A public hearing before the Asheville City Council shall be held for all conditional use permit applications except those for Level III site plan projects, development standard bonuses for residential districts, and applications for ancillary nonresidential uses in residential districts. For Level III site plan projects, development standard bonuses for residential districts, and applications for ancillary nonresidential uses in residential districts, the initial hearing shall be before the Asheville Planning and Zoning Commission. Following review and recommendation by the planning and zoning commission, a public hearing shall be held by the city council for consideration of Level III site plan projects, development standard bonuses for residential districts, and applications for ancillary nonresidential uses in residential districts.
 2. *Action by the Asheville Planning and Zoning Commission.*
Review of conditional use permit request. A public hearing on the application and site plan for Level III site plan projects, development standard bonuses for residential districts, and applications for ancillary nonresidential uses in residential districts shall be scheduled by the Asheville Planning and Zoning Commission following review and approval or conditional approval of the application by the technical review committee. The Asheville Planning and Zoning Commission shall consider the request its next available meeting after receiving the recommendations of the TRC.
- (e) *Formal review.*
- (1) *Public hearing.* Upon receipt of a notice from the planning and development director or the applicant requesting a public hearing on the application and site plan for a conditional use permit, a public hearing shall be scheduled. A public hearing before the Asheville City Council shall be held for all conditional use permit applications except those for Level III site plan projects and applications for ancillary non-residential uses in residential districts. For Level III site plan projects and applications for ancillary non-residential uses in residential districts, the initial hearing shall be before the Asheville Planning and Zoning Commission. Following review and recommendation by the planning and zoning commission, a public hearing shall be held by city council for consideration of Level III site plan projects and applications for ancillary non-residential uses in residential districts.
 - (2) *Action by the Asheville Planning and Zoning Commission.*
 - a. *Review of conditional use permit request.* A public hearing on the application and site plan for Level III site plan projects and applications for ancillary non-residential uses in residential districts shall be considered by the Asheville Planning and Zoning Commission following review and approval or conditional approval of the application by the technical review committee. The Asheville Planning and Zoning Commission shall consider the request at its next available meeting after receiving the recommendation of the TRC.
 - b. *Decision by the Asheville Planning and Zoning Commission.* The planning and zoning commission, after conducting the public hearing may: (1) recommend approval of the proposed conditional use; (2) recommend approval with conditions of the proposed conditional use; (3) table the application pending submittal of additional information; or (4) recommend denial of the application. The decision on the conditional use application shall be by a simple majority vote of those members of the Asheville Planning and Zoning Commission present at the meeting at which the action is taken. The recommendation of the Asheville Planning and Zoning Commission shall be presented to the Asheville City Council at their next available meeting, unless the parties involved agree to another time.
 - (3) *Action by the Asheville City Council.*

- a. *Review of conditional use permit request.* A public hearing on those conditional use applications reviewed by the planning and zoning commission from the TRC shall be scheduled by the Asheville City Council following action by the planning and zoning commission. A public hearing on all other conditional use applications shall be scheduled following action by the TRC. The Asheville City Council shall consider the request within 35 days of receiving information regarding the conditional use permit application from the planning and development director.
- b. *Decision by city council:* The Asheville City Council, after conducting the public hearing, may: (1) deny approval; (2) table the application pending submittal of additional information; or (3) approve the proposed conditional use permit. The minutes of the Asheville City Council shall state if the proposed conditional use meets or does not meet each of the standards set forth in subsection 7-16-2(c) of this chapter and all other requirements set forth by this chapter for the proposed conditional use. The decision on the conditional use application shall be by a simple majority vote of those members of the Asheville City Council present at the meeting at which the action is taken.

If approved by the city council, no permits may be issued related to the approved conditional use permit pertinent to the specific property until the property owner has recorded the approved plan and conditions at the Buncombe County Register of Deeds including notation of the pertinent deed number with book and page reference.

- c. *Transfer of approval.* A conditional use approval is not transferable from one property to another, but may be transferred to a subsequent owner of the property.
 - d. *Resubmission of denied applications.* No application for approval of a development project (conditional use, site plan, project plan) under any approval process (Level I, Level II, or Level III), shall be filed with or accepted by the planning and development department if that project is identical or substantially similar to a conditional use or conditional zoning application which has been denied by the city council within one year of the final action by the city council denying the request.
- (f) *Public notification.* Notice of public hearings or public meetings required under this section for conditional use approvals shall be provided in accordance with the provisions of section 7-5-20 of this chapter.
- (g) *Project phasing.* If a project approved as a conditional use is to be developed in phases, a master plan for the entire development site must be approved by the Asheville City Council at the same time and in the same manner the conditional use permit application is considered.

Final plans for phases of the conditional use may be submitted in stages and shall be approved by the planning and development department staff provided that the following requirements are met:

- (1) All stages shall be shown with precise boundaries on the master plan and shall be numbered in the expected order of development.
 - (2) Each phase must be able to exist independently of subsequent phases by meeting all applicable laws and regulations as if the phase were a separate project.
 - (3) All the data required for the project as a whole shall be given for each stage shown on the plan.
 - (4) A proportionate share of the open space and common facilities shall be included in each stage of the development.
 - (5) The phasing shall be consistent with the traffic circulation, drainage, and utilities plan for the entire master plan for the conditional use.
 - (6) Each phase of the conditional use must comply with any and all conditions attached to the approval of the conditional use permit by the Asheville City Council.
- (h) *Variations.* In issuing conditional use permits, the city council may prescribe dimensional requirements (height, setback, etc.) that are different from the requirements of the corresponding general zoning classification, and may prescribe development and design standards that are different from those set out in article XI; provided, that any request for a modification to a dimensional requirement or development and design standard that is less restrictive than would be applicable for the underlying general zoning classification must be specifically described in any notices required for the public hearing on the conditional use permit application, and must be set out separately in any ordinance issuing said conditional use permit, together with an explanation of the reason for the modification. Except as modified pursuant to this paragraph, all standards and requirements applicable to the underlying general zoning district must be met. Variations to the standards established by any conditional use permit shall not be allowed.
- (i) *Appeals.* An appeal from the decision of the Asheville City Council regarding a conditional use application and site plan may be made by an aggrieved party and shall be made to the Superior Court of Buncombe County in the nature of certiorari. Any such petition to the Superior Court shall be filed with the court no later than 30 days after a written copy of the decision of the city council is received by the applicant.
- (j) *Permit validity.* Approvals of a conditional use application and site plan shall be valid for two years from the date of approval by the Asheville City Council. An extension of up to one additional year may be granted by the Asheville City Council upon submittal by the application of sufficient justification for the extension. Appropriate conditions may be added to the initial approval or extension approval to guarantee site maintenance and security. Failure to obtain a zoning permit or otherwise being the permitted use, within this time shall render the conditional use approval void. The planning and development director may grant a single extension of this time period up to six months upon submittal by the application of sufficient justification for the extension. Nothing herein shall be construed to extend any time limitations prescribed by statute or by other ordinances in this chapter.

Permits for the phased development of a conditional use project shall remain valid for the time approved by the Asheville City Council as part of the conditional use approval of the master plan for the conditional use.

- (k) *Violations.* Violations of the conditional use permit or of any of the conditions attached to the approval shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, § 4, 11-11-97; Ord. No. 2771, § 1a.—d., 11-28-00; Ord. No. 2843, § 1(a), 8-28-01; Ord. No. 2871, §§ 1(g)—1(k), 11-27-01; Ord. No. 3064, §§ 1(a), (b), 10-14-03; Ord. No. 3206, § 1, 1-25-05; Ord. No. 3369, § 1(b), 6-27-06; Ord. No. 3374, §§ 1(a)—(c), 7-11-06; Ord. No. 3530, § 1, 8-28-07; Ord. No. 3709, § 1a, 3-10-09; Ord. No. 3757, § 1a, 7-14-09; Ord. No. 3947, § 1, 2-22-11; Ord. No. 4273, § 1, 1-28-14)

Sec. 7-5-6. - Reserved.

Editor's note— Ord. No. 3328, § 1(g), adopted Jan. 24, 2006, deleted § 7-5-6 in its entirety. Former § 7-5-6 pertained to planned unit development (PUD) approvals and derived from Ord. No. 2369, § 1, adopted May 27, 1997 and Ord. No. 2843, § 1(b), adopted Aug. 28, 2001.

Sec. 7-5-7. - Manufactured housing community (MHC) approval.

- (a) *Purpose.* The review procedure for manufactured housing communities is required for developments which propose the provision of two or more manufactured homes or manufactured home spaces for rent. This review procedure is designed to assure that the communities comply with the design standards set forth in subsection 7-9-5. Public comment, particularly from owners of neighboring property, is provided for through this review procedure.

The manufactured housing community review process is a two-part procedure which involves the approval of a master plan, as well as the rezoning of the property to the manufactured housing community overlay district. The manufactured housing community overlay district is not mapped or affixed to particular parcels until after an application by a developer and approval by the Asheville City Council.

When applied to a specific geographic area, the manufactured housing community overlay district shall have the effect of allowing development to be designed, reviewed, approved, constructed and managed according to the provisions of section 7-9-5, rather than as required by the underlying zoning district.

(b) *Pre-application procedure.*

- (1) *Conference.* Prior to the submittal of an application for approval of a manufactured housing community, the applicant is required to meet with the planning and development director in a pre-application conference. The purposes of this conference are to provide clarification and assistance in the preparation and submission of plans for approval. The sketch plan, as described below, shall be presented for review during the conference.
- (2) *Sketch plan.*
 - a. *Required for review.* A sketch plan is required for review by the planning and development director for all proposed manufactured housing communities.
 - b. *Preparation.* The sketch plan shall be prepared in accordance with Appendix A (Map and Plan Standards) and submitted to the planning and development department.
- (3) *Neighborhood meeting.* It is highly recommended that the developer meet with representatives of the neighborhood in which the proposed project is located. This meeting, which should be held at the pre-application stage, will allow the developer to explain the proposed project and to be informed of the concerns of the neighborhood.

(c) *Plan submittal.*

- (1) *Filing of application.* An application for approval of a manufactured housing community may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a manufactured housing community shall be filed with the development and permitting center on a form provided by the center.
- (2) *Fees.* Fees as established by the City of Asheville's Fees and Charges Manual shall be due and payable when the site plan is submitted.
- (3) *Information required.*
 - a. *General.* Each application for a manufactured housing community shall contain all of the information described in Appendix B (Checklists for Applications).
 - b. *Site plan required.* A site plan depicting the proposed manufactured housing community shall be required for all proposed rental communities.
 - c. *Preparation by registered professional.* The site plan shall be prepared by a registered land surveyor, licensed architect, or licensed engineer and shall be prepared in accordance with Appendix A (Map and Plan Standards).
 - d. *Submittal of plans.* Fifteen copies of the site plan must be submitted to the development and permitting center at least 14 days prior to the technical review committee meeting at which it is to be reviewed.

(d) *Staff review.*

- (1) *Planning and development staff review.* Following submittal of the site plan for the manufactured housing community, it shall be reviewed by the planning and development director for compliance with the requirements of this chapter.
- (2) *Submittal of plans to technical review committee (TRC).* The planning and development director shall present site plans for manufactured housing communities to the technical review committee at its next regular meeting. The technical review committee shall review the site plan for compliance with existing federal, state, and local regulations. This review shall be made by the members of the technical review committee and by any other agencies or officials as determined by the planning and development director.
- (3) *Action by technical review committee.*
 - a. *Timing.* The technical review committee shall take action within ten working days of reviewing the site plan. Provided the application is complete, failure by the technical review committee to take action within ten working days shall result in the refund of any application fees paid. The refund of the application fee due to the expiration of the ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application.
 - b. *Approval.* If the site plan is approved by the technical review committee, the planning and development director shall present the site plan and the manufactured housing community (MHC district) designation for review and approval at the next regular meeting of the Asheville Planning and Zoning Commission.
 - c. *Conditional approval.* If the site plan receives conditional approval from the technical review committee ("TRC"), the applicant shall revise the plan based upon the conditions of the approval and resubmit it. The revised plan shall be reviewed by the planning and development director and if it meets all the approval conditions, the site plan and the MHC District designation shall be presented for review and approval at the next available regular meeting of the Asheville Planning and Zoning Commission. If the plan is not revised within 60 days after conditional approval from the TRC to meet the conditions, the request shall be deemed denied.
 - d. *Denial.* If the site plan is denied approval by the technical review committee, the reasons for denial shall be provided in writing to the applicant. The site plan may be revised to address the reasons for denial and resubmitted in accordance with the provisions of this chapter.

(e) *Formal review.*

- (1) *Action by Asheville Planning and Zoning Commission.*
 - a. *Public hearing.* Upon receiving the application and site plan for a manufactured housing community from the planning and development director, the Asheville Planning and Zoning Commission shall hold a public hearing on the proposed development.
 - b. *Review of site plan and manufactured housing community (MHC) district designation.* The site plan and MHC District designations shall be reviewed at the next regularly scheduled meeting of the Asheville Planning and Zoning Commission following review and approval or conditional approval of the plan by the technical review committee.
 - c. *Recommendation for approval of MHC district designation and approval of site plan.* If the site plan is approved and the MHC district designation is recommended for approval by the Asheville Planning and Zoning Commission, the planning and development director shall notify the city clerk and present the MHC district designation for review and consideration at the next regular meeting of the Asheville City Council.
 - d. *Approval of MHC district designation and conditional approval of site plan.* If the Asheville Planning and Zoning Commission recommends approval of the MHC district designation and grants conditional approval to the site plan, the applicant shall revise the plan based upon the conditions of the approval and resubmit it. The planning and development director shall review the revised plan and if it meets all of the approval conditions and is otherwise unchanged from the original, shall signify on the plan the change of status from conditional approval to approval. The planning and development director shall then present the MHC district designation for review and consideration at the next regular meeting of the Asheville City Council. The applicant shall have 60 days to revise the plan in accordance with the approval conditions or it shall be deemed denied.
 - e.

Denial of the MHC district designation and/or site plan. If either the MHC district designation or the site plan is recommended for denial, the entire project is considered denied. If the project is denied, the applicant shall be informed in writing of the reasons for denial. If the MHC district designation is denied, the request cannot be reconsidered until one year after the date of action taken by the Asheville Planning and Zoning Commission to deny the request.

f. *Timing.* The Asheville Planning and Zoning Commission shall consider the request at its next regular meeting, unless parties agree to another time.

(2) *Action by Asheville City Council.*

a. *Review of MHC district designation.* Following review and recommendation for approval by the Asheville Planning and Zoning Commission, the MHC District designation shall be presented for review and consideration at the next available meeting of the Asheville City Council. The public hearing will be scheduled as provided by city council's rules of procedure. The city council does not review the preliminary master plan unless the decision of the Asheville Planning and Zoning Commission is appealed.

b. *Approval of MHC district designation.* If the Asheville City Council approves the MHC district designation, the applicant may then apply for all appropriate construction permits and proceed toward construction.

c. *Denial of MHC district designation.* If the Asheville City Council denies the MHC district designation, the applicant will be informed in writing of the reasons for denial. If the Asheville City Council denies the MHC district designation, the provisions of [section 7-7-7](#) (Waiting Period for Subsequent Applications) shall apply.

d. *Timing.* The Asheville City Council shall consider the request within 35 days of receiving the request for consideration of the MHC district designation.

(3) *Public dedications.* Asheville City Council approval and acceptance are required for the public dedication of any properties, streets, easements, or rights-of-way. When public dedications are required, the request will be presented for review and approval at the next available meeting of the Asheville City Council. The Asheville City Council shall take action within 30 days of reviewing the request for public dedication. Approval of public dedications shall be a condition of project approval.

(f) *Public notification.* Notice of public hearings or public meetings required under this section for manufactured housing community approval shall be provided in accordance with the provisions of [section 7-5-20](#) of this chapter.

(g) *Project phasing.* If a project is to be developed in phases, a master plan for the entire development site must be approved by the Asheville Planning and Zoning Commission prior to the beginning of construction on any phase.

Final plans for the phases of the manufactured housing community development may be submitted in stages and shall be approved by the planning and development department staff provided that the following requirements are met:

(1) All stages shall be shown with precise boundaries on the master plan and shall be numbered in the expected order of development.

(2) Each phase must be able to exist independently of subsequent phases by meeting all applicable laws and regulations as if the phase were a separate project.

(3) All the data required for the project as a whole shall be given for each stage shown on the plan.

(4) A proportionate share of the open space and common facilities shall be included in each stage of the development.

(5) The phasing shall be consistent with the traffic circulation, drainage, and utilities plan for the entire master plan for the rental community.

(h) *Variations.* Variations from the requirements of this chapter for manufactured housing communities may be approved by the Asheville City Council upon the recommendation of the Asheville Planning and Zoning Commission. Requests for variations shall be identified in the public notices required by [subsection 7-5-7\(f\)](#).

(i) *Appeals.* If the site plan is denied or granted conditional approval, or if no action is taken within ten days by the technical review committee, the applicant may appeal the decision to the Asheville Planning and Zoning Commission within 30 days after denial, conditional approval, or lack of action by the technical review committee. The Asheville Planning and Zoning Commission shall approve, grant conditional approval, or deny the site plan.

If the MHC district designation is denied, or if the site plan is denied or granted conditional approval, or if no action is taken within 35 days by the Asheville Planning and Zoning Commission, the applicant may appeal the decision to the Asheville City Council within 30 days after denial, conditional approval, or lack of action by the Asheville Planning and Zoning Commission. The Asheville City Council shall approve, grant conditional approval, or deny the plan.

(j) *Permit validity.* Approval of the site plan for a manufactured housing community and the MHC zoning designation shall be valid for one year from the date of approval by Asheville City Council. Failure to initiate construction, or otherwise begin the permitted use, within this time shall render the manufactured housing community approval void. The planning and development director may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.

Permits for phased development of a manufactured housing community shall remain valid for the time approved by the Asheville Planning and Zoning Commission as part of the master plan approval.

(k) *Violations.* Violations of the approved master plan for the manufactured housing community shall be considered a violation of this chapter and subject to the provisions of [section 7-18](#).

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2843, § 1(c), 8-28-01; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3374, §§ 1(d), (e), 7-11-06)

Sec. 7-5-8. - Subdivision plat approvals.

(a) *Major subdivisions.*

(1) *Purpose and application.* The major subdivision review process is required for those divisions of land into two or more lots where the extension of public streets or private streets built to City of Asheville standards is required. Review of the preliminary plat by the technical review committee is required under the major subdivision review process, with final approval provided by the planning and zoning commission for all applications received after the effective date of this ordinance (June 14, 2011). Review and approval of the final plat is done by the technical review staff.

(2) *Pre-application procedure.*

a. *Conference.* It is required that every applicant for a major subdivision applicant meet with the planning and development director in a conference prior to the submittal of a subdivision plat. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plats for approval.

b. *Sketch plan.* A sketch plan shall be submitted to the planning and development director prior to or at the pre-application conference. Upon submittal of the sketch plan, the planning and development director shall conduct an initial review to determine whether the proposed subdivision is a major subdivision.

c. *Neighborhood meeting.* It is highly recommended that the developer meet with representatives of the neighborhood in which the proposed project is located. This meeting, which should be held at the pre-application stage, will allow the developer to explain the proposed project and to be informed of the concerns of the neighborhood.

(3) *Preliminary plat/site plan submittal.*

a. *Plan(s) required.* Preliminary plat/site plan(s) for a proposed major subdivisions shall be prepared by a professional land surveyor, licensed landscape architect, or licensed engineer and shall be prepared in accordance with the standards established by the planning and development department.

- b. *Filing of application.* A complete application packet containing all information as required by the planning and development department shall be submitted according to the established schedule prior to the technical review committee meeting at which they are to be reviewed.
- c. *Public notification.* The planning and development director shall prepare a public notice as described herein below which indicates the official receipt of an application and preliminary plat for major subdivision approval. This notice for publication shall include the following:
 1. Brief description of the major subdivision proposed;
 2. The time, date, and place at which the request will be considered; and
 3. Contact information for staff receiving comments concerning the proposed subdivision.

The notice shall be published in a newspaper of general circulation at least five days prior to the date on which the application is to be considered. This notice is also mailed to the owners of abutting property and any other property located within 200 feet of the property in question at least ten days before the date on which the request is to be considered.

This notice shall also be mailed to the contact person(s) for the neighborhood(s) in which the subdivision is proposed if the contact person(s) is (are) known to the planning and development department.

This notice shall be mailed at least ten days before the date on which the request is to be considered. A sign stating the above information shall be posted on the subject property ten days before the date on which the application is to be considered.

- d. *Review at technical review committee.* The preliminary plat of a proposed major subdivision shall be reviewed by the planning and development director for compliance with these subdivision regulations. The planning and development director shall then present the preliminary plat of major subdivisions to the technical review committee ("TRC") at the next regular meeting of the TRC following receipt of the preliminary plat. Review of the preliminary plat by the TRC shall be ministerial in nature, and limited to compliance with existing applicable regulations. Once reviewed, the planning and development director shall notify the applicant and transmit the preliminary plat along with the TRC review comments to the Asheville Planning and Zoning Commission for review and approval.

1. *Action by the planning and zoning commission.* Upon receipt of the preliminary plat for the major subdivision and the recommendation of the technical review committee, the Asheville Planning and Zoning Commission shall schedule a public hearing to receive comments regarding the proposed project. The public hearing shall be scheduled for the next available meeting of the planning and zoning commission.

If the preliminary plat is approved the applicant may proceed with infrastructure construction and final plat approval.

The review of the preliminary plat by the planning and zoning commission shall be ministerial in nature. If the preliminary plat is not approved, the commission shall set forth in writing the reasons for denying approval of the plat. The applicant may revise the plat and resubmit it. The revised plat shall be reviewed by the planning and development director, and if it is revised in accordance with the directions provided by the planning and zoning commission the preliminary plat shall be presented at the next regular meeting of the TRC. If the plat is not revised within 60 days to comply, it shall be deemed denied; provided, however, the planning and development director may extend the time period for compliance upon a showing by the applicant that additional time is needed to comply.

If the approval of the preliminary plat is tabled or the review is continued, the reasons for the tabling or continuance shall be provided to the applicant in writing. The applicant shall address the reasons for tabling or continuance and the preliminary plat shall be reviewed and action taken at the next planning and zoning commission meeting, unless all parties agree to another time.

- e. *Appeals.* Actions taken by the planning and zoning commission with respect to preliminary plats, or a failure by the planning and zoning commission to take action within 35 days after it has received a preliminary plat, may be appealed to the Buncombe County Superior Court in accordance with applicable state statutes.
- f. *Permit validity.* Approval of the preliminary plat for major subdivisions shall be valid for two years from the date of approval by the Asheville Technical Review Committee. The final plat for the major subdivision shall be presented for approval prior to the end of this two-year period. Phased subdivisions shall be exempt from this time limit as set forth in subsection 7-5-8(a)(5)b.iii.

- (4) *Guarantee in lieu of construction of improvements.* In lieu of completion of construction of the required improvements and utilities prior to final plat approval, the property owner may submit to the city a performance bond from a corporate surety, licensed in North Carolina to execute such bonds, or an irrevocable letter of credit payable to the City of Asheville, either of which shall be in an amount equal to 150 percent of the estimated cost of the installation of the required improvements, as determined by the city. The performance bond or irrevocable letter of credit shall secure the completion of construction of the improvements shown on the approved preliminary plat.

The letter of credit or bond shall remain in full force and effect until such time as the construction of improvements and installation of utilities are completed and accepted by the City of Asheville.

Failure to maintain the required bond or irrevocable letter of credit shall result in the revocation of the approval of the preliminary plat and any permits issued as a result of the preliminary plat approval.

Failure to initiate construction of the improvements within one year of the date the bond or letter of credit was accepted by the city shall result in the city constructing the improvements, with the cost to be paid from the letter of credit or bond. In the event that the amount of the bond or letter of credit on hand is insufficient to pay for the completion of the improvements, the property owner shall pay to the city the total amount of the insufficiency and if the city is not paid, the amount of the insufficiency shall constitute a lien on the property in favor of the city.

If a developer provides satisfactory evidence that a bond or surety as required by this paragraph has been requested and that the developer and project otherwise qualify for said bond or surety, and that said request has been turned down by two or more financial institutions for reasons unrelated to the qualifications of the developer or project, the planning director may enter into an agreement with the developer for the delayed completion of the required work; provided, that said agreement may not apply to improvements or features that are required for safety purposes, or are prescribed by statute or state codes or regulations. By way of illustration and not limitation, said agreement (1) shall establish a schedule for the completion of improvements, (2) shall contain provisions relating to enforcement of its terms, and (3) shall specify penalties for breach, (4) shall be subject to approval of the city attorney, and (5) may be recorded in the office of the register of deeds wherein the property is located.

- (5) *Final plat.* The final plat of a major subdivision shall be reviewed by the planning and development director for compliance with the requirements of this chapter and for conformity with the approved preliminary plat. Substantial changes from the preliminary plat, as determined by the planning and development director, shall require an additional review by the technical review committee and the planning and zoning commission, as determined by the planning and development director, to ensure compliance with existing regulations. Provided the final plat is complete, and no further review is determined to be required, the planning and development director shall act on the final plat of major subdivisions within ten working days of receipt of the plat. Following final plat approval, the applicant shall record the plat for a major subdivision in accordance with this subsection.

- a. *Formal review not required.* Formal review of final plats is not required.
 - b. *Recordation and signatures.*
 1. *Signatures.* Upon approval of a final plat for major subdivisions, the plat shall be signed in the appropriate place by the planning and development director and by the owner(s).
 2. *Recordation.* A final plat for major subdivisions must be recorded in the office of the register of deeds for Buncombe County in compliance with North Carolina General Statutes within 30 days following approval by the city. No plat shall be considered finally approved until the plat has been recorded.
If the final plat of all or part of the area shown on an approved preliminary plat for a major subdivision is not recorded in the office of the register of deeds within 24 months of the approval by the city of the preliminary plat, the preliminary plat shall be resubmitted to the planning and development department for consideration following the process set forth in this chapter. Final plats for phase subdivisions shall be recorded as set forth in subsection 7-5-8(a)(5).
 3. *Phasing.* Final plats for subdivisions developed in phases shall be recorded in accordance with the schedule presented by the applicant during the preliminary plat approval. The applicant may request, in writing, adjustments of the approved schedule and the planning and development director may grant extensions of up to 12 months for each phase. If the final plat for any phase of the subdivision is not submitted in accordance with the approved schedule, the preliminary plat shall be resubmitted to the planning and development department. Such resubmittal shall be in accordance with the requirements of this chapter.
 - c. If final plat approval for a major subdivision is denied, the applicant may appeal the decision to the Asheville City Council. Such an appeal must be taken within 30 days after denial.
- (6) *Acceptance of rights-of-way and easements.* The approval of a final plat does not constitute acceptance for maintenance or other purposes of improvements in rights-of-way, such as utility lines, street paving, drainage facilities, or sidewalks. Such improvements, when located within the corporate limits of the City of Asheville, may be accepted only by action by the City of Asheville City Council following inspection and approval.
- (7) *Open space dedication and acceptance.* Land designated as public open space or a park on a plat shall be considered to be offered for dedication but not accepted until the Asheville City Council has by express action done so. Until such dedication has been accepted, such areas may be used for open space purposes by its owner or by its association representing owners of lots within the subdivision. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use without the approval of the Asheville City Council.
- (8) *Violations.* Violations of the provisions of this section shall be subject to the penalty and enforcement provisions set forth in article XVIII of this chapter.
- (b) *Minor subdivisions.*
- (1) *Purpose.* The minor subdivision review process is required for those divisions of land into two or more lots which do not require the extension of public streets or private streets built to City of Asheville standards. Review and approval of the subdivision plat by the staff permits a speedy review while insuring that the proposed subdivision meets all requirements established by the City of Asheville.
 - (2) *Pre-application conference.* It is recommended that every subdivision applicant meet with the planning and development director in a conference prior to the submittal of a subdivision plat. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plats for approval.
 - (3) *Plan submittal.*
 - a. *Plan required.* Plats for minor subdivisions shall be prepared by a professional land surveyor in accordance with the standards set forth by the planning and development department and applicable state standards.
 - b. *Filing of application.* Plats and a complete application packet containing all information established by the planning department for minor subdivisions shall be submitted to the planning and development director and may be presented at any time.
 - (4) *Staff review.* The plat for a proposed minor subdivision shall be reviewed by the planning and development director for compliance with these subdivision regulations. The review shall also include compliance by the plat with other ordinances and regulations of the City of Asheville.
Provided the application is complete, the planning and development director shall take action on the plat of the proposed minor subdivision within ten working days of its submittal. Following approval, the applicant shall record the plat for a minor subdivision in accordance with this subsection.
 - (5) *Public notification.* No public notification is required for minor subdivision review.
 - (6) *Formal review.* Formal review of minor subdivisions is not required.
 - (7) *Final plats approval.*
 - a. *Recordation and signatures.*
 1. *Signatures.* Upon approval of a plat for minor subdivisions, said plat shall be signed in the appropriate place by the planning and development director and by the owner(s).
 2. *Recordation.* A plat for minor subdivisions must be recorded in the office of the register of deeds for Buncombe County; compliance with North Carolina General Statutes within 30 days following approval by the city. No plat shall be considered finally approved until the plat has been recorded. No lots in a subdivision shall be sold prior to approval by the city and recording of a plat for the subdivision.
 3. *Permit validity.* Minor subdivision plats which have been granted approval shall be recorded as set forth in subsection 7-5-8(b)(6)b. within 30 days following approval or the approval becomes invalid.
 4. *Amendments.* Amendments to approved minor subdivisions plats and recombinations may be submitted to the planning and development staff within 90 days of recordation shall not require re-application submittal and fee.
 - (8) *Appeals.* Decisions of the planning and development director with regard to minor subdivisions may be appealed to the Asheville Planning and Zoning Commission. Such an appeal must be made within 30 days of the receipt of the decision by the property owner. The appeal shall be in writing and delivered to the planning and development department.
 - (9) *Violations.* Violations of the provisions of this section shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.
- (c) *Modifications.*
- (1) *Approval authority.* Modifications to the standards for subdivisions found in article XV of this chapter and access standards found in article XI as they relate to subdivisions shall be reviewed by the planning and zoning commission of the City of Asheville. Requests for variances from other requirements of this chapter shall be heard by the board of adjustment under the procedures established by section 7-6-1 of this chapter.
 - (2) *Grounds for modifications.* Modifications from the standards of this chapter may be granted in cases of physical hardship. Cases of physical hardship shall be defined as those cases where because of the topography of the tract to be subdivided, the condition or nature of adjoining areas, or the existence of other unusual physical characteristics, strict compliance with the provisions of this chapter would cause unusual and unnecessary hardship on the subdivision of the property by property owner or developer.

- (3) *Conditions.* The planning and zoning commission of the City of Asheville, in granting modifications, may require such conditions as will ensure the purposes of the standards or requirements waived.
- (4) *Filing of application.* Modifications must follow the standards outlined in subsection 7-5-8(a)3.
- (d) *Fees.* For all categories of subdivision, fees as established by the City of Asheville fees and charges manual shall be due and payable when the application is submitted. (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2564, § 1, 4-27-99; Ord. No. 2724, § 1(a)—(c), 7-11-00; Ord. No. 3032, § 1(c), (d), 6-10-03; Ord. No. 3328, § 1(h), 1-24-06; Ord. No. 3374, §§ 1(f)—(h), 7-11-06; Ord. No. 3466, § 1(a), 4-24-07; Ord. No. 3572, §§ 1(f), (g), 1-8-08; Ord. No. 3708, § 1, 3-10-09; Ord. No. 3984, §§ 1b—d, 6-14-11)

Sec. 7-5-9. - Site plan review for development projects except those on parcels zoned Central Business District and located in the Downtown Design Review Overlay District (CBD/DDR).

(a) *Level III site plan review process.*

- (1) *Purpose and application.* The Level III site plan review process is required for redevelopment projects located within the planning and regulation jurisdiction of the City of Asheville which, due to their size, could be expected to have a significant impact upon public services and facilities. This review process is established to assure that adequate services and facilities can be provided for these developments and to assure that they do not negatively impact the area in which they are proposed to be located or the city as a whole. Proposed development involving new construction, additions, renovations, and changes of use which fall into one or more of the following categories are subject to the Level III site plan review process:
- a. New construction and changes of use.
 1. Commercial buildings, structures, or developments with a gross floor area of more than 100,000 square feet;
 2. Industrial uses (as defined in [section 7-2-5](#) of this chapter) in the commercial industrial or river zoning districts with a gross floor area of more than 100,000 square feet;
 3. Office or institutional buildings, structures, or developments with a gross floor area of more than 100,000 square feet;
 4. Any manufactured housing community, camper/trailer park, or other residential development containing more than 50 individual units.
 5. Commercial or mixed-use buildings, structures, or developments with a gross floor area of more than 45,000 square feet if located within one-half mile of the downtown central business district unless separated from this district by a significant geographical feature(s) such as a mountain or river.
 6. Residential subdivisions that result in 50 or more separate lots.
 - b. Additions with a gross floor area of 50 percent or more of the above threshold for new construction for that land use, or additions with a gross floor area of 25 percent of the above threshold for new construction for that land use if the resulting total gross floor area, when combined with the existing floor area, would result in a gross floor area meeting or exceeding the above threshold for new construction for that land use if the structure did not previously meet the above threshold. In the case of manufactured housing parks, camper/trailer parks, and residential development: additions of 30 or more dwelling units on one parcel of land.
 - c. Properties located within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.
- (2) *Conditional use permit required.* All developments subject to the Level III site plan review process shall require a conditional use permit and shall comply with the provisions for conditional use approval set forth in [section 7-5-5](#)
- (3) *Pre-application procedure.*
- a. All applicants for Level III plan review are required to schedule a predevelopment conference with the planning and development director prior to the preparation of development plans. This conference allows the applicant and staff an opportunity to discuss the review process, the requirements for completing the review schedule, contact persons for services and permits, and information regarding site plans, landscaping, and development requirements. Information regarding the need for a grading and erosion control plan, which will have to be approved through the city sedimentation and erosion control staff, will be provided at this time.
 - b. The staff can also determine if any special reviews will be required, such as reviews by the historic resources commission, the tree commission, the housing authority of the city, the board of adjustment, or downtown design review staff.
 - c. It is highly recommended that the developer meet with representatives of the neighborhood in which the proposed project is located. This meeting, which can be held at the pre-application stage, will allow the developer to explain the proposed project and to be informed of the concerns of the neighborhood.
- (4) *Plan submittal.*
- a. *Application required.* An application shall be required for all Level III site plan review requests. This application shall contain all information described in Appendix B (Checklists for Applications) and shall be accompanied by a conceptual site plan. The conceptual site plan shall contain the following:
 - Property boundaries with dimensions
 - PIN for property
 - Location of adjacent streets and utility easements
 - Dimensioned footprint and setbacks of the existing and proposed structures with gross floor area indicated
 - Location and number of parking spaces
 - Location and size of buffer and landscape areas
 - Location of existing and proposed driveways and/or streets
 - Location of all flood zones (if any)
 - Location of adjoining properties and the zoning and use of these properties
 - Number of stories and overall height of all structures (existing and proposed)
 - Location of proposed stormwater detention facilities
 - Location of existing and proposed dumpster and recycling containers
 - Generalized depiction or description of natural features on and immediately adjoining the site, including streams and other water bodies, steep slopes, areas covered by tree canopy, etc.
 - Other information determined by the planning and development director as necessary to evaluate the request.

- b. *Preparation by professional.* Site plans for developments requiring Level III site plan review shall be prepared by a registered architect, engineer, landscape architect, or land surveyor licensed in the State of North Carolina for the work in which he is trained and licensed to perform.
- c. *Fees.* Fees as established by the City of Asheville Fees and Charges Manual shall be due and payable upon submittal of the application for Level III site plan review.
- d. *Submittal of application.* Applications for Level III site plan review, with 17 copies of the conceptual site plans, shall be submitted to the planning and development director at least 14 days prior to the technical review committee meeting at which they will be considered.
- d.[e.] *Action by the planning and zoning commission.* Upon receipt of the conceptual site plan for the Level III site plan project and the recommendation of the technical review committee, the Asheville Planning and Zoning Commission shall schedule a public hearing to receive comments regarding the proposed project. The public hearing shall be scheduled for the next available meeting of the planning and zoning commission.

If the conceptual site plan is approved, the planning and development director shall notify the applicant and transmit the conceptual site plan to the Asheville City Council for review according to the procedure for conditional use permits set forth in subsection 7-5-5 of this chapter.

If the conceptual site plan receives conditional approval, the applicant shall revise the plan based upon the conditions of the approval and resubmit it. The planning and development director shall review the revised plan. If it meets all of the approval conditions, the conceptual site plan shall be transmitted to the Asheville City Council for review according to the procedure for conditional use permits set forth in subsection 7-5-5 of this chapter.

If the conceptual site plan is denied, the reasons for denial shall be provided to the applicant in writing. The site plan may be revised to address the reasons for denial and resubmitted in accordance with the provisions of this chapter.

If the conceptual site plan is tabled or the review is continued, the reasons for the tabling or continuance shall be provided to the applicant in writing. The applicant shall address the reasons for tabling or continuance and the conceptual site plan shall be reviewed and action taken at the next planning and zoning commission meeting, unless all parties agree to another time.

Editor's note— Ord. No. 2771, § 1(h), adopted Nov. 28, 2000, set out provisions pertaining to action by the planning and zoning commission as related to Level III site plans. To maintain the numeric sequencing of this Code, these provisions have been included as § 7-5-9(a)(4)e. at the discretion of the editor to read as herein set out. See the Code Comparative Table.

(5) *Staff review.*

- a. *Planning and development staff review.* Plans for development requiring Level III site plan review shall be reviewed by the planning and development director for compliance with the requirements of this chapter.
- b. *Submittal of plans to technical review committee.* The planning and development director shall present site plans for developments requiring Level III site plan review to members of the technical review committee for review at their next available regular meeting. The technical review committee shall review the site plans for compliance with existing federal, state, and local laws and regulations. This review shall be made by the members of the technical review committee and by any other agencies or officials as required.
- c. *Action by technical review committee.* Provided the application and conceptual site plan are complete, the technical review committee shall take action within ten working days of reviewing the conceptual site plan. Provided the application and conceptual site plan are complete, failure to take action within this time shall result in the refund of application fees. The refund of the application fee due to the expiration of the ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application.

If the conceptual site plan is approved, the planning and development director shall notify the applicant and transmit the conceptual site plan to the Asheville Planning and Zoning Commission for review and recommendation.

If the conceptual site plan receives conditional approval, the applicant shall revise the plan based upon the conditions of the approval and resubmit it. The planning and development director shall review the revised plan. If it meets all of the approval conditions, the conceptual site plan shall be transmitted to the Asheville Planning and Zoning Commission for review and recommendation.

If the conceptual site plan is denied, the reasons for denial shall be provided to the applicant in writing. The site plan may be revised to address the reasons for denial and resubmitted in accordance with the provisions of this chapter.

If the conceptual site plan is tabled or the review is continued, the reasons for the tabling or continuance shall be provided to the applicant in writing. The applicant shall address the reasons for tabling or continuance and the conceptual site plan shall be reviewed and action taken at the next technical review committee meeting, unless all parties agree to another time.

- (6) *Public notification.* Notice of public hearings or public meetings required under this section for Level III site plan review shall be provided in accordance with the provisions of section 7-5-20 of this chapter.
- (7) *Formal review.* Site plans for developments requiring Level III site plan review shall comply with the review process for conditional uses set forth in subsection 7-5-5 of this chapter. Following review and approval of the application and conceptual site plan, and issuance of the conditional use permit, by the Asheville City Council, a detailed site plan shall be submitted to the technical review committee for review and approval.
- (8) *Variances.* Council may modify requirements as part of the conditional use approval as set forth in section 7-5-5(h).
- (9) *Appeals.* Appeals shall be made according to the provisions of subsection 7-5-5 of this chapter.
- (10) *Permit validity.* Permits shall be valid according to the provisions of subsection 7-5-5 of this chapter.
- (11) *Violations.* Violations of the conditional use permit or any of the conditions attached to the approval for a Level III site plan approval shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.

(b) *Level II site plan review process.*

- (1) *Purpose and application.* The Level II site plan review process is required for development applications received after the effective date of this ordinance (June 14, 2011) within the planning and regulation jurisdiction of the City of Asheville involving new construction, additions, renovations, and changes of use which would fall into one or more of the following categories:
 - a. *New construction, renovations, and changes of use.*
 1. Industrial buildings(s), structure(s), or developments in the industrial district with a gross floor area of 100,000 square feet or more, and industrial building(s), structure(s), or developments in the commercial industrial or river districts with a gross floor area of 50,000 to 100,000 square feet.
 2. Commercial building(s) or structure(s) with a gross floor area of 35,000 square feet to 100,000 square feet;
 3. Office or institutional building(s) with a gross floor area of 35,000 square feet to 100,000 square feet; or

4. Any manufactured housing rental community, camper/trailer park, or other residential development containing 20 to 50 individual dwelling units.
 5. Any new non-residential use in a residential zoning district containing more than 10,000 square feet or the expansion of an existing non-residential use in a residential zoning district if the expansion contains more than 10,000 square feet.
- b. Additions with a gross floor area of 25 percent or more of the above threshold for new construction for that land use if the resulting total gross area, when combined with the existing gross floor area, would result in a gross floor area meeting or exceeding the above threshold for new construction for that land use if the structure did not previously meet the above threshold. In the case of manufactured housing parks, camper/trailer parks, and residential development; additions of five or more dwelling units on one parcel of land.
- Properties located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such."
- c. Properties not adjoining or fronting single-family zoning, that are within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such. Properties adjoining or fronting single-family zoning, located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.
- (2) *Pre-application procedure.*
- a. All applicants for Level II site plan review are required to schedule a predevelopment conference with the planning and development director prior to the preparation of development plans. This conference allows the applicant and staff an opportunity to discuss the review process, the requirements for completing the review schedule, contact persons for services and permits, and information regarding site plans, landscaping, and development requirements. Information regarding the need for a grading and erosion control plan, which will have to be approved through the sedimentation and erosion control staff, will be provided at this time.
 - b. The staff can also determine if any special reviews will be required, such as reviews by the historic resources commission, the tree commission, the housing authority of the city, the board of adjustment, or downtown design review staff.
 - c. It is highly recommended that the developer meet with representatives of the neighborhood in which the proposed project is located. This meeting, which can be held at the pre-application stage, will allow the developer to explain the proposed project and to be informed of the concerns of the neighborhood.
- (3) *Plan submittal.*
- a. *Application required.* An application shall be required for all Level II site plan review requests. This application shall contain all information described in Appendix B (Checklists for Applications) and shall be accompanied by a site plan prepared in accordance with the requirements of Appendix A (Map and Plan Standards).
 - b. *Preparation by professional.* Site plans for developments requiring Level II site plan review shall be prepared by a registered architect, engineer, landscape architect, or land surveyor licensed in the State of North Carolina for the work in which he is trained and licensed to perform.
 - c. *Fees.* Fees as established by the City of Asheville Fees and Charges Manual shall be due and payable upon submittal of the application for Level II site plan review.
 - d. *Submittal of application.* Applications for Level II site plan review, with 15 copies of the site plans, shall be submitted to the development and permitting center at least 14 days prior to the technical review committee (TRC) meeting at which they are to be reviewed.
- (4) *Staff review.*
- a. *Planning and development staff review.* Plans for development requiring Level II site plan review shall be reviewed by the planning and development director for compliance with the requirements of this chapter.
 - b. *Submittal of plans to technical review committee.* The planning and development director shall present site plans for developments requiring Level II site plan review to members of the technical review committee for review at their next available regular meeting. Provided the application and site plan are complete, the technical review committee ("TRC") shall take action within ten working days of reviewing the site plan. Failure to take action within this time shall result in the refund of application fees. The refund of the application fee due to the expiration of the ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application. The technical review committee shall review the site plans for compliance with existing federal, state, and local laws and regulations. This review shall be made by the members of the technical review committee and by any other agencies or officials as required. Once reviewed, the planning and development director shall notify the applicant and transmit the site plan along with the TRC review comments to the Asheville Planning and Zoning Commission for review and approval.
 - c. *Action by the planning and zoning commission.* Upon receipt of the site plan(s) for the project and the recommendation of the technical review committee, the Asheville Planning and Zoning Commission shall schedule a public hearing to receive comments regarding the proposed project. The public hearing shall be scheduled for the next available meeting of the planning and zoning commission.
- If the site plan is approved, the planning and development director shall issue a letter of approval and the applicant may apply for zoning and other required permits.
- If the site plan receives conditional approval, the applicant shall revise the plan based upon the conditions of the approval and resubmit it. The revised plan shall be reviewed by the planning and development director and if it meets all of the approval conditions, the site plan shall be considered approved.
- If revised site plans are not received within 180 days of approval, the project shall be deemed denied; provided, however, the planning and development director may extend the time period for compliance upon a showing by the applicant that additional time is needed to comply.
- If the site plan is denied, the reasons for denial shall be provided to the applicant in writing. The site plan may be revised to address the reasons for denial and resubmitted in accordance with the provisions of this chapter. If the site plan is tabled or the review is continued, the reasons for the tabling or continuance shall be provided to the applicant in writing. The applicant shall address the reasons for tabling or continuance and the site plan shall be reviewed and action taken at the next planning and zoning commission meeting, unless all parties agree to another time.
- (5) *Public notification.* Notice of public hearings or public meetings required under this section for Level II site plan review shall be provided in accordance with the provisions of [section 7-5-20](#) of this chapter.
 - (6) *Formal review.* Applications for Level II site plan review are not subject to review before a board or commission.
 - (7) *Variations.* Variations from the requirements of this chapter for developments requiring Level II site plan approval shall be considered by the board of adjustment in accordance with the procedures set forth in [section 7-6-1](#).
 - (8) *Appeals.* Appeals of decisions of the technical review committee regarding developments requiring Level II site plan approval shall be heard by the board of adjustment in accordance with the procedures set forth in [section 7-6-2](#) of this chapter.
 - (9)

Permit validity. Approval of site plans and permits for developments requiring Level II site plan review shall be valid for one year from the date of approval. Failure to obtain a zoning permit or otherwise begin the permitted use within this time shall render the site plan approval void. The planning and development director may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Nothing herein shall be construed to extend any time limitations prescribed by statute or by other ordinances in this chapter.

- (10) *Violations.* Violations of the approved site plan shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.
- (c) *Level I site plan review process.*
- (1) *Purpose.* The Level I site plan review process is required for development projects within the planning and regulation jurisdiction of the City of Asheville and its extraterritorial jurisdiction involving new construction, additions, renovations, and changes of use which do not meet the requirements of the Level II or Level III site plan review processes as set forth in subsections 7-5-9(b) and 7-5-9(a), but do fall into one or more of the following categories:
- All new developments not meeting the threshold for Level II site plan review, except residential projects containing not more than two dwelling units;
 - Additions with a gross floor area of 500 square feet or more (excluding single-family and duplex residential units);
 - Additions that displace existing parking;
 - Additions that generate the need for more parking;
 - Renovations with a total cost exceeding 75 percent of the appraised value of the building, as determined by Buncombe County Tax Assessor or by an MAI-certified real estate appraiser;
 - Changes of use;
 - Properties located within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such;
 - Development projects that require site and/or landscape compliance as referenced in Article XI: Development and Design Standards: section 7-11-1 — General; section 7-11-3 — Landscape and buffering standards; section 7-11-3(f) — Compliance and maintenance; and section 7-11-10 — Outdoor lighting standards.
- (2) *Pre-application procedure.* A predevelopment conference with the planning and development director prior to the preparation of development plans is recommended. This conference introduces the applicant to the review process and the information required on the site plans, landscaping, development standards, and to the contact persons for services and permits. Information regarding the need for a grading and erosion control plan, which will have to be approved through the Asheville sedimentation and erosion control staff, will be provided at this time. The need for special reviews such as reviews by the historic resources commission, the tree commission, the housing authority of the city, the board of adjustment, or the downtown design review staff, can be determined at this time.
- (3) *Plan submittal.*
- Application required.* An application shall be required for all Level I site plan review requests. This application shall contain all information described in Appendix B (Checklists for Applications) and shall be accompanied by a site plan prepared in accordance with the requirements of Appendix A (Map and Plan Standards). The application and site plan shall be submitted to the development and permitting center.
 - Fees.* Fees as established by the City of Asheville Fees and Charges Manual shall be due and payable upon submittal of the application for Level I site plan review.
 - Submittal of application.* Applications for Level I site plan review, with six copies of the site plans, shall be submitted to the development and permitting center. Applications may be submitted at any time.
- (4) *Staff review.*
- Departmental review.* Upon receipt of the application for Level I site plan review, the site plans shall be distributed to and reviewed by the affected departments of the city for compliance with the requirements of this chapter and other applicable ordinances and laws.
 - Action by reviewing departments.* Provided the application and site plan are complete, all departments of the city reviewing the site plan shall take action within ten working days of receipt by the department of the application. Provided the application and site plan are complete, failure of the planning and development director, or any other department of the city reviewing the site plan, to take action within this time shall result in the refund of any applicable application fees for the application and site plan. The refund of any application fee due to the expiration of ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application. Where the issuance of any city permit shall also require the approval of an agency or department of the United States of America or the approval of the North Carolina Department of Transportation, or of any other state or federal agency or department, the transmittal by the city of the documentation required of the city to these entities shall constitute action by the city within the meaning of this section.
 - Approval.* If the site plan is approved by a reviewing city department, that department shall issue an approval to the city's permitting and development office stating any conditions of the approval and notify the applicant that the reviewing city department has completed its review and issued an approval for those elements for which the department is responsible. Notification may be by telephone, facsimile transmission, electronic mail, the Internet, United States mail, or by private mail, wire or messenger service. In all cases, a written copy of the approval along with any conditions shall be attached to the permit released to the applicant by the permitting and development office. The applicant may then proceed with obtaining zoning, building, construction, and other required permits. Projects that displace existing parking, add parking, or involve a change of use of a building also require approval by the fire department.
 - Denial.* If the site plan is denied, the reviewing city department shall notify the applicant in writing of the reasons for denial using hand delivery, or certified mail with a return receipt requested. Upon notification of denial, the applicant may revise the plan to address the reasons for denial and resubmit it for review or appeal the decision in accordance with the provisions of this chapter.
- (5) *Public notification.* Public notice shall not be required for Level I site plan review requests.
- (6) *Formal review.* Applications for Level I site plan review are not subject to formal review.
- (7) *Variations.* Requests for variations from the requirements of this chapter for developments requiring Level I site plan review shall be considered by the board of adjustment in accordance with the procedures set forth in section 7-6-1.
- (8) *Appeals.* Appeals of decisions of the planning and development director regarding the Level I site plan review process shall be heard by the board of adjustment in accordance with the procedures set forth in section 7-6-2.
- (9) *Permit validity.* Approval of site plans and permits for developments requiring Level I site plan review shall be valid for one year from the date of approval. Failure to obtain a zoning permit or otherwise begin the permitted use within this time shall render the site plan approval void. The planning and development director may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Nothing herein shall be construed to extend any time limitations prescribed by statute or by other ordinances in this chapter.
- (10) *Violations.* Violations of the approved site plan for developments requiring Level I site plan review shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, §§ 5—7, 11-11-97; Ord. No. 2439, § 1, 11-25-97; Ord. No. 2619, §§ 1(d)—(f), 9-28-99; Ord. No. 2771, §§ 1(e)—(i), 11-28-00; Ord. No. 2911, §§ 1(a), 1(b), 4-9-02; Ord. No. 2975, § 1, 11-12-02; Ord. No. 3027, § 1, 5-27-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3191, § 1, 12-14-04; Ord. No. 3374, §§ 1(i)—(k), 7-11-06; Ord. No. 3466, § 1(d), 4-24-07; Ord. No. 3709, §§ 1b, c, 3-10-09; Ord. No. 3738, § 1, 6-9-09; Ord. No. 3757, § 1b, 7-14-09; Ord. No. 3791, §§ 1f, g, 9-22-09; Ord. No. 3930, § 1a, 11-23-10; Ord. No. 3948, § 1, 2-22-11; Ord. No. 3984, §§ 1d—f, 6-14-11; Ord. No. 4209, §§ 1a—c, 6-25-13)

Sec. 7-5-9.1. - Site plan review for development projects on parcels zoned Central Business District and located in the Downtown Design Review Overlay District. (CBD/DDR)

(a) *Level III site plan review process.*

- (1) *Purpose.* This Level III site plan review process is required for development projects on parcels zoned Central Business District and located in the Downtown Design Review Overlay District (CBD/DDR). This review process is required for projects, which, due to their size, could be expected to have significant impact upon public services and facilities. Proposed developments which fall into one or more of the following categories are subject to the Level III site plan review process:
 - a. Any new construction and/or changes of use with buildings, structures, or developments having a gross floor area greater than 175,000 square feet.
 - b. Any new construction and/or changes of use with buildings, structures, or developments that are above the Intermediate Height Zone.
 - c. Additions with a gross floor area of 50 percent or more of the above threshold for new construction for that land use, or additions with a gross floor area of 25 percent of the above threshold for new construction if the resulting total gross floor area, when combined with the existing floor area, would result in a gross floor area meeting or exceeding the above threshold for new construction for that land use if the structure did not previously meet the above threshold.
 - d. Properties located within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.
- (2) *Pre-application procedure.*
 - a. All applicants for Level III plan review in the Central Business District and Downtown Design Review Overlay District are required to schedule a predevelopment conference as provided in subsection 7-5-9(a)(3)a. of this chapter.
 - b. It is required that the developer meet with representatives of the area in which the proposed project is located. This meeting shall be held prior to project submittal. The developer is responsible for providing notification to property owners in accordance with subsections 7-5-20(b)(2) and (3) and must certify to the planning and development director that these notice requirements have been met.
- (3) *Plan submittal.* Plan submittal for Level III plan review in the Central Business District and Downtown Design Review Overlay District shall be as set forth in subsections 7-5-9(a)(4)a.—d. Developments with phased components shall be required to also submit a phased master plan.
- (4) *Staff review.*
 - a. *Planning and development staff review.* Plans for development requiring Level III site plan review in the CBD/DDR shall be reviewed by the planning and development director for compliance with the requirements of this chapter.
 - b. *Action by technical review committee.* Plans for developments requiring Level III site plan review in the CBD/DDR shall be submitted and reviewed by the members of technical review committee in accordance with subsections 7-5-9(a)(5)b. and c., except that following approval by the technical review committee the plans shall next be transmitted to the downtown commission for review and recommendation.
- (5) *Action by the downtown commission.* Upon receipt of the conceptual site plan for the Level III site plan project in the CBD/DDR and the recommendation of the technical review committee, the Asheville Downtown Commission shall schedule a public hearing to receive comments regarding the proposed project. Review and action shall be taken in accordance with subsections 7-5-10(b)(1)—(4) and (6). The downtown commission shall act on the proposed development application within 120 days of receipt. Following approval by the downtown commission the plans shall be transmitted to the Asheville Planning and Zoning Commission for review and approval.
- (6) *Action by the planning and zoning commission.* Upon receipt of the conceptual site plan for the Level III site plan project in the CBD/DDR and the recommendations from the technical review committee and the downtown commission, the Asheville Planning and Zoning Commission shall schedule a public hearing to receive comments regarding the proposed project. The public hearing shall be scheduled for the next available meeting of the planning and zoning commission. Review and action shall be taken in accordance with subsection 7-5-9(a)(4)d.[e.] except that review by the Asheville City Council shall be in accordance with subsection (a)(7) [below].
- (7) *Action by the Asheville City Council.* Upon receipt of the conceptual site plan for the Level III site plan project in the CBD/DDR and the recommendations of the technical review committee, downtown commission, and the Asheville Planning and Zoning Commission, the Asheville City Council shall schedule a public hearing to receive comments regarding the proposed project. There are two different review processes before the council as set forth below.
 - a. *Process for Level III site plan projects in the traditional downtown core.* Level III site plan projects in the CBD/DDR and also in the traditional downtown core shall be reviewed and may only be approved by the Asheville City Council through a conditional zoning process. In reviewing these projects, the council shall follow the procedures set forth in subsection 7-7-8 of this chapter.
 - b. *Process for Level III site plan review projects outside the traditional downtown core.* Level III site plan projects in the CBD/DDR but outside the traditional downtown core shall be reviewed by the Asheville City Council. The council will be reviewing the projects only for compliance with applicable standards and regulations.
- (8) *Final review by the technical review committee.* Following approval of the application and conceptual site plan by the Asheville City Council, a detailed site plan shall be submitted to the technical review committee for review and approval prior to permit issuance.
- (9) *Public notification.* Notice for all public hearings and meetings required under this section for Level III site plan review in the CBD/DDR (excluding the required developer/neighborhood meeting) shall be provided in accordance with the provisions of section 7-5-20 of this chapter. Notice shall provide a detail listing of any projects to be reviewed at the meeting. Notice for the developer/neighborhood meetings shall be provided in accordance with subsection (a)(2)b. above.
- (10) *Records.* Detailed records shall be kept of all meetings where projects are reviewed. Records shall include staff recommendations and any findings of the reviewing body.
- (11) *Variations.* Council may modify requirements as part of a conditional zoning approval. Additionally, staff of the planning and development department may provide for deviations of up to ten percent on standards concerning openings and expanses of walls. Any other variations shall be considered by the planning and zoning commission, serving as the board of adjustment in these matters and acting in accordance with the provisions of subsection 7-6-1. The downtown commission shall provide a recommendation on all variance requests.
- (12) *Appeals.* An appeal from the decision of the Asheville City Council regarding a development application and site plan may be made by an aggrieved party and shall be made to the Superior Court of Buncombe County in manner provided by law.
- (13) *Permit validity.* Permits shall be valid according to the provisions of section 7-7-8 of this chapter for those receiving conditional zoning approval. For other approvals, such approvals shall be valid for 24 months from the date of approval. Failure to obtain a zoning permit or otherwise begin the permitted use within this time shall render the site plan approval void. The planning and development director shall grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Nothing herein shall be construed to extend any time limitations prescribed by statute or by other ordinances of this chapter.

- (14) *Violations.* Violations of the conditional use permit or any of the conditions attached to the approval for a Level III site plan approval in the CBD/DDR shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.
- (b) *Level II site plan review process.*
- (1) *Purpose.* This Level II site plan review process is required for development projects on parcels zoned Central Business District and located in the Downtown Design Review Overlay District (CBD/DDR). This review process is required for the following categories of proposed developments:
 - a. Any new construction and/or changes of use in which buildings have a gross floor area of 20,000 to 175,000 square feet and which are under the Intermediate Height Zone.
 - b. Additions with a gross floor area of 25 percent or more of the above threshold for new construction for that land use if the resulting total gross area, when combined with the existing gross floor area, would result in a gross floor area meeting or exceeding the above threshold for new construction for that land use if the structure did not previously meet the above threshold.
 - c. Properties located within 500 feet of each other, under the same ownership and /or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.
 - (2) *Pre-application procedure.*
 - a. All applicants for Level II plan review in the CBD/DDR are required to schedule a predevelopment conference as provided in subsection 7-5-9(b)(2)a. of this chapter.
 - b. It is required that the developer meet with representatives of the area in which the proposed project is located. This meeting shall be held prior to project submittal. The developer is responsible for providing notification to property owners in accordance with subsections 7-5-20(b)(2) and (3) and must certify to the planning and development director that these notice requirements have been met.
 - (3) *Plan submittal.* Plan submittal for Level II plan review in the CBD/DDR shall be as set forth in subsection 7-5-9(b)(3) of this chapter. Developments with phased components shall be required to also submit a phased master plan.
 - (4) *Staff review.*
 - a. *Planning and development staff review.* Plans for development requiring Level II site plan review in the CBD/DDR shall be reviewed by the planning and development director for compliance with the requirements of this chapter.
 - b. *Action by the technical review committee.* Plans for development requiring Level II site plan review in the CBD/DDR shall be submitted and reviewed by the members of the technical review committee in accordance with subsections 7-5-9(b)(4)b. and c., except that this is not the final approving body. The site plans are forwarded from the technical review committee to the Asheville Downtown Commission.
 - (5) *Action by the downtown commission.* Upon receipt of the conceptual site plan for a Level II site plan project in the CBD/DDR, and the recommendation of the technical review committee, the Asheville Downtown Commission shall schedule a public hearing to receive comments regarding the proposed project. Review and action shall be taken in accordance with subsections 7-5.10(b)(1)–(4) and (6). The downtown commission shall act on the proposed development application within 120 days of receipt. Following approval by the downtown commission, the plans shall be transmitted to the Asheville Planning and Zoning Commission for review and approval.
 - (6) *Action by the planning and zoning commission.* Upon receipt of the conceptual site plan for the Level II site plan project in the CBD/DDR and the recommendation from the technical review committee and the Asheville Downtown Commission, the Asheville Planning and Zoning Commission shall schedule a public hearing to receive comments regarding the proposed project. The public hearing shall be scheduled for the next available meeting of the Asheville Planning and Zoning Commission. The planning and zoning commission shall review the conceptual site plan for compliance with applicable standards and regulations.
 - (7) *Final review by the technical review committee.* Following review and approval of the application and conceptual site plan by the Asheville Planning and Zoning Commission, a detailed site plan shall be submitted to the technical review committee for review and approval prior to permit issuance.
 - (8) *Public notification.* Notice for all public hearings and meetings required under this section for Level II site plan review in the CBD/DDR (excluding the required developer/neighborhood meeting) shall be provided in accordance with the provisions of section 7-5-20 of this chapter. Notice shall provide a detail listing of any projects to be reviewed at the meeting. Notice for the developer/neighborhood meetings shall be provided in accordance with subsection (a)(2)b. above.
 - (9) *Records.* Detailed records shall be kept of all meetings where projects are reviewed. Records shall include staff recommendations and any findings of the reviewing body.
 - (10) *Variiances.* Staff of the planning and development department may provide for deviations of up to ten percent on standards concerning openings and expanses of walls. Any other variiances shall be considered by the planning and zoning commission, serving as the board of adjustment in these matters and acting in accordance with the provisions of section 7-6-1. The downtown commission shall provide a recommendation on all variance requests.
 - (11) *Appeals.* Appeals of decisions of the Asheville Planning and Zoning Commission regarding developments requiring Level II site plan approval in the CBD/DDR, shall be heard by the Asheville City Council. Further appeals shall be made to Buncombe County Superior Court in accordance with subsection (a)(12) [above].
 - (12) *Permit validity.* Permits shall be valid for 24 months from the date of approval. Failure to obtain a zoning permit or otherwise begin the permitted use within this time shall render the site plan approval void. The planning and development director shall grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Nothing herein shall be construed to extend any time limitations prescribed by statute or by other ordinances of this chapter.
 - (13) *Violations.* Violations of the approved site plan shall be considered a violation of this chapter and be subject to the enforcement and penalty provisions of article XVIII of this chapter.
- (c) *Level I site plan review process.*
- (1) *Purpose.* This Level I site plan review process is required for development projects on parcels zoned Central Business District and located in the Downtown Design Review Overlay District (CBD/DDR). This review process is required for the following categories of proposed developments:
 - a. All new developments, changes of use or additions not meeting the threshold for Level II site plan review.
 - b. Changes that modify the exterior walls and/or roof of an existing building.
 - c. Renovations with a total cost exceeding 75 percent of the appraised value of the building, as determined by the Buncombe County Tax Assessor or by an MAI-certified real estate appraiser.
 - d. Properties located within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.
 - e. Development projects that require site and/or landscape compliance as referenced in article XI: Development and Design Standards: section 7-11-1 - General; section 7-11-3 - Landscape and buffering standards; subsection 7-11-3(f) - Compliance and maintenance; and section 7-11-10 - Outdoor lighting standards.
 - (2) *Pre-application procedure.*
 - a. A predevelopment conference with the planning and development director prior to the preparation of development plans is recommended.
 - b.

It is highly recommended that the developer meet with representatives of the area in which the proposed project is located. This meeting should be held prior to project submittal. The developer is responsible for providing notification to property owners of such a meeting. It is recommended that this notification be done in accordance with subsection 7-5-20(b)(2) of this chapter.

- (3) *Plan submittal.* Plan submittal for Level I plan review in the CBD/DDR shall be as set forth in subsection 7-5-9(c)(3).
- (4) *Staff review.* Plans for development requiring Level I site plan review in the CBD/DDR shall be reviewed in accordance with subsection 7-5-9(c)(4) of this chapter except that prior to obtaining any permits, the plans must be reviewed by staff of the planning and development department for compliance with downtown design standards.
- (5) *Public notification.* Public notice shall not be required for Level I site plan review in the CBD/DDR.
- (6) *Formal review.* Applications for Level I site plan review are not subject to formal review.
- (7) *Variances.* Staff of the planning and development department may provide for deviations of up to ten percent on standards concerning openings and expanses of wall. Any other variances shall be considered by the planning and zoning commission, serving as the board of adjustment in these matters and acting in accordance with the provisions of section 7-6-1 of this chapter. The downtown commission shall provide a recommendation on all variance requests.
- (8) *Appeals.* Appeals of decisions of the planning and development director regarding the Level I site plan review shall be heard by the Asheville Planning and Zoning Commission, serving as the board of adjustment in these matters and acting in accordance with the provisions of section 7-6-2 of this chapter.
- (9) *Permit validity.* Permits validity for Level I site plan review in the CBD/DDR is as set forth in subsection 7-5-9(c)(9) of this chapter.
- (10) *Violations.* Violations of the approved site plan for developments requiring Level I site plan review in the CBD/DDR shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.

(Ord. No. 3930, § 1b, 11-23-10)

Sec. 7-5-10. - Downtown design review.

(a) *Minor works.*

- (1) *Purpose.* Downtown design (DTDR) minor works review is required for those projects in which the visual character of the structure or grounds is not substantially changed and for those projects related to locally designated historic landmarks as they undergo a separate design review process. The downtown design review procedure seeks to encourage renovation and rehabilitation in a manner that will promote visual harmony, enhance the historical integrity and develop creative design solutions. While the design guidelines will not dictate architectural styles, they will suggest a variety of design options for achieving compatibility within the designated commercial core, gateways, and periphery boundaries. Procedures for cleaning and painting of structures along with minor exterior rehabilitation and repair shall be considered minor works. Except when included with a major work, exterior illumination, landscaping, signage, site design and roofing shall also be considered minor works. All work related to locally designated historic landmark buildings and properties shall be considered minor works projects, regardless of the scope of work. In addition, except when defined as a major work, all other construction work requiring a building, sign, zoning, demolition for buildings less than 5,000 square feet or variance permit must be reviewed as a minor work.
Minor works review will apply to projects that are aligned with city definitions for Level I projects in scope and scale.
- (2) *Pre-application conference.* A pre-application conference is required prior to conducting work within the downtown design review (DTDR) boundaries. Applicants should call or visit DTDR staff prior to making application to discuss proposed design changes and to determine what level of information is required for submittals.
- (3) *Application submittal.*
 - a. *Filing of application.* An application and guidelines for minor works review shall be obtained from the planning staff. When completed, the application, required drawings, and specifications shall be filed with the planning staff to begin the review process. Applicants are strongly encouraged to make application for minor works review at the design phase of the project.
 - b. *Fees.* No fees are charged for the DTDR review and permitting process.
 - c. *Information required.* Each application for DTDR minor works review shall include the information described in the checklist provided by the planning and development department for Level I projects.
- (4) *Staff review.* The downtown design review staff shall review the application and meet with the applicant, preferably at the site of the proposed work, within ten working days of receipt of the application. Immediately following the review of the application, the minor works review application will be processed.
- (5) *Public notification.* No public notification is required for the DTDR minor works review.
- (6) *Formal review.* No formal review of DTDR minor works review is required under the mandatory review and voluntary compliance program.
- (7) *Variances.* No request for a variance from other city laws and regulations shall be heard by the board of adjustment until the proposed project has completed downtown design review.
- (8) *Appeals.* The downtown design review process has been designated by the Asheville City Council as a mandatory review and voluntary compliance program. Applicants are strongly encouraged to implement their plans for such activities within the designated boundaries in accordance with the adopted guidelines.

(b) *Major works.*

- (1) *Purpose.* A downtown design (DTDR) major works review is required for those projects which involve a substantial change in the appearance of a building or structure or landscape. Major works also include the demolition of a building or structure and relocating a building or structure. Major works project threshold is aligned with city standards for Level II and Level III projects in scope and scale. Major works shall be reviewed by the Asheville Downtown Commission with a recommendation from the DTDR staff. Major works shall include the following:
New construction; rehabilitation where the structure has been substantially altered; and signage, landscaping, site design, and exterior illumination of said development proposals that meet the major works threshold.

Demolition of structures larger than 5,000 square feet.

The review procedure seeks to encourage rehabilitation and new construction in a manner that will promote visual harmony, enhance the historical integrity and develop creative design solutions. While the design guidelines will not dictate architectural styles, they will suggest a variety of design options for achieving compatibility within the designated commercial core, gateways, and periphery boundaries.

- (2) *Pre-design review conference.* A pre-application conference is required prior to conducting work within the downtown design review boundaries. Applicants should call or visit the DTDR staff prior to making application to discuss proposed design changes and to determine what level of information is required for submittals.
- (3) *Application submittal.*
 - a. *Filing of application.* An application for major works review shall be obtained from the planning staff. When completed, the application, required drawings, and specifications shall be filed with the planning staff to begin the review process and scheduling for formal review by the Asheville Downtown Commission.

Applicants are strongly encouraged to make application for major works review at the design phase of the project.

- b. *Fees.* No fees are charged for the DTDR review and permitting process.
 - c. *Information required.* Each application for DTDR major works review shall include the information on the standard planning and development department check sheets for Level II and Level III projects, building elevations, building sections and context analysis. Applicants may wish to submit a project model including nearby affected properties.
- (4) *Staff review.* The planning staff shall review the application and shall meet with the applicant at the site of the proposed work, within ten working days of receipt of the application. Immediately following the review of the application, staff will schedule a formal review of the application for the next available regular meeting of the Asheville Downtown Commission.
 - (5) *Public notification.* The Asheville Downtown Commission shall notify property owners adjacent to the proposed work site at least ten days prior to the date of the meeting at which the application will be reviewed.
 - (6) *Formal review.* The Asheville Downtown Commission will meet monthly to review and vote on major works proposed within the designated downtown design boundaries. Applicants are encouraged to prepare a presentation to be given at this review. No city permits can be processed or variances heard until this formal review with the commission is completed.
 - (7) *Variances.* No variance from other city regulations shall be heard by the board of adjustment until the proposed project has completed downtown design review.
 - (8) *Appeals.* The downtown design review process has been designated by the Asheville City Council as a mandatory review and voluntary compliance program. Applicants are strongly encouraged to implement their plans for such activities within the designated boundaries in accordance with the adopted guidelines.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2624, § 1, 10-12-99; Ord. No. 3351, § 1, 4-25-06)

Sec. 7-5-11. - Certificate of appropriateness approval.

(a) *Minor works.*

- (1) *Purpose.* A minor works certificate of appropriateness is required for those projects in which the visual character of the structure or grounds is not substantially changed. Structures and grounds located within local historic districts require certificates of appropriateness, which certify that the proposed improvements are not incongruous with the historic character of the local historic district. This section describes the procedure for applying for and receiving a certificate of appropriateness for a minor work.
- (2) *Pre-application procedure.* No pre-application conference is required prior to applying for a certificate of appropriateness for a minor work. Applicants are encouraged to call or visit the planning and development department prior to requesting a certificate of appropriateness to determine what information is required for the application and to obtain the appropriate guidelines.
- (3) *Application submittal.*
 - a. *Filing of application.* An application for a minor works certificate of appropriateness shall be obtained from the director of the historic resources commission. When completed, the application shall be filed with the director of the historic resources commission. The director of the historic resources commission shall review the application for compliance with the principles and guidelines applicable to the historic district.
An application may be filed at any time for a minor works certificate of appropriateness.
 - b. *Fees.* For all minor work certificates of appropriateness, fees as established by the City of Asheville Fees and Charges Manual shall be due and payable when the application is submitted.
 - c. *Information required.* Each application for a minor works certificate of appropriateness shall include the information described in Appendix B (Checklists for Applications). In addition, the applicant shall provide detailed and dimensioned drawings showing the proposed changes to the property and samples of all proposed materials and colors.
- (4) *Staff review.* The director of the historic resources commission shall review the application within ten working days of its receipt to insure that it is complete. The review shall include a meeting with the applicant at the site of the proposed work. If the proposed minor work is consistent with the applicable design review guidelines, the director of the historic resources commission shall issue a certificate of appropriateness for the work.
- (5) *Public notification.* No public notification is required for a minor works certificate of appropriateness application.
- (6) *Formal review.* No formal review of a request for a minor works certificate of appropriateness requests is required unless an appeal from the decision of the director of the historic resources commission is taken to the historic resources commission.
- (7) *Variances.* No variances from the principles and guidelines applicable to a review for a minor works certificate of appropriateness shall be granted.
- (8) *Appeals.* An appeal of the decision of the director of the historic resources commission regarding approval or disapproval of an application for a minor works certificate of appropriateness shall be heard by the historic resources commission. The appeal must be made in writing within 30 days of receipt by the applicant of the written decision of the director of the historic resources commission.
- (9) *Certificate of appropriateness validity.* A minor works certificate of appropriateness shall be valid for one year following approval. If work on the project has not begun, the applicant shall be required to resubmit the project to the historic resources commission for review.
- (10) *Violations.* Violations of the provisions of this [section 7-5-11](#) shall include, but not be limited to, failure to obtain a minor works certificate of appropriateness in accordance with the requirements set forth above and/or failure to comply with the terms of a minor works certificate of appropriateness once it has been issued. Discontinuance of work in accordance with the minor works certificate of appropriateness or lack of progress toward completion of the work for a period of 90 days shall constitute a violation of this [section 7-5-11](#). Determination of discontinuance of work or lack of progress on such work shall be decided in the sole discretion of the planning and development director and/or director of the historic resources commission.
Violations shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.

(b) *Major works.*

- (1) *Purpose.* A major works certificate of appropriateness is required for those projects which involve new construction; a change in the appearance of a building, structure, or landscape; demolition of a building or structure; relocation of a building or structure; or any other work which is more substantial in nature than work for which a minor works certificate of appropriateness is required. Buildings, structures and grounds located within local historic districts require certificates of appropriateness, which certify that the proposed changes are not incongruous with the historic character of the local historic district. The procedures for applying for and receiving a certificate of appropriateness for a major work are set forth in this section.
- (2) *Pre-application procedure.* No pre-application conference is required prior to applying for a major works certificate of appropriateness for a major work. Applicants are encouraged to call or visit the planning and development department prior to requesting a certificate of appropriateness to determine what information is required for the application and to obtain the appropriate guidelines.

(3) *Application submittal.*

- a. *Filing of application.* An application for a major works certificate of appropriateness must be filed with the director of the historic resources commission. When completed, the application shall be filed with the director of the historic resources commission at least 14 days prior to the historic resources commission meeting at which the request is to be heard.

An application for a major works certificate of appropriateness must be filed with the director of the historic resources commission. When completed, the application shall be filed with the director of the historic resources commission at least 14 days prior to the historic resources commission meeting at which the request is to be heard.

- b. *Fees.* For all major work certificates of appropriateness, fees as established by the City of Asheville Fees and Charges Manual shall be due and payable when the application is submitted.
- c. *Information required.* Each application for a major works certificate of appropriateness shall include the information described in Appendix B (Checklists for Applications). In addition, the applicant shall provide as part of the application the following information:
- Photographs showing all elevations of the building (including roof lines);
 - Detailed and dimensioned construction drawings showing the existing conditions and proposed changes to the property;
 - Samples of all exterior materials in the proposed colors as well as manufacturer's data for the proposed materials, such as photographs or warranties;
 - Photographs, renderings, and/or line sketches of neighboring houses which will show scale and massing; and
 - Detailed and dimensioned construction drawings of the proposed work.

The historic resources commission may refuse to consider or table an application if it determines that insufficient information has been provided by the applicant.

- (4) *Staff review.* Upon receipt of an application for a major work certificate of appropriateness, the director of the historic resources commission shall review the application to insure that it is complete. Following the review, the application shall be scheduled for review by the historic resources commission.
- (5) *Public notification.* Notice of public hearings or public meetings required under this section for major works certificates of appropriateness approval shall be provided in accordance with the provisions of [section 7-5-20](#) of this chapter and in accordance with the Rules of Procedure for the Historic Resources Commission of Asheville and Buncombe County. Posting of sites as set forth in [section 7-5-20](#) is not required for major works certificates of appropriateness.
- (6) *Formal review.* All applications for major work certificates of appropriateness, shall be considered by the historic resources commission. The request shall be scheduled for review at the next available regular meeting of the historic resources commission. The historic resources commission shall use the applicable principles and guidelines in its review of all applications for certificates of appropriateness. The hearing shall be conducted pursuant to the rules of procedure established by the commission and according to the requirements of the North Carolina General Statutes. The Historic Resources Commission then shall take action to approve, approve with modifications, or disapprove the application.
- The historic resources commission shall cause to be entered into the minutes of its meeting the reasons for its action. In cases where the historic resources commission deems it necessary, it may hold a public hearing concerning the application. The historic resources commission may, at its discretion, view the premises and obtain additional facts concerning any application, and may seek the advice of the North Carolina Department of Cultural Resources or other expert advice as it may deem necessary. The historic resources commission must issue or deny a certificate of appropriateness within 95 days after filing of the application, except when the time limit has been extended by mutual agreement between the applicant and the historic resources commission. If the application is approved, the secretary of the historic resources commission shall transmit, in writing, a certificate of appropriateness, clearly describing the nature of the work which has been approved. The secretary shall attach a copy of the minutes of the meeting at which the approval was granted and a placard form of a certificate of appropriateness, which shall be displayed on the project. A copy of this information shall be transmitted to the building safety department and fire department of the City of Asheville. If an application is denied, a letter stating the reason for the denial shall be mailed to the applicant.
- (7) *Variations.* No variations from the principles and guidelines applicable to a review for a certificate of appropriateness shall be granted.
- (8) *Appeals.* An appeal of the decision of the historic resources commission regarding approval of an application for a major works certificate of appropriateness shall be heard by the board of adjustment in the nature of certiorari. The appeal must be made in writing and filed with the board of adjustment within 30 days of receipt by the applicant of the letter stating the action taken by the historic resources commission.
- (9) *Certificate of appropriateness validity.* A certificate of appropriateness shall be valid for one year following approval. If work on the project has not begun, the applicant shall be required to resubmit the project to the historic resources commission for review.
- (10) *Violations.* Violations of the provisions of this [section 7-5-11](#) shall include, but not be limited to, failure to obtain a major works certificate of appropriateness in accordance with the procedures set forth above and/or failure to comply with the terms of a major works certificate of appropriateness once it has been issued. Discontinuance of work in accordance with the major works certificate of appropriateness or lack of progress toward completion of the work for a period of 90 days shall constitute a violation of this [section 7-5-11](#). Determination of discontinuance of work or lack of progress on such work shall be decided in the sole discretion of the planning and development director and/or director of the historic resources commission.

Violations shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2976, §§ 1b., c., 11-12-02; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3374, §§ 1(l), (w), 7-11-06)

Sec. 7-5-12. - Floodplain development.

- (a) *Purpose.* No approval shall be granted for construction in an area designated as a special flood hazard area as shown on the flood insurance rate maps (FIRMS) for the City of Asheville, as provided by the Federal Emergency Management Agency, and also adjoining lands, which, because of their characteristics, the city determines as being susceptible to flooding or determines as being susceptible to flooding or damage by flooding until the requirements of subsection [7-12-1](#) of this chapter are met. Procedures for assuring compliance with these requirements are set forth below.
- (b) *Pre-application procedure.* Developers are encouraged to meet with the floodplain administrator prior to submitting an application for development in the special flood hazard area. This will provide developers with the opportunity to obtain information regarding details of the application process.
- (c) *Plan submittal.*
- (1) *Application required.* Applications for permits shall be made to the floodplain administrator prior to performing grading or construction on lands in the special flood hazard area. Applications shall be made on forms furnished by floodplain administrator (repealed in 2007).
 - (2) *Preparation by professional.* Plans, designs, calculations, working drawings, and specifications for work shall be prepared by an authorized registered professional properly registered and licensed in North Carolina for the work in which they are engaged.

- (3) *Fees.* Fees, as established by City of Asheville Fees and Charges Manual, shall be due and payable when the application is submitted.
- (4) *Submittal of plans.* Seven copies, unless otherwise required, of the application and supporting data shall be submitted to the floodplain administrator. Applications shall include a detailed site plan showing conditions both before and after the proposed work. Information which must appear on the site plan is set forth in subsection 7-12-1(d)(1).
- (d) *Staff review.*
- (1) *Engineering staff review.* Following submittal of the application and accompanying data, the information shall be reviewed by engineering staff for compliance with the requirements of this chapter. Provided that the application is complete, applications shall be reviewed and acted upon by the city engineering staff and notice given the applicant within 30 days of receipt of the application. Provided that the application is complete, failure of the city engineering staff to act within this time shall result in the refund of application fees. The refund of the application fee due to the expiration of the 30 days shall not cause the review of the application to cease. Staff shall continue with the review of the application.
- (2) *Submittal of applications to board of adjustment.* Applications for projects requiring variances as set forth in subsection 7-12-1(f) shall initially be heard by the specifications review committee, as established under this chapter for review and recommendation. The matter shall then be submitted to the board of adjustment and scheduled for review by the board at their next available meeting.
- (e) *Public notification.* Notice of public hearings or public meetings required under this section for review of a request for a variance from the requirements of section 7-12-1 of this chapter shall be provided in accordance with the provisions of section 7-5-20 of this chapter.
- (f) *Formal review—projects requiring variances only.*
- (1) *Review by board of adjustment.* The board of adjustment shall consider requests for variances as provided for by subsection 7-12-1(f).
- (2) *Timing.* Provided the application is complete, the board of adjustment shall arrive at a decision on a request for a variance within 30 days after its hearing on the request. In granting variances the board of adjustment may attach appropriate conditions and safeguards which promote the objectives of this chapter.
- (g) *Variances.* Variances from the requirements of section 7-12-1 (Flood Protection) shall be heard by the board of adjustment as set forth in subsection 7-12-1(f).
- (h) *Appeals.* Appeals from decisions of the floodplain administrator shall be heard by the board of adjustment as set forth in subsection 7-12-1(j)(1). An appeal shall be filed, in writing, within 30 days of the date action is taken by the floodplain administrator. Decisions of the board of adjustment may be appealed to the Superior Court of Buncombe County as provided by subsection 7-6-1(i).
- (i) *Permit validity.* Permits for construction activity in designated special flood hazard areas shall be valid for one year. Failure to initiate construction, or otherwise begin the permitted use, within this time shall render the permit void.
- (j) *Violations.* Violations of the requirements for construction activity in designated special flood hazard areas shall be considered a violation of this chapter and shall be subject to the enforcement and penalty provisions set forth in section 7-12-1
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2902, §§ 1(e)—1(g), 3-12-02; Ord. No. 3374, § 1(m), 7-11-06; Ord. No. 3811, § 1, 11-24-09)

Sec. 7-5-13. - Erosion and sedimentation control plans.

- (a) *Purpose.* To assure that land-disturbing activity undertaken in the city does not result in accelerated erosion and sedimentation, no such land-disturbing activity shall take place until plans for controlling erosion associated with the activity have been reviewed and approved in accordance with the procedures set forth below.
- (b) *Pre-application conference.* Prior to applying for a grading permit and submitting erosion control plans, the applicant is encouraged to meet with the erosion and sedimentation control staff of the city to discuss the proposed project. At this meeting, questions regarding information required in the application, schedules for review and construction, and special requirements can be addressed.
- (c) *Plan submittal.*
- (1) *Filing of application.* An application for a grading permit shall be filed with the development and permitting center at least 30 days prior to beginning the proposed land-disturbing activity. Application for a permit shall be made on a form provided by the development and permitting center.
- (2) *Fees.* A permit fee as established by the City of Asheville Fees and Charges Manual shall be due and payable when the application is submitted.
- (3) *Plan required.* All applications for a grading permit shall be accompanied by either a formal erosion control plan or a sketch erosion control plan. A formal plan shall be required when an area of more than 10,000 square feet is to be uncovered. When less than 10,000 square feet are to be uncovered, a sketch plan shall be required. The plans shall be prepared in accordance with the requirements set forth in subsection 7-12-2(c).
- (d) *Staff review.*
- (1) *Receipt of plans.* Upon receipt of the grading permit application and erosion control plan, the erosion and sedimentation control staff shall conduct an initial review of the application and plan to insure that it meets the requirements of section 7-12-2 of this chapter.
- (2) *Distribution of plans.* Upon completion of the initial review, one copy of formal erosion control plans shall be forwarded to the Buncombe County Soil and Water Conservation District for review as required.
- (3) *Review period.* Provided the application is complete, the erosion and sedimentation control staff shall have ten working days following receipt of a sketch erosion plan to review it and notify the applicant of its status. Provided the application is complete, failure to approve, deny or request additional information on the plans within this time shall result in the refund of application fees. The refund of the application fee due to the expiration of the ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application.
- Following receipt of a formal erosion control plan, the erosion and sedimentation control staff shall have 30 days to review it and notify the applicant that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Revised plans must be approved or denied within 15 days.
- Provided the application is complete, failure to act on the plans within these time periods shall result in the refund of application fees.
- (e) *Public notification.* No public notification is required for grading permit requests and erosion control plan review.
- (f) *Formal review.* Formal review of grading permit requests and erosion control plans before a board or commission is not required.
- (g) *Variances.* No variances shall be granted from the requirements that a grading permit be obtained and an erosion control plan be approved prior to initiating any land-disturbing activity subject to the soil erosion and sedimentation control regulations set forth in section 7-12-2 of this chapter.
- (h) *Appeals.* Appeals from decisions of the erosion and sedimentation control staff regarding approval of erosion control plans shall be heard by the city's erosion control plan review committee pursuant to that procedure set forth in subsection 7-12-2(s) of this chapter. The applicant must submit a written demand for a hearing within 15 days following receipt of the written notice of the erosion and sedimentation control staff's decision.
- (i) *Permit validity.* When work under a grading permit is not completed within 12 months following the date of issuance of the grading permit, the grading permit shall be deemed expired. Renewal of the grading permit will require the same application procedure as the initial permit. No further grading work is to be performed until the new permit is issued. This provision, however, shall not apply to construction projects which are to be completed in phases provided that the initial application for the erosion

control plan for the construction-site indicates a proposed schedule and an erosion control plan for all the phases. In the event that the project is done in separate phases, an erosion control plan for each separate phase shall be submitted and approved by the city with the 12-month period applying to each separate phase.

- (j) *Violations.* Violations of the soil erosion and sedimentation control regulations of this chapter shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-5-14. - Stormwater discharge permits.

- (a) *Purpose.* To insure that development undertaken in the city does not result in increased stormwater runoff which adversely impacts adjacent property, no development to which this chapter applies, pursuant to the standards set forth in section 7-12-5, shall be commenced without the issuance of a stormwater discharge permit by the city engineer.
- (b) *Pre-application procedure.* Although a pre-application conference is not required, applicants are encouraged to contact the city's engineering department prior to submitting their application to discuss the project.
- (c) *Plan submittal.*
- (1) *Application required.* An application for a stormwater discharge permit shall be made by, or on behalf of, the owner(s) or developer(s) of the site for which a permit is sought. The application shall be filed with the development and permitting center on a form supplied by the development and permitting center, and signed by the owner of the property or by an agent specifically authorized by the owner to file such application. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a zoning permit shall be filed with the development and permitting center on a form provided by the center.
 - (2) *Submittal of plan.* Three copies of a complete and detailed stormwater management plan, including detailed design plans and construction specifications, for stormwater management facilities; the exact location of any stormwater management facility; and the proposed location of any access easement(s) shall be submitted to the development and permitting center.
The plan shall be prepared by a registered professional engineer, architect, or landscape architect registered, licensed, or certified pursuant to the North Carolina General Statutes and authorized by law to prepare the analysis, plans, and specifications, and provide the certifications required by the various provisions of this subsection.
 - (3) *Fees.* The appropriate stormwater discharge permit application fee, as set forth in the City of Asheville's Fees and Charges Manual, shall be due and payable when the application is submitted.
- (d) *Staff review.*
- (1) *Engineering department review.* Upon receipt of the stormwater discharge permit application and stormwater management plan, the engineering department staff shall conduct a review of the application and plan to insure that they meet the requirements of this chapter.
 - (2) *Review period.* The engineering department staff shall have 30 days after receipt of a stormwater discharge permit application and stormwater management plan to review the application and plan and notify the applicant of the status of the review. Failure to approve, approve with modifications, approve with performance reservations, deny, or request additional information on the application and plan within this time shall result in the refund of application fees. The refund of the application fee due to the expiration of the ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application.
 - (3) *Issuance of stormwater permit.* Stormwater discharge permits shall be issued in the name of the applicant(s) and no permit shall be transferred or assigned without the written consent of the city.
- (e) *Public notification.* No public notification is required for stormwater discharge permit requests and stormwater management plan review.
- (f) *Formal review.* Formal review of stormwater discharge permit requests and stormwater management plans before a board or commission is not required.
- (g) *Variances.* No variances shall be granted from the requirements that a stormwater discharge permit be obtained and a stormwater management plan be approved prior to initiating any development activity subject to the stormwater management regulations set forth in subsection 7-12-5 of this chapter.
- (h) *Appeals.* Appeals from the decisions of the engineering department regarding stormwater discharge permits including, but not limited to, denial, suspension, assessment of civil penalties, revocation and interpretation, shall be made to the Asheville City Council. The city council shall conduct a hearing to review the information regarding an appeal in order to make a determination as to whether the requirements set forth in this chapter and the city's stormwater standard specifications manual have been met. The applicant must submit a written demand for a hearing to the city clerk within 30 days following receipt by the applicant of the denial, suspension, revocation, interpretation or other decision of the engineering department from which the appeal is taken. The city council shall schedule the hearing for appeal as soon as the council deems reasonably practicable. At the hearing, the applicant may be represented by an attorney. The city council may affirm, modify or reverse any decision of the engineering department. Appeals from the decisions of the city council shall be to the Superior Court of Buncombe County, shall be in nature of certiorari, and shall be filed with the court within 30 days of the applicant's receipt of the decision of the city council.
- (i) *Permit validity.* When a stormwater discharge permit is issued in association with a project requiring a building permit, the stormwater discharge permit shall expire upon the expiration or revocation of the building permit. When a stormwater discharge permit is issued for a project which does not require a building permit, the stormwater discharge permit shall expire if work is not initiated within 12 months of the date of issuance of the permit or if work stops for a 12-month period.
- (j) *Violations.* Violations of the stormwater management regulations shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-5-15. - Zoning vested rights approval.

- (a) *Purpose.* The zoning vested right is a right which is established pursuant to N.C. Gen. Stat. sec. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan. Upon issuance of a building permit, the expiration provisions of N.C. Gen. Stat. sec. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section 7-5-15 is outstanding. Obtaining site plan approval or preliminary plat subdivision approval through the vested rights procedure gives the applicant the right to start construction of the development as approved within two years of approval.
- (b) *Pre-application procedure.* The applicant shall meet with the planning and development director to inquire about specific zoning requirements and obtain the proper application forms. The applicant and the planning and development director shall discuss the site plan or subdivision review process and applicable meetings and deadlines. In addition, the planning and development director shall advise the applicant of the specific requirements the project needs to address and discuss other aspects of the vested rights procedure.
- (c) *Plan submittal.*
- (1)

Filing of application. In order to apply for site plan review under the vested rights procedure, the applicant must indicate his/her intent to obtain vested rights in the form of a letter to the Planning and Development Director. The letter shall include the property address, Buncombe County Tax Office parcel identification number, name of the property owner, and any other pertinent information.

- (2) *Site plan required.* Site plans, prepared in accordance with the standards set forth in Appendix A (Map and Plan Standards), shall be submitted when applying for vested rights. The number of site plans to be submitted depends upon the particular review process and is specified in the procedure section for the particular review process.
 - (3) *Fees.* An application fee as established by City of Asheville Fees and Charges Manual shall be submitted with the application.
 - (d) *Staff review.* The planning and development director shall review the application and accompanying site plan for compliance with the requirements of this chapter and other applicable regulations. After the review and approval through the appropriate review process, the request for vested rights will be scheduled for a public hearing before the Asheville City Council. The public hearing will be scheduled as provided by city council's rules of procedure.
 - (e) *Public notification.* Notice of public hearings or public meetings required under this section for zoning vested rights approval shall be provided in accordance with the provisions of section 7-5-20 of this chapter.
 - (f) *Formal review.* Requests for vested rights for site plans and subdivisions shall be scheduled for review at the next regular meeting of the Asheville City Council. At this time, the city council shall hold a public hearing to review the site plan and evaluate its conformance with the requirements of this chapter and other applicable requirements of the City of Asheville. The city council shall then take one of the following actions:
 - (1) Approve the vested rights request. The planning and development director is then directed to issue a vested rights zoning permit.
 - (2) Approve the vested rights request subject to conditions which are necessary to protect the public health, safety, and welfare. The planning and development director is then directed to issue the vested rights zoning permit subject to the changes in the site plan to be made by the developer.
 - (3) Table the vested rights request pending the submittal of additional information.
 - (g) *Variances.* Variances from the procedures and requirements for obtaining vested rights as set forth in section 7-11-4 of this chapter shall not be permitted. Requests for variances from the development standards established by this chapter shall be heard by the board of adjustment under the procedures established by section 7-6-1 of this chapter.
 - (h) *Appeals.* Aggrieved parties may seek appropriate relief as allowed by law.
 - (i) *Permit validity.* A zoning right that has been vested as provided in section 7-11-4 shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approving authority at the time the amendment or modification is approved. A zoning permit, conditional use permit, or subdivision approval shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding. A vested right shall terminate under the termination conditions as specified in subsection 7-11-4(f) of this chapter.
 - (j) *Violations.* Violations of the conditions of the vested rights approval shall be considered a violation of this chapter and shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2843, § 1(d), 8-28-01; Ord. No. 3374, § 1(n), 7-11-06)

Sec. 7-5-16. - Sign permits.

- (a) *Purpose.* In order to regulate the provision of sign standards and sign restrictions within the planning and regulation jurisdiction of the City of Asheville, it shall be unlawful to erect or maintain any sign or sign structure without first obtaining a sign permit.
- (b) *Pre-application procedure.* There is no pre-application procedure for sign permits.
- (c) *Application submittal.*
 - (1) *Filing of application.*
 - a. An application for a sign permit may be filed by the owner of the property or sign or by an agent specifically authorized by the owner to file such application. The application for a sign permit shall be filed with the City of Asheville Planning and Development Department, Code Enforcement Division, on a form provided by the Division.
 - b. *Sign contractor's license.* No person shall engage in the business of erecting or maintaining signs in the City of Asheville unless said person has been issued a sign contractor's license which has not expired at the time said work is done. This requirement shall be interpreted to exclude those persons who construct and erect a principal use identification sign when that sign is used at that person's place of business, provided all construction and installation is properly permitted and inspected for compliance with the applicable building codes of the City of Asheville and other sections of this article.
 - c. *Outdoor advertising license.* No person shall erect or maintain off-premises advertising structures in the City of Asheville unless said person has been issued an outdoor advertising license which has not expired at the time said work is done. In order to obtain an outdoor advertising license, the licensee must be a licensed sign contractor, as described in subsection a. above, and must submit annually upon renewal of this license a listing of all sign structures leased, owned, or maintained by this licensee. Such list shall give the specific location of each sign by reference to ward, sheet, and tax lot number as indicated on the Buncombe County tax maps and by reference to the name of the property owner.
 - (2) *Fees.* A permit fee as established by the City of Asheville Fees and Charges Manual is requested and shall be submitted with the application. Work performed without a permit shall be subject to a late fee. When any permit has been revoked under the terms of this chapter, the permit fees shall not be refunded. If a sign permit is denied, however, the permit fee will be refunded.
 - (3) *Information required.* Each application for a sign permit shall be accompanied by complete information as required by Appendix B (Checklists for Applications) and shall include, without being limited to, a site plan and elevation drawings of the proposed sign, a drawing of the building facade indicating the proposed location of the sign, height, dimensions and square footage of the proposed sign and any other data as the sign administrator may determine to be necessary for review of the application.
- (d) *Staff review.* Provided the application is complete, the sign administrator shall review the application and determine whether it is complete within ten working days of its submittal. Provided the application is complete, failure by the sign administrator to act within this time shall result in the refund of application fees. The refund of the application fee due to the expiration of the ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application. If the application is incomplete, the sign administrator shall notify the applicant of any deficiencies. No further steps shall be taken to process the application until the applicant corrects the deficiencies. The sign administrator shall issue a permit only upon finding that the proposed sign or sign structure satisfies the requirements of section 7-13.
- (e) *Public notification.* No public notification is required for sign permit requests.
- (f) *Formal review.* No formal review of sign permit requests is required.
- (g) *Variances.* Requests for variances from the requirements for signs set forth in this chapter shall be heard by the board of adjustment under the procedures established by section 7-6-1.
- (h) *Appeals.* Appeals of the decisions of the sign administrator shall be heard by the board of adjustment under the procedures established by section 7-6-2.

- (i) *Permit validity.* Upon issuance of a sign permit, the applicant will have one year to commence work on the approved signage, after which the permit shall automatically become null and void. The sign administrator may grant a single 30-day extension of time within which operations must be started or resumed. All requests for such extensions and approval thereof shall be in writing.
- (j) *Violations.* Violations of the conditions of a sign permit shall be considered a violation of this chapter and shall be subject to the enforcement and penalty provisions set forth in article XVIII of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3043, § 1(h), 7-22-03; Ord. No. 3642, § 1b, 9-9-08)

Sec. 7-5-17. - Driveway access permits.

- (a) *Purpose.* A driveway access permit shall be required prior to the construction of a driveway or other connection within the right-of-way of a state roadway system or highway or City of Asheville roadway system. The procedure set forth below shall be followed to obtain a permit for the construction of a driveway or other connection within the public right-of-way.
- (b) *Pre-application procedure.* No pre-application conference is required prior to applying for a driveway access permit. Applicants are encouraged to call or visit the city's traffic engineering division prior to requesting a driveway access permit to determine what information is required for the application and to determine if any special conditions exist which may affect the construction or modification of a driveway at the site.
- (c) *Plan submittal.*
 - (1) *Filing of application.* An application for a driveway access permit may be filed by the owner of the property or by an agent authorized by the owner to file such application. The application for a driveway access permit shall be filed with the development and permitting center on a form provided by the center.
 - (2) *Fees.* An application fee, as established by the City of Asheville Fees and Charges Manual, shall be due and payable when the application is submitted. Where a driveway is connected to a state maintained roadway, fees as established by the N.D. Department of Transportation shall be due and payable when the application is submitted.
 - (3) *Information required.* Each application for a driveway access permit shall contain the information described in Appendix B (Checklists for Applications), including a site plan, prepared in accordance with the standards established by Appendix A (Map and Plan Standards), showing the location of the proposed driveway access point and construction specifications. Other information necessary to show that the proposed driveway complies with the standards set forth in this chapter and in the Asheville Standard Specifications and Details Manual shall also be provided.
- (d) *Staff review.* The city's traffic engineer shall review the application for compliance with the standards established by the City of Asheville for driveway access. The application for a driveway entrance permit shall be reviewed and comments provided by the city traffic engineer within ten working days of its submittal. Failure of the city traffic engineer to take action within this time period shall result in the refund of application fees. The refund of the application fee due to the expiration of the ten working days shall not cause the review of the application to cease. Staff shall continue with the review of the application.
- (e) *Public notification.* No public notification is required for driveway access permit applications.
- (f) *Formal review.* No formal review of driveway access permit applications is required.
- (g) *Variances.* Requests for variances from the requirements for driveway entrances set forth in this chapter shall be heard by the board of adjustment under the procedures established by [section 7-6-1](#) of this chapter.
- (h) *Appeals.* Appeals of the decisions of the city traffic engineer shall be heard by the board of adjustment under the procedures established by [section 7-6-2](#) of this chapter.
- (i) *Permit validity.* The driveway access permit shall be valid for one year only. The public works director may grant a single extension of this time period up to six months upon submittal by the applicant of sufficient justification for the extension. Any change in the approved plan shall render the driveway access permit invalid.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-5-18. - River district design review.

- (a) *Minor works.*
 - (1) *Purpose.* River district design review/ minor works review for compliance with the River District Design Review Guidelines is required for projects located within the River District Design Review Area for which the visual character of the structure or grounds is not substantially changed. Renovation, rehabilitation, and construction that promotes visual harmony, enhances the historical integrity of the riverfront area, and recognizes the environmental constraints of developing along the river is encouraged by the review procedure.
Landscaping, signage, site design, small additions to existing buildings, minor exterior rehabilitation and repair shall be considered minor works. In addition, all construction work requiring a building sign, zoning, or demolition permit and all variance requests must be reviewed for compliance with the River District Design Review Guidelines.
 - (2) *Pre-application conference.* A pre-application conference is required prior to conducting work within the river district design review area. Applicants should call or visit the development services center staff prior to making application to discuss proposed design changes and to determine what information is required for the application.
 - (3) *Application submittal.*
 - a. *Filing of application.* An application and guidelines for minor works review may be obtained from the development services center staff, who will also provide the applicant with the name and contact of the staff member in charge of coordinating river district design review.
When completed, the application, required drawings, and specifications shall be submitted to the development services center staff.
Applicants are encouraged to apply for river district design review/minor works review at the design phase of the project.
 - b. *Fees.* No fees are charged for the river district design review/minor works review and permitting process.
 - c. *Information required.* Each application for river district design review/ minor works review shall include the information described in Appendix B (Checklists for Applications) of the River District Design Review Guidelines. A site plan, prepared in accordance with Appendix A (Map and Plan Standards) of the River District Design Review Guidelines shall be required for all projects involving additions, expansions, and/or landscaping.
 - (4) *Staff review.* The staff member in charge of coordinating river district design review shall review the application and meet with the applicant, preferably at the site of the proposed work, within ten working days of receipt of the application. Immediately following the review of the application, the river district design review/minor works review application will be processed by the development services center staff.
 - (5) *Public notification.* No public notification is required for the river district design review/minor works review.
 - (6) *Formal review.* No formal review of river district design review/minor works review is required by an administrative board or commission of the City of Asheville.
 - (7) *Variiances.* No variance from other city regulations shall be heard by the board of adjustment until the proposed project has completed river district design review/minor works review.

- (8) *Appeals.* The river district design review/minor works review process has been designated by the Asheville City Council as a mandatory review and voluntary compliance program. Applicants are strongly encouraged to implement their plans for activities within the river district design review area in accordance with the adopted guidelines.
- (b) *Major works.*
- (1) *Purpose.* River district design review/major works review for compliance with the River District Design Review Guidelines is required for those projects within the River District Design Review Area which involve a substantial change in the appearance of a building or structure or landscape. Major works also include: the demolition of a building or structure; relocation of a building or structure; new construction over 1,500 square feet in size (excluding accessory structures and additions to a building primarily occupied by mechanical, electrical, and communications equipment); rehabilitation where the exterior of the structure has been substantially altered; and substantial changes to signage, landscaping, site design, and exterior illumination of said new construction and rehabilitation.
- The review procedure seeks to encourage rehabilitation and new construction in a manner that will promote visual harmony, enhance and historical integrity of the river district, and recognize the environmental constraints of developing along the river.
- Major works review requests shall be reviewed by the Asheville Area Riverfront Redevelopment Commission. A recommendation regarding the major works review request shall be provided by the staff member in charge of coordinating the river district design review.
- (2) *Pre-application conference.* A pre-application conference is required prior to conducting work within the river district design review area. Applicants should call or visit the development services center staff prior to making application to discuss the project proposal and to determine what level of information is required for submittals.
- (3) *Application submittal.*
- a. *Filing of application.* An application for river district design review/major works review shall be obtained from development service center staff, who will also provide the applicant with the name and contact of the staff member in charge of coordinating river district design review. When completed, the application, required drawings, and specifications shall be filed with the development service center staff to begin the review process and scheduling for formal review by the Asheville Area Riverfront Redevelopment Commission.
- Applicants are strongly encouraged to apply for river district design review/major works review at the design phase of the project.
- b. *Fees.* No fees are charged for the river district design review/major works review and permitting process.
- c. *Information required.* Each application for river district design review/major works review shall include the information described in Appendix B (Checklists for Applications) of the River District Design Review Guidelines. A site plan, prepared in accordance with Appendix A (Map and Plan Standards) of the River District Design Review Guidelines, shall be required for all river district design review/major works review.
- (4) *Staff review.* The staff member in charge of coordinating river district design review shall review the application and shall meet with the applicant at the site of the proposed work, within ten working days of receipt of the application. Immediately following the review of the application, staff will schedule a formal review of the application by the Asheville Area Riverfront Redevelopment Commission within 30 days of receipt of the application.
- (5) *Public notification.* No public notification is required for river district design review/major works review.
- (6) *Formal review.* The Asheville Area Riverfront Redevelopment Commission will meet as needed to review major works proposed within the designated river district design review area. Applicants are encouraged to prepare a presentation to be given at this review. No city permits can be processed or variances heard until this formal review with the committee is completed.
- (7) *Variances.* No variance from other city regulations shall be heard by the board of adjustment until the proposed project has completed river district design review/major works review.
- (8) *Appeals.* The river district design review/major works review process has been designated by the Asheville City Council as a mandatory review and voluntary compliance program. Applicants are strongly encouraged to implement their plans for such activities within the river district design review area in accordance with the adopted guidelines.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2437, §§ 3, 4, 11-25-97; Ord. No. 4068, § 1a, 3-13-12; Ord. No. 4263, § 2, 1-14-14)

Sec. 7-5-19. - Certificate of occupancy.

- (a) *Purpose.* Issuance of a certificate of occupancy shall be required prior to the occupancy or use of any new construction and re-occupancy or re-use of any renovation/rehabilitation in the City of Asheville. Certificates of occupancy insure that a completed development project has complied with all of the applicable requirements of this chapter, with the applicable standards of the North Carolina State Building Code, and all other applicable federal, state, and local regulations.
- A temporary certificate of occupancy shall be issued only when the following conditions are met:
- (1) Remaining or outstanding work other than that required by the North Carolina State Building Code has been bonded (or an irrevocable letter of credit provided) in the amount of one-and-one-half times the estimated cost of completing the work;
- (2) Limitations on occupancy by building area, use, and occupancy type (for example, occupancy by employees but not the public) imposed by the fire department or building safety department are agreed to by the applicant; and
- (3) Outstanding work involving life safety features or components is approved for such temporary certificate of occupancy by the fire chief.
- (b) *Pre-application procedure.* Although a pre-application conference is not required, applicants are encouraged to contact the building safety department prior to requesting a certificate of occupancy to discuss the procedure.
- (c) *Plan submittal—filing of application.* A request for a certificate of occupancy may be made by the owner of the property or by an agent authorized by the owner to make the request. The request for a certificate of compliance shall be made at the development and permitting center.
- (d) *Staff review.* Upon receipt of the request for a certificate of occupancy, the planning and development director, the director of public works, the fire chief, the city engineer, and the director of building safety and/or their designee(s) shall inspect the project building(s) and site for compliance with the approved site plan or subdivision plat and the applicable standards of this chapter, with the applicable standards of the North Carolina State Building Code, and all other applicable federal, state, and local regulations. The building(s) and site shall be inspected within ten working days of the receipt of the request for a certificate of occupancy. The applicant shall be notified of any deficiencies in the building(s) or site which prevent the issuance of the certificate of occupancy. No further action shall be taken to issue the certificate of occupancy until all deficiencies are corrected and a reinspection is performed.
- The certificate of occupancy shall be issued only upon finding that the building(s) and site comply with all applicable requirements, including any conditions placed on a project under the provisions of this chapter.
- (e) *Public notification.* No public notification is required for requests for certificate of occupancy.

- (f) *Formal review.* No formal review of requests for certificate of occupancy is required.
- (g) *Variations.* There are no provisions for a variance from the requirement that a certificate of occupancy be issued for all new construction and renovation/rehabilitation to insure compliance with the requirements of the City of Asheville and with the North Carolina State Building Code.

If a developer provides satisfactory evidence that a bond or surety as required by this paragraph has been requested and that the developer and project otherwise qualify for said bond or surety, and that said request has been turned down by two or more financial institutions for reasons unrelated to the qualifications of the developer or project, the planning director may enter into an agreement with the developer for the delayed completion of the required work; provided, that said agreement may not apply to improvements or features that are required for safety purposes, or are prescribed by statute or state codes or regulations. By way of illustration and not limitation, said agreement (1) shall establish a schedule for the completion of improvements, (2) shall contain provisions relating to enforcement of its terms, and (3) shall specify penalties for breach, (4) shall be subject to approval of the city attorney, and (5) may be recorded in the office of the register of deeds wherein the property is located.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, § 8, 11-11-97; Ord. No. 3708, § 1, 3-10-09)

Sec. 7-5-20. - Notices and public hearings.

(a) *General notice requirements.*

- (1) All notices which this chapter requires for public hearings or public meetings shall identify the date, time and place of the public hearing/public meeting and the nature and character of the proposed action. Where the action being taken concerns a particular property or properties, the notice shall also identify the location of the subject property.
 - (2) Where specific notice requirements are set forth in the North Carolina General Statutes for a particular type of public hearing, the requirements set forth in the North Carolina General Statutes shall be followed. Where these requirements conflict with procedures as stipulated in this subsection or elsewhere in this chapter, the requirements contained in the North Carolina General Statutes will control.
- (b) *Notice procedure.* The following guidelines detail the notification procedure to be followed for public hearings or public meetings required by this chapter unless otherwise set forth in this chapter. Failure to follow procedures set forth in this section, other than those required by the North Carolina General Statutes, shall not affect the validity of any action taken at a public hearing or public meeting.
- (1) *Published notice.* Notice for public meetings or public hearings required by this chapter shall be published in a newspaper of general circulation no later than ten days prior to the date on which the application is to be considered.
 - (2) *Mailed notice.* First class mailed notice for public meetings or public hearings required by this chapter shall be provided to the person or entity whose application or request 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 and owners of all properties located within 200 feet of the subject property as said owners are shown on the county tax listings. Such notice shall be mailed no later than ten days before the scheduled date of the hearing. This notice shall also be mailed to the contact person(s) for the neighborhood(s) in which the development is proposed, if the contact person(s) is (are) known to the planning and development department.
 - (3) *Posted notice.* A sign (or signs) providing information concerning a public hearing or public meeting required by this chapter will be posted on property which is the subject of said hearing/meeting no later than ten days before the date on which the hearing or meeting is to occur. The sign(s) shall be prominently placed on the subject parcel or on an adjacent public street or highway right-of-way. When multiple parcels are involved, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons.
- (c) *Special notice requirements for telecommunications towers/structures.* For any public hearing for conditional use applications for telecommunication towers and concealed telecommunication support structures, as required by section 7-16-2 hereinafter, additional notice and public hearing requirements shall be provided as set forth in section 7-16-2 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2535, § 4, 1-12-99; Ord. No. 2625, § 1, 10-12-99; Ord. No. 2976, § 1a, 11-12-02; Ord. No. 3374, § 1(o), 7-11-06; Ord. No. 4274, § 1d, 1-28-14)

Sec. 7-5-21. - Neighborhood/developer meetings.

- (a) *Purpose.* The purpose of this section is to provide for neighborhood/developer meetings as an optional, alternative step in the review process for rezonings, certain conditional use permits, conditional use rezonings, and Level III developments. Its intent is to improve the communication between developers and the neighborhood(s) potentially affected by developer proposals in an effort to educate both parties about each other's interests, to attempt to resolve issues in a manner that respects those interests, and to not add to the application processing time for the developer.
- (b) *Process.* Notwithstanding the requirements set forth elsewhere in this chapter, a neighborhood/developer meeting may be held in lieu of a public hearing by the planning and zoning commission in the following cases:
- (1) Rezoning.
 - (2) Conditional use rezoning.
 - (3) Level III developments.
 - (4) Conditional use permits for which the planning and zoning commission has specific review authority.

The neighborhood/developer meeting shall be conducted in the manner described by the planning director, which shall at a minimum include mailed notification in accordance with section 7-5-20, but need not include published notice unless required by statute. Prior to submitting any application to city council for final action, the planning director shall provide verification of compliance with the requirements of this section. Nothing herein shall require a neighborhood/developer meeting in lieu of consideration by the planning and zoning commission, and nothing herein shall preclude the holding of neighborhood/developer meetings in addition to a public hearing by the planning and zoning commission on the same application.

(Ord. No. 3072, § 1, 11-25-03)

ARTICLE VI. - VARIANCES AND ADMINISTRATIVE APPEALS

Sec. 7-6-1. - Variances.

- (a) *Purpose.* The variance process administered by the board of adjustment is intended to provide limited relief from the requirements of this chapter in those cases where strict application of a particular requirement will create an unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this chapter. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this chapter may impose on property owners in general or to increase the profitability of a proposed development. Rather, it is intended to provide relief where the requirements of this chapter render the land difficult to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested.
- (b) *Provisions which may not be varied by the board of adjustment:*
- (1)

Other than those exceptions explicitly noted, in no event shall the board of adjustment grant a variance to any special requirement set out in article XVI for a use by right subject to special requirements, or grant a variance with respect to any conditional use permit or conditional zoning district ordinance adopted pursuant to this chapter.

- (2) In no event shall the board of adjustment grant a variance which would modify, alter, change, or suspend the special requirements set forth in article XVI of this chapter, for a use by right, subject to special requirements, or a conditional use.
 - (3) In no event shall the board of adjustment grant a variance to the flood protection provisions within the designated floodway district which would result in any increase in the flood levels during the regulatory flood discharge.
 - (4) In no event shall the board of adjustment grant a variance which would permit the creation of a non-conforming lot except that the board may grant a variance permitting a reduction in lot area and dimensional standards, for an individual lot located in residential districts, provided that the variance does not permit a reduction of greater than ten percent in the required lot area and dimensional standards. Provided further, applications for such variance for additional lot(s) under common ownership or located within the same development shall not be submitted within three years of submittal of the previous application, regardless of the decision of the board on the previous application.
 - (5) In no event shall the board of adjustment grant a variance from the design guidelines established for local historic districts and historic landmarks.
 - (6) In no event shall the board of adjustment grant a variance which would conflict with the North Carolina State Building Code, the Asheville Fire Prevention Code, or any other state code unless otherwise authorized by laws and regulations.
 - (7) In no event shall the board of adjustment grant a variance which would permit the creation of a nonconforming lot.
 - (8) In no event shall the board of adjustment grant a variance from the landscape and buffering standards set forth in section 7-11-1 of this chapter.
- (c) *Applications.*
- (1) An application for a variance may be filed only by the owner of the land affected by the variance or an agent specifically authorized in writing by the owner to file such application.
 - (2) Before filing the application, the applicant is strongly encouraged to meet with the planning and development director or the engineering director if proceeding under sections 7-5-12, 7-12-1 or 7-12-2 of this chapter to discuss the proposed variance and to become more familiar with the applicable requirements and approval procedures of the city.
 - (3) An application for a variance shall be filed with the city clerk who will then forward to the planning and development director or the engineering director, if proceeding under section 7-5-12, 7-12-1, or 7-12-2, on a form prescribed by the director, and containing such information and plans as required on the application form. The notice of appeal shall state the grounds for the appeal.
 - (4) The application shall be accompanied by a fee as set forth in the City of Asheville's Fees and Charges Manual.
 - (5) Once an application is accepted as complete by the clerk, the planning and development director or the engineering director, if proceeding under the section 7-5-12, 7-12-1 or 7-12-2, the application will be scheduled for consideration at a public hearing by the board of adjustment; provided however, all appeals and requests for variances under section 7-5-12 and 7-12-1 of this chapter shall initially be heard by the specifications review committee.
- (d) *Action by the board of adjustment.*
- (1) Upon receiving the application materials, the board of adjustment shall hold a public hearing on a proposed variance. Notice of the public hearing shall be provided in accordance with the provisions of section 7-5-20 of this chapter. The public hearing shall be conducted in accordance with the rules of procedure of the board of adjustment and in accordance with the North Carolina General Statutes.
 - (2) In considering the application, the board of adjustment shall review the application materials, the staff recommendation, the general purpose and standards set forth in this article for the granting of variances, and all testimony and evidence received by the board of adjustment at the public hearing.
 - (3) After conducting the public hearing, the board of adjustment may:
 - a. Deny the application;
 - b. Conduct an additional public hearing on the application; or
 - c. Grant the application. The concurring vote of four-fifths of the board of adjustment shall be necessary to grant a variance.

Any approval or denial of the request shall be accompanied by written findings that the variance meets or does not meet each of the standards set forth in subsection 7-6-1(e) below: except the standards for flood protection regulation variances are set forth in subsection 7-6-1(f). The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the secretary to the board.
 - (4) Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board of adjustment.
- (e) *Standard of review.* When unnecessary hardships would result from carrying out the strict letter of this ordinance, the board of adjustment shall grant a variance upon a showing of all the following:
- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (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 variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved.
- No change in permitted uses may be authorized by the variance. Appropriate conditions may be imposed on any variance provided that the conditions are reasonably related to the variance.
- (f) *Standard of review—flood regulations variances.* A variance from the standards set forth in section 7-12-1 of this chapter for flood protection may be granted permitting the erection of a structure with a lowest floor elevation, including basement, lower than the regulatory flood datum if all of the following are met:
- (1) The property on which the structure is to be erected is an isolated lot of one-half acre or less, contiguous to and surrounded by existing structures constructed below such required first floor elevation;
 - (2) Good and sufficient cause exists for the granting of the variance;
 - (3) Failure to grant the variance would result in exceptional hardship to the applicant;
 - (4) The issuance of the variance would not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
 - (5) The variance is the minimum necessary to afford relief; and

- (6) The variance would not have the effect of nullifying the intent and purposes of this chapter.
- (g) *Standard of review—sign variances.* See [section 7-13-9](#) of this chapter.
- (h) *Effect of approval or denial.*
- (1) After the board of adjustment approves a variance, the applicant shall follow all appropriate procedures set forth in article V of this chapter for the receipt of permits, certificates, and other approvals necessary in order to proceed with development.
 - (2) An application for a rehearing may be made in accordance with the board of adjustment's rules of procedure.
- (i) *Appeals.* Any appeal from the decision of the board of adjustment may be made by an aggrieved party and shall be made to the Superior Court of Buncombe County in the nature of certiorari. Any such petition to the Superior Court shall be filed no later than 30 days, as provided in N.C.G.S., sec. 160A-388(e2), after a written copy of the decision of the board of adjustment is received by the applicant.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2453, § 1, 2-24-98; Ord. No. 2637, § 1(b), 11-9-99; Ord. No. 2902, §§ 1(h)—1(j), 3-12-02; Ord. No. 2912, § 1(d), 4-9-02; Ord. No. 3306, § 1(b), 11-22-05; Ord. No. 3369, § 1(c), 6-27-06; Ord. No. 3374, § 1(p), 7-11-06; Ord. No. 3757, § 1c, 7-14-09; Ord. No. 3793, § 1g, 9-22-09; Ord. No. 3943, § 1a, 1-25-11; Ord. No. 4274, § 1b, 1-28-14)

Sec. 7-6-2. - Appeals of administrative decisions.

- (a) *Purpose.* Appeals to the board of adjustment from the decisions of the administrative staff of the city are permitted as provided for in this chapter.
- (b) *Decisions which may be appealed.* Any order, requirement, decision, or determination made by an administrative officer charged with enforcing the provisions of this chapter may be appealed to the board of adjustment.
- (c) *Persons who may file and appeal.* Any person who has standing under N.C.G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. The notice of appeal shall state the grounds for appeal.
- (d) *Filing of an appeal.*
- (1) An application for an appeal shall be filed with the city clerk who will then forward to the planning and development director on a form prescribed by the director and contain such information as required on the application form.
 - (2) The application shall be accompanied by a fee as set forth in the City of Asheville's Fees and Charges Manual.
 - (3) Any appeal of an administrative decision must be filed no later than 30 days from receipt of written notice of the decision. For purposes of this section, "filed" means received by the city clerk. Additionally, though posting of notice of a decision is not required by this ordinance, N.C.G.S. 160A-388(b1)(4) provides that constructive notice to all persons with standing to appeal "shall be conclusively presumed" upon compliance with the provisions of that statute.
 - (4) Once an application is accepted as complete by the planning and development director, the application will be scheduled for consideration at a public hearing by the board of adjustment.
 - (5) The filing of an appeal of a notice of violation or other enforcement order shall stay all proceedings in furtherance of the contested action unless the planning and development director, chief building inspector, or the official who made the decision, certifies to the board of adjustment that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property, or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In such case, proceedings shall not be stayed except by restraining order which may be granted by the Superior Court of Buncombe County on notice to the administrative official from whom the appeal is taken, with due cause shown. 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 of adjustment 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 ordinance shall not stay the 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.

- (e) *Action by the board of adjustment.*
- (1) Upon receiving the application materials, the board of adjustment shall hold a public hearing on the appeal. Notice of the public hearing shall be provided in accordance with the provisions of [section 7-5-20](#) of this chapter. The public hearing shall be conducted in accordance with the rules of procedure of the board of adjustment and in accordance with the North Carolina General Statutes.
 - (2) Either at the public hearing or a subsequent meeting, the board of adjustment shall adopt an order reversing, affirming, or modifying the contested action.
 - (3) The board of adjustment shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the terms of this chapter.
 - (4) The board of adjustment shall not reverse or modify the contested action unless there is a concurring majority vote of the board members.
 - (5) Nothing herein shall prevent the planning and development director or his/her designee from pursuing an informal resolution of the matter appealed from. In such cases, the planning and development director or his/her designee shall report such resolution to the board of adjustment.
- (f) *Effect of reversal or modification.* In the event that the board of adjustment reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the board of adjustment unless an appeal is taken on the board's decision.
- (g) *Appeal from board of adjustment.* Any such petition to the superior court shall be filed no later than 30 days, as provided in N.C.G.S., sec. 160A-388(e2), after a written copy of the decision of the board of adjustment is received by the applicant.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3306, § 1(c), 11-22-05; Ord. No. 3374, § 1(q), 7-11-06; Ord. No. 3757, §§ 1d, e, 7-14-09; Ord. No. 4274, § 1c, 1-28-14)

ARTICLE VII. - TEXT AMENDMENTS AND MAP AMENDMENTS

Sec. 7-7-1. - General.

The Asheville City Council may amend, supplement, modify, or repeal the regulations set forth in this chapter or amend the zoning maps. Such amendments shall be evaluated for compliance with the city's comprehensive plan and other applicable adopted plans, and may require a comprehensive plan amendment pursuant to [section 7-4-2](#) of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3306, § 1(d), 11-22-05)

Sec. 7-7-2. - Initiation of amendments.

Proposed changes or amendments to the text of this chapter may be initiated by the Asheville City Council, the Asheville Planning and Zoning Commission, the board of adjustment, the planning and development director, any owner of a legal or equitable interest in land located in the city or its extraterritorial jurisdiction, or any resident of the city or its extraterritorial jurisdiction. Proposed zoning map amendments may be initiated by the Asheville City Council, the Asheville Planning and Zoning Commission, the board of adjustment, the planning and development director, or any owner of a legal or equitable interest in the property for which the map amendment is requested. A zoning study of a defined area may be requested upon submittal to the planning and development department of a petition signed by 51 percent of the property owners in the defined area for which the zoning study is requested who own at least 51 percent of the property (acreage) in the defined area for which the zoning study is requested. The area for which the zoning study is requested must be defined by the petitioners requesting the zoning study and may be of any size and include any number of individual contiguous parcels, including a public street. The area defined by the petitioners will be used by city staff to determine if the required 51 percent of property owners owning at least 51 percent of the property have signed the petition requesting the zoning study. Upon confirmation that the petition for a zoning study is valid, it shall be forwarded to the Asheville City Council for a determination of whether the zoning study should be initiated for the defined area and any portion thereof. The city council may initiate the zoning study, elect not to initiate the zoning study, or reduce the size of the area to be included in the zoning study and initiate a zoning study of the reduced area.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-7-3. - Petition requirements.

- (a) *Pre-filing meeting.* Before filing a petition for an amendment or a request for a zoning study, an applicant shall meet with the planning and development director to discuss the proposed amendment or request and to become more familiar with the applicable requirements and approval procedures of the city.
- (b) *Filing.*
 - (1) A petition requesting an amendment or a zoning study shall be filed with the planning and development department on a form provided by the director.
 - (2) Applicable fees shall be payable as set forth in the City of Asheville's Fees and Charges Manual.
 - (3) Petitions must be submitted by 12:00 noon on the last Friday of a month in order for the petition to be heard at the meeting of the planning and zoning commission scheduled at least 30 days later.
- (c) *Content of applications.*
 - (1) Each application shall contain or be accompanied by all information required on the application form provided by the planning and development director.
 - (2) Every amendment proposing to change the district boundary lines shall be accompanied by a metes and bounds description, a survey of the area involved, or reference to existing lots, sufficient in the estimation of the planning and development director to plot or otherwise identify the amendment on the official zoning maps of the City of Asheville.
 - (3) Any person designated by the owner(s) of the property included in the petition to serve as agent for the owner shall submit such authorization in writing with the application.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3296, § 1, 10-25-05)

Sec. 7-7-4. - Review by the Asheville Planning and Zoning Commission.

- (a) *Review—general.* The Asheville Planning and Zoning Commission shall hold a public hearing to consider proposed amendments. Notice of the public hearing shall be provided in accordance with the provisions of [section 7-5-20](#) of this chapter. The public hearing shall be conducted in accordance with the rules of procedure of the commission. The commission will make recommendations to the Asheville City Council regarding whether to approve or deny each proposed amendment. When considering an amendment, the Asheville Planning and Zoning Commission shall base its decision on considerations as set forth in subsection [7-7-5\(b\)](#).
- (b) *Affirmative recommendation by the Asheville Planning and Zoning Commission.* Following an affirmative recommendation by the Asheville Planning and Zoning Commission on the proposed amendments, the action shall be reported to the Asheville City Council for a public hearing and final action according to the process set forth in subsection [7-7-5](#) of this chapter. The public hearing will be scheduled as provided by city council's rules of procedure.
- (c) *Negative recommendation by the Asheville Planning and Zoning Commission.* If the Asheville Planning and Zoning Commission has made a negative recommendation on an amendment, the petitioner may, within 30 days after written notification from the city clerk, request that a public hearing be held by the Asheville City Council. This request shall be in writing and submitted, within the 30-day period, to the city clerk. If the petitioner fails to request a public hearing before the Asheville City Council within the allotted 30-day time frame, then the denial shall be considered affirmed by the Asheville City Council and the normal administrative remedies provided by this chapter satisfied. Furthermore, the waiting period for subsequent applications as set forth in subsection [7-7-7](#) of this chapter shall apply to all property included in a petition denied in this manner.

Amendments initiated by the Asheville City Council or the Planning and Development Director which receive a negative recommendation from the Asheville Planning and Zoning Commission shall not be required to follow the appeals process set forth above. The recommendation of the planning and zoning commission on the amendments initiated by the Asheville City Council or the planning and development director shall be forwarded to the city council for review and action.

- (d) *No action by the Asheville Planning and Zoning Commission.* If the Asheville Planning and Zoning Commission has made neither a positive nor a negative recommendation on a proposed amendment within 90 days of first considering it, the proposed amendment shall be forwarded to the Asheville City Council for consideration. The proposed amendment shall be accompanied by a record of the Asheville Planning and Zoning Commission's comments regarding the amendment and the reasons, if any, for their lack of action.
- (e) *Content of recommendations.* Any recommendation made by the planning and zoning commission to the city council pursuant to this section shall be in writing and shall include a statement describing whether the proposed amendment is consistent with the comprehensive plan and any other applicable plan, and shall address any other matter deemed appropriate by the commission.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, § 9, 11-11-97; Ord. No. 2843, § 1(e), 8-28-01; Ord. No. 3306, § 1(e), 11-22-05; Ord. No. 3374, § 1(r), 7-11-06)

Sec. 7-7-5. - Action by the Asheville City Council.

- (a) *Review—general.* Following receipt of a recommendation on a proposed amendment, or in the case of a negative recommendation, the receipt of the petitioner's request for a public hearing or in the case of no action by the Asheville Planning and Zoning Commission as described in subsection [7-7-4\(d\)](#) above, the Asheville City Council shall hold a public hearing on the proposed amendment. The public hearing will be scheduled and conducted as provided by city council's rules of procedure. Notice of the hearing shall be provided in accordance with the provisions of [section 7-5-20](#) of this chapter and the North Carolina General Statutes.
- (b) *Action.*
 - (1) Before acting on any proposed amendment, the Asheville City Council shall consider any recommendation made by the Asheville Planning and Zoning Commission, the recommendation submitted by the Planning and Development Department to the Asheville Planning and Zoning Commission, the comments made at the public hearing, and any other relevant additional information.
 - (2)

When considering a proposed amendment, the Asheville City Council will not evaluate the petition based on any specific proposal for the use or development of the property. The petitioner shall not use any graphic materials or descriptions of the proposed development except for those which would apply to all uses permitted by the requested classification.

- (3) Upon reviewing all pertinent information, the Asheville City Council may:
- Adopt the proposed amendment;
 - Reject the proposed amendment;
 - Refer the proposed amendment back to the Asheville Planning and Zoning Commission for further consideration or hearing; or
 - Modify the proposed amendment.
- (4) *Considerations during decisions.* Prior to adopting or rejecting any zoning amendment, the city council shall adopt a statement describing whether its action is consistent with the comprehensive plan and any other applicable plan, and shall state why the action taken is considered to be reasonable and in the public interest.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2843, § 1(f), 8-28-01; Ord. No. 3306, § 1(f), 11-22-05; Ord. No. 3374, § 1(s), 7-11-06)

Sec. 7-7-6. - Protests.

- (a) *Protest petitions.* In case of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.
- (b) *Qualifications.*
- (1) *Signatories required.* To qualify as a protest, under this section, the petition must be signed by the owners of either (i) 20 percent or more of the area included in the proposed change or (ii) five percent of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.
 - (2) *Qualified signatures.* Where the owner of property submitting a protest petition is something other than an individual, married couple holding the property as an entirety, or fewer than five joint owners (tenancy in common, joint tenants, etc.), the petition shall be accompanied by copies of appropriate documentation that the petition has been signed by all of the record owners of the protesting property, and in the case of an owner that is not a real person, documentation showing that the petition has been executed in the proper form for that entity. Where the property is titled in the name of someone who is deceased, divorced, or otherwise no longer an owner of the property, the petition shall so state. An opinion from a licensed North Carolina attorney as to the legal sufficiency of the form of execution of a protest petition will suffice for this requirement.
- (c) *Exceptions.* The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use district, (ii) conditional use district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use district, conditional use district, or conditional district.
- (d) *Form and time for filing.* No protest against any change in or amendment to the zoning ordinance or zoning map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers to protest the proposed change or amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The city council may by ordinance require that all protest petitions be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine the sufficiency and accuracy of the petition. The City of Asheville provides protest petition forms at the office of the city clerk. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in N.C.G.S., sec. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 3306, § 1(g), 11-22-05; Ord. No. 3572, § 1(h), 1-8-08)

Sec. 7-7-7. - Waiting period for subsequent applications.

- (a) *Waiting period - general.* When an application for a zoning amendment has been approved or denied by the Asheville City Council, no rezoning application covering the same property shall be accepted or considered within 12 months after the date of the approval or denial. This restriction shall apply regardless of whether or not the new application is for a zoning classification different from the original application.
- (b) *Waiting period - waiver.* The waiting period required by this section may be waived by a three-fourths vote of Asheville City Council if it determines that there have been substantial changes in conditions or circumstances which may relate to the request.
- (Ord. No. 2369, § 1, 5-27-97)

Sec. 7-7-8. - Conditional zoning.

- (a) *Purpose.* Conditional zoning is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Conditional zoning affords a degree of certainty in land use decisions not possible when rezoning to a general use district. Additional standards and regulations may be attached to a proposed development to ensure compatibility with the surrounding uses and with applicable adopted plans in accordance with the requirements of this section.
- (b) *Conditional zoning districts.* Conditional zoning is available for any of the general zoning classifications enumerated in this ordinance, except for those that require a site specific development plan as part of the application (e.g., Urban Village). The conditional zoning designation shall be indicated on all zoning maps and other official documents with the suffix, "(CZ)" (e.g. RM-8 (CZ); IND (CZ)).
- (c) *General requirements.* The following provision shall apply in the administration of conditional zoning.
- (1) A conditional zoning application shall be considered only upon request of the owner of the affected property or a duly authorized representative of the property owner.
 - (2) Prior to submittal of the application, it is strongly recommended that the applicant meet with representatives of the surrounding property owners and of the surrounding neighborhood(s) to discuss the proposed development, and include a report of any such meetings in its application.
 - (3) All standards and requirements of the corresponding general use zoning district shall be met, except to the extent that the conditions imposed by the conditional zoning may be more or less restrictive than the general use standards if such conditions comply with the comprehensive plan or other adopted plans, and/or except where the requirements are modified in accordance with subsection 7-7-8(c)(6).
 - (4) No uses shall be permitted except those enumerated in the ordinance adopting the conditional zoning.

- (5) The conditions agreed upon pursuant to the conditional zoning approval shall be stated in the adopting ordinance and may limit the uses which are permitted on the property. By way of illustration and not limitation, conditions may specify location on the property of the proposed structure(s), the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the height of structures, the location and extent of rights-of-way and other areas to be dedicated for public purposes, and other such matters as may be identified as appropriate for the proposed development.
- (6) Minor modifications to the approved conditional zoning ordinance may be approved by the planning and development director. The minor modifications authorized herein are intended to provide relief where conditions established by the conditional zoning ordinance create a hardship based upon a unique physical attribute of the property itself or some other factor unique to the property which was not known at the time of ordinance adoption and which has subsequently rendered the property difficult or impossible to use due to the condition(s) imposed by the zoning. The permit holder shall bear the burden of proof to secure the modification(s). Such modifications shall be limited to the following:
- A deviation of up to ten percent or 24 inches, whichever is greater, from the approved setback, provided that the conditions for approving a deviation from the required setback established by subsection 7-11-6(c)(1) of this chapter are met.
 - A reduction of up to 25 percent in the number of parking spaces required for the use provided that the conditions established by subsection 7-11-1(c) of this chapter are met.
 - Any other minor modification in accordance with the limitations and procedures prescribed in this chapter, unless a conditional zoning ordinance adopted pursuant to this section specifies otherwise.
- Any other modifications must be approved by the city council as an amendment to the conditional zoning ordinance, and may be referred to the planning and zoning commission or technical review committee as appropriate. The planning director shall in every case have the discretion to decline to exercise the power to approve or deny modifications as provided for herein, and may require the applicant to seek an amendment to the conditional zoning ordinance.
- (7) Any violation of a provision of a conditional zoning ordinance shall be treated the same as any other violation of this chapter and shall be subject to the same remedies and penalties as any other such violation.
- (8) If for any reason any provision of a conditional zoning ordinance is found to be illegal or invalid, or if the applicant should fail to accept any condition, the entire ordinance shall be null and void, and the property shall revert to its previous zoning classification without further action by the city council.
- (9) If no action has been taken to obtain a zoning permit or otherwise begin development of the property in accordance with the conditional zoning ordinance within 24 months of its approval by city council, or no vested right has been obtained then the property shall revert to its previous zoning classification, or the planning director may initiate appropriate action to rezone the affected property to any other classification. The planning and development director may grant a single extension of this time period up to six months upon submittal by the application of sufficient justification for the extension. An extension of up to one additional year may be granted by the Asheville City Council upon submittal by the application of sufficient justification for the extension. Appropriate conditions may be added to the initial approval or extension approval to guarantee site maintenance and security. Nothing herein shall be construed to extend any time limitations prescribed by statute or by other ordinances in this chapter.
- (10) If the use or uses commenced pursuant to a conditional zoning ordinance adopted pursuant to this section are abandoned or discontinued pursuant to sections 7-17-5 or 7-17-6; or no vested right has been obtained then the property shall revert to its previous zoning classification, or the planning director may initiate appropriate action to rezone the affected property to any other classification.
- (11) No variances or conditional use permits may be issued for developments on property that is subject to a conditional zoning ordinance.
- (d) *Application procedure.* When applying for conditional zoning, the owner shall specify the nature of the proposed development and shall propose conditions to ensure compatibility with the surrounding uses and consistency with adopted plans. Applications for conditional zoning shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established in this article for zoning map and zoning text amendments, except as provided below:
- The application shall include site plans, landscape plans, building elevations, floor plans, and other such information required to provide the approving bodies with a complete and accurate description of the proposed development. It must also include a notation of the deed number of the subject property with book and page reference from the Buncombe County Register of Deeds.
 - The application and supporting materials shall be reviewed by the technical review committee in accordance with its procedures for reviewing applications for conditional use permits prior to the meeting of the planning and zoning commission at which the application is to be considered. The recommendations and comments of the technical review committee shall be reported to the planning and zoning commission. In addition, the planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2, and shall submit said report at the public hearings on said applications.
 - Following review by the technical review committee, the Asheville Planning and Zoning Commission shall hold a public hearing on applications for conditional zoning. Notice of the public hearing shall be provided in accordance with the provisions of section 7-5-20 of this chapter. After holding the public hearing, the Asheville Planning and Zoning Commission may recommend approval of the application, including recommending conditions for the zoning; recommend denial of the application; or continue the consideration of the application in order to receive further information regarding the application.
 - Upon receipt of the recommendations from the planning and zoning commission, the city council shall hold a public hearing on the application for conditional zoning. Notice of the public hearing shall be provided in accordance with the provisions of section 7-5-20 of this chapter and the North Carolina General Statutes.
 - The city council's consideration of an application for conditional zoning is legislative in nature, and the council may consider any relevant information in its deliberations, including the criteria for issuing conditional use permits specified in section 7-16-2. Consideration shall be given to adopted land use plans for the area, small area plans, corridor plans, and other land use policy documents, and to surrounding land uses. The council may adopt or not adopt a conditional zoning ordinance, or may continue its consideration of the application as necessary or appropriate.
 - During the adoption of a conditional zoning ordinance, specific conditions may be proposed by the petitioner, city council, planning and zoning commission or city staff, but only those conditions mutually approved by city council and the petitioner may be incorporated into the zoning regulations and permit requirements. Conditions and site-specific standards imposed in a conditional use district shall be limited to those that address the conformance of the development and use of the site to city ordinances, an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.
 - Specific findings of the city council are not required for action on an application for conditional zoning. However, a statement analyzing the reasonableness of the proposed rezoning shall be prepared for each conditional use district.
- (7.1) Prior to the issuance of any permits, the applicant must submit detailed plans to the technical review committee for final review.
- (8) Upon adoption of a conditional zoning ordinance, the official zoning map of the City of Asheville shall be amended to add the conditional zoning district. The planning director shall maintain a book or file for conditional zoning ordinances, and each conditional zoning ordinance shall be filed therein. Failure to comply with this provision shall not render the ordinance invalid.

If approved by the city council, no permits may be issued on the subject property until the property owner has recorded the approved plan and conditions pertinent to the specific property at the Buncombe County Register of Deeds, including a notation of the pertinent deed number with book and page reference.

(9) The conditional zoning ordinance adopted as provided herein shall be perpetually binding upon the affected property unless subsequently changed or amended as provided for in this chapter.

(10) Conditional zoning ordinances are legislative in nature, and judicial review of conditional zoning ordinances shall be as provided by law for zoning ordinances.

(Ord. No. 3237, § 1(b), 5-24-05; Ord. No. 3306, §§ 1(h—j), 11-22-05; Ord. No. 3374, §§ 1(t), (u), 7-11-06; Ord. No. 3700, §§ 1a, b, b, 2-10-09; Ord. No. 3709, § 1d, 3-10-09; Ord. No. 4273, § 1, 1-28-14; Ord. No. 4377, § 1, 1-13-15)

ARTICLE VIII. - GENERAL USE DISTRICTS

Sec. 7-8-1. - Enumeration and description of districts; designation of districts on official zoning maps.

(a) *Criteria for zoning districts.* For the purposes set forth in article I, the City of Asheville and its extraterritorial jurisdiction are divided into zoning districts taking into account the design, size, and/or location of one or more of the following:

- (1) Transportation facilities, including streets, sidewalks, and bridges;
- (2) Schools, parks, greenways, and other public facilities and requirements;
- (3) Police protection;
- (4) Fire protection;
- (5) Sanitary sewer and stormwater drainage structures;
- (6) Water supplies for purposes of fire protection and consumption;
- (7) Access and location to other utility services;
- (8) Potential hazards from fire, flooding, and diseases;
- (9) Access to light and air from buildings;
- (10) Access for fire and police protection and refuse collection;
- (11) Protection for occupants of dwellings from noise, dust, and gases caused by traffic and other uses;
- (12) Topography and other natural features; and/or
- (13) Current uses of land and buildings for residences, businesses, industries, places of worship, schools, and for other uses and heights of buildings, the size and location of yards, and the density of population in each of the zoning districts hereinafter mentioned.

(b) *Enumeration and descriptions of zoning districts.* There are two types of zoning districts:

- (1) General use districts are those in which a variety of uses are permitted. The general use districts established in this article are classified from "highest" to "lowest" in the following order:

"Highest"

RS-2 Residential Single-Family Low-Density District

RS-4 Residential Single-Family Medium Density District

RS-8 Residential Single-Family High Density District

RM-6 Residential Multi-Family Low Density District

RM-8 Residential Multi-Family Medium Density District

RM-16 Residential Multi-Family High Density District

Neighborhood Business District

Office District

Office II District

Office/Business District

Community Business I District

Community Business II District

Urban Residential District

Neighborhood Corridor District

Haywood Road Form District

Urban Village District

Urban Place District

Resort District

Institutional District

Highway Business District

- Regional Business District
- Central Business District
- River District
- Commercial Industrial District
- Light Industrial District
- Industrial District

"Lowest"

For any district where an overlay district is found, the overlay district shall have the same order as the general use district for the purpose of determining its hierarchy under the table.

- (2) Overlay districts are zoning districts which overlap one or more general use districts. Overlay districts (article IX) involve additional regulations on some or all property within underlying general use districts. The following overlay districts are established:
 - a. Reserved.
 - b. *Historic preservation overlay district(s)*. Asheville's historic areas are important assets to the city. The protecting and conserving of the historic areas is encouraged through the establishment of historic preservation overlay districts. Designation of an area as an historic district and the development of design guidelines for the area help preserve the architectural integrity of the area and stabilize and enhance property values. Historic districts, protected by designation as preservation overlays, serve as valuable educational tools and as tourist attractions.
 - c. *Downtown design review overlay district*. Urban design review assists in protecting the downtown local architectural heritage and in the preservation of the considerable economic investments that have occurred over the years. The downtown design review process seeks to encourage renovation and new development in a manner that will promote visual harmony, enhance the historical integrity, and develop creative design solutions. While the design guidelines will not dictate architectural styles, they will suggest a variety of design options for achieving compatibility within the designated boundaries.
 - d. *Manufactured housing and manufactured housing community overlay districts*. The manufactured housing and manufactured housing community overlay districts are established to provide a procedure for identifying areas in which manufactured housing may be located and to establish standards for individual manufactured homes and for the development of communities. These overlay districts are intended to expand the range of housing opportunities available to residents of Asheville while assuring that manufactured housing is compatible with existing development.
 - e. *Blue Ridge Parkway Overlay District*. Realizing the importance of the Blue Ridge Parkway to the economy of Asheville and western North Carolina, the Blue Ridge Parkway Overlay District is created to protect and preserve the unique features of this asset to the city. The standards established in this district will protect the scenic quality of the parkway and reduce encroachment on its rural setting.
 - f. *Transition overlay district*. Several areas in the City of Asheville are experiencing development pressures which are pushing the areas toward change. The location of most of these area on the edge of residential neighborhoods means that changes in these areas could have a significant impact on the adjacent neighborhoods. Transition overlay districts are established to allow these areas to change while assuring that the change is compatible with adjacent areas. Standards are developed individually for each area and designed to meet each area's unique needs. Involvement of area property owners and residents in the preparation of development standards is encouraged.
- (c) *Designation of districts on official zoning maps*. Each district shall be shown on the official zoning maps of the City of Asheville, North Carolina, a copy of which is located in the city planning and development department. Said set of maps, and all district designations, boundaries, figures, letters, and symbols shown on such maps are hereby declared to be a part of this chapter.
- (d) *Table of Permitted Uses*. The table is a summary listing of uses that are fully defined in section 7-2-5

Zones	RS2	RS4	RS8	RM6	RM8	RM16	NB	OFF	OFF II	OB	CBI	CBII	NCD	HB	RB	CI	CBD	LI	IND	RSR
Residential Uses																				
Accessory apartment	S	S	S	S	S	S		P	P	P	P	P				P				
Accessory dwellings														P	P	P	P	P	P	
Dwellings, Duplex	S/C	S/C	S/C	P	P	P		P	P	P	P	P	P	P	P	P	P			P
Dwellings, Triplex	C	C	C	P	P	P		P	P	P	P	P	P	P	P	P	P			P
Dwellings, Quadraplex	C	C	C	P	P	P		P	P	P	P	P	P	P	P	P	P			P
Dwelling, Townhouse				S	S	S		S	S	S	S	S	S	S	S	S	S			S
Dwellings, Multi-family				P	P	P	S	P	P	P	P	P	P	P	P	P	P			P
Dwelling, Single family detached	P	P	P	P	P	P		P	P	P	P	P		P	P					P
Cottage Development			S	S	S	S														

Sustainable Development Projects				S	S	S		S	S	S	S	S		S	S	S					
Public and Institutional Uses	RS2	RS4	RS8	RM6	RM8	RM16	NB	OFF I	OFF II	OB	CBI	CBII	NCD	HB	RB			CBD	LI	IND	RES
Institutional Uses																					
Armories														P	P	P			P	P	
Assisted living facilities						S		P	P	P	P	P	S	P	P	P	P				P
Civic, social service & fraternal organizations						S		P	P	P	P	P	P	P	P	P	P				
Convention, Conference, and/or Exhibit Centers												P		P	P	P	P				P
Colleges and Universities														P	P	P	P			S	
Day Care Center, Adult						S		S	S	P	P	P	S	P	P	P	P				P
Day Care Center, Child						S		S	S	P	P	P	S	P	P	P	P				P
Day Care Home, Adult	S	S	S	S	S	S		P	P	P	P	P		P	P	P	P				P
Day Care Home, Child	S	S	S	S	S	S		P	P	P	P	P		P	P	P	P				P
Detention, jails & correctional facilities														C	C	C					
Dormitories														P	P	P	P			S	
Family Care Homes	S	S	S	S	S	S		P	P	P	P	P		P	P	P	P				P
Fire/Police stations	P	P	P	P	P	P	P	P	P	P	P	P	S	P	P	P	P	P	P	P	P
Government buildings and uses								S	S	S	S	S	P	P	P	P	C				
Group homes			C	C	C	S			P	P	P	P		P	P	P	P				
Hospitals/medical centers														P	P	P	P				
Libraries	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Museums											P	P	P	P	P	P	P				P
Orphanages						P				P	P	P		P	P	P	P				
Performance centers												P	P	P	P	P	P				
Places of Worship	S	S	S	S	S	S		P	P	P	P	P	S	P	P	P	P			P	P
Post offices without distribution facility							P	P	P		P	P	P	P	P	P	P			P	P
Post office distribution facilities														P	P	P				P	
Public Utilities & related facilities	S	S	S	S	S	S	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Schools	S	S	S	S	S	S		P	P	P	P	P	P	P	P	P	P				
Shelters									P	P	P		P	P	P	P					P
Stadiums & arenas															P	P	P			P	

Transportation terminals															P	P	P	P		P	
Vocational or Technical School												P	S	P	P	P	P	S	S		
Recreational Uses	RS2	RS4	RS8	RM6	RM8	RM16	NB	OFF I	OFF II	OB	CBI	CBII	NCD	HB	RB	CI	CBD	LI	IND	RES	
Arboretums	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Community Centers	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Golf Courses	P	P	P	P	P	P				P				P	P	P					P
Parks, Passive and greenways	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Recreational uses, governmental such as, but not limited to, parks for active use	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P				P
Recreational uses, restricted to membership, non-profit	S	S	S	S	S	S			P	P	P	P		P	P	P	P				P
Recreational uses accessory to residential uses	P	P	P	P	P	P				P	P	P	P	P	P	P	P				P
Commercial/Business Uses	RS2	RS4	RS8	RM6	RM8	RM16	NB	OFF I	OFF II	OB	CBI	CBII	NCD	HB	RB	CI	CBD	LI	IND	RES	
Food, Beverage, Entertainment Uses																					
Adult establishments																	C	C	C	EXP	
Eating/drinking establishments (drive-through facility permitted separately)							S	S	S	S	P	P	P	P	P	P	S				P
Nightclubs											P	P		P	P	P	P				S
Microbrewery								S	S	S	P	P	P	P	P	P	S				S
Mobile food vending								S	S	S	S	S	S	S	S	S	S	S	S		
Movie theaters											S	S	S	P	P	P	P				
Recreational uses, commercial indoor											P	P	P	P	P	P	P				P
Recreational uses, commercial outdoor												P		P	P	P					P
Lodging																					
Bed & breakfast inns				S	S	S		P	P	P	P	P	P	P	P	P	P				
Boardinghouses						S					P	P	P	P	P		P				
Campground														P	P	P					P
Homestays	S	S	S	S	S	S		P	P	P	P	P		P	P	P	P				P
Vacation resort lodging	S	S	S	S	S	S															

Lodging Facilities												P	P	S	P	P	P	P			P	
Office Uses																						
Business incubator															P		P		P	P		
Call Center																	P		P	S		
Home Occupations	S	S	S	S	S	S	P	P	P	P	P	P	P	P	P	P	P	P				P
Instructional services									P	P	P	P	P	P	P	P	P	P				
Offices							P	P	P	P	P	P	P	P	P	P	P	P	S	S		
Radio/Television studios										P	P	P	P	P	P	P	P	P			P	
Research & technology production uses									P	P		P	P	P	P	P	P	P	P	P		
Retail/Service Uses																						
Barber shops & beauty salons							P	P	P	P	P	P	P	P	P	P	P	P				S
Car washes											P	P	S	P	P	P			P			
Clinics								P	P	P	P	P	P	P	P	P	P					
Clinics, veterinary								P	P	P	P	P	P	P	P	P	P					
Commercial use accessory to residential use					S	S	S	S	S	P	P	P	P	P	P	P	P					P
Equipment rental business											S	S	S	S	S	S						S
Farm Products Market							P			P	P	P	P	P	P	P	P					
Financial institutions (drive-through permitted separately)										P	P	P	P	P	P	P	P					
Flea markets																	P					P
Funeral establishments										P	P	P			P	P	P	P				P
Gasoline sales											P	P	S	P	P	P	S					P
Grocery stores (outdoor storage and gasoline sales uses permitted separately)							P				P	P	P	P	P	P	P					
Hardware/garden supply stores (outdoor storage permitted separately)							P				P	P	P	P	P	P	P					
Health & fitness facilities							P			P	P	P	P	P	P	P	P					S
Heavy equipment & specialized vehicle sales, rental & service															P	P	P					P
Industrial equipment sales															P	P	P	P	S	P		
Kennels															P	P	P					
Laundry/dry cleaning establishments							P			P	P	P	P	P	P	P	P					

(drivethrough facility permitted separately)																					
Manufactured home sales and servicing															P	P	P				
Recreational vehicle sales, service & repair															P	P	P				
Motor vehicle and boat sales new & used															P	P	P	C			
Motor vehicle and boat service & repair business (outdoor storage permitted separately)										S	S	S			P	P	P	S		S	
Motor vehicle and utility trailer rental															P	P	P	P	P	P	P
Motor vehicle service facility (outdoor storage and gasoline sales permitted separately)												P	P	S	P	P	P	P			P
Pharmacies (drive-through facility permitted separately)							P	S		P	P	P	P		P	P	P	P			
Plant sales, nurseries and greenhouses											P	P			P	P	P				
Printing & publishing												P	P		P	P	P	P	P	P	P
Retail sales (outdoor storage, gasoline sales, drive-through facility uses permitted separately)							S			P	P	P	P		P	P	P	P	S	S	S
Self-service storage facilities															P	P	P			P	P
Single tenant retail structures, multi-tenant retail structures with GFA of more than 100,000 sq. ft.															C	C	C				
Small Engine service and repair							P			P	S	S	P		S	S	P	S			P
Studios, galleries & workshops for artists, artisans, and craftspeople - low impact								P	P	P	P	P	P		P	P	P	P	P	P	P
Studios, galleries & workshops for artists, artisans and craftspeople - high impact															P	P	P	S	P	P	
Tailors/dressmaker shops							P			P	P	P	P		P	P	P	P			P
Taxi stands															P	P	P	P			
Tattoo Parlors											P	P			P	P	P	P			
Industrial Uses	RS2	RS4	RS8	RM6	RM8	RM16	NB	OFF I	OFF II	OB	CBI	CBII	NCD	HB	RB	CI	CBD	LI	IND	RES	

Concrete plant																			P	P	
Crematories - animal														S	S	S			S	S	
Crematories - human								S	S		S	S		S	S	S				S	
Industrial uses																P				P	
Industrial uses, light										S	S				S	P			P		
Recycling operation																S			S	S	
Recycling plant																				S	
Lumber yards															P	P				P	
Motor freight terminals																P				P	
Wholesale sales														P	P	P	P	P	P	P	
Warehousing and storage															S	P			P	P	
Aeronautical/Airport Uses	RS2	RS4	RS8	RM6	RM8	RM16	NB	OFF I	OFF II	OB	CBI	CBII	NCD	HB	RB	CI	CBD	LI	IND	RES	
Aerospace and aviation-related training facilities																					
Air cargo/freight terminals, operations and activities																					
Aircraft hangars, servicing and repair facilities																					
Aircraft sales and leasing facilities and services																					
Aircraft servicing, manufacturing and retrofitting facilities																					
Airport administration and maintenance facilities																					
Airport facilities to include runways, aprons, taxiways, weather monitoring facilities, control tower, navigational/communication facilities, airfield lighting, signs & associated structures																					
Airport passenger terminal with associated ticket sales, restaurant/lounge/food services, retail sales & services, car rental services, other incidental services and associated short and long-term parking lots																					
Airport services																					
General aviation services																					

and facilities, including aircraft tie-down & parking areas, support & maintenance shops, concessions, aviation fuel storage & dispensing facilities																					
Offices and other facilities that specifically support airport, aviation and aeronautical activities																					
Other Use Types	RS2	RS4	RS8	RM6	RM8	RM16	NB	OFF I	OFF II	OB	CBI	CBII	NCD	HB	RB	CI	CBD	LI	IND	RES	
Accessory structures	S	S	S	S	S	S		P	P		P	P	P	P	P	P	P	P	P	P	
Agriculture	S	S	S	S	S	S	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Ancillary non-residential uses	C	C	C	C	C	C															
Antenna	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Commercial satellite dishes & related equipment														P	P					P	
Cemeteries, animal											S	S		S	S	S	S	S	S		
Cemetaries/Columbariums	P	P	P	P	P	P					P	P		P	P	P	P			P	
Drive-through facilities or uses							EXP	S	S	S	EXP		C	P	P	P	S			P	
Interim uses on vacant lots								S	S	S	S	S	S	S	S	S	S	S	S	S	
Live-work units							P	P	P	P	P	P	P	P	P	P	P			P	
Outdoor storage							EXP				S	S	S	S	S	S	EXP	S	S	S	
Parking Decks, Garages, Structures														P	P	P	P				
Parking Lots											P	P		P	P	P	P			P	
Recycling collection centers											S	S	S	S	S	S		P	P	S	
Stables																	S			S	
Telecommunication towers										C		C		C	C	C		C	C	C	
Telecommunication tower/support structure concealed	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C		C	C	C	
Wireless telecommunication facilities, microcell	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Wireless telecommunication facilities, co-location	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Wireless telecommunication facilities (concealed)				S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Uses Expressly Prohibited	RS2	RS4	RS8	RM6	RM8	RM16	NB	OFF	OFF	OB	CBI	CBII	NCD	HB	RB	CI	CBD	LI	IND	RES	

									I	II										
Adult establishments																				EXP
Asphalt plants																				
Chemical storage facilities																				
Detention, jails & correctional facilities																				
Drive-through facilities or uses									EXP				EXP							
Gas manufacturing																				
Gasoline sales																				
Gated communities	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP	EXP
Hazardous waste management facilities																				
Hazardous materials (H1) manufacturing or storage																				
Manufacture or storage of ammunition, dynamite, or other high explosives																				
Mining																				
Outdoor storage									EXP											EXP
Paper Mills																				
Skywalks/pedestrian bridges over key pedestrian streets																				EXP
Slaughter house																				
Solid waste disposal facilities																				
Solid waste landfills																				
Uses prohibited by Asheville Flood Protection Standards																				
Uses with outdoor speaker systems									EXP											

NOTES

Permitted = P

A use permitted by right that must still meet all regulatory standards for the applicable district in Sec. 7-8.

USSR = S

A use permitted by right subject to special standards in Sec. 7-16-1, as well as all regulatory standards for the applicable district in Sec. 7-8.

Conditional = C

A use permitted only through approval of the City Council subject to special standards in Sec. 7-16-2, that must also meet all regulatory standards for the a

Expressly Prohibited = EXP

Use is expressly prohibited in any indicated districts.
Tan - adding or changing category
Accessory Use Only = AP
RES = Residential Zones
MU = Mixed Use Zones
IND = Industrial Zones
S = Special Zones
FN#1 - Living Quarters uses prohibited
FN#2 - Excluding protection service
FN #3 - Allowed as accessory use only
FN #4 - Allowed if no gasoline sales
FN #5 (XP) - Expressly Prohibited
FN #6 - Allowed if indoors only

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(2), 8-24-04; Ord. No. 3328, § 1(i), 1-24-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3700, § 1c, 2-10-09; Ord. No. 3959, § 1b, 4-12-11; Ord. No. 4007, § 1b, 9-13-11; Ord. No. 4233, § 1c, 9-24-13; Ord. No. 4342, § 1c, 9-9-14)

Sec. 7-8-2. - RS-2 Residential Single-Family Low Density District.

- (a) *Purpose.* It is the intent of the RS-2 Residential Single-Family Low Density District to establish a low density for single-family dwellings and other compatible uses in recognition of environmental constraints such as, but not limited to, steep slopes, impervious soils, high water tables, and flooding. It is also the intent of this district to preserve the general welfare by protecting important resources such as, but not limited to, watersheds and view sheds. In addition to recognizing environmental constraints and preserving important resources, this district is also intended to stabilize and protect the district's residential character while promoting a suitable environment for single-family living.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements or a conditional use in the RS-2 Residential Single-Family Low Density District shall be prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

- (d) Reserved.
- (e) Reserved.

(f) *Development standards.*

- (1) *Density standards.* The maximum density per acre in the RS-2 District shall be two dwelling units.
- (2) *Structure size standards.* None.
- (3) *Lot size standards.* The minimum lot size in the RS-2 District shall be 20,000 square feet.
- (4) *Lot width standards.* Lots in the RS-2 District shall have a minimum width of 100 feet.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the RS-2 District.

Front: 35 ft.

Side: 10 ft.

Rear: 25 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* None.
- (7) *Height standards.* The maximum height of structures in the RS-2 District shall be 40 feet. An increase in height is allowed provided that for every one foot increase in height, all required minimum yards shall be increased by two feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking lots shall be permitted within any required setback.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in subsection 7-11-8 of this chapter.

(11) *Access standards.* None.

(12) *Recreational/open space standards.* Open space shall be provided for new developments and expansions of existing developments as required by [section 7-11-3](#)

(13) *Design and operation standards.* None.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2506, § 1, 8-11-98; Ord. No. 2527, § 1, 11-10-98; Ord. No. 2584, § 1(a), 6-22-99; Ord. No. 2663, § 1(a), 2-8-00; Ord. No. 2664, § 1(b), 2-8-00; Ord. No. 2735, § 1d., 8-22-00; Ord. No. 2871, § 1(a), 11-27-01; Ord. No. 2904, § 1(b), 3-12-02; Ord. No. 3031, § 1(a), 6-10-03; Ord. No. 3064, § 1(c), 10-14-03; Ord. No. 3083, § 1(a), 1-13-04; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3412, § 1(b), 12-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1, 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3908, § 1e, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-3. - RS-4 Residential Single-Family Medium Density District.

(a) *Purpose.* It is the intent of the RS-4 Residential Single-Family Medium Density District to establish a medium density for single-family dwellings and to stabilize and protect the residential character of the district while promoting a suitable environment for single-family living. Non-single-family development normally required to provide the basic elements of a balanced and attractive residential area is also permitted.

(b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection [7-8-1\(d\)](#), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.

(c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements or a conditional use in the RS-4 Residential Single-Family Medium Density District shall be prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

(1) *Density standards.* The maximum density per acre in the RS-4 District shall be four dwelling units.

(2) *Structure size standards.* None.

(3) *Lot size standards.* The minimum lot size in the RS-4 District shall be 10,000 square feet.

(4) *Lot width standards.* Lots in the RS-4 District shall have a minimum width of 80 feet.

(5) *Yard standards.* The following minimum setbacks shall be required for uses in the RS-4 District.

Front: 25 ft.

Side: 10 ft.

Rear: 25 ft.

The landscape and buffering standards ([section 7-11-3](#)) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

(6) *Impervious surface standards.* None.

(7) *Height standards.* The maximum height of structures in the RS-4 District shall be 40 feet.

(8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by [section 7-11-3](#) of this chapter.

(9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by [section 7-11-2](#) of this chapter. No parking lots shall be permitted within any required setback.

(10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in subsection [7-11-8](#) of this chapter.

(11) *Access standards.* None.

(12) *Recreational/open space standards.* Open space shall be provided for new developments and expansion of existing developments as required by [section 7-11-4](#)

(13) *Design and operation standards.* None.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2506, § 1, 8-11-98; Ord. No. 2527, § 1, 11-10-98; Ord. No. 2584, § 1(b), 6-22-99; Ord. No. 2663, § 1(b), 2-8-00; Ord. No. 2664, § 1(c), 2-8-00; Ord. No. 2735, § 1d., 8-22-00; Ord. No. 2871, § 1(b), 11-27-01; Ord. No. 2904, § 1(c); 3-12-02; Ord. No. 3031, § 1(b), 6-10-03; Ord. No. 3064, § 1(c), 10-14-03; Ord. No. 3083, § 1(a), 1-13-04; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3412, § 1(b), 12-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3908, § 1e, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-4. - RS-8 Residential Single-Family High Density District.

(a) *Purpose.* It is the intent of the RS-8 Residential Single-Family High Density District to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living. Non-single-family development normally required to provide the basic elements of a balanced and attractive residential area is also permitted.

(b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection [7-8-1\(d\)](#), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.

(c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements or a conditional use in the RS-8 Residential Single-Family High Density District shall be prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

- (1) *Density standards.* The maximum density per acre in the RS-8 District shall be eight dwelling units.
- (2) *Structure size standards.* None.
- (3) *Lot size standards.* The minimum lot size in the RS-8 District shall be 5,000 square feet.
- (4) *Lot width standards.* Lots in the RS-8 District shall have a minimum width of 50 feet.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the RS-8 District.

Front: 15 ft.

Side: 6 ft.

Rear: 15 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* None.
- (7) *Height standards.* The maximum height of structures in the RS-8 District shall be 40 feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking lots shall be permitted in any required setback.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in subsection 7-11-8 of this chapter.
- (11) *Access standards.* None.
- (12) *Recreational/open space standards.* Open space shall be provided for new developments and expansions of existing developments as required by section 7-11-4
- (13) *Design and operation standards.* None.
- (14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2506, § 1, 8-11-98; Ord. No. 2527, § 1, 11-10-98; Ord. No. 2584, § 1(c), 6-22-99; Ord. No. 2663, § 1(c), 2-8-00; Ord. No. 2664, § 1(d), 2-8-00; Ord. No. 2735, § 1d., 8-22-00; Ord. No. 2871, § 1(e), 11-27-01; Ord. No. 2904, § 1(d), 3-12-02; Ord. No. 3031, § 1(c), 6-10-03; Ord. No. 3052, § 1(a), 8-26-03; Ord. No. 3064, § 1(c), 10-14-03; Ord. No. 3083, § 1(a), 1-13-04; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3412, § 1(b), 12-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3489, § 1(b), 6-19-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3908, § 1e, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-5. - RM-6 Residential Multi-Family Low Density District.

- (a) *Purpose.* It is the intent of the RM-6 Residential Multi-Family Low Density District to permit a limited range of low density multi-family housing types along with single-family detached and attached residences. This district is intended to provide a transitional area between single and multi-family areas, and to provide a compatible mixture of these housing types by limiting the size and density of multi-family development. This district is also intended for areas where low density multi-family development is appropriate but where environmental constraints and infrastructure limit development potential. Non-residential development normally required to provide the basic elements of a balanced and attractive residential area is also permitted.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in the RM-6 Residential Multi-Family Low Density District shall be prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

- (d) Reserved.
- (e) Reserved.

(f) *Development standards.*

- (1) *Density standards.* The maximum residential density in the RM-6 district shall be one dwelling unit per 7,000 square feet of lot area. The maximum number of residential units per multi-family building shall be four.
- (2) *Structure size standards.* None.
- (3) *Lot size standards.* The minimum lot size in the RM-6 District shall be 7,000 square feet.
- (4) *Lot width standards.* Lots in the RM-6 District shall have a minimum width of 70 feet.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the RM-6 District.

Front:		15 ft.
Side:	Single-family detached and multi-family less than 4 units/building:	6 ft.
Rear:	Single-family detached and multi-family less than 4 units per building:	15 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* None.
- (7) *Height standards.* The maximum height of structures in the RM-6 District shall be 40 feet.

- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by [section 7-11-3](#) of this chapter.
 - (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by [section 7-11-2](#) of this chapter. No parking lots shall be permitted in any required setback.
 - (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in subsection [7-11-8](#) of this chapter.
 - (11) *Access standards.* None.
 - (12) *Recreational/open space standards.* Open space shall be provided as required by [section 7-11-4](#) of this chapter.
 - (13) *Design and operation standards.* None.
 - (14) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2506, § 1, 8-11-98; Ord. No. 2527, § 1, 11-10-98; Ord. No. 2584, § 1(d), 6-22-99; Ord. No. 2663, § 1(d), 2-8-00; Ord. No. 2664, § 1(e), 2-8-00; Ord. No. 2735, § 1d., 8-22-00; Ord. No. 2772, § 1(1), 11-28-00; Ord. No. 2871, § 1(d), 11-27-01; Ord. No. 2904, § 1(e), 3-12-02; Ord. No. 3031, § 1(d), 6-10-03; Ord. No. 3052, § 1(a), (b), 8-26-03; Ord. No. 3064, § 1(d), 10-14-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3205, § 1, 1-25-05; Ord. No. 3412, § 1(b), 12-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3489, § 1(b), 6-19-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3908, §§ 1b, e, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-6. - RM-8 Residential Multi-Family Medium Density District.

- (a) *Purpose.* It is the intent of the RM-8 Residential Multi-Family Medium Density District to permit a full range of medium density multi-family housing types along with single-family detached and attached residences. This district is intended to provide a transitional area between high density single-family and multi-family areas, and to permit medium density multi-family development in areas where existing conditions make higher density development inappropriate. Non-residential development normally required to provide the basic elements of a balanced and attractive residential area is also permitted.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection [7-8-1\(d\)](#), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in the RM-8 Residential Multi-Family Medium Density District shall be prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

- (d) Reserved.
- (e) Reserved.
- (f) *Development standards.*
 - (1) *Density standards.* The maximum residential density in the RM-8 District shall be one dwelling unit per 5,000 square feet of lot area.
 - (2) *Structure size standards.* None.
 - (3) *Lot size standards.* The minimum lot size in the RM-8 District shall be 5,000 square feet.
 - (4) *Lot width standards.* Lots in the RM-8 District shall have a minimum width of 50 feet.
 - (5) *Setback standards.* The following minimum setbacks shall be required for uses in the RM-8 District.

Front:		15 ft.
Side:	Single-family detached and multi-family 4 or fewer units per building:	6 ft.
	More than 4 units per building:	6 ft. when adjacent to multi-family and non-residential uses; when adjacent to single-family uses, 6 ft. for first unit in the building, 2 ft. additional for each additional unit in the building up to a maximum required setback of 40 ft.
Rear:	Single-family detached and multi-family with 4 or fewer units per building	15 ft.
	More than 4 units per building	15 ft. for first units, 2 ft. additional for each additional unit up to a maximum required setback of 40 ft.

The landscape and buffering standards ([section 7-11-3](#)) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* None.
- (7) *Height standards.* The maximum height of structures in the RM-8 District shall be 40 feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by [section 7-11-3](#) of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by [section 7-11-2](#) of this chapter. No parking shall be permitted in any required setback.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in subsection [7-11-8](#) of this chapter.
- (11) *Access standards.* None.
- (12) *Recreational/open space standards.* Open space shall be provided as required by [section 7-11-4](#) of this chapter.

(13) *Design and operation standards.* None.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2506, § 1, 8-11-98; Ord. No. 2527, § 1, 11-10-98; Ord. No. 2584, § 1(e), 6-22-99; Ord. No. 2663, § 1(e), 2-8-00; Ord. No. 2664, § 1(f), 2-8-00; Ord. No. 2735, § 1d., 8-22-00; Ord. No. 2772, § 1(b), 11-28-00; Ord. No. 2871, § 1(e), 11-27-01; Ord. No. 2904, § 1(f), 3-12-02; Ord. No. 3031, § 1(e), 6-10-03; Ord. No. 3052, § 1(a), (b), 8-26-03; Ord. No. 3064, § 1(d), 10-14-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3205, § 1, 1-25-05; Ord. No. 3412, § 1(b), 12-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3489, § 1(b), 6-19-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3908, §§ 1b, e, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-7. - RM-16 Residential Multi-Family High Density District.

- (a) *Purpose.* It is the intent of the RM-16 Residential Multi-Family High Density District to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in the RM-16 Residential Multi-Family High Density District is prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

- (1) *Density standards.* The maximum residential density in the RM-16 District shall be one dwelling unit per 2,500 square feet of lot area.
- (2) *Structure size standards.* None required.
- (3) *Lot size standards.* The minimum lot size in the RM-16 District shall be 5,000 square feet for multi-family development; 2,500 square feet for attached single-family development and 3,500 square feet for detached single-family development.
- (4) *Lot width standards.* Lots in the RM-16 District shall have a minimum width of 50 feet.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the RM-16 District.

Front:		15 ft.
Side:	Single-family detached and multi-family 4 or fewer units per building:	6 ft.
	More than 4 units per building:	15 ft. for first unit, 2 ft. additional for each additional unit up to a maximum required setback of 40 ft.
Rear:	Single-family detached and multi-family with 4 or fewer units per building	15 ft.
	More than 4 units per building	15 ft. for first units, 2 ft. additional for each additional unit up to a maximum required setback of 40 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* None.
- (7) *Height standards.* The maximum height of structures in the RM-16 District shall be 40 feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking shall be permitted in any required setback.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.
- (11) *Access standards.* None.
- (12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.
- (13) *Design and operation standards.* None required.
- (14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2506, § 1, 8-11-98; Ord. No. 2527, § 1, 11-10-98; Ord. No. 2584, § 1(f), 6-22-99; Ord. No. 2663, § 1(f), 2-8-00; Ord. No. 2664, § 1(g), 2-8-00; Ord. No. 2735, § 1d., 8-22-00; Ord. No. 2772, § 1(c), 11-28-00; Ord. No. 2871, § 1(f), 11-27-01; Ord. No. 2901, § 1(g), 3-12-02; Ord. No. 3031, § 1(f), 6-10-03; Ord. No. 3064, § 1(d), 10-14-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3489, § 1(b), 6-19-07; Ord. No. 3572, § 1(i), 1-8-08; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3874, §§ 1a, b, 6-8-10; Ord. No. 3908, §§ 1b, e, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-8. - Neighborhood Business District.

- (a) *General description.* The Neighborhood Business District is established to reserve areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhood. The intent of the district is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. This district is designed to be located within or adjacent to residential neighborhoods where large commercial operations are inappropriate, but where small neighborhood oriented businesses are useful and desirable.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.

(c) *Prohibited uses.*

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

Outdoor storage

Uses with drive-through facilities

Uses with outdoor loud speaker systems

Any use not specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in the Neighborhood Business District is prohibited.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

(1) *Density standards.* The maximum residential density per acre within the Neighborhood Business District shall be 12 dwelling units.

(2) *Structure size standards.* New structures in the Neighborhood Business District shall not exceed a total of 3,000 square feet in gross floor area for one story structures. Multiple story structures may have a gross floor area of up to 6,000 square feet if residential uses are provided on the upper floor(s).

(3) *Lot size standards.* None.

(4) *Lot width standards.* None required.

(5) *Setback standards.* The following minimum setbacks shall be required for uses in the Neighborhood Business District.

Front: 15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required.

Rear: None required.

Corner lot, street side: 15 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

(6) *Impervious surface standards.* None.

(7) *Height standards.* The maximum height of structures in the Neighborhood Business District shall be 40 feet.

(8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.

(9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking shall be permitted in any required setback. Parking must be provided at the side or rear and not closer to the street than the edge of the building. Uses in the Neighborhood Business District are permitted a 30 percent reduction in the minimum number of parking spaces required by section 7-11-2

(10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in subsection 7-11-8 of this chapter.

(11) *Access standards.* None.

(12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.

(13) *Design and operation standards.* All activities associated with non-residential uses, including deliveries and refuse collection, shall be conducted between the hours of 7:00 a.m. and 10:00 p.m.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(15) *Drive-through facilities.* Uses with drive-through facilities are prohibited in the district.

(16) *Outdoor storage.* Outdoor storage is prohibited in the district.

(17) *Outdoor loudspeaker systems.* Outdoor loudspeaker systems are prohibited in the district.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2664, § 1(h), 2-8-00; Ord. No. 2904, § 1(h), 3-12-02; Ord. No. 3010, § 1(b), 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3279, § 1, 9-13-05; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1b, 7-22-08; Ord. No. 3959, §§ 1c—e, n, p, 4-12-11)

Sec. 7-8-9. - Office District.

(a) *Purpose.* The Office District is established to reserve areas for the development of small scale office uses adjacent to residential uses. A mixture of office and residential uses is permitted in the Office District. This district may serve as a transition as residential areas convert to other uses or between residential and commercial areas. Due to the location of the Office District near residential areas, uses in this district shall conduct most of their activities during daylight hours.

(b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.

(c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements or a conditional use in the Office District is prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

- (1) *Density standards.* The maximum residential density per acre within the Office District shall be 20 dwelling units; or 40 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.
- (2) *Structure size standards.* New structures in the Office District shall not exceed a total of 4,000 square feet in gross floor area for one story buildings and 8,000 square feet for multiple story buildings. Existing structures shall not be expanded to exceed these limits.
- (3) *Lot size standards.* The minimum lot size in the Office District shall be 5,445 square feet.
- (4) *Lot width standards.* Lots in the Office District shall have a minimum width of 50 feet.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Office District.

Front: 15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: 10 feet.

Rear: 15 feet.

The landscape and buffering standards (section [7-11-3](#)) may require additional setbacks; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the North Carolina State Building Code, Volume V - Fire Prevention.

- (6) *Impervious surface standards.* The maximum impervious surface coverage in the Office District shall be 80 percent.
 - (7) *Height standards.* The maximum height of structures in the Office District shall be 40 feet.
 - (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by [section 7-11-3](#) of this chapter.
 - (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by [section 7-11-2](#) of this chapter. No parking shall be permitted in any required setback.
 - (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in [section 7-11-8](#) of this chapter.
 - (11) *Access standards.* None.
 - (12) *Recreational/open space standards.* Open space shall be provided as required by [section 7-11-4](#) of this chapter.
 - (13) *Design and operation standards.* All activities associated with non-residential uses, including deliveries and refuse collection, shall be conducted between the hours of 7:00 a.m. and 9:00 p.m. The arrival and departure of guests at bed and breakfast homestays and inns shall be exempt from this standard.
 - (14) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2490, § 1, 6-9-98; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(i), 2-8-00; Ord. No. 2904, § 1(i), 3-12-02; Ord. No. 3010, § 1b, 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(3), 8-24-04; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3874, § 1c, 6-8-10; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, § 1a, 12-9-14)

Sec. 7-8-10. - Office II District.

- (a) *Purpose.* The Office II District is established to reserve areas for the development of small to medium scale office uses where this scale is compatible with the scale of adjacent uses and/or where the infrastructure is inadequate to serve larger scale uses. The Office II District may also serve to provide for a mixture of uses along thoroughfares where the predominant use is commercial. The Office II District may also serve as a transition between residential areas and commercial areas.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection [7-8-1\(d\)](#), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in Office II District is prohibited. Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.
- (d) Reserved.
- (e) Reserved.
- (f) *Development standards.*

- (1) *Density standards.* The maximum residential density per acre within the Office II District shall be 20 dwelling units; or 40 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.
- (2) *Structure size standards.* New structures in the Office II District shall not exceed a total of 8,000 square feet in gross floor area for one story buildings and 16,000 square feet for multiple story buildings; provided, however, restaurants shall not exceed 4,000 square feet in size. Existing structures shall not be expanded to exceed these limits.
- (3) *Lot size standards.* The minimum lot size in the Office II District shall be 10,000 square feet.
- (4) *Lot width standards.* Lots in the Office II District shall have a minimum width of 80 feet.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Office II District:

Front: 15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: 10 feet.

Rear: 15 feet.

The landscape and buffering standards (section 7-11-3) may require additional setbacks; if so, the most restrictive requirements shall apply. The minimum spacing between structures shall, in addition, be as per the North Carolina State Building Code, Volume V—Fire Protection.

- (6) *Impervious surface standards.* The maximum impervious surface coverage in the Office II District shall be 80 percent.
 - (7) *Height standards.* The maximum height of structures in the Office II District shall be 40 feet.
 - (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3
 - (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-3. No parking shall be permitted in any required setback.
 - (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.
 - (11) *Access standards.* None.
 - (12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4
 - (13) *Design and operation standards.* All activities associated with nonresidential uses, including deliveries and refuse collection, shall be conducted between the hours of 7:00 a.m. and 9:00 p.m. The arrival and departure of guests at bed and breakfast homestays and inns shall be exempt from this standard.
 - (14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.
- (Ord. No. 2539, § 1, 1-26-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(j), 2-8-00; Ord. No. 2904, § 1(j), 3-12-02; Ord. No. 3010, § 1b, 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, § 1b, 12-9-14)

Sec. 7-8-11. - Office/Business District.

- (a) *Purpose.* The Office/Business District is established to reserve an area for the development of office uses and related support uses. This district will reserve areas for medium scale offices and a limited range of business uses and may serve as a transition area between commercial and residential areas.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements or a conditional use in the Office/Business District is prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

- (d) Reserved.
- (e) Reserved.
- (f) *Development standards.*
 - (1) *Density standards.* The maximum residential density per acre within the Office Business District shall be 20 dwelling units; or 40 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price Index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.
 - (2) *Structure size standards.* New structures in the Office/Business District shall not exceed a total of 30,000 square feet in gross floor area. Existing structures shall not be expanded to exceed 30,000 square feet in gross floor area.
 - (3) *Lot size standards.* The minimum lot size in the Office/Business District shall be 10,000 square feet.
 - (4) *Lot width standards.* Lots in the Office/Business District shall have a minimum width of 80 feet.
 - (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Office/Business District.
 - Front: 15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: 10 feet.

Rear: 15 feet.

The landscape and buffering standards (section 7-11-3) may require additional setbacks; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* The maximum impervious surface coverage in the Office/Business District shall be 80 percent.
- (7) *Height standards.* The maximum height of structures in the Office/Business District shall be four stories, but not to exceed 60 feet, except in the transition area described in subsection (13) below.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking shall be permitted in any required setback.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.
- (11) *Access standards.* None required.
- (12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.
- (13) *Design and operation standards.* All activities associated with non-residential uses, including deliveries and refuse collection, shall be conducted between the hours of 7:00 a.m. and 10:00 p.m.
 - Transition area: Within 50 feet of a residentially zoned area, restrictions shall be placed on the height of buildings and structures. Height of buildings and structures located in this area shall be subject to the height restrictions established in the adjacent residential area.
- (14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(k), 2-8-00; Ord. No. 2904, § 1(k), 3-12-02; Ord. No. 3010, § 1b, 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3337, § 1(b), (c), 2-28-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3874, § 1d, 6-8-10; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, § 1c, 12-9-14)

Sec. 7-8-12. - Community Business I District.

- (a) *General description.* The Community Business I District is established to provide areas for medium-density business and service uses serving several residential neighborhoods. This community business center may serve as a workplace for many residents in the surrounding neighborhoods and should be sensitive to a significant pedestrian population, but also provide for adequate and safe vehicular access. The Community Business I District is designed to be located primarily along streets which serve multiple residential neighborhoods.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements or a conditional use in the Community Business I District is prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

Uses with drive-through facilities

- (d) Reserved.
(e) Reserved.

(f) *Development standards.*

- (1) *Density standards.* The maximum residential density per acre within the Community Business I District shall be 20 dwelling units; or 40 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.
- (2) *Structure size standards.* New structures in the Community Business I District shall have a building footprint of not more than 6,000 square feet. The gross floor area of new structures shall not exceed 12,000 square feet. Existing structures shall not be expanded to exceed a footprint or gross floor area of 12,000 square feet.
- (3) *Lot size standards.* None.
- (4) *Lot width standards.* None.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Community Business I District.
Front: 15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required.

Rear: None required.

Corner lot, street side: 15 feet.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* The maximum impervious surface coverage in the Community Business I District shall be 80 percent.
- (7) *Height standards.* The maximum height of structures in the Community Business I District shall be 40 feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking shall be permitted in any required setback. Parking shall be provided at the side or rear and not closer to the street than the edge of the structure. Uses in the Community Business I District are permitted a 25 percent reduction in the minimum number of parking spaces required by section 7-11-2 of this chapter.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in subsection 7-11-8 of this chapter.
- (11) *Access standards.* None.
- (12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.
- (13) *Design and operation standards.* None.
- (14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.
- (15) *Drive-through facilities.* Uses with drive-through facilities are prohibited in the district.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(l), 2-8-00; Ord. No. 2904, § 1(l), 3-12-02; Ord. No. 3010, § 1b, 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3337, § 1(b), (c), 2-28-06; Ord. No. 3390, § 1(b), 9-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3685, § 1b, 1-13-09; Ord. No. 3700, §§ 1d, e, 2-10-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3856, § 1b, 5-25-10; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1f, n, p, 4-12-11; Ord. No. 4374, § 1d, 12-9-14)

Sec. 7-8-13. - Community Business II District.

- (a) *General description.* The Community Business District II is established to provide areas for medium-to-high-density business and service uses serving several residential neighborhoods. This community business center may serve as a workplace for many residents in the surrounding neighborhoods and should be sensitive to a significant pedestrian population, but also provide for adequate and safe vehicular access. The Community Business II District is designed to be located primarily along minor and major thoroughfare streets which serve multiple residential neighborhoods.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c)

Prohibited uses. Any use not specifically listed as a permitted use, a use by right, subject to special requirements, or a conditional use in the Community Business II District is prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

(1) *Density standards.* The maximum residential density per acre within the Community Business II District shall be 25 dwelling units; or 50 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.

(2) *Structure size standards.* New structures in the Community Business II District shall not exceed a total of 45,000 square feet in gross floor area. Existing structures shall not be expanded to exceed 45,000 square feet in gross floor area.

(3) *Lot size standards.* None.

(4) *Lot width standards.* None.

(5) *Setback standards.* The following minimum setbacks shall be required for uses in the Community Business II District.

Front: 15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required.

Rear: None required.

Corner lot, street side: 15 feet.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

(6) *Impervious surface standards.* The maximum impervious surface coverage in the Community Business II District shall be 80 percent.

(7) *Height standards.* The maximum height of structures in the Community Business II District shall be 40 feet.

(8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.

(9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking shall be permitted in any required setback. Parking shall be provided at the side or rear and not closer to the street than the edge of the structure. Uses in the Community Business II District are permitted a 20 percent reduction in the minimum number of parking spaces required by section 7-11-2 of this chapter.

(10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.

(11) *Access standards.* None.

(12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.

(13) *Design and operation standards.* None.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(m), 2-8-00; Ord. No. 2904, § 1(m), 3-12-02; Ord. No. 3002, § 1b, 2-25-03; Ord. No. 3010, § 1(b), 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3337, § 1(b), (c), 2-28-06; Ord. No. 3390, § 1(b), 9-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3685, § 1b, 1-13-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3856, § 1b, 5-25-10; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, § 1e, 12-9-14)

Sec. 7-8-14. - Resort District.

(a) *Purpose.* The Resort District is established to provide an area for the development of resort oriented uses and conference/retreat facilities. This district will provide areas for the development and expansion of facilities which serve primarily tourists and vacationers. Development standards are established to protect adjacent land uses from the adverse impacts of resort development.

(b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.

(c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements or a conditional use in the Resort District is prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

(1) *Density standards.* The maximum residential density per acre within the Resort District shall be 16 dwelling units.

(2) *Structure size standards.* None.

(3) *Lot size standards.* The minimum lot size in the Resort District shall be five acres.

(4) *Lot width standards.* Lots in the Resort District shall have a minimum width of 100 feet.

(5) *Setback standards.* The following minimum setbacks shall be required for uses in the Resort District.

Front: 35 feet, except that the minimum setback may be reduced to five feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: 15 feet.

Rear: 25 feet.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* The maximum impervious surface coverage in the Resort District shall be 80 percent.
- (7) *Height standards.* The maximum height of structures in the Resort District shall be 80 feet except in the transition area described below in subsection (13). The permitted height of buildings and structures in the Resort District may be increased by one foot for each two feet of additional front, side, and rear setbacks up to a maximum height of 100 feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.
- (11) *Access standards.* None.
- (12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.
- (13) *Design and operation standards.* All exterior lighting shall be shielded such that light is not directed toward adjacent residential property.
Outdoor loud systems shall be directed away from residential areas and shall not operate between the hours of 9:00 p.m. and 7:00 a.m.

Transition area: Within 100 feet of a residentially zoned area, restrictions shall be placed on the height and location of uses other than those permitted in the adjacent residential zone. Height of buildings and structures located in this area shall be subject to the height limitations established in the least restrictive adjacent residential zone. Primary entrances of buildings and structures located in the transition area shall be directed away from residential uses. Restaurants, bars and nightclubs, facilities for animals (stables), mechanical equipment, and maintenance facilities shall not be located in the transition area.

- (14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(n), 2-8-00; Ord. No. 2904, § 1(n), 3-12-02; Ord. No. 3010, § 1(c), 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-15. - Institutional District.

- (a) *Purpose.* The Institutional District is established to reserve land for the development of major educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use, or a use by right, subject to special requirements or a conditional use in the Institutional District is prohibited.
Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.
- (d) Reserved.
- (e) Reserved.
- (f) *Development standards.*

- (1) *Density standards.* The maximum residential density per acre within the Institutional District shall be 30 dwelling units; or 60 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney. This density standard shall not apply to dormitories constructed on the campus of an educational institution.
- (2) *Structure size standards.* None.
- (3) *Lot size standards.* Except for single-family residential development, the minimum lot size in the Institutional District shall be 20,000 square feet. For single-family residential development in the Institutional District, the minimum lot size shall be 2,500 square feet for attached single-family development and 3,500 square feet for detached single-family development.
- (4) *Lot width standards.* Except for single-family residential development, lots in the Institutional District shall have a minimum width of 100 feet. For single-family residential development in the Institutional District, the minimum lot width shall be 50 feet.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Institutional District.

Front: 15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: 10 ft.

Rear: 10 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* The maximum impervious surface coverage in the Educational/Campus Institutional District shall be 80 percent.
- (7) *Height standards.* None required, except in the transition area described below in subsection (13).
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.

- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by [section 7-11-2](#) of this chapter. No parking shall be permitted in any required setback.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in [section 7-11-8](#) of this chapter.
- (11) *Access standards.* Primary access to colleges, universities, junior colleges, vocational schools, hospitals, and medical complexes shall not be from local residential streets. If located on a local residential street, primary access to other non-residential uses in the Institutional District shall be no more than 500 feet from the local street's intersection with a street with a minimum classification of collector.
- (12) *Recreational/open space standards.* Open space shall be provided as required by [section 7-11-4](#) of this chapter.
- (13) *Design and operation standards.*
Transition area: Within 100 feet of a residentially zoned area, the height of buildings and other structures shall be subject to the height limitations established in the least restrictive adjacent residential zone. The primary entrance of nonresidential buildings and structures located in the transition area shall be directed away from residential uses.
- (14) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.
 (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2589, § 1(d), 7-13-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(o), 2-8-00; Ord. No. 2904, § 1(o), 3-12-02; Ord. No. 3002, § 1b, 2-25-03; Ord. No. 3010, § 1(b), 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3337, § 1(b), (c), 2-28-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3685, §§ 1b, c, 1-13-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, § 1f, 12-9-14)

Sec. 7-8-16. - Highway Business District.

- (a) *Purpose.* The Highway Business District is established to address the needs of commercial development along major thoroughfares. Automobile oriented development is prevalent within this district and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a major objective within this district is to preserve the traffic capacity of the thoroughfare. This is attempted through minimizing the number of access points onto the thoroughfare, encouraging zero-lot line development, and promoting shared parking and access between adjacent businesses. Development which enhances the function of the thoroughfare and is sensitive to the appearance of the corridor is essential within this district. These major corridors are the gateways to Asheville and often define the first image of the city.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection [7-8-1\(d\)](#), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in the Highway Business District is prohibited.
 Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

- (1) *Density standards.* The maximum residential density per acre within the Highway Business District shall be 35 dwelling units; or 70 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.
- (2) *Structure size standards.* New developments in the highway business district shall not exceed a total of 200,000 square feet in gross floor area for multiple tenant developments and 100,000 square feet in gross floor area for single tenant development; existing developments shall not be expanded to exceed these limits. In multi-tenant developments, no single retailer may exceed those limits set forth in subsection [7-16-2\(c\)\(10\)](#) and shall not constitute more than 75 percent of the total gross floor area of the development in order to receive a multi-tenant square footage allowance.
- (3) *Lot size standards.* None.
- (4) *Lot width standards.* There shall be no minimum lot width standards, however, the minimum lot frontage shall be 100 lineal feet or meet access requirements for non-residential lots as set forth in subsection [7-11-2\(k\)](#). For through and corner lots, the minimum street frontage shall be required along the property line abutting the larger thoroughfare.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Highway Business District.
 Front: 35 feet, except that the minimum setback may be reduced to five feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required

Rear: 10 feet.

Corner lot, street side: 25 feet.

The landscape and buffering standards ([section 7-11-3](#)) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* None.
- (7) *Height standards.* The maximum height of structures in the Highway Business District shall be 60 feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by [section 7-11-3](#) of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by [section 7-11-2](#) of this chapter.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in [section 7-11-8](#) of this chapter.
- (11) *Access standards.* Points of access to the street shall be determined by the city traffic engineer following review of the site plan and other relevant information.
- (12) *Recreational/open space standards.* Open space shall be provided as required by [section 7-11-4](#) of this chapter.
- (13) *Design and operation standards.* None required.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2462, §§ 1(a), 2, 4-14-98; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2649, § 1(a), 12-21-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(p), 2-8-00; Ord. No. 2904, § 1(p), 3-12-02; Ord. No. 3002, § 1b, 2-25-03; Ord. No. 3010, § 1(c), 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3337, § 1(b), (c), 2-28-06; Ord. No. 3390, § 1(b), 9-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3582, § 1(b), 2-12-08; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3685, §§ 1b, c, 1-13-09; Ord. No. 3711, § 1, 3-10-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3856, § 1b, 5-25-10; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, § 1g, 12-9-14)

Sec. 7-8-17. - Regional Business District.

(a) *Purpose.* The Regional Business District is established to provide areas for large scale commercial operations. This district is intended to encourage innovative development that is integrated with adjacent uses. It is not the intent of the district to encourage strip commercial areas, but rather a concentration of commercial activities with an overall design scheme. This district is designed to be located around the intersections of high traffic volume thoroughfares such as interstate highways and arterial roads. This district permits a wide range of commercial uses and is easily accessible by the automobile. The Regional Business District is characterized by high traffic generation, large structures which may contain multiple businesses, and shared parking and access between adjacent businesses. Although the automobile and bus are the primary modes of transportation to this district, pedestrian connections between the businesses within the district enhance the functionality of the district.

(b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.

(c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in the Regional Business District is prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

(1) *Density standards.* The maximum residential density per acre within the Regional Business District shall be 35 dwelling units; or 70 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.

(2) *Structure size standards.* None.

(3) *Lot size standards.* None.

(4) *Lot width standards.* There shall be no minimum lot width standard, however, the minimum lot frontage shall be 100 lineal feet. For through and corner lots, the minimum street frontage shall be required along the property line abutting the larger thoroughfare.

(5) *Setback standards.* The following minimum setbacks shall be required for uses in the Regional Business District.

Front: 35 feet, except that the minimum setback may be reduced to five feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required.

Rear: 10 feet.

Corner lot, street side: 25 feet.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

(6) *Impervious surface standards.* None.

(7) *Height standards.* The maximum height of structures in the Regional Business District shall be 80 feet.

(8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.

(9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter.

(10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.

(11) *Access standards.* Points of access to the street shall be determined by the city traffic engineer following review of the site plan and other relevant information.

(12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.

(13) *Design and operation standards.* None.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

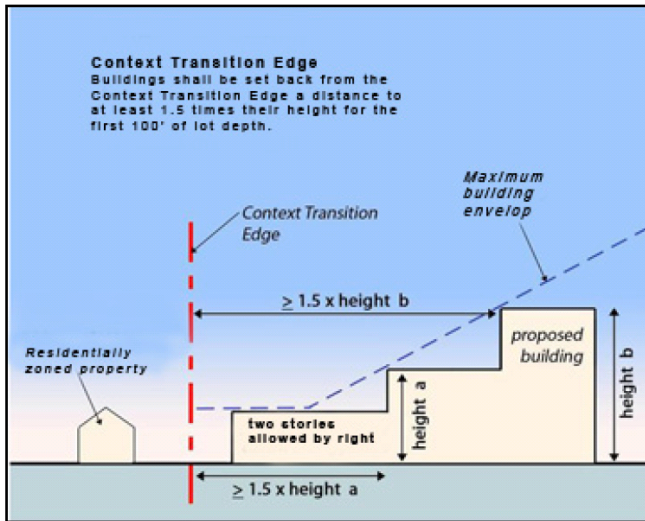
(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2462, §§ 1(a), 2, 4-14-98; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2649, § 1(b), 12-21-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(q), 2-8-00; Ord. No. 2792, § 1(a), 2-13-01; Ord. No. 2872, § 1(a), 11-27-01; Ord. No. 2904, § 1L(q), 3-12-02; Ord. No. 3002, § 1b, 2-25-03; Ord. No. 3010, § 1(c), 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3337, § 1(b), (c), 2-28-06; Ord. No. 3390, § 1(b), 9-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3572, § 1(j), 1-8-08; Ord. No. 3582, § 1(c), 2-12-08; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3685, §§ 1b, c, 1-13-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3856, § 1b, 5-25-10; Ord. No. 3874, § 1e, 6-8-10; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, § 1h, 12-9-14)

Sec. 7-8-18. - Central Business District.

(a) *Purpose.* It shall be the purpose of the Central Business District to reinforce the downtown as the urban center of Asheville and Western North Carolina, encouraging private and public investment which will preserve the Central Business District as the primary retail, office, hotel, institutional, cultural and entertainment center of our community. It is further the purpose of this district to encourage a strong supportive retail center along with high density residential development which will complement other downtown uses and surrounding neighborhoods. A high priority is placed on design, integrating new uses into and with existing architecture in a respectful and cohesive

manner. Design review guidelines in place for the downtown area remain as a companion document for urban design decisions. Development within this district should facilitate the circulation patterns and needs of individuals and business alike. A well-balanced transportation system for this district must recognize the importance of all forms of movements, be it pedestrian, bicycling, transit, automobile, or truck in nature.

- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.*
- Outdoor storage or outdoor warehousing (excluding automobile or cycle sales and leasing)
 - Adult establishment
 - Skywalks/pedestrian bridges over key pedestrian streets
- Any use not specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in the Central Business District is prohibited
- Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.
- (d) Reserved.
- (e) Reserved.
- (f) *Development standards—Downtown.* The following development standards apply to all parcels zoned Central Business District for new construction and/or changes that modify the exterior walls and/or roof of an existing building that are located within the boundaries of the Downtown Design Review Overlay District, as described in section 7-9-3 of this chapter. Routine maintenance, repairs or replacement of same or similar materials on existing buildings are exempt from these requirements.
- (1) *Density standards.* None.
 - (2) *Structure size standards.* Structure size shall not be limited except that height and design and operational standards shall apply.
 - (3) *Lot size standards.* None.
 - (4) *Lot width standards.* None.
 - (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Central Business District.
 - Front:
 - Minimum setback: Zero feet from the right-of-way line. For corner lots buildings are to be placed at the corner.
 - Maximum setback: Zero feet from the right-of-way line. The following exceptions to the maximum setback may be permitted. The agency or official responsible for project review may consider allowing greater setbacks under one or more of the following circumstances:
 - a. A setback of up to 50 feet from the edge of the curb may be approved for places of worship, civic and governmental buildings, and residential projects that will provide a public space, such as a courtyard or plaza space.
 - b. A setback of up to 20 feet for uses in the district providing courtyard or plaza spaces in the setback area.
 - Courtyard and plaza areas should meet definitions located in 7-2-5 of this chapter which describe form and purpose. The main facade of the building must face this setback area.
 - c. An adopted plan or other official document of the city recommends a greater setback.
 - d. A greater setback is determined as part of a design review process or is the result of an addition (that is otherwise compliant with this article) to an existing building.
 - Side: None required, except that a 15-foot setback will be required when adjacent to residentially zoned property.
 - Rear: None required, except that a 15-foot setback will be required when adjacent to residentially zoned property.
 - (6) *Impervious surface standards.* None.
 - (7) *Height standards.* For the definition of height see building height in section 7-2-5 of this chapter. The minimum height for new structures in the Central Business District will be two stories (a minimum of 24 feet). Maximum building height will be determined according to the context transition edge map, the height zone map, the height zone edge setback and shadow impacts described below and with maps following this section.
 - a. The two-story requirement for new construction will mean that:
 1. A second floor is provided as a full occupiable floor and a mezzanine level will not be sufficient to meet this requirement; and
 2. Civic uses such as places of worship, arenas, auditoriums, and performance centers will not be required to meet the two-story requirement described in subsection 1. above.
 - b. *Context transition edge:* The first step in determining the height permitted for a structure is to review the context transition edge map found at the end of this section to determine if it is applicable to the specific property. This map shows areas where a gradual scale transition is required for new downtown construction from nearby established residential neighborhoods. The map reflects a specific height overlay for properties located near the context transition edge (a 100-foot-wide area measured from the transition line). Buildings located within this transition edge will have their actual height determined by using the formula for height: $H = D/1.5$; (where H is the height of the building and D is the distance from the transition edge). The one exception is that a two-story structure with a 15-foot setback when adjacent to residentially zoned property is exempt from the formula requirements.



- c. *Height zones*: Measurement of height: The second step in determining the height permitted for a structure is to review the building height zone map located at the end of this section.
- (1) The intermediate height zone is 145 feet and the tallest height zone is 265 feet.
 - (2) Actual building heights may exceed this height by an additional overall amount of 50 feet to accommodate such uses as the final occupied floor, mechanical penthouses and roof cap features.
- d. *Height zone edge setback from the right-of-way*: To protect certain views in downtown, as illustrated on the height zone map by a dashed line (specific to portions of four streets listed below), a height zone edge setback is established. The height zones for the intermediate height zone and the tallest height zone follow property lines except for the following streets where a height transition between these two zones 40 feet wide measured from the right-of-way line edge will be observed:
- (1.) College Street between the tunnel and Town Mountain Road.
 - (2.) Haywood Street between Battery Park Avenue and N. French Broad Avenue (south side).
 - (3.) Patton Avenue from Pearl Street to Otis Street (both sides of street) and continuing from Otis Street to the point of Pritchard Park (south side).
 - (4.) Hilliard Avenue between Clingman Avenue and Pearl Street (north side).
- e. *Shadow impact limits*: Shadows from new construction on large or small public parks or public plazas are limited by the following standard:
- (1.) Shadows impacts on any one point are limited to no more than two hours between the hours of 10:00 a.m. and 2:00 p.m. on the spring or fall equinox at ground level; March 21 or September 21 respectively.
 - (2.) Where no right-of-way exists between the proposed project and the public park or plaza, a 50-foot buffer free of any shadow limitations will be observed. This shadow impact standard will not apply to smaller public spaces such as pocket parks or private plazas, parks and courtyards. See the definition for parks specific to the Central Business District in [section 7-2-5](#) of this chapter for further clarification.
- f. One story additions to existing buildings are approved under the following circumstances:
1. Additions are permitted when they are:
 - a. 1,000 square feet or less, or
 - b. The addition does not expand the footprint of the existing building by more than 20 percent; and
 - c. The addition is located no closer than five feet of the primary façade of an existing contributing structure in the Downtown National Register District, or is located at the rear of the existing building so there is no affect on the primary façade, or for non-contributing structures is placed to make the existing building either equal to or more compliant with setback requirements; and
 - d. As measured from the primary street façade, the width of the addition shall not exceed 50 percent of the width of the existing building, and
 - e. Other fenestration and design requirements if any, apply.
 2. One-story accessory structures, that are in support of a primary use on a site are allowed when:
 - a. Placement of the accessory structure is behind or to the side of the primary building or in the case of outside dining spaces for restaurants, may be placed at the front of the lot to enhance activity at the sidewalk level, and
 - b. Fenestration and design requirements if any, apply.
- Other additions that fall outside of these provisions may be considered by the planning and zoning commission following the usual process for variances, which includes a recommendation from the downtown commission.
- (8) *Landscaping/buffering standards*. Landscaping and/or buffering shall be provided as required by [section 7-11-3](#) of this chapter.
- (9) *Parking/loading standards*. If provided, loading facilities shall be placed along alleys or streets not identified on the Key Pedestrian Streets map (found at the end of this section) as a first choice but may be located there if no other alternative is available. There shall be no requirements for off-street parking in the Central Business District. No parking is allowed between the building and any abutting street. Parking garages placed on a key pedestrian street shall provide a full habitable story and use along the street-side facade(s) with a minimum depth of 20 feet or shall comply with the design and operation standards for openings and design organization requirements for new construction.
- (10) *Sidewalk standards*. Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in [section 7-11-8](#) of this chapter. In general, sidewalks shall be a minimum of ten feet wide or the city engineer may approve an alternative width based on context of street and block. Narrower sidewalks may be approved in cases where there is insufficient space for a larger sidewalk.
- (11)

Access standards. Vehicular entries shall be a maximum of 24 feet in width. In addition driveway curb cuts are limited to a single standard driveway per 200 feet along a block face per development. Automobile access and services from a rear alley is encouraged. The city engineer shall make the final determination regarding access standards for situations where strict compliance is difficult while assuring the goals for a strong pedestrian environment in the CBD are met.

(12) *Recreational/open space standards.* None.

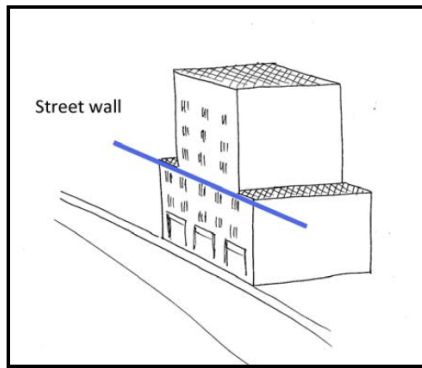
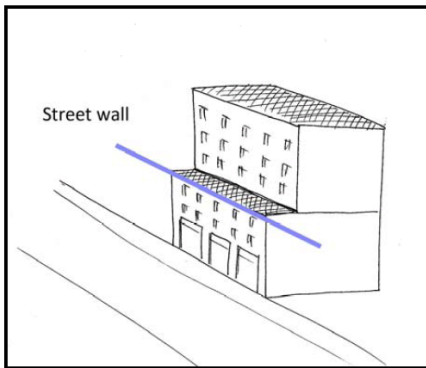
(13) *Design and operational standards.*

a. The following requirements apply to all buildings in the CBD:

Street wall and step-back requirements: In order to enhance the traditional scale of downtown and ensure adequate air and light at the sidewalk level and neighboring properties, a visual demarcation will be established across the facade of the building at a height that is defined as the street wall. Corresponding to this elevation on the facade a step-back across the front or side(s) will be provided and in limited circumstances described below, other alternatives may apply to ensure variety in new construction.

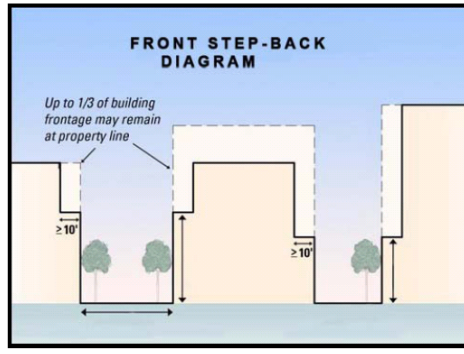
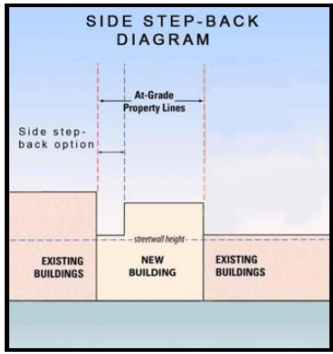
(1.) *Street wall height:* The street wall height and specific alternatives are established in the following ways:

- a. If the property is located within the Traditional Downtown Core area as illustrated on the map following this section, the street wall will be set at between two and four stories with a recommendation to reflect the height of neighboring buildings;
- b. If the property is located outside the Traditional Downtown Core the street wall will be established by a one-to-one relationship to the width of the right-of-way (ROW). For example, a ROW of 50 feet would result in a maximum street wall height of 50 feet. Depending on the site the following scenarios may apply:
 1. If a parcel fronts on more than one street, the street wall shall be established by:
 - a. The ROW width of the key pedestrian street if applicable; or
 - b. Measuring the ROW from the side of the building with the primary pedestrian entrance.
 2. The street wall may wrap around to the side(s) at the same height or be re-established based on the ROW of the side street. For the purposes of this section frontage on a service alley will be treated the same as an internal property line and therefore would not require a street wall step-back, or;
- c. Throughout the CBD, a building that provides a setback along the frontage line to create a plaza or courtyard area (minimum depth ten feet), will not be required to establish a street wall. This setback area must exceed two-thirds of the building width along the frontage line; or
- d. For areas outside the Traditional Downtown Core where the ROW area is greater than 75 feet, a building is not required to provide a street wall step-back or side step-back. Buildings in these situations will be required to meet other design and operational standards as applicable; or
- e. Throughout the CBD, a variance may be sought as set forth in [section 7-5-9.1](#) from the step-back requirements by meeting design guidelines that specify a clear visual demarcation provided between the base of the building and upper floors corresponding to the height of the street wall. The requested variance shall not result in conflict with building code requirements; or
- f. Throughout the CBD, buildings determined to be signature buildings or proposed for landmark locations may seek a variance as set forth in [section 7-5-9.1](#) from street wall and step-back requirements when they meet design guidelines specific to landmarks. See the Public View Corridors map for recommended landmark locations.
- g. When an existing one-story building that is a contributing structure in the downtown national register district will be incorporated into a development proposal that may include a single or multi-story addition, it will be deemed to satisfy the requirement or that portion of the requirement for the streetwall.



(2.) *Step-back requirement:* In order to enhance the traditional scale of downtown and ensure adequate air and light at the sidewalk level and neighboring properties a step-back at the street wall height is required according to the following standards. In no case shall the required step-back(s) decrease the buildable area by more than ten percent:

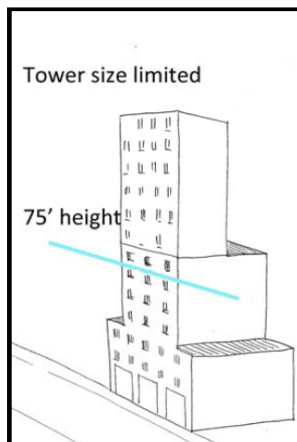
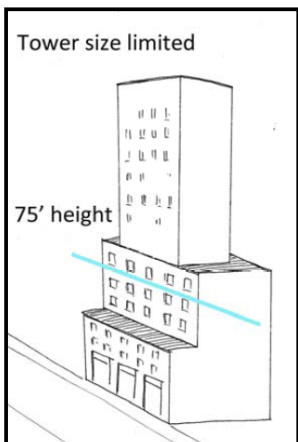
- a. At the street wall height a minimum ten-foot-wide step-back is observed along at least two-thirds of the length of the street-side facade (the remaining one-third may be provided at up to two hundred percent (2 X) of the street wall height); or
- b. A side step-back may be provided as an alternative according to the following requirements as applicable.
 1. At the street wall height, a 40-foot-wide step-back is provided along the side of the proposed structure. This 40-foot-wide step-back may be split between two sides (such as 20 feet each side);
 2. Buildings taller than 75 feet shall provide a side step-back that equals one-half of the width of the facade above 75 feet*.
 - * The step-back amount may be split between two sides.
 - * See street wall height description to determine the height of the corresponding street wall.



(3.) *Design organization:* Buildings shall demonstrate a building design organization on each facade such as but not limited to a base-middle-cap organization, vertical articulation or other organizing principle.

Building caps: Downtown Asheville has a wealth of buildings with distinctive caps that use special forms and materials. The unique diversity of building caps has become a defining feature of the downtown skyline. In order to frame views and provide attractive landmarks that enhance the skyline of the downtown area, building caps are required. See the design guidelines regarding building caps for recommendations in addition to the following requirements:

- a. Provide a cap to enhance a base-middle-cap oriented design; or
 - b. Provide a cornice or other decorative band for flat roofs to serve as a cap.
- (4.) *Pedestrian entrances:* All buildings shall have their primary pedestrian entrance on a frontage line. If the site is located on a key pedestrian street then the primary pedestrian entrance shall be located along that street. See the Asheville Downtown Design Guidelines for additional recommendations.
- (5.) *Windows, doors and other openings.* Building fenestration is required because it enhances the character of downtown Asheville by providing features of visual interest at the sidewalk for the benefit of pedestrians, by defining the scale of buildings between the ground floor and upper floors and by improving the skyline vista of Asheville. The following requirements apply:
- a. For buildings along streets designated as key pedestrian streets (see map at the end of this section), at least 70 percent of the street-level facade is composed of windows, doors and other openings.
 - b. For buildings along streets that are not designated as key pedestrian streets, at least 50 percent of the street-level facade is composed of windows, doors and other openings.
 - c. Residential buildings shall provide at least 30 percent (40 percent for live/work units) windows, doors or other openings along the street-level facade unless located along a key pedestrian street where it will be required to meet the 70 percent standard noted above.
 - d. All buildings are required to provide a minimum of 20 percent of the upper story areas as windows, doors or other openings with each face calculated independently. This requirement applies to exposed building sides unless otherwise restricted by the NC State Building Code.
 - e. At street-level, areas of opaque wall may extend no more than 20 feet horizontally before beginning a window, door or other opening.
 - f. Glass may be tinted but shall not be reflective.
 - g. When the facade of a building follows the natural grade of a sloping site, windows and other openings which may start out at pedestrian-level quickly go overhead and no longer relate to the sidewalk; in these situations where the surface level of the floor reaches six feet or more above the sidewalk, that floor will be deemed to no longer be at the pedestrian level. Requirements for windows, doors or other openings will be reassessed for the remaining ground level facade length.
- b. The following requirements apply to buildings taller than 75 feet for additional floors extending above this point:



- (1.) *Floor plate limited:*
- a. For parcels 20,000 square feet and larger, the gross floor plate area is limited to 40 percent of the lot area;
 - b. For parcels smaller than 20,000 square feet, gross floor plate area may not exceed 8,000 square feet.
 - c. For parcels greater than 16,000 square feet, the agency or official responsible for project review may consider floor plates up to 50 percent if it is surrounded by substantial permanent public or private open space that allows for views and access to direct sunlight.
- (2.) *Maximum dimension defined:* The maximum horizontal wall dimension in any direction is limited to 145 feet for additional floors above the 75 feet.

- (3.) *External vista points:* Photomontages modeling the proposed building are required from each of the established external vista points as a tool to evaluate development proposals:

Merrimon Avenue at Gracelyn Street

College Street at the west side of the tunnel

Stephens-Lee Recreation Center

Biltmore Avenue at Short Coxe Avenue

I-240 at the Smokey Park Bridge

Town Mountain Road at the bridge over I-240

- (4.) *Public view corridors:* If a project lies within a public view corridor based on the map following this section a photomontage from the internal vista point is required and where possible, building mass should be oriented to preserve views and roof forms should help to frame views.

- c. *Additional site related standards for all projects:*

Street furnishings: Street furnishings placed in the public right-of-way shall be approved by the department of public works and will include but not be limited to benches, tree grates, lighting fixtures and waste receptacles.

Mechanical equipment and appurtenances necessary for the function of the building shall be enclosed and screened or otherwise designed to be integral with the overall building design, including but not limited to elevators, stairs, cooling towers and vent stacks.

The design of the base of a building, as well as the quality and durability of its materials, shall be emphasized at the first floor of structures. Exterior insulation and finish systems (EIFS) are prohibited as a base material.

Private dumpsters and freestanding service equipment shall be screened by solid partitions or other screening.

Development on key pedestrian streets shall meet the following requirements:

For new construction along key pedestrian streets, buildings are required to be constructed along a minimum of 80 percent of the frontage line of the lot. This standard is not intended to restrict site access especially for smaller lots. Access is covered under access standards above. On corner lots the 80 percent frontage requirement applies to the primary street.

- (14) *Downtown design review guidelines.* All construction work requiring building, sign, demolition, and zoning permits and projects requesting a variance, within the downtown boundaries designated by the Asheville City Council, shall be submitted for mandatory review, voluntary compliance with the adopted Downtown Asheville Design Review Guidelines, with the exception of locally designated historic landmarks which shall be reviewed by the Historic Resources Commission of Asheville and Buncombe County in accordance with the applicable review procedures of the historic resources commission.
- (15) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

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7-8-18-9.png



7-8-18-10.png



- (16) *Balconies*. A balcony encroachment which extends into the public right-of-way beyond three feet must be approved by the city council.
- (17) *Skywalks and pedestrian bridges*.
- a. Skywalks and pedestrian bridges over key pedestrian streets are not permitted in the district.
 - b. Skywalks and pedestrian bridges when crossing over alleys or private property are permitted with the approval of the director.
 - c. Skywalks and pedestrian bridges when crossing over streets not included on the key pedestrian streets map are permitted with the approval of the director.
- (18) *Outdoor storage*. Outdoor storage or outdoor warehousing, excluding automobile or cycle sales and leasing, is prohibited in this district.

(g) Reserved.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2589, § 1(b), 7-13-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(r), 2-8-00; Ord. No. 2792, § 1(b), 2-13-01; Ord. No. 2872, § 1(b), 11-27-01; Ord. No. 2904, § 1(r), 3-12-02; Ord. No. 3002, § 1b, 2-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(4), 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3337, § 1(b), (c), 2-28-06; Ord. No. 3350, § 1, 7-25-06; Ord. No. 3390, § 1(b) 9-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3572, § 1(k), 1-8-08; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1b, 7-22-08; Ord. No. 3685, § 1a, 1-13-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3856, § 1b, 5-25-10; Ord. No. 3874, § 1f, 6-8-10; Ord. No. 3929, §§ 1a, b, 11-23-10; Ord. No. 3959, §§ 1g—i, n, p, 4-12-11; Ord. No. 4168, § 1b—g, 2-26-13; Amend. of July 2014; Ord. No. 4342, § 1d, 9-9-14)

Sec. 7-8-19. - River District.

(a) *Purpose*. River District is hereby created to celebrate, conserve, promote, and manage those areas on both sides of the French Broad and Swannanoa Rivers within the corporate limits and those areas of extraterritorial jurisdiction of the City of Asheville, North Carolina. These zoning standards will ensure that new development is compatible with and enhances the unique river resources as called for in Asheville's Comprehensive Plan and addenda. It is the intent of these standards to promote economic revitalization throughout the river valleys while providing for an opportunity for enjoyment of the river by a maximum number of citizens, neighbors, and guests. The Riverfront Plan, the Riverfront Open Space Guidelines, and the River District Design Review Guidelines are companion documents to these regulations.

The goals of the River District are to:

- (1) Promote the protection and improvement of the French Broad and Swannanoa Rivers as water resources;
- (2) Allow a mixture of river oriented land uses (residential, recreational, office/institutional, commercial, manufacturing, industrial, open space, and agricultural) to develop and prosper together through the establishment of specific development standards;
- (3) Promote responsible development that will result minimal stormwater runoff, soil erosion, river bank destabilization, grading, and flood damage;
- (4) Promote the preservation of a vegetative river resource corridor between the top of the river bank and new development to protect property from flooding and to enhance water quality;

- (5) Encourage the planting of specific riparian landscaping that will aid in controlling erosion, improving water quality, reducing stormwater runoff, enhancing fish and wildlife habitats, and protecting visual quality;
- (6) Promote the protection of existing natural areas, wetlands, and habitats, especially bluffs along the rivers;
- (7) Encourage the establishment of vegetative buffer yards between incompatible land uses to lessen negative impacts;
- (8) Encourage the conservation, protection, and promotion of the district's natural, cultural, and historic resources to enhance its value as a significant amenity to Asheville's citizens, neighbors, and tourists;
- (9) Encourage the creation of identifiable neighborhoods within the district through preferred land uses and the enhancement of their historical significance through coordinated physical amenities;
- (10) Promote improvements to existing infrastructure and the coordination of all new utility improvements;
- (11) Promote the rivers as a gateway to the city by encouraging the improvement of physical connections to Downtown, West Asheville, Biltmore Village, U.N.C.-A., A. B. Technical Community College, Warren Wilson College, Blue Ridge Parkway, and the N.C. Arboretum and encourage the provision of controlled public access directly to the water; and
- (12) Encourage the development of different uses on different floors of multiple story buildings.

The development of a pedestrian trail/greenway along the rivers is encouraged within the River District. Land owners are encouraged to dedicate/grant a dry land right-of-way or easement within the river resource yard. The public pedestrian trail/greenway along the rivers would be a part of the proposed greenway system for the City of Asheville as designated in the Greenway Master Plan.

Land owners are additionally encouraged to dedicate or grant a dry-land right-of-way or easement for use and maintenance by the Asheville Fire Department as a river emergency/rescue point.

(b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.

(c) *Prohibited uses.* The following uses are prohibited in the River District:

Adult establishments

Asphalt plants

Businesses manufacturing or storing materials listed as H1 hazardous materials as identified in the current version of the North Carolina State Building Code

Chemical storage facilities

Detention centers, jails, and related correctional facilities

Gas manufacturing

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

Hazardous waste management facilities

Manufacture or storage of ammunition, dynamite, or other high explosives

Mining

Paper mills

Slaughter houses

Solid waste disposal facilities

Solid waste landfills

Uses prohibited by the Asheville Flood Protection Standards

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

(1) *Density standards.* The maximum residential density per acre within the River District shall be 30 dwelling units; or 60 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.

(2) *Structure size standards.* None. However, in multi-tenant developments, no single retailer shall constitute more than 75 percent of the total gross floor area.

(3) *Lot size standards.* None.

(4) *Lot width standards.* None.

(5) *Setback standards.* The following minimum setbacks shall be required for uses in the River District.

Front, street side: 15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required.

Lots abutting the river: 10-foot side setback

Rear: None required unless lot abuts the river.

Lots abutting the river: Setback from the top of the river bank a distance equal to 20 percent of the lot depth, with a maximum setback of 50 feet and a minimum setback of 20 feet (See River Resource Yard; Development Standard # 12). This distance shall be measured at the time of site plan review.

Non-residential uses shall be setback a minimum of 30 feet from residential uses.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* The maximum impervious surface coverage in the River District shall be 80 percent. Vegetative drainage swales are required for stormwater control in the River District.
- (7) *Height standards.* The maximum height of structures in the River District shall be 60 feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter. Species suitable for a river environment shall be specified for required landscaping and buffering in the River District. (See Appendix C, Recommended Species List.) In areas experiencing natural stream bank erosion, planting of riparian vegetation shall be the required stabilization measure. If this technique is shown to be ineffective, then riprap shall be utilized, using natural rocks and installed in a manner providing space for vegetative growth.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking shall be permitted in any required setback. Uses in the River District shall be permitted a 20 percent reduction in required parking. Shared parking arrangements and common parking areas are encouraged.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in subsection 7-11-8 of this chapter.
- (11) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.
- (12) *Design and operation standards.* The speculative grading of land within the River District is prohibited. Natural slopes in excess of 45 degrees shall not be graded and the existing vegetation shall not be removed.

River Resource Yard - A river resource yard equal to 20 percent of the lot depth, with a maximum depth of 50 feet and a minimum depth of 20 feet shall be required of those properties abutting the French Broad River and Swannanoa River banks for all new development on these lots. This river resource yard is to be measured from the top of the banks of the rivers at the time of site plan approval. Existing continuous tree stands should be preserved to stabilize the river banks. Selective pruning or removal of diseased trees and shrubs in the river resource yard is permissible, provided that a live room system stays intact to provide for bank stabilization, erosion control, and improved water quality. Dead and diseased vegetation may be removed. Walkways, trails, river access areas, and similar activities may occur within the River Resource Yard.

Uses located within the River District shall be subject to the noise standards set forth in the city's noise ordinance (article IV of Code of Ordinances of the City of Asheville, sections 10-81 through 10-83). New outdoor loud speaker systems shall operate only during daylight hours.

All new or expanded operations located within the River District producing glare or heat shall be screened from adjacent residential districts. Exposed sources of light shall be shielded so no direct beam of light crosses lot lines. The top of light fixtures shall not exceed 30 feet in height in parking lots and 14 feet at all other locations on the development site.

Outdoor storage of materials is prohibited in the required front setback and within 50 feet of a residential district.

River District Design Guidelines: All construction work requiring building, sign, demolition, and zoning permits and projects requesting a variance within the River District shall be subject to a mandatory review/voluntary compliance procedure as set forth in article V of this chapter.

- (13) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.
- (14) *Storage tanks and containers.* Storage tanks and containers used for storage of chemicals, oil or fuels incidental to a use that is allowed in the district but shall be prohibited when located within the regulated floodway and, if out of the floodway, shall be elevated and secured to comply with the City of Asheville Environmental Protection Standards found in article 12.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2437, §§ 5, 6, 11-25-97; Ord. No. 2462, § 1(b), 4-14-98; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2589, § 1(d), 7-13-99; Ord. No. 2649, § 1(c), 12-21-99; Ord. No. 2664, § 1(s), 2-8-00; Ord. No. 2792, § 1(d), 2-13-01; Ord. No. 2904, § 1(s), 3-12-02; Ord. No. 3010, § 1b, 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3390, § 1(b), 9-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3579, §§ 1(a), (b), 1-22-08; Ord. No. 3582, § 1(d), 2-12-08; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3685, §§ 1b, c, 1-13-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3856, § 1b, 5-25-10; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1j, n, p, 4-12-11; Ord. No. 4374, § 1i, 12-9-14)

Sec. 7-8-20. - Commercial Industrial District.

- (a) *Purpose.* The Commercial Industrial District is established to provide areas for a wide range of commercial and industrial uses including: light manufacturing, wholesale, warehousing, services, retail sales, offices, and residential uses. The district is established where environmental conditions and urban infrastructure are adequate to support commercial and industrial development.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use or a use by right, subject to special requirements in the Commercial Industrial District is prohibited. In addition, asphalt plants are expressly prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved.

(f) *Development standards.*

- (1) *Density standards.* The maximum residential density per acre within the Commercial Industrial District shall be eight dwelling units.
- (2) *Structure size standards.* None.
- (3) *Lot size standards.* None.
- (4) *Lot width standards.* Lots in the Commercial Industrial District shall have a minimum width of 100 feet.
- (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Commercial Industrial District.

Front: Front: 35 feet, except that the minimum setback may be reduced to five feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required.

Rear: 10 ft.

Corner lot, street side: 25 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* None.
 - (7) *Height standards.* The maximum height of structures in the Commercial Industrial District shall 80 feet.
 - (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.
 - (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking shall be permitted in the required front setback.
 - (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.
 - (11) *Access standards.* Points of access to the street shall be determined by the city traffic engineer following review of the site plan and other relevant information.
 - (12) *Recreational/open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter.
 - (13) *Design and operation standards.* Open storage shall not be permitted within any required setback.
 - (14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2462, §§ 1(a), 2, 4-14-98; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2649, § 1(d), 12-21-99; Ord. No. 2663, § 1(g), 2-8-00; Ord. No. 2664, § 1(t), 2-8-00; Ord. No. 2792, § 1(c), 2-13-01; Ord. No. 2904, § 1(t), 3-12-02; Ord. No. 3002, § 1b, 2-25-03; Ord. No. 3010, § 1(c), 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3209, § 1b, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3337, §§ 1(b), (c), 2-28-06; Ord. No. 3390, § 1(b), 9-12-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3685, §§ 1b, d, 1-13-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3856, § 1b, 5-25-10; Ord. No. 3874, § 1g, 6-8-10; Ord. No. 3908, § 1b, 10-26-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, § 1j, 12-9-14)

Sec. 7-8-21. - Light Industrial District.

- (a) *Purpose.* Realizing the importance of light industrial uses to the economy of the City of Asheville, it shall be the purpose of the Light Industrial District to reserve land for existing and future light industrial, office-warehouse, and related activities and for land uses that support these activities. Development standards are established to ensure that land uses located outside the Light Industrial District are not adversely affected by the negative impacts of the more intense development types permitted in this zoning district. Light Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use, or a use by right, subject to special requirements or a conditional use in the Light Industrial District is prohibited.
- (d) Reserved.
- (e) Reserved.
- (f) *Development standards.*
 - (1) *Density standards.* The maximum residential density per acre within the Light Industrial District shall be two dwelling units per acre and shall apply only to accessory dwellings as residential uses are generally prohibited in the Light Industrial District.
 - (2) *Structure size standards.* None.
 - (3) *Lot size standards.* The minimum lot size in the Light Industrial District shall be 10,000 square feet.
 - (4) *Lot width standards.* Lots in the Light Industrial District shall have a minimum width of 100 feet.
 - (5) *Setback standards.* The following minimum setbacks shall be required for uses in the Light Industrial District.

Front: 20 feet, except that the minimum setback may be reduced to five feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required unless adjacent to residential district, then setback shall be 30 feet.

Rear: None required unless adjacent to residential district, then setback shall be 30 feet.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (6) *Impervious surface standards.* 85 percent.
- (7) *Height standards.* 80 feet.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter. No parking shall be permitted in any required front setback. Loading docks designed to accommodate vehicles larger than panel trucks shall be limited to one per each 20,000 square feet of gross floor area.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.
- (11) *Access standards.* None.
- (12) *Open space standards:* Open space shall be provided as required by section 7-11-4
- (13) *Design and operation standards.*
 - a. *Transition area:* Within 200 feet of a residentially zoned area, primary entrances of buildings and structures shall be directed away from residential uses.

- b. Uses located in the Light Industrial District shall be subject to the noise standards set forth in the city's noise ordinance (article IV of the Code of Ordinances of the City of Asheville, sections 10-81 through 10-83).
- c. Exposed sources of light shall be equipped with a 90 degree shut-off fixtures. The top of light fixtures shall not exceed 30 feet in height in parking lots and 14 feet at all other locations on the development site.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 3262, § 1(c), 7-12-05; Ord. No. 3337, § 1(c), 2-28-06; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3685, § 1d, 1-13-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3794, §§ 1a, b, 9-22-09; Ord. No. 3874, § 1h, 6-8-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-22. - Industrial District.

- (a) *Purpose.* Realizing the importance of industrial uses to the economy of the City of Asheville, it shall be the purpose of the Industrial District to reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities. Supporting land uses are characterized as providing supplies, raw materials, transportation, or storage services to industries or providing services to industrial employees.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use, or a use by right, subject to special requirements or a conditional use in the Industrial District is prohibited. In addition, asphalt plants are expressly prohibited.
- (d) Reserved.
- (e) Reserved.
- (f) *Development standards.*

(1) *Density standards.* The maximum residential density per acre within the Industrial District shall be two dwelling units.

(2) *Structure size standards.* None.

(3) *Lot size standards.* The minimum lot size in the Industrial District shall be 10,000 square feet.

(4) *Lot width standards.* Lots in the Industrial District shall have a minimum width of 100 feet.

(5) *Setback standards.* The following minimum setbacks shall be required for uses in the Industrial District.

Front: 20 feet, except that the minimum setback may be reduced to five feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: None required unless adjacent to residential district, then setback shall be 50 ft.

Rear: None required unless adjacent to residential district, then setback shall be 50 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

(6) *Impervious surface standards.* None.

(7) *Height standards.* None.

(8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter.

(9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-1 of this chapter. No parking shall be permitted in any required front setback. Employee parking only shall be permitted in any required side and rear setback.

(10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter.

(11) *Access standards.* None.

(12) *Recreational/open space standards.* None.

(13) *Design and operation standards.*

Transition area - Within 200 feet of a residentially zoned area, restrictions shall be placed on the height and orientation of uses other than those uses permitted in the adjacent residential zone. Height of buildings and structures located in this area shall be subject to the height limitations established in the least restrictive adjacent residential zone. Primary entrances of buildings and structures located in the transition area shall be directed away from residential uses.

Uses located in the Industrial District shall be subject to the noise standards set forth in the city's noise ordinance (article IV of the Code of Ordinances of the City of Asheville, sections 10-81 through 10-83).

Exposed sources of light shall be shielded so no direct beam of light crosses lot lines. The top of light fixtures shall not exceed 30 feet in height in parking lots and 14 feet at all other locations on the development site.

All operations using or storing radioactive materials, whether or not licensed by the atomic energy commission, shall comply with the applicable regulations adopted, or as such regulations may hereafter be amended, by the North Carolina State Board of Health, pursuant to the power granted such board by Chapter 481, Session Laws of 1959 (G.S. 104C), entitled North Carolina Atomic Energy, Radio Activity, and Ionizing Radiation Laws, as amended.

Outdoor storage of materials is prohibited in the required front setback and within 50 feet of a residential district.

(14) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2539, § 1, 1-26-99; Ord. No. 2649, § 1(e), 12-21-99; Ord. No. 2664, § 1(u), 2-8-00; Ord. No. 2740, §§ 1(a)(b), 9-12-00; Ord. No. 2904, § 1(u), 3-12-02; Ord. No. 3002, § 1b, 2-25-03; Ord. No. 3010, § 1(d), 3-25-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(5), 8-24-04; Ord. No. 3262, § 1(c), 7-12-05; Ord. No. 3327, § 1(b), 2-28-06; Ord. No. 3337, § 1(c), 2-28-06; Ord. No. 3368, § 1, 6-13-06; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3685, §§ 1b, d, 1-13-09; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3794, §§ 1c, d, 9-22-09; Ord. No. 3874, §§ 1i, j, 6-8-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-23. - Urban Village District.

- (a) *Purpose.* The Urban Village District is established to create mixed use development that is economically vital, pedestrian-oriented and contributes to the place-making character of the built environment. The Urban Village District offers the unique opportunity to provide quality and long lasting retail, office and residential uses in an organized layout that encourages the full range of access by patrons and users, and offers innovative high quality design of structures, public amenities and pedestrian facilities. The development and design standards set forth in this district intend to accomplish the following purposes:
- (1) Provide safe and convenient access to shopping and other essential services to:
 - Pedestrians,
 - Bicyclists,
 - Transit riders, and
 - Persons with disabilities.
 - (2) Effective traffic flow through:
 - Access management, and
 - Improved internal and external connectivity.
 - (3) Create a built environment that serves to:
 - Enhance gateway corridors,
 - Preserve historic heritage,
 - Promote economic development and an improved tax base for the city, and
 - Celebrate Asheville's distinction from other cities.
 - (4) Promote sustainable use of limited land and investment resources by:
 - Encouraging higher building densities,
 - Allowing efficient shared parking areas, making cost effective use of existing infra-structure,
 - Showcasing innovative high quality development,
 - Providing adaptive re-use of under-performing retail properties,
 - Ensuring multi-modal transportation access,
 - Insuring internal and external connectedness,
 - Developing a durable framework of infrastructure and built structures that can accommodate future renovations,
 - Upgrades and rehabilitation, and
 - Reestablishing the public realm, civic pride, and sense of community ownership in new developments.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use, a use by right subject to special requirements, or a conditional use in the Urban Village District is prohibited.
- Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.
- (d) Reserved.
- (e) Reserved.
- (f) *Development standards.*
- (1) *Master plan required.*
 - a. Unless initiated by the city pursuant to its zoning authority, Urban Village District projects are required to submit a master plan with the zoning application for the entire parcel that indicates the general street network, the land use configuration within that network, the ultimate proposed development intensity (including the number of residential units and gross square footage of all nonresidential uses), and the proposed structure heights for the Urban Village. For initiation of this zoning classification, properties may fall under more than one ownership so long as there exist covenants or other legally binding agreements that address cross-access, cross-parking and other similar issues affecting joint operation of the projects.
 - b. After the establishment of the Urban Village District zoning, regardless of scale, Urban Village District development projects shall be approved under the Level II site plan review process. Multi-phase projects must submit drawings and elevations along with the approved master plan at the time of Level II review. A traffic impact analysis will be required for all Urban Village projects and shall be submitted with the Level II application. Projects for the Urban Village District shall be reviewed for compliance with the standards set forth in the ordinance.
 - c. Revisions to approved Urban Village District master plans may be approved by the city council or by the planning and development director depending on the type of revisions being requested. City council shall review any revisions to a master plan that increases the overall development intensity, changes the proposed mix of uses by increasing or reducing any use category by 25 percent or more, or increases the maximum building height from that shown on the approved master plan. Additionally, city council shall review any revision to a master plan that results in a decrease in the amount of perimeter open space or perimeter parking lot buffering, or in a 25 percent or greater reduction in the number of proposed blocks from that shown on the approved master plan. For the purpose of determining overall development intensity, one residential unit shall be regarded as the equivalent of 500 square feet of office floor area; one residential unit shall be regarded as the equivalent of 200 square feet of commercial floor area; and 1,000 square feet of office space shall be regarded as the equivalent of 350 square feet of commercial floor area. For other uses, the planning and development director shall determine the equivalency factor using quantifiable information such as automobile trip generation data. In reviewing master plan revisions, the city council shall follow the same public hearing process used to approve the initial master plan; at its discretion, the city council may refer the proposed revisions to the planning and zoning commission for their recommendation. The planning and

development director is authorized to review and approve all other revisions to master plans. In approving revisions to a master plan, the planning and development director shall analyze the revisions in terms of compliance with the specific requirements of the Urban Village Zoning District, the general development pattern approved by city council, and the overall development concept, including the mix of uses, of the initial approved master plan. In the event the planning and development director denies the proposed revisions, the property owner may request that the city council review the revisions following the same public hearing process as provided above.

- (2) *Density standards.* Maximum residential density shall not be limited, except by other standards such as building height, parking, landscaping and buffering, open space, and traffic impact analysis.
- (3) *Structure size standards.* The structure size shall not be limited except by other standards such as building height, parking, landscaping and buffering, open space, and traffic impact analysis.
- (4) *Area standards.* The minimum area required to establish an Urban Village District shall be five acres.
- (5) *Lot size standards.* There is no minimum lot size in an Urban Village District.
- (6) *Street design standards.* Internal streets in the Urban Village District shall be designed using the Asheville Standards And Specifications Manual (or as approved by the city engineer) but shall contain: pedestrian zone area, travel lane area, center medians if any, on-street parking. The sight visibility triangle requirement noted in article XI may be modified at the review of the city engineer.
- (7) *Lot width standards.* None
- (8) *Setbacks.*

Minimum setback: Zero feet from the right-of-way.

Maximum setback: 15 feet from the street as measured from back of curb, except as follows:

- a. Arcades and awnings may encroach into the setback area.
 - b. Mixed use office/retail structures may be setback from the back of curb up to 25 feet if at least ten feet in front of the structure includes an arcade, forecourt, dooryard, or courtyard offering public amenities.
 - c. Institutional and public uses may be setback a maximum of 75 feet as measured from back of curb for projects that incorporate a courtyard or green. Courtyard and green areas may include landscape portions but shall also include hardscape paving elements for public meeting or gathering. The main facade of institutional and public use structures must face this setback area.
 - d. Single-family residential structures may be setback up to 25 feet from back of curb and may include a dooryard, courtyard, porch and fence.
 - e. Multifamily residential structure setback areas may include a courtyard up to 25 feet deep. The courtyard may not be wider than one-third of the building length unless approved by the director of planning and development.
 - f. Variations in setback requirements may be granted by the city council or planning and development director to address issues of context, including but not limited to alignment of buildings in the same blockface, street classification on the thoroughfare plan, and proposed or existing public greens, pedestrian zones and courtyards.
 - g. Buildings may be set back up to 40 feet from back of curb for topographic reasons subject to the following requirements:
 - A pedestrian zone and sidewalk is provided at the back of the curb meeting UV standards and may include street trees and other streetscape enhancements;
 - The top of the retaining wall (excluding handrails, etc.) does not exceed five feet above (or below depending on the specific topographic grade) the sidewalk level;
 - The area above (or below depending on the specific topographic grade) the retaining wall and adjacent to the building includes uses to encourage a lively pedestrian space and shall be considered an active pedestrian level;
 - Building frontages facing this active pedestrian level shall meet fenestration requirements as described in the ordinance.
 - No more than 50 percent of the length of the facade of the building is separated from the main sidewalk level with the use of a retaining wall. The remaining 50 percent of the street frontage must:
 1. Have upper and lower sidewalks join at the same grade as a single sidewalk, or
 2. Connect the upper and lower sidewalks through no more than five steps or a ramp at no more than a one to 12 slope. The steps described in this scenario are the steps running parallel to the face of the building connecting to the sidewalk area.
- (9) *Impervious surface standards.* None.
 - (10) *Height standards.*
 - a. Minimum height: 15 feet. Maximum height: 100 feet. It is the intent of this section that the predominant height of structures in Urban Village Districts be between two and six stories in height. In applying this provision, single story structures shall not exceed 50 percent of the total gross building footprint of structures included in the master plan. Any structure taller than four stories shall be designed with a cornice at the fourth story level, with those portions of the structure taller than four stories being set back at a minimum of ten feet from the cornice level. Any structure taller than six stories shall be located internally to the site unless the surrounding context supports such height.
 - b. As part of its approval of the master plan, increases in maximum height of a structure may be allowed by the city council not to exceed 150 feet, based on such factors as topography, relationship to other structures in the area, and compliance with applicable design guidelines. For structures exceeding 100 feet in height, the minimum cornice level setback shall be 20 feet or a second cornice level with a minimum setback of 10 feet shall be established at a point between floors five through eight.
 - (11) *Design and operational standards.*
 - a. *Orientation.* Buildings shall be oriented towards their primary access street. On corner lots, the building must be located at the corner. Single-family residential units located on a corner are exempt from this requirement. Building sides should appear similar to their fronts.
 - b. *Entrances.* All buildings should include well-defined entrances facing the street at regular intervals. An operable entrance on each primary facade should be provided to encourage access by pedestrians. Buildings on corner lots may place the entrance at the corner eliminating the need for side entrances.
 - c. *Windows, doors and other openings.* The first floor of all new structures in the Urban Village District shall be designed in a way that a minimum of 45 percent of the length of the first floor street frontage incorporates either windows, doors and other openings to complement pedestrian scale activity. Structures shall have windows evenly distributed across the facade. Upper story windows, doors and other openings shall make up at least 30 percent of the wall surface. Residential-only buildings that are identified on the approved masterplan may reduce the openings along the ground floor street facing facade to 30 percent. All storefront

windows shall be transparent or lightly tinted and shall not appear false or applied. Windows are also required along the sides of structures that are visible from roadways or have parking adjacent to them. Exceptions to these standards may be made by the city council in order to achieve compliance with LEED or NC building energy code standards, to accommodate public art or to allow alternative fenestration approaches provided the intent of this section is met by the building exhibiting a primary focus on pedestrian interest.

- d. *Variations*. Requests for variances of the design and operational standards set forth in this subsection may be granted by the planning and zoning commission, which is hereby designated to perform the duties of a board adjustment for this purpose.
- (12) *Internal access and connectivity*. The site shall be traversed by a network of internal streets built according to the Asheville Standards and Specifications Manual (or as approved by the city engineer). Internal streets should seek to avoid cul-de-sacs and dead end roads and other features that hamper connectivity. However, roads may terminate at a monumental structure or a green. In such cases, a sidewalk or other connection must be provided to ensure the goals of connectivity. In addition, internal streets are also required to have sidewalks and street trees. A bus shelter is required for Urban Village Districts. Larger projects may require more shelters as determined by the Traffic Impact Analysis and or by the transit director. Connectivity is a goal of the internal street system and external connections to areas outside and adjacent to the Urban Village should be created where possible and appropriate. Blocks are required throughout the site to provide access to different village areas and to encourage multi-modal transportation options. Only one driveway per block face shall be allowed for blocks shorter than 350 feet; up to two driveways may be allowed in blocks 350 feet or longer provided measures are taken to maintain pedestrian interest and safety. Single-family (including townhome) and duplex uses are exempt from this driveway restriction. Parking and loading access from service alleys for all uses, however, is encouraged, and such alleys, when approved as part of the street network of the master plan, shall be exempt from the requirements of this section.
- (13) *Block length*. Block length may vary but shall not exceed 500 feet in length. For blocks on local streets that are 350 feet or longer, a mid-block pedestrian street crossing is required which may also include a parking lot driveway and/or pedestrian passageway between two or more buildings, and shall have curb extensions (bulbouts) for ease and safety of pedestrian street crossing (per the Asheville Standards and Specifications Manual). Collector streets may also require mid-block pedestrian crossings as noted above. Variations in block length and pedestrian crossing requirements may be approved by the city engineer provided the intent of this section is met.
- (14) *Pedestrian zone and sidewalks*. The pedestrian zone is the area between the street curb and the building edge or for access roads, the street curb and the ROW area. The pedestrian zone includes sidewalks, street trees and other pedestrian amenities. The pedestrian zone will generally be 15 feet wide along primary streets in the Urban Village District but may be wider depending on the setback pattern. On secondary streets, the city engineer may accept a 12-foot wide pedestrian zone after evaluation of traffic and circulation patterns. Sidewalks in Urban Village Districts shall be required along one side of access streets and both sides of internal streets throughout the development. If appropriate to the design of the Urban Village, greenway paths may be substituted for sidewalks in residential areas to provide connections. The sidewalk shall be a minimum of seven feet wide in the Urban Village District. In solely residential areas containing less than eight units per acre, sidewalks are only required to be five feet wide. With institutional and public uses that have an increased setback, a sidewalk shall connect the building facade entrance with the street. The sidewalk may be as wide as the entire pedestrian area. Arcades, awnings, outdoor dining, shelters, seating areas, fountains, street trees, additional landscaped areas and other pedestrian amenities may be a part of this pedestrian area so long as seven feet of clear walking space is maintained. The pedestrian area may also be used to create an area for waiting, pick up and drop off. At locations such as intersections and other crosswalks, curb extensions (bulb-outs) are required to create safer pedestrian crossings. No fee in lieu of construction of sidewalks will be accepted in urban village districts.
- (15) *Parking/loading standards*. Parking facilities shall be provided as per the parking, loading and access standards, article 11 of this code with the exceptions noted below:
- Amount of parking*. Parking spaces in the Urban Village District shall be reviewed at the master plan level. The maximum number of spaces allowed in Urban Villages shall be the minimum required in the parking section in article 11 since this district can take advantage of shared parking opportunities. Parking spaces in parking structures shall be exempt from parking space calculations.
 - On-street parking*. On-street parking is required for all local streets and for collector streets as approved by the city engineer. On-street parking may take the form of parallel or angle parking and shall be built according to the Asheville Standards and Specifications Manual. On-street parking shall be counted when calculating the maximum number of spaces allowed.
 - Off-street parking*. Uses in the Urban Village District are not required to provide off-street parking. Off street parking lots are encouraged to be provided at the side or rear of buildings or the interior of a block of buildings and not closer to the street than the edge profile of the structures. No more than 20 percent of parking that is provided in the Urban Village District shall be in the form of off-street surface lots not located to the side or rear of buildings. Off-street parking shall not be adjacent to street intersections. No parking is permitted in any setback area. No more than 50 percent of the parking spaces provided may be in the form of off-street surface parking, with other parking to be accommodated in on-street or structured parking. Phased development may exceed the allowable amount of surface parking for time frames determined in master plan approval provided that full development of all phases meets the above requirements.
 - Bicycle parking*. Bicycle parking shall be provided as per article 11 except that the five percent calculation of total parking spaces will include on-street and off-street spaces provided in the master plan. Bicycle parking shall be distributed throughout the project use area.
 - Loading standards*. Urban Village Districts may share on-street and off-street loading facilities and are therefore allowed to provide these facilities at half the rate listed for the applicable uses. On-street loading spaces may be counted toward the project loading requirements.
- (16) *Street trees*. Street trees are required in the pedestrian zone and along access roads at an average rate of one tree every 40 feet and shall be selected from the City of Asheville recommended tree species list for durable large maturing trees. Trees may be planted in minimum of five foot by five-foot square pits close to the curb edge of the sidewalk. Tree frames and grates are not required but are recommended especially near store entrances, other sidewalk constraints, points of ingress or egress, or public gathering areas. If tree grates are not used, an organic surfacing material shall be used to level the surface of the tree pit with the sidewalk. This material shall receive regular maintenance. To offer flexibility in the tree planting requirements, trees may be planted in planting strips adjacent to the curb edge of the sidewalk. Planting strips shall be no narrower than five feet wide. Planting strips may include grass, flowers and other plant materials where appropriate. Planting strips may not be appropriate in pedestrian gathering areas.
- (17) *Landscape/buffering standards*. Landscaping and buffering shall be in accordance with article 11 [of the UDO] of the code with exceptions as noted below. Surface parking lots shall include interior and perimeter tree plantings made up of deciduous trees at a rate of one tree for every 1,500 square feet of parking and shall be selected from the City of Asheville Recommended Species Tree List for durable large sized trees. No parking space may be farther than 45 feet from a tree. Parking areas adjacent to roadways will require buffering from the street as noted in article 11 [of the UDO] with the exception that the buffer planting area shall be a minimum of eight feet wide. Residential structures within the Urban Village may have up to a 100 percent reduction in buffering requirements from the rest of the Urban Village. Buffering for Urban Village District projects is measured and reviewed from the parcel lot lines used to establish the district and not on an internal lot-by-lot basis. The Urban Village development projects shall be considered a high impact use based on the existing adjacent land use table in article 11 [of the UDO]; however, required buffering of neighboring uses may be reduced by the director of planning and development depending on the compatibility of the design of the project or particular component thereof with adjoining uses.

(18)

Open space standards. Open space for urban village district shall be a minimum of five percent of the area covered by the master plan. Pedestrian zones and public plaza spaces may be counted toward the open space requirements. Any bufferyards provided according to this section that are constructed with a greenway or other durable walking trail may also be counted toward the open space requirements. Dedicated public park space shall be reviewed with the City of Asheville Parks and Recreation Department for concurrence, agreement and maintenance (if required).

(19) *Emergency wireless communications.* Communication requirements shall be provided as required by section 7-11-9 of this chapter.

(Ord. No. 2851, § 1(a), 9-25-01; Ord. No. 3115, § 1, 4-27-04; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(b), 8-24-04; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3262, § 1(c), 7-12-05; Ord. No. 3335, § 1(a), 2-28-06; Ord. No. 3418, §§ 1(a), (b), 11-28-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3578, § 1, 1-22-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3874, §§ 1k—m, 6-8-10; Ord. No. 3959, §§ 1n, p, 4-12-11)

Sec. 7-8-24. - Neighborhood Corridor District.

- (a) *Purpose.* The Neighborhood Corridor District (NCD) is established to foster medium density, mixed-use development that is economically viable, pedestrian oriented and contributing to the place making character of the built environment. The Neighborhood Corridor District is designed to provide new development and redevelopment opportunities in the form of neighborhood scaled mixed-use structures that relate to the street, enhance the streetscape, offer services for the surrounding neighborhoods, and provide pedestrian facilities along connector corridors throughout the city and its extraterritorial jurisdiction. Enhancing and maintaining the transportation function and capacity of the corridor is also a goal of this district and will be accomplished by encouraging the following: shared parking among parcels and uses, internal connections between parcels, and reducing the number of allowable curb cuts.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection 7-8-1(d), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Prohibited uses.* Any use not specifically listed as a permitted use, use by right subject to special requirements, or a conditional use in the Neighborhood Corridor District is prohibited.

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

(d) Reserved.

(e) Reserved

(f) *Development standards.*

- (1) *Density standards.* Maximum residential density shall be 35 dwelling units per acre but may be increased up to a maximum of 70 dwelling units per acre if affordability incentives are met according to the Community Incentive Table. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.

7-8-23-1.png



7-8-23-1

7-8-23-2.png



7-8-23-2

7-8-23-3.png



Landscape/Hardscape/Openspace:

These elements can strengthen the project usefulness and livability by building residents, office tenants and the overall community and can be either public or private in nature. Hardscape features and courtyards can count towards open space requirements. Landscaping will be as per article 11 of the UDO. Street trees, awnings, arcades, seating areas and other pedestrian uses may be placed in the setback area or the public right-of-way with an approved encroachment agreement from the city or North Carolina Department of Transportation as applicable.

- (3) *Building size:* Building size is limited to a maximum footprint of 12,000 square feet, except for grocery stores which are allowed a maximum building footprint of 24,000 square feet. The maximum total building floor area shall be 24,000 square feet but may be increased to up to 48,000 square feet per the Community Incentive Table.
- (4) *Lot size:* There are no lot size or lot width requirements.
- (5) *Setback standards:* As noted below, and landscape and buffer standards shall also apply.

Front and street side: Minimum zero feet and maximum of 15 feet from right-of-way line.

Side: None.

Rear: None.

Note: The Planning and Development Director may adjust the setback line to not more than 25 feet from the right-of-way based upon an assessment of topographic and other site constraints.

- (6) *Height standards:* Minimum two stories and maximum three stories. Buildings can be constructed to four stories in height with a maximum height of 45 feet per the Community Incentive Table. The height of automobile related businesses is governed by the requirements of the uses by right subject to special requirements section.
- (7) *Impervious surface standards.* The maximum impervious surface coverage in the Neighborhood Corridor District shall be 90 percent. Where feasible, the pervious surface areas should be located at the lower sections of the site to intercept storm water runoff and provide opportunities for ground water recharge.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter with the exceptions noted below. In the Neighborhood Corridor District, street trees may be provided in the front building setback or the street right-of-way (with an approved encroachment agreement) as a part of a streetscape plan that may be proposed or in place for the corridor. Landscape bufferyards shall be a minimum of a 'B' buffer. Automobile related businesses shall provide a minimum of a 'C' buffer. In determining bufferyard requirements for uses in the NCD, the measure of application shall be that the adjacent property is not zoned NCD and the neighboring use is exclusively residential. The intent of the bufferyard requirement as applied to the Neighborhood Corridor District is to provide an effective screen to buffer residential uses. With this in mind and respecting site topography, plantings should be included at the highest points of original slopes or fill slopes along property lines where the buffer is required. As an alternative to these landscaped buffer requirements, a landscaped buffer ten feet wide is allowed with plantings provided consistent with a Type "A" buffer and the provision of a fence eight feet in height that complies with the standards outlined in subsection 7-11-3(d)(17). Landscaped bufferyards shall be a type 'B' buffer except as indicated below.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter with the following additions:
 - a. Parking shall be provided at the side or rear of the structure and not closer to the street than the face or edge of the structure; On corner lots, the side of the building that fronts on the secondary street is also considered a front or face of the building.
 - b. Parking may be provided in the street right-of-way adjoining the property as on-street parking with the approval of the city traffic engineer or the North Carolina Department of Transportation.
 - c. Uses in the Neighborhood Corridor District are permitted a 50 percent reduction in the minimum number of parking spaces required by section 7-11-2 of this chapter provided that a walking amenity and bike racks are provided (walking amenities may include but are not limited to public courtyards, drinking water fountains, benches, shade structures, pocket green spaces and public access restrooms).
 - d. Shared and remote parking is encouraged and may count for up to 100 percent of the required parking so long as the parking is within 500 feet of the property. Parcels that are sharing parking areas or providing remote parking shall bring the parking lots into compliance with parking and landscaping requirements found in article 11 [of the UDO], at a minimum, the area that is provided as a part of the shared use. Rules requiring that shared and remote parking areas must be found in the same zoning classification are waived in the Neighborhood Corridor District. Residentially zoned areas may not be used to provide shared or remote parking space for this district except that non-residential uses in residential districts may be used. Parcels will require a recorded agreement for the shared or remote parking arrangement.
 - e. Parking structures may be provided as a secondary use in meeting a project's parking requirements.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter. In addition, sidewalk connections may be required to ensure and provide a safe passageway for pedestrians and patrons to maneuver through the parking area to the entrance of the businesses. If internal cross-access is provided between businesses and parcels, then sidewalks shall be also provided along accessways as needed to insure pedestrian connectivity.
- (11) *Open space standards.* Open space shall be provided as required by the requirements found in section 7-11-4 of this chapter with the addition that all uses (projects) exceeding 10,000 square feet of gross floor for commercial projects or eight residential units are required to comply. Sidewalk spaces featuring public-pedestrian amenities, outside dining facilities and vest pocket parks are supported and shall count towards open space requirements.
- (12) *Design and operational standards.*
 - a. *Orientation.* The front of the building shall be orientated towards the primary access corridor. Building sides should appear similar to their fronts. On corner lots the building or portions of the building must be located at the street corner respecting setback standards unless prohibitive terrain issues are present.
 - b. *Entrances.* All buildings shall include a well-defined operable entrance at regular intervals not exceeding 45 feet on each primary facade to encourage access by pedestrians. Secondary entrances may face second tier streets, driveways or parking areas. Buildings on corner lots may place the entrance at the corner, eliminating the need for dual entrances.
 - c. *Windows.* Windows shall be evenly distributed at pedestrian level across the length of the facade on the first floor of the building. Windows will create a more effective pedestrian environment if they are un-tinted and non-reflective. Windows shall make up at least 45 percent of the first floor facade facing the primary streetfront. If located on a corner property, windows shall make up at least 40 percent of the first floor facade facing a side street.
 - d. *Facades.* When new building facades will be wider than 45 feet, the facade surface shall be subdivided into portions not exceeding this distance by varying setbacks, roof forms, or adding design details such as pilasters or other architectural treatments.
 - e. *Variances.* Requests for variances of the design and operational standards set forth in this subsection 12 may be granted by the Asheville Planning and Zoning Commission, which is hereby designated to perform the duties of a board of adjustment for this purpose. Requests for variances shall be submitted to the Planning and Zoning Department and considered by the Planning and Zoning Commission at their next available regularly scheduled meeting.
- (13) *Access and connectivity standards.* As determined by the director of planning and development, sites that are of sufficient size, location and are topographically workable, require a network of internal streets and driveways. Shared access and cross-access with adjoining properties instead of access from the corridor is required where practical to improve and sustain the capacity of the corridor, reduce the number of curb cuts, ensure driver and pedestrian safety, improve the unity of the streetscape, and encourage trip chaining and pedestrian mobility. Stub out connections to neighboring parcels may be constructed if cross access is not available at time of permit approval.
- (14) *Community Incentive Table*

Incentives	Mixed Use	Residential	Existing Historic Structures
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Density greater than 35 units per acre	Buildings more than 80 feet wide fronting on corridor must incorporate retail or office uses into the street-level façade.	In combination with: 20 percent of units provided are designated affordable	Compatible adaptive reuse and/or additions to historic structures
Building square footage greater than 24,000 square feet	Minimum of 50 percent of street level gross square footage is used for retail and building setbacks adjacent to residentially zoned properties are a minimum of 40 feet	In combination with: a minimum of 25 percent of the building square feet is residential uses and a minimum of 25 percent of the units are less than or equal to 700 square feet each	Compatible adaptive reuse and/or additions to historic structures
Height greater than 3 stories to a maximum of four stories (45')	Minimum of 50 percent of street level gross square footage is used for retail and building setbacks adjacent to residentially zoned properties is expanded to a minimum of 40 feet	In combination with; a minimum of 25 percent of the building square feet are residential units and building setbacks adjacent to residentially zoned properties is expanded to a minimum of 40 feet	Compatible adaptive reuse and/or additions to historic structures

(15) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.

(Ord. No. 2973, § 1a, 11-12-02; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3207, § 1, 1-25-05; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3262, § 1(c), 7-12-05; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3757, § 1f, 7-14-09; Ord. No. 3874, § 1n, 6-8-10; Ord. No. 3959, §§ 1n, p, 4-12-11; Ord. No. 4374, §§ 1k, l, 12-9-14)

Sec. 7-8-25. - Urban Residential District.

(a) *Purpose.* The Urban Residential District (URD) is established to complement existing residential neighborhoods by providing an improved diversity of housing types, scale, affordability, and character in areas where they can best be served by city services and infrastructure and is intended to be located on significant transit corridors and/or in high growth areas. The Urban Residential District is designed to provide new development and redevelopment opportunities that encourage urban scaled residential structures that relate to the street and character of Asheville's urban areas. While housing types that are economically viable and pedestrian oriented will be emphasized, a mix of other compatible activities, especially those that support residential uses within walking distance, will be permitted. It is also intended that this district enhance and maintain the transportation connectivity through the promotion of multi-use greenway paths, sidewalks, and public transit.

(b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection [7-8-1\(d\)](#), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.

(c) *Prohibited uses.*

Drive through establishments

Gasoline sales

Gated communities. This shall not include those gated communities lawfully established prior to June 12, 2007, or extend to those properties acquired as part of such communities prior to June 12, 2007, provided it can be demonstrated that these properties were included in a documented community masterplan.

Any use not specifically listed as a permitted use, use by right subject to special requirements, or a conditional use in the Urban Residential District is prohibited.

(d) Reserved.

(e) Reserved.

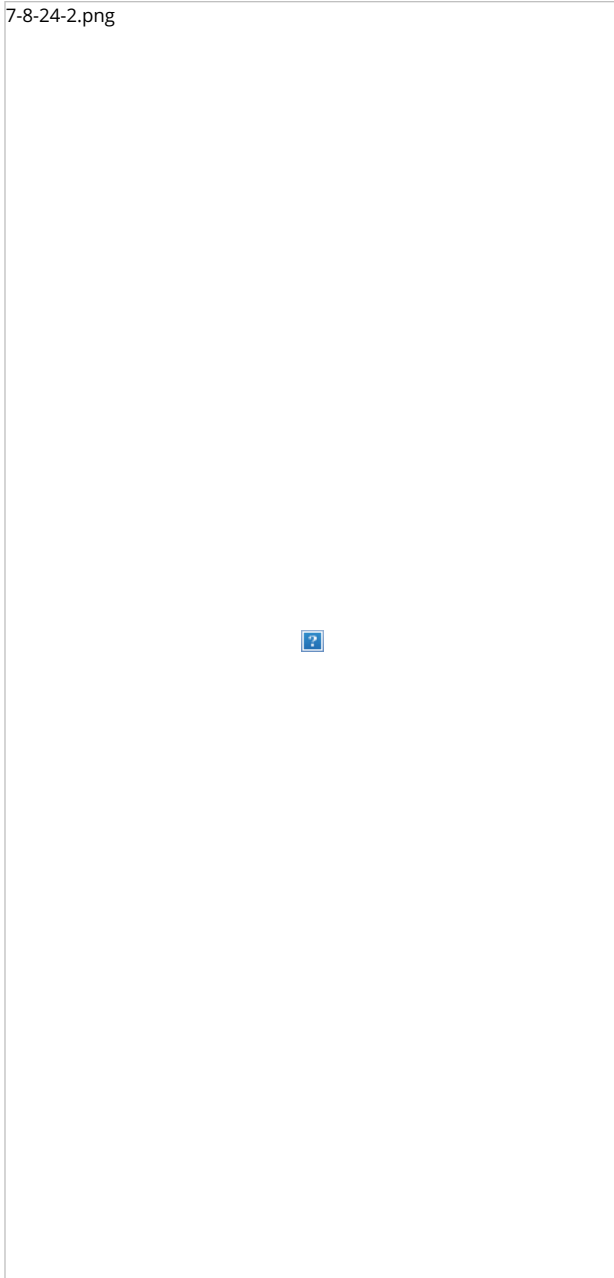
(f) *Development standards.*

(1) *Density standards.* Maximum residential density shall be 35 dwelling units; or 70 dwelling units if 20 percent of the dwelling units are designated affordable. Projects including affordable units must provide a declaration of deed restrictions ensuring that rents or sale prices will remain affordable for the first ten years after completion, increasing by no more than three percent per year, or the annual increase in the Consumer Price index, whichever is lower. Also, such units must be reserved for qualified households in a form satisfactory to the city attorney.

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Landscape/Hardscape/Openspace:

These elements can strengthen the project usefulness and livability by building residents, office tenants and the overall community and can be either public or private in nature. Hardscape features and courtyards can count towards open space requirements. Landscaping shall be provided as required by [section 7-11-3](#) of this chapter. Street trees, awnings, arcades, seating areas and other pedestrian uses may be placed in the setback area or the public right-of-way with an approved encroachment agreement from the city or NC Department of Transportation as applicable.

(3) *Building size:* Building size is limited to a maximum footprint of 10,000 square feet. The maximum total building floor area shall be 30,000 square feet.

(4) *Lot size:*

Single-family, attached:	1,800 square feet (min.)
	2,500 square feet (max.)
Single-family, detached:	2,000 square feet (min.)
	3,500 square feet (max.)
Multi-family	3,500 square feet (min.)

Front and street side: Minimum zero feet and maximum 15 feet from right-of-way line, except as follows. Front and street sides adjacent to proposed Wilma Dykeman Riverway (currently, Swannanoa River Road, Thompson Street, Meadow Road, Lyman Street, and Riverside Drive) shall observe a build-to line consistent with the projected road-widening plan and/or limits of floodway designation; this line shall be determined by the planning and development director after consultation with the city engineer and may vary depending on the road segment affected by the widening plan. In appropriate circumstances, the planning and development director may increase the setback line from the right-of-way or build-to line based upon an assessment of topographic, flood hazard, significant existing vegetation, or other significant site constraints or features.

Side: None

Rear: None

- (6) *Height standards:* For multifamily development: Minimum 2 stories and maximum 4 stories with a maximum height of 54 feet. For single-family development, the maximum height shall be 40 feet.
- (7) *Impervious surface standards.* The maximum impervious surface coverage in the Urban Residential District shall be 90 percent. Where feasible, the pervious surface areas should be located at the lower sections of the site to intercept storm water runoff and provide opportunities for ground water recharge.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by [section 7-11-3](#) of this chapter with the exceptions noted below. In the Urban Residential District, street trees may be provided in the front building setback or the street right-of-way (with an approved encroachment agreement) as a part of a streetscape plan that may be proposed or in place for the district.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by [section 7-11-2](#) of this chapter with the following additions:
 - a. Parking shall be provided at the side or rear of the structure and not closer to the street than the face or edge of the structure; On corner lots, the side of the building that fronts on the secondary street is also considered a front or face of the building.
 - b. Parking may be provided in the street right-of-way adjoining the property as on-street parking with the approval of the city Traffic Engineer or the NC Department of Transportation. This parking may be applied towards the parking requirement when on-street parking is located within 500' of the main entrance except on streets where the primary uses are single-family residential.
 - c. Uses in the Urban Residential District are permitted a 50 percent reduction in the minimum number of parking spaces required by [section 7-11-2](#) of this chapter provided that a walking amenity and bike racks are provided (walking amenities may include but are not limited to public courtyards, drinking water fountains, benches, shade structures, pocket green spaces and public access restrooms).
 - d. Shared and remote parking is encouraged and may count for up to 100% of the required parking so long as the parking is within 500 feet of the property. Parcels that are sharing parking areas or providing remote parking shall bring the parking lots into compliance with parking and landscaping requirements found in article 11, at a minimum, the area that is provided as a part of the shared use. Rules requiring that shared and remote parking areas must be found in the same zoning classification are waived in the Urban Residential District. Residentially zoned areas may not be used to provide shared or remote parking for this district except that non-residential uses in residential districts may be used. Parcels will require a recorded agreement for the shared or remote parking arrangement.
 - e. Parking structures may be provided as a secondary use in meeting a project's parking requirements. Parking decks are not exempt from the design guidelines. Particular attention shall be placed in the design and programming of the base of parking decks. On primary streets which strive for pedestrian continuity, the first story shall be masked by a habitable liner building and the decks above shall be screened from view by a designed facade consistent with the overall building design.
- (10) *Sidewalk standards.* Sidewalks shall be required for all projects with street frontage in accordance with City standards. In addition, sidewalk connections may be required to ensure and provide a safe passageway for pedestrians and patrons to maneuver through the parking area to the entrance of the businesses. If internal cross-access is provided between businesses and parcels, then sidewalks shall be also provided along accessways as needed to insure pedestrian connectivity.
- (11) *Open space standards.* Open space shall be provided as required by the requirements found in [section 7-11-4](#) of this chapter with the addition that all uses (projects) exceeding 10,000 square feet of gross floor for commercial projects or 8 residential units are required to comply. Sidewalk spaces featuring public-pedestrian amenities, outside dining facilities, courtyards and pocket parks are supported and shall count towards open space requirements.
- (12) *Design and operational standards.*
 - a. *Orientation.* The front of the building shall be orientated towards the primary access corridor. Building sides should appear similar to their fronts. On corner lots the building or portions of the building must be located at the street corner respecting setback standards unless prohibitive terrain issues are present.
 - b. *Entrances.* All buildings shall include a well-defined operable entrance at regular intervals not exceeding 45 feet on each primary facade to encourage access by pedestrians. Secondary entrances may face second tier streets, driveways or parking areas. Buildings on corner lots may place the entrance at the corner, eliminating the need for dual entrances.
 - c. *Facades.* When new building facades will be wider than 45 feet, the facade surface shall be subdivided into portions not exceeding this distance by varying setbacks, roof forms, or adding design details such as pilasters or other architectural treatments.
 - d. *Openings on a facade.* The openings on a facade shall remain within a void-to-solid ratio of not more than 45 percent with each facade measured independently. The void-to-solid ratio of the facade includes windows, balconies, arcades, loggias, and galleries. The void-to-solid calculations shall not be applied to, nor include, non-residential uses located on the first floor.
 1. *Windows.* When a non-residential use is located on the first floor, storefront windows shall be evenly distributed at pedestrian level across the length of the facade on the first floor of the building. All storefront windows shall be transparent or lightly tinted and shall not appear false or applied. Windows shall make up at least 60 percent of the area of the street facing first story facade. Upper floors shall have windows evenly distributed across the facade that may differ in size and proportion from the street level windows. Upper story windows shall make up at least 25 percent of the wall surface. Under no circumstances shall the upper floor windows be installed flush with the outer surface of the facade. All windows, except storefronts, shall be operable as hung or casement. Window sills should be provided, and lintels may be shown. Windows are also required along the sides of structures that are visible from roadways or have parking located adjacent to them.
 2. *Balconies.* Balconies shall be used in moderation and shall be integrated into the overall composition of the facade. Balconies shall not be implemented in a monotonous or repetitive configuration. This pertains to both indented balconies (loggias) and to cantilevered ones. Cantilevered balconies shall extend no more than three feet from the building facade and shall be visibly supported by brackets. In the case of balconies that are nearly flush with the facade and associated with inwardly swinging doors (French balconies) there may be as many balconies as there are doors.
 - 3.

Arcades, loggias, and galleries. Arcades, loggias, and galleries shall have columns and piers of a width and depth proportion to the height of the element with a width-to-height ratio of between 1:6 and 1:8 but in no case less than 16 inches wide. Arcades and galleries shall overlap the front sidewalk to within eighteen inches of the curb. The interior passage of the arcades/galleries should be a minimum of 12 feet deep with a min. of 14 feet clear from sidewalk to ceiling.

- e. *Rooftop machinery.* The location and masking of rooftop machinery shall be as consciously designed as any other aspect of the building. Adequate parapets shall mask any negative impact from street level, as well as horizontally from adjacent buildings.
 - f. *Signage.* See article 13 of this chapter for sign allowance in this district.
 - g. *Variations.* Requests for variances of the design and operational standards set forth in this subsection 12 may be granted by the Asheville Planning and Zoning Commission, which is hereby designated to perform the duties of a board of adjustment for this purpose. Requests for variances shall be submitted to the planning and zoning department and considered by the planning and zoning commission at their next available regularly scheduled meeting.
- (13) *Access and connectivity standards.* As determined by the director of planning and development, sites that are of sufficient size, location and are topographically workable, require a network of internal streets and driveways. Shared access and cross-access with adjoining properties instead of access from the corridor is required where practical to improve and sustain the capacity of the corridor, reduce the number of curb cuts, ensure driver and pedestrian safety, improve the unity of the streetscape, and encourage trip chaining and pedestrian mobility. Stub out connections to neighboring parcels may be constructed if cross access is not available at time of permit approval.
- (14) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.
- (15) *Drive-through facilities.* Drive through facilities are prohibited in the district.
- (16) *Gasoline sales.* Gasoline sales are prohibited in the district.

(Ord. No. 3028, § 1, 5-27-2003; Ord. No. 3052, § 1(b), 8-26-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3272, § 1(b), 7-26-05; Ord. No. 3262, § 1(c), 7-12-05; Ord. No. 3362, §§ 1(a), (b), 5-23-06; Ord. No. 3394, § 1(a), 9-26-06; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1b, 7-22-08; Ord. No. 3874, § 1o, 6-8-10; Ord. No. 3959, §§ 1k, l, n, p, 4-12-11; Ord. No. 4374, § 1m, 12-9-14)

Sec. 7-8-26. - Urban Place District.

- (a) *Purpose.* The Urban Place District is established to foster higher density, mixed-use development that is economically viable, pedestrian oriented, visually attractive and contributing to the place making character of the city. The Urban Place District is designed to provide new development and redevelopment opportunities in the form of mixed-use structures that relate to the street, enhance the streetscape, and offer a wide range of complementary land uses and employment opportunities. The Urban Place District is intended primarily for use in areas currently or potentially affected by blight or neglect, or where the design and appearance of the built environment is important to the vitality of the area. Typical application of this district will be in areas planned for high intensity mixed use development with sufficient infrastructure to support this type of development. There should be general compatibility with either an established plan or plans or with the existing or historic development pattern in applying this district.

The Urban Place District has special application to properties located in or near the flood plain for the French Broad and Swannanoa Rivers. It is important here to celebrate, conserve, promote and manage the river areas. Balancing economic development in the river corridors with environmental protection is our future. The rivers are our last great treasure enhancing our unique sense of place. The Wilma Dykeman Riverway Master Plan and urban riverfront corridor plans acknowledge that businesses will choose where to locate based on the availability of quality of life amenities, such as our rivers and parks. Low impact sustainable development that offers a variety of land uses and housing types and prices will leverage public open space for flood control and storm water retention. The flood plain is a sensitive resource that must be protected while providing for the opportunity for enjoyment of the river area by the citizens of the community. These regulations are intended to complement the Wilma Dykeman Riverway Master Plan and other river related plans and ordinances including but not limited to local, state and federal floodplain and stormwater ordinances.

- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection [7-8-1\(d\)](#), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
 - (c) *Level III, conditional use.* All Level III projects as identified in subsection [7-5-9](#) of this chapter will require a conditional use permit. These projects may include only those uses permitted in the district in which the project is located.
 - (d) Reserved.
 - (e) Reserved.
 - (f) *Development standards.*
 - (1) *Density standards.* Maximum residential density shall be 64 units per acre.
 - (2) *Building size:* Building size is limited to: A maximum footprint of 35,000 square feet, with a maximum gross floor area of 100,000 square feet for buildings three stories or less in height; and a maximum footprint of 50,000 square feet, with a maximum gross floor area of 200,000 square feet for buildings exceeding three stories.
 - (3) *Lot size:* Minimum lot size: 10,000 square feet. This requirement may be waived by the technical review committee for smaller lots that are determined to further the purpose of the Urban Place District.
 - (4) *Lot width:* Minimum lot width: 75 feet. This requirement may be waived by the technical review committee for narrower lots that are determined to further the purpose of the Urban Place District.
 - (5) *Setback standards.*
Front and street side: Minimum zero feet and maximum 15 feet from right-of-way line, except as follows: Front and street sides adjacent to proposed Wilma Dykeman Riverway (currently, Swannanoa River Road, Thompson Street, Meadow Road, Lyman Street, and Riverside Drive) shall observe a build-to line consistent with the projected road-widening plan and/or limits of floodway designation; this line shall be determined by the planning and development director after consultation with the city engineer and may vary depending on the road segment affected by the widening plan. In appropriate circumstances, the planning and development director may increase the setback line from the right-of-way or build-to line based upon an assessment of topographic, flood hazard, significant existing vegetation, or other significant site constraints or features.
- Side: None
- Rear: None
- (6) *Height standards.* Minimum two stories and maximum six stories or 80 feet, whichever is greater.
 - (7) *Impervious surface standards.* The maximum impervious surface coverage in the Urban Place District shall be 95 percent unless the property is located within the designated 100-year special flood hazard areas.
 - (8)

Landscaping/buffering standards. Landscaping and/or buffering shall be provided as required by section 7-11-3 of this chapter with the exceptions noted below. In the Urban Place District, street trees may be provided in the front building setback or the street right-of-way (with an approved encroachment agreement) as a part of a streetscape plan that may be proposed or in place for the corridor. The planning and development director may grant alternate compliance as outlined in subsection 7-11-3(b)(3) in order to provide appropriate buffers for the purpose of compatibly integrating the Urban Place District development into the surrounding land use pattern.

- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by section 7-11-2 of this chapter with the following additions:
- a. Parking shall be provided at the side or rear of the structure and not closer to the street than the face or edge of the structure. On corner lots, the side of the building that fronts on the secondary street is also considered a front or face of the building.
 - b. Parking may be provided in the street right-of-way adjoining the property as on street parking with the approval of the city traffic engineer or the North Carolina Department of Transportation.
 - c. Uses in the Urban Place District are permitted up to a 50 percent reduction in the minimum number of parking spaces required by section 7-11-2 of this chapter provided that transit shelters, pedestrian amenities and/or bike racks are provided and such amenities are determined by the planning and development director to offer significant multimodal transportation accessibility to, from, and within the development. Pedestrian amenities may include but are not limited to wide sidewalks, public courtyards, and public park areas.
 - d. Shared and remote parking is encouraged and may count for up to 100 percent of the required parking so long as the parking is within 500 feet of the property. Parcels that are sharing parking areas or providing remote parking shall bring the parking lots into compliance with parking and landscaping requirements found in article 11 [of the UDO], at a minimum, the area that is provided as a part of the shared use. Rules requiring that shared and remote parking areas must be found in the same zoning classification are waived in the Urban Place District. Residentially zoned areas may not be used to provide shared or remote parking space for this district except that nonresidential uses in residential districts may be used. Parcels will require a recorded agreement for the shared or remote parking arrangement.
 - e. Parking structures may be provided as a secondary use in meeting a project's parking requirements; such structures may contain more than the maximum number of spaces required for the associated use(s) if there are shared parking or commercial parking arrangements acceptable to the planning and development director.
- (10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-7 of this chapter, except that a minimum width of ten feet shall be provided unless precluded by topographic or dimensional constraints as determined by the city engineer and planning director. In addition, sidewalk connections may be required to ensure and provide a safe passageway for pedestrians and patrons to maneuver through the parking area to the entrance of the businesses. If internal cross-access is provided between businesses and parcels, then sidewalks shall also be provided along accessways as needed to insure pedestrian connectivity.
- (11) *Open space standards.* Open space shall be provided as required by section 7-11-4 of this chapter, except in no case shall the total required open space exceed five percent of the lot area. Public sidewalk spaces two or more feet wider than the minimum requirement and featuring public-pedestrian amenities, outside dining facilities and pocket parks are encouraged and may count toward open space requirements. Donations of land for green space and greenways is also encouraged.
- (12) *Design and operational standards.*
- a. *Orientation.* The front of the building shall be orientated towards the primary access corridor. Building sides should appear similar to their fronts. On corner lots the building or portions of the building must be located at the street corner respecting setback standards unless prohibitive terrain issues are present.
 - b. *Entrances.* All buildings shall include a well-defined operable entrance at regular intervals not exceeding 60 feet on each primary facade to encourage access by pedestrians. Secondary entrances may face second tier streets, driveways or parking areas. Buildings on corner lots may place the entrance at the corner, eliminating the need for dual entrances.
 - c. *Windows.* Windows shall be evenly distributed at pedestrian level across the length of the facade on the first floor of the building. Windows will create a more effective pedestrian environment if they are un-tinted and non-reflective. Windows shall make up at least 40 percent of the area of the street-facing first story facade. Upper floors shall have windows evenly distributed across the facade that may differ in size and proportion from the street level windows. Upper story windows shall make up at least 25 percent of the wall surface. All storefront windows shall be transparent or lightly tinted and shall not appear false or applied. Windows are also required along the sides of structures that are visible from roadways or have surface parking lots located adjacent to them.
 - d. *Facades.* When new building facades will be wider than 60 feet, the facade surface shall be subdivided into portions not exceeding this distance by varying setbacks, roof forms, or adding design details such as pilasters or other architectural treatments.
 - e. *Variances.* Requests for variances of the design and operational standards set forth in this subsection may be granted by the Asheville Planning and Zoning Commission, which is hereby designated to perform the duties of a board of adjustment for this purpose. Requests for variances shall be submitted to the planning and zoning department and considered by the planning and zoning commission at their next available regularly scheduled meeting.
- (13) *Access and connectivity standards.* As determined by the planning and development director, sites that are of sufficient size, location and are topographically workable require a network of internal streets and driveways. Shared access and cross-access with adjoining properties instead of access from the corridor is required where practical to improve and sustain the capacity of the corridor, reduce the number of curb cuts, ensure driver and pedestrian safety, improve the unity of the streetscape, and encourage pedestrian mobility. Stub out connections to neighboring parcels may be constructed if cross access is not available at time of permit approval. Block lengths shall not exceed 600 feet unless precluded by topography or existing block patterns.
- (14) *Special requirements for properties located within the designated 100-year special flood hazard areas along either the French Broad or Swannanoa Rivers and their adjacent tributaries,*
- a. Properties abutting the river shall provide a setback from the top of the river bank of 20 percent of the lot with a maximum depth of 50 feet and a minimum depth of 25 feet. This area is called the river resource yard.
 - b. The river resource yard shall not be graded and all existing native trees shall be preserved in order to maintain the river bank and protect existing trees. Diseased trees and shrubs may be pruned leaving roots alive and intact and dead trees removed. Greenways, passive recreation areas and other river access areas may be constructed within the river resource yard.
 - c. The maximum impervious surface coverage for the flood zone properties shall be 80 percent. Special site and development features such as but not limited to green roofs and other best management practices (BMPs) for storm water collection and treatment may be considered such that their net effect is to provide 80 percent or less impervious surface coverage as reviewed and approved by city engineering department.
 - d. The speculative grading of land within the designated 100-year special flood hazard area is prohibited.
 - e. *River district design guidelines:* All construction work requiring building, sign, demolition, and zoning permits and projects requesting a variance shall be subject to the mandatory review/voluntary compliance procedure as set forth in article V of this chapter.
 - f.

Sustainable design: In order to protect the environmental resources of Asheville's riverfront and to ensure that buildings and structures built or renovated in this area are done in an environmentally sound way, the City of Asheville encourages that all design and construction follow the Leadership in Energy and Environmental Design (LEED™) Commercial Green Building rating system, or other related LEED™ Rating System, approved by the U.S. Green Building Council.

- g. *Elevated buildings:* For buildings that are elevated to comply with requirements of the 100-year special flood hazard areas:
1. Parking may occur under the building. Screening of the parking area is required between adjacent right-of-way areas and the structured parking unless floodplain requirements will not allow for this to occur.
 2. Window detailing requirements at the ground level are waived. A connecting feature from the right-of-way area to the main level of the elevated structure is recommended.

(15) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.

(Ord. No. 3216, § 1, 2-22-05; Ord. No. 3262, § 1(c), 7-12-05; Ord. No. 3445, § 1, 2-27-07; Ord. No. 3483, § 1(b), 6-2-07; Ord. No. 3583, § 1(a), 2-12-08; Ord. No. 3643, § 1a, 7-22-08; Ord. No. 3743, § 1a, 6-9-09; Ord. No. 3874, § 1p, 6-8-10; Ord. No. 3959, §§ 1n—p, 4-12-11)

Sec. 7-8-27. - Airport District.

- (a) *Purpose.* It shall be the intent of this district to encourage and support the continued operation and vitality of the Asheville Regional Airport by allowing certain airport-related commercial/industrial and recreational uses in accordance with this ordinance, state law, and Federal Aviation Administration regulations.
- (b) *Allowable land uses.* All permitted uses, special uses, conditional uses and uses expressly prohibited are identified in subsection [7-8-1\(d\)](#), Table of Permitted Uses. Standards for special uses and conditional uses can be found in article XVI of this chapter.
- (c) *Level III, conditional use.* All Level III projects as identified in [section 7-5-9](#) of this chapter will require a conditional use permit. These projects may include only those uses permitted in the district in which the project is located.
- (d) Reserved.
- (e) Reserved.
- (f) *Development standards.*
- (1) *Review thresholds.* Level I, II, and III development review thresholds will remain unchanged for non-aviation projects. Aviation projects will be exempt from the cumulative thresholds set forth in subsections [7-5-9\(a\)\(1\)\(a\)b](#) and [c](#), and [7-5-9\(b\)\(1\)b](#) and [c](#).
 - (2) *Density standards.* Residential uses are not permitted in the Airport District, no density standards apply.
 - (3) *Structure size standards.* None.
 - (4) *Lot size standards.* The minimum lot size in the Airport District shall be 10,000 square feet.
 - (5) *Lot width standards.* Lots in the Airport District shall have a minimum width of 100 feet.
 - (6) *Setback standards.* The following minimum setbacks shall be required for uses in the Airport District.

Front: 35 feet.

Side: Ten feet unless adjacent to a residential district, then the setback shall be 50 feet.

Rear: 20 feet unless adjacent to a residential district, then the setback shall be 50 feet.

The landscape and buffering standards ([7-11-3](#)) may require additional setback; if so, the most restrictive requirement shall apply.

The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.
 - (7) *Impervious surface standards.* None.
 - (8) *Access standards.* Points of access to all publicly accessible streets shall be determined by the city traffic engineer following review of the site plan and other relevant information.
 - (9) *Design and operation standards.* None.
 - (10) *Height standards.* The maximum height for all non-aviation related businesses shall be 60 feet. Height limitations for aviation related operations are regulated through the Federal Aviation Regulations (FAR), Part 77 or its successor.
 - (11) *Outdoor lighting.* All outdoor lighting requirements shall be provided as required by [section 7-11-10](#) except for those standards which are found to be in conflict with Federal Aviation Regulations that regulate airport lighting.
 - (12) *Emergency wireless communications.* Communication requirements shall be provided as required by [section 7-11-9](#) of this chapter.
- (13) *Other development standards.*
- Airside: No landscaping/buffering, parking/loading, sidewalk, and open space standards will apply.
- Landside: Landscaping/buffering, parking/loading, sidewalk, and open space shall be provided as required by article XI of this chapter except for those areas within 100 feet of an Airside zone, which shall also be exempt.
- (14) *Asphalt plants.* Asphalt plants are prohibited in the district.
- (Ord. No. 3906, § 1b, 10-12-10; Ord. No. 3959, §§ 1m—p, 4-12-11)

Sec. 7-8-28. - Haywood Road Form District.

1.0. *General provisions.*

- 1.1. *Purpose.* The purpose of the Haywood Road Form District is to implement the Haywood Road Corridor Charrette Report and the Haywood Road Vision Plan.
- 1.2. *Intent.* It is the intent of this Haywood Road Form District to:
 1. Where feasible, preserve and enhance existing buildings and structures along the corridor.
 2. Ensure a high quality of development for new construction;
 3. Reduce the bulk and mass of buildings;
 4. Ensure adequate distribution of height and mass throughout the corridor, with larger buildings located closer to Patton Avenue;
 5. Allow for a mix of uses at a variety of scales;
 6. Promote additional housing types and housing opportunities;
 7. Make the corridor more walkable and pedestrian-friendly;

- 8. Implement the complete streets model by enhancing multi-modal transportation options, including transit, bicycle and pedestrian connections;
- 9. Calm traffic and improve vehicular circulation;
- 10. Support existing businesses; and
- 11. Ensure adequate transitions from the corridor to adjacent residential neighborhoods.

1.3. *Applicability.*

- A. *Territorial application.* The Haywood Road Form District applies to all property located within the Haywood Road Corridor, as shown in subsection 2.1.
- B. *Application of chapter 7, Development.*

- 1. The following requirements of chapter 7 do not apply in the Haywood Road Form District, unless expressly stated otherwise:
 - a. Section 7-10-2. Required setbacks; allowable encroachments into required setbacks.
 - b. Section 7-11-4. Open space standards.
 - c. Section 7-11-6. Traffic impact analysis.
 - d. Subsection 7-8-1d. Table of Uses.
 - e. Subsection 7-11-2c. Off-street parking requirements.
 - f. Subsections 7-13-4b and c. On-premises signs and single and multi-tenant signs.

2. The use of buildings and land within the Haywood Road Form District is subject to all other regulations as well as the Haywood Road Form District, whether or not such other provisions are specifically referenced in the Haywood Road Form District. References to other regulations or provisions of the Haywood Road Form District are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure or use from other regulations.

C. *Conflicting provisions.*

- 1. Interpretation of conflicts between the Haywood Road Form District and any other city ordinance or regulation (including chapter 7) are controlled by the Haywood Road Form District.
- 2. The graphics, illustrations and photographs used to visually explain certain provisions of Haywood Road Form District are for illustrative purposes only. Where there is a conflict between a graphic, illustration or photograph and the text, the text controls.

1.4. *Transitional provisions.*

A. *New development.*

- 1. Except as provided in subsection 1.4.C below, upon the effective date of the Haywood Road Form District or any subsequent amendment, any new building, additions or other structure or any use of land must be constructed or developed only in accordance with all applicable provisions of the Haywood Road Form District.
- 2. No excavation or filling of land or construction of any public or private improvements may take place or commence except in conformity with the Haywood Road Form District.

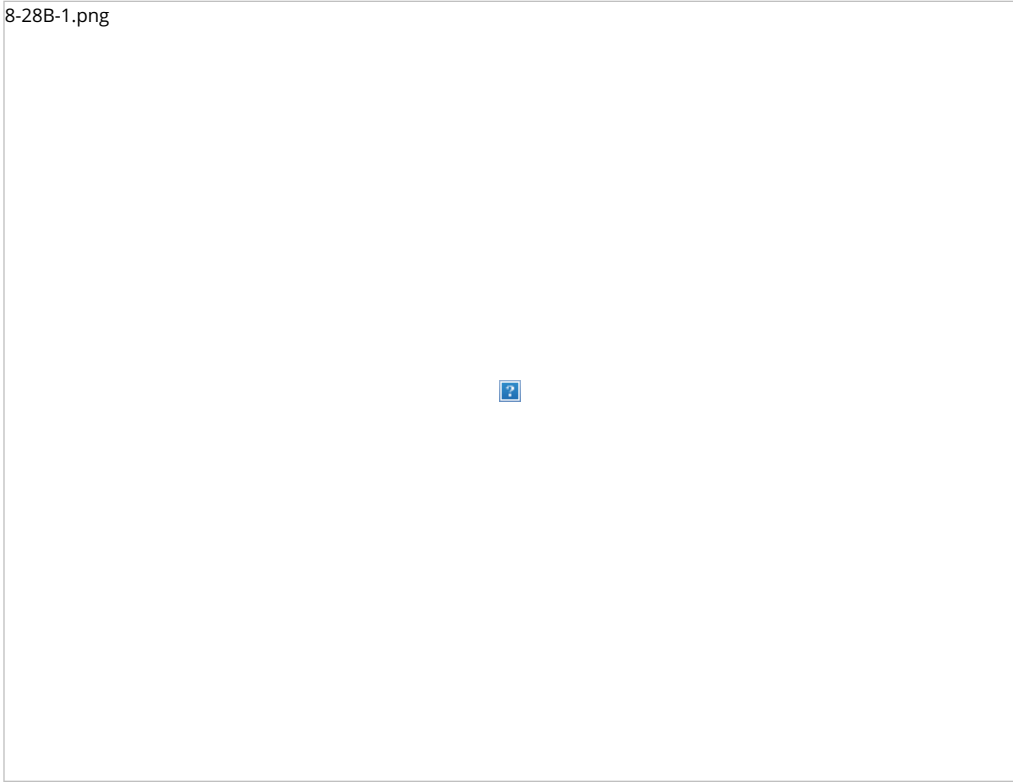
B. *Existing development.* Any existing use, lot, building or other structure legally established prior to the effective date of the Haywood Road Form District that does not comply with any provision of these specific regulations is a legal non-conformity pursuant to article 18.

C. *Previously issued permits and pending applications.* Previously issued permits and pending applications will be processed in accordance with and decided pursuant to the law existing on the date the application was filed.

2.0. *Districts.*

2.1. *Districts established.*

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2.2. *Rules applicable to all districts.* The following general rules apply to all Haywood Road sub-districts unless expressly stated otherwise.

A. *Lot.*

1. *Defined.* A parcel of land either vacant or occupied intended as a unit for the purpose, whether immediate or for the future, of transfer of ownership, or possession, or for development.
2. *Lot area.* Lot area is the area included within the rear, side and front lot lines. Lot area does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use.
3. *Lot width.* Lot width is the distance between the two side lot lines measured at the primary street property line along a straight line or along the chord of the property line on a curvilinear lot.

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B. *Building coverage.*

1. The maximum area of the lot that is permitted to be covered by buildings, including both principal structures, structured parking and roofed accessory structures, including gazebos.
2. Building coverage does not include paved areas such as driveways, uncovered porches or patios, decks, swimming pools, porte cochere, or roof overhangs of two feet or less. Surface parking is not considered part of building coverage.

C. *Outdoor amenity space.*

1. *General.* Where required, outdoor amenity space must be provided on the lot and must be available as unenclosed exterior space appropriately improved for pedestrian amenity, rooftop space, or for aesthetic appeal and cannot include areas used for vehicles, except for incidental service, maintenance or emergency actions only. Outdoor amenity space may be public or private.
2. *Standards.*
 - a. Outdoor amenity space may be met in one contiguous open area or in multiple open areas on the lot; however, to receive credit, the area must be at least seven feet in width and length, and at least 60 percent of the required amenity space must be located in one contiguous open area.

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- b. Outdoor amenity space may be located at or above grade, except in HR-3: Corridor, where at least 50 percent of the required outdoor amenity space must be located at grade.
- c. Outdoor amenity space may be roofed but cannot be permanently enclosed.
- d. Outdoor amenity space cannot be parked or driven upon, except for emergency access and permitted temporary events.
- e. In calculating the minimum outdoor amenity space requirement, the following listed facilities, and any similar facilities, may be included:
 - i. Ground-level facilities such as a swimming pool, playground, sport court, dog park, garden, community garden, park, green, pavilion, courtyard, seating area, outdoor dining area or plaza; and
 - ii. Upper-level facilities such as a shared or common balcony, rooftop deck or rooftop garden.
- f. A required property line buffer is not considered outdoor amenity space.

D. *Building setbacks.*

1. *Generally.* There are four types of setbacks - primary street, side street, side interior and rear. Building setbacks apply to both principal and accessory buildings and structures except where explicitly stated otherwise.

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2. *Measurement of building setbacks.*

- a. The primary street setback is measured at a right angle from the primary street right-of-way line.
- b. On corner lots, the side street setback is measured at a right angle from the side street right-of-way line.
- c. The rear setback is measured at a right angle from the rear property line or the rear right-of-way or easement line where there is an alley. The rear property line is the property line opposite to the primary street property line.
- d. All lot lines which are not primary street, side street or rear lot lines are considered side interior lot lines for the purpose of measuring setbacks. Side interior setbacks are measured at a right angle from the side property line.

3. *Primary street designation.*

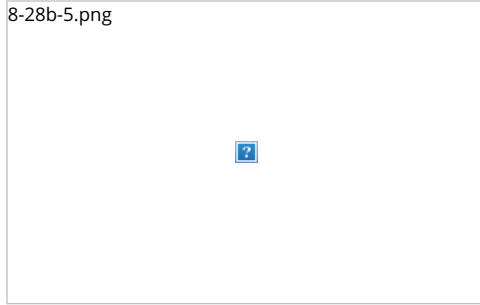
- a. Where only one street abuts a lot, that street is considered a primary street.
- b. Where more than one street abuts a lot, Haywood Road or Patton Avenue are considered the primary street.

E. *Build-to zone (BTZ).*

1. *Defined.*

- a. The build-to zone (BTZ) is the area on the lot where a certain percentage of the front building facade must be located, measured as a minimum and maximum setback range from the edge of the right-of-way.
- b. The required percentage specifies the amount of the front building facade that must be located in the build-to zone, measured based on the width of the building divided by the width of the lot.

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2. *Corner lots.* On a corner lot, a building facade must be placed within the build-to zone for the first 30 feet along the street extending from the block corner, measured from the intersection of the two right-of-way lines.

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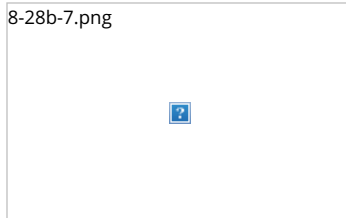
3. *Uses allowed.* With the exception of parking spaces and outdoor storage, all structures and uses (including outdoor dining) allowed on the lot are allowed in the build-to zone.

F. *Nonconforming build-to zone.*

1. *Additions.* Expansion of an existing building which is unable to meet the build-to requirement must comply with the following nonconforming provisions:

- a. *Front: Addition.* Any addition to the front must be placed in the build-to zone; however, the addition does not have to meet the build-to percentage for the lot. A front addition is not allowed on a contributing structure in a National Register District or a structure that is eligible for historic designation (although a variance may be granted where a hardship exists, including but not limited to a conflict with the Building Code or specific purposes for the addition that make a front location the most technically (not financially) feasible option.

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- b. *Rear: Addition.* One-story or multi-story rear additions are allowed because the extension does not increase the degree of the nonconformity.



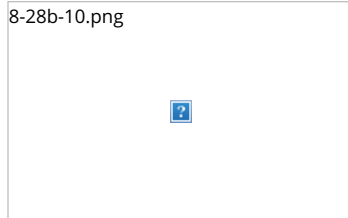
- c. *Side: Addition.* One-story or multi-story side additions meeting the following conditions are allowed:
- i. The side addition is no greater than 500 square feet in area or 20 percent of the existing building footprint, (whichever is greater), and is less than 50 percent of the existing building width measured along the primary street.



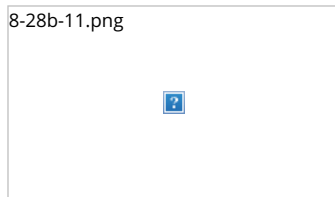
- ii. In the case of a contributing structure in a National Register District (or a structure eligible for designation), the side addition can be placed no closer than 5 feet from the street-facing façade of the building.

2. *New buildings.* Where a new building is being constructed on a lot or site with an existing building on it that doesn't meet the build-to requirement, the following nonconforming provisions apply.

- a. *Front: New building.* All new buildings must be placed in the build-to zone until the build-to percentage for the lot has been met.



- b. *Rear: New building.* New buildings located outside of the build-to zone are not allowed until the build-to percentage for the lot has been met.



- c. *Side: New building.* New buildings located outside of the build-to zone are not allowed until the build-to percentage for the lot has been met.



- d. *Accessory structures:* New Structure New accessory structures must be placed behind or to the side of the principal building and may not exceed 500 square feet. Outdoor dining may be placed at the front of the lot to enhance the activity at the sidewalk. One-story accessory structures are permitted.

- G. *Setback encroachments.* All buildings and structures must be located at or behind the required setbacks except as listed below. Unless specifically stated, no building or structure can extend into a required easement or public right-of-way.

1. *Building features.*

- a. Porches, stoops, balconies, galleries and awnings/canopies can extend into a required primary street setback as stated in subsection 2.2.R.
- b. Building eaves, roof overhangs, gutters, downspouts, light shelves, bay windows and oriels less than ten feet wide, cornices, belt courses, sills, buttresses or other similar architectural features may encroach up to three feet into a required setback, provided that such extension is at least two feet from the vertical plane of any lot line.
- c. Chimneys or flues may encroach up to four feet, provided that such extension is at least two feet from the vertical plane of any lot line.
- d. Unenclosed patios, decks, balconies, stoops, porches, terraces or fire escapes may encroach into a side interior or rear setback, provided that such extension is at least six feet from the vertical plane of any lot line and bufferyard requirements, if any, are met.
- e. Handicap ramps may encroach to the extent necessary to perform their proper function.

f. Structures below and covered by the ground may encroach into a required setback.

2. *Low impact stormwater features.*

- a. Low impact stormwater management features may encroach up to two feet into a primary street setback (but not into the required sidewalk), including, but not limited to:
 - i. Rain barrels or cisterns, six feet or less in height;
 - ii. Planter boxes;
 - iii. Bio-retention areas; and
 - iv. Similar features, as determined by the city engineer.
- b. Low impact stormwater management features listed above may encroach into a side interior or rear setback, provided such extension is at least two feet from the vertical plane of any lot line.

3. *Mechanical equipment and utility lines.*

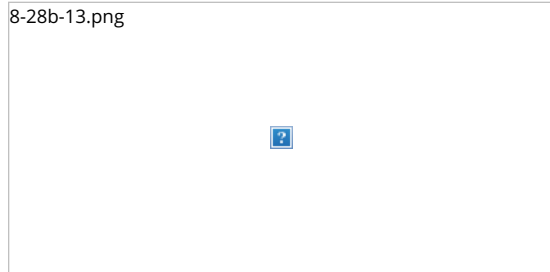
- a. For residential buildings only, mechanical equipment such as HVAC units and security lighting, may encroach into a required rear or side interior setback, provided that such extension is at least three feet from the vertical plane of any lot line.
- b. Minor structures accessory to utilities (such as hydrants, manholes, and transformers and other cabinet structures) may encroach into a required rear, side interior or side street setback.

4. *Other setback encroachments.*

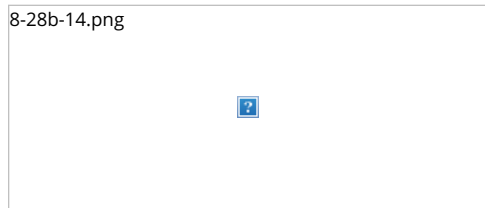
- a. Fences and walls under [section 7-10-3](#)
- b. Property line buffers under subsection 4.2.
- c. Signs under subsection 4.3.

H. *Building height.*

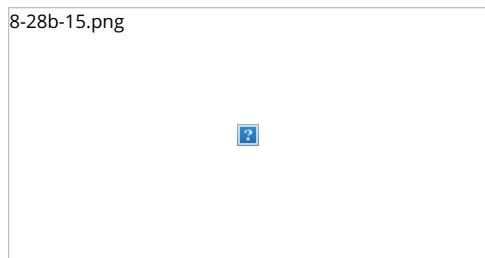
- 1. Building height is regulated in both number of stories and feet and is measured from the average grade to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof or to the highest point of roof surface of a flat roof, not including a maximum six-foot high parapet wall encroachment. In no case is a parapet allowed to exceed six feet in height above the roof deck.



- 2. Average grade is determined by calculating the average of the highest and lowest elevation along natural or improved grade (whichever is more restrictive) along the front of the building parallel to the primary street setback line.



- 3. New principal structures must be a minimum height of two stories. Any second story must be finished out for occupancy.
- 4. Where a lot slopes downward from the front property line, one story that is additional to the specified maximum number of stories may be built on the lower, rear portion of the lot.



- 5. An attic does not count as a story where 50 percent or more of the attic floor area has a clear height of less than seven and one-half feet; measured from the finished floor to the finished ceiling.

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6. A basement with 50 percent or more of its perimeter wall area surrounded by natural grade is not considered a story.
- I. *Height encroachments.* Any height encroachment not listed below is prohibited.
1. The maximum height limits of the district do not apply to spires, belfries, cupolas, domes not intended for human occupancy; monuments, water tanks, water towers or other similar structures which, by design or function, must exceed the established height limits.
 2. The following specified accessory structures, building and site features, and mechanical equipment may exceed the established height limit provided they do not exceed the maximum height by more than six feet:
 - a. Chimney, flue or vent stack;
 - b. Flagpole;
 - c. Vegetation associated with a rooftop garden or landscaping;
 - d. Skylights;
 - e. Parapet wall; and
 - f. Solar panels, wind turbines and rainwater collection systems.
 3. The following may exceed the established height limits provided they do not exceed the maximum building height by more than ten feet, do not occupy more than 25 percent of the roof area, and are set back at least ten feet from the edge of the roof:
 - a. Elevator or stairway access to roof;
 - b. Rooftop shade structure;
 - c. Greenhouse; and
 - d. Mechanical equipment.
 4. Any of the elements listed in paragraphs 2. and 3. above are considered accessory to the principal structure and must not be used for any purpose other than as incidental to the principal structure.
- J. *Ground floor elevation.*
1. Ground floor elevation is measured from top of the adjacent curb to the top of the finished ground floor.
 2. Minimum ground floor elevation applies to the first 30 feet of the lot measured from the right-of-way line.

8-28b-17.png



3. Ground floor elevation must meet the accessibility requirements of the NC Building Code.
- K. *Story height.*
1. Story height is measured from the top of the finished floor to the ceiling above.
 2. Minimum ground story height applies to the first 30 feet of the building measured inward from the street-facing facade. At least 50 percent of the ground story must meet the minimum height provisions.
 3. At least 80 percent of each upper story must meet the minimum upper story height provisions.

8-28b-18.png



- L. *Transparency.*
1. The minimum percentage of windows and doors that must cover a ground story facade. The transparency percentage is derived by dividing the transparent area of ground story windows and doors between two and 12 feet above the adjacent sidewalk by the total area of the ground story façade along the primary or side street.

8-28b-19.png



2. The minimum transparency percentage of windows and doors that must cover an upper story façade is measured from top of the finished floor to the top of the finished floor above. When there is no floor above, upper story transparency is measured from the top of the finished floor to the top of the wall plate. The percentage is derived for each upper story based on the transparent area of upper story windows and doors divided by the total area of the upper story façade.
3. Transparency applies to primary and side street-facing façades only.
4. Glass is considered transparent where it has a transparency higher than 80 percent and external reflectance of less than 15 percent.
5. An opening to a parking garage is not considered transparency. Any clear glass in a garage door for a restaurant or entertainment use (and not for loading purposes) is considered transparent.

M. *Blank wall area.*

1. Blank wall area means a portion of the exterior facade of the building that does not include: windows or doors; columns, pilasters or other articulation greater than 12 inches in depth; or a substantial material change (paint color is not considered a substantial change). The same material used in a different pattern does not constitute a substantial material change.

8-28b-20.png



2. Blank wall area applies in both a vertical and horizontal direction and to ground and upper story primary and side street-facing façades.

N. *Pedestrian access.*

1. An entrance providing both ingress and egress, operable to residents or customers at all times during operating hours, is required to meet the street-facing entrance requirements. Additional entrances off another street, pedestrian area or internal parking area are permitted.
2. The entrance spacing requirements must be met for each building, but are not applicable to adjacent buildings.

8-28b-21.png



3. Doors are not permitted to swing into public rights-of-way.
4. An angled entrance may be provided at either corner of a building along the street to meet the street-facing entrance requirements.

O. *Neighborhood compatibility.*

1. *Building setback.*
 - a. A building setback is required when form district property is abutting an RS or RM district. When abutting an RS or RM district, a building must not extend into a 45-degree angular plane projecting over the subject property measured from a height of 40 feet at the side interior or rear setback line. One foot of additional setback is required for every foot of height above 40 feet.

8-28b-22.png

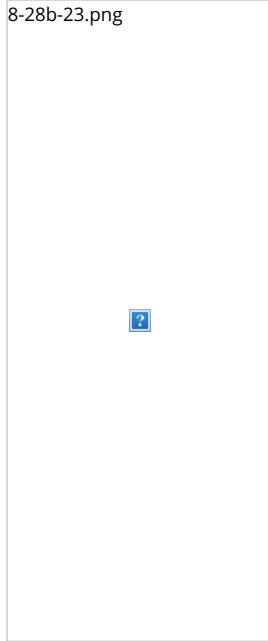


- b. The building setback ends at any public street (not including an alley) or 150 feet from the RS or RM district property line, whichever is less.
2. *Property line buffer.* A property line buffer meeting the standards of subsection 4.2 is required where a Haywood Road Form District abuts a RS or RM district.

P. *Building materials.*

1. *Applicability.* The following requirements apply to all street-facing façades of a building.
2. *Use of materials.*
 - a. Traditional materials such as brick, terra-cotta, natural stone, cast stone, metal, glass, concrete are preferred for new construction and renovations. Non-traditional materials such as unpainted rough-sawn wood and materials with a rustic image are used carefully and in ways that relate to their traditional context. The use of modern sustainable or green materials may justify deviations from the use of traditional materials. Synthetic finishing system materials are not permitted at the ground or street level.
 - b. Primary material changes must occur at inside corners or where they wrap around an outside corner a minimum of two feet.

8-28b-23.png



- c. When using more than one primary material in a façade, one is required as the main theme, with the others acting only to complement and accentuate the design.
- d. Openings in masonry façades should express a structural lintel or arch to show how they are carrying the weight above.

Q. *Streets, sidewalks and driveways.*

1. If an appropriate width sidewalk and street trees do not exist or do not meet the sub-district requirements, the developer is responsible for installation sidewalk and street trees as shown in subsection 2.3 through subsection 2.6. Modified dimensions may be approved by the city traffic engineer to account for existing street widths and building locations.
2. The required sidewalk may be wholly or partially located on private property, provided the sidewalk is located within an easement permanently dedicated to the city.
3. Where vehicular access is provided to a site, it must occur from a side street and not from Haywood Road, unless this option is determined infeasible by the city traffic engineer. For sites that must be accessed from Haywood Road, no more than one driveway is allowed with a maximum width of 24 feet.
4. The city traffic engineer may require the closure of existing curb cuts on Haywood Road where proposed site and building improvements exceed 75 percent of the appraised value of the existing improvements (as determined by Buncombe County Tax Assessor or by an MAI-certified real estate appraiser) and alternatives to access from Haywood Road are available.

R. *Building elements.* Individual building elements are allowed for by sub-district (see subsection 2.3 through subsection 2.6).

8-28b-24.png



1. *Awning/canopy.* A wall-mounted, cantilevered structure providing shade and cover from the weather for a sidewalk.
 - a. An awning/canopy must be a minimum of nine feet clear height above the sidewalk and must have a minimum depth of six feet. The planning and development director may approve a modification to these standards in order to fit an awning or canopy on an existing building.
 - b. An awning/canopy may extend into a required setback above private property.
 - c. An awning/canopy may encroach up to nine feet into the public right-of-way but must be at least two feet inside the curb line or edge of pavement, whichever is greater. The encroachment requires city or DOT approval, based on the ownership of the right-of-way.

8-28B-25.png



2. *Balcony.* A platform projecting from the wall of an upper-story of a building with a railing along its outer edge, often with access from a door or window.
- A balcony must be at least four feet deep and may extend up to six feet into a required setback, provided that such extension is at least two feet from the vertical plane of any lot line.
 - A balcony must have a clear height above the sidewalk of at least nine feet.
 - A balcony may be covered and screened, but cannot be fully enclosed.
 - A balcony may encroach up to six feet into the public right-of-way but must be at least two feet inside the curb line or edge of pavement, whichever is greater. The encroachment requires city or DOT approval, based on the ownership of the right-of-way.

8-28b-26.png



3. *Gallery.* A covered passage extending along the outside wall of a building supported by arches or columns that is open on three sides.
- A gallery must have a clear depth from the support columns to the building's facade of at least eight feet and a clear height above the sidewalk of at least nine feet.
 - A gallery must be contiguous and extend over at least 75 percent of the width of the building façade from which it projects.
 - A gallery may extend into a required setback.
 - A gallery may encroach up nine feet into the public right-of-way but must be at least two feet inside the curb line or edge of pavement, whichever is greater. The encroachment requires city or DOT approval, based on the ownership of the right-of-way.

8-28b-27.png



4. *Front porch.* A raised structure attached to a building, forming a covered entrance to a doorway.
- A front porch must be at least six feet deep (not including the steps).
 - A front porch must be contiguous, with a width not less than 33 percent of the building façade from which it projects.
 - A front porch must be roofed and may be screened, but cannot be fully enclosed.
 - A front porch may extend up to nine feet, including the steps, into a required setback, provided that such extension is at least two feet from the vertical plane of any lot line.
 - A front porch may not encroach into the public right-of-way.

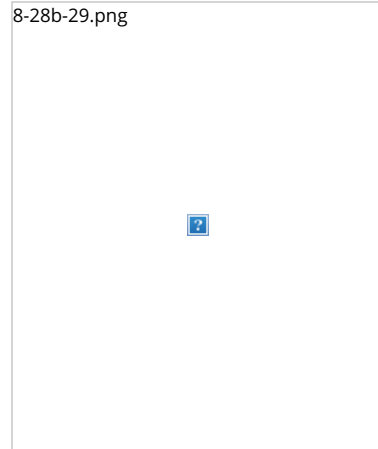
8-28b-28.png



5. *Stoop.* A small raised platform that serves as an entrance to a building.
- A stoop must be no more than six feet deep (not including the steps) and six feet wide.
 - A stoop may be covered but cannot be fully enclosed (must not be screened in).
 -

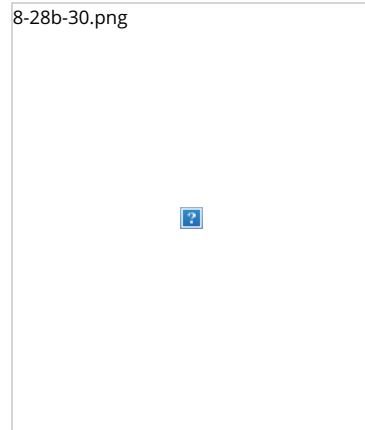
A stoop may extend up to six feet, including the steps, into a required setback, provided that such extension is at least two feet from the vertical plane of any lot line.

- d. A stoop may not encroach into the public right-of-way.



6. *Courtyard.* An open area at grade, or within 30 inches of grade, that serves as an open space, plaza or outdoor dining area, that does not extend across the full length of building.

- a. A courtyard must be no more than one-third of the length of the building face, and in no case longer than 35 feet in width.
- b. A courtyard may be no more than 35 feet in depth.
- c. A courtyard is considered as part of the building for the purpose of measuring the build-to zone.



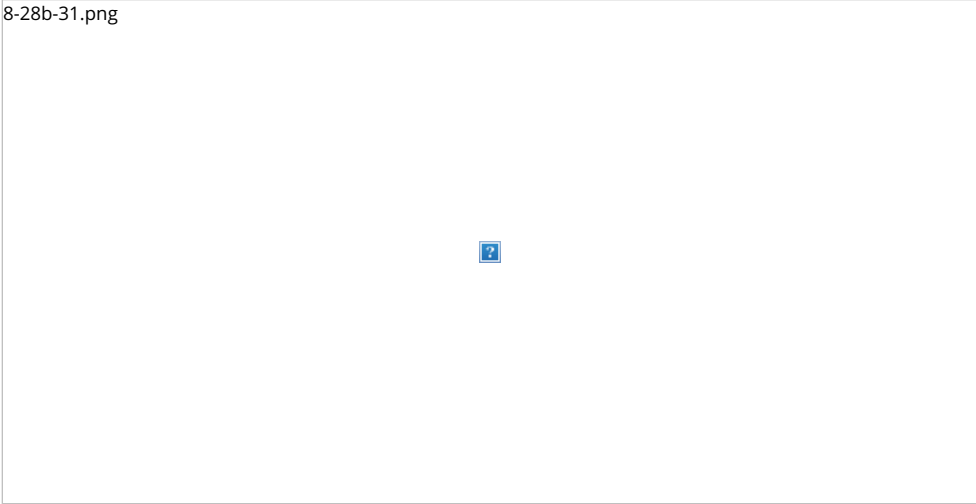
7. *Forecourt.* An open area at grade, or within 30 inches of grade, that serves as an open space, plaza or outdoor dining area that extends across the full length of building.

- a. A forecourt may be placed in front of a building, provided that it extends no more than 20 feet in depth.
- b. A forecourt extends the depth of the build-to zone in an amount equal to the courtyard depth.
- c. A forecourt of at least ten feet in depth satisfies the building setback requirement above the second floor (where applicable).
- d. A forecourt may extend the entire width of the lot.
- e. A forecourt may also be located internal to the lot, adjacent to one or more sides of the building.

2.3. *HR-1: Core.*

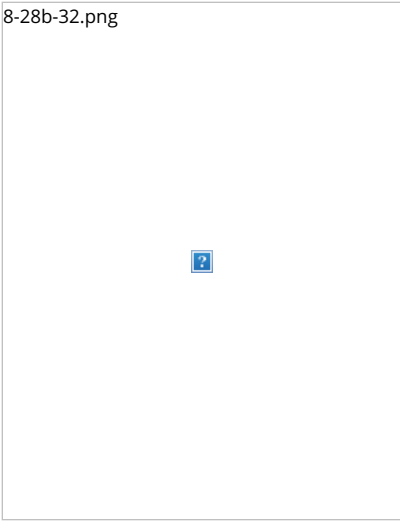
PURPOSE AND INTENT

8-28b-31.png



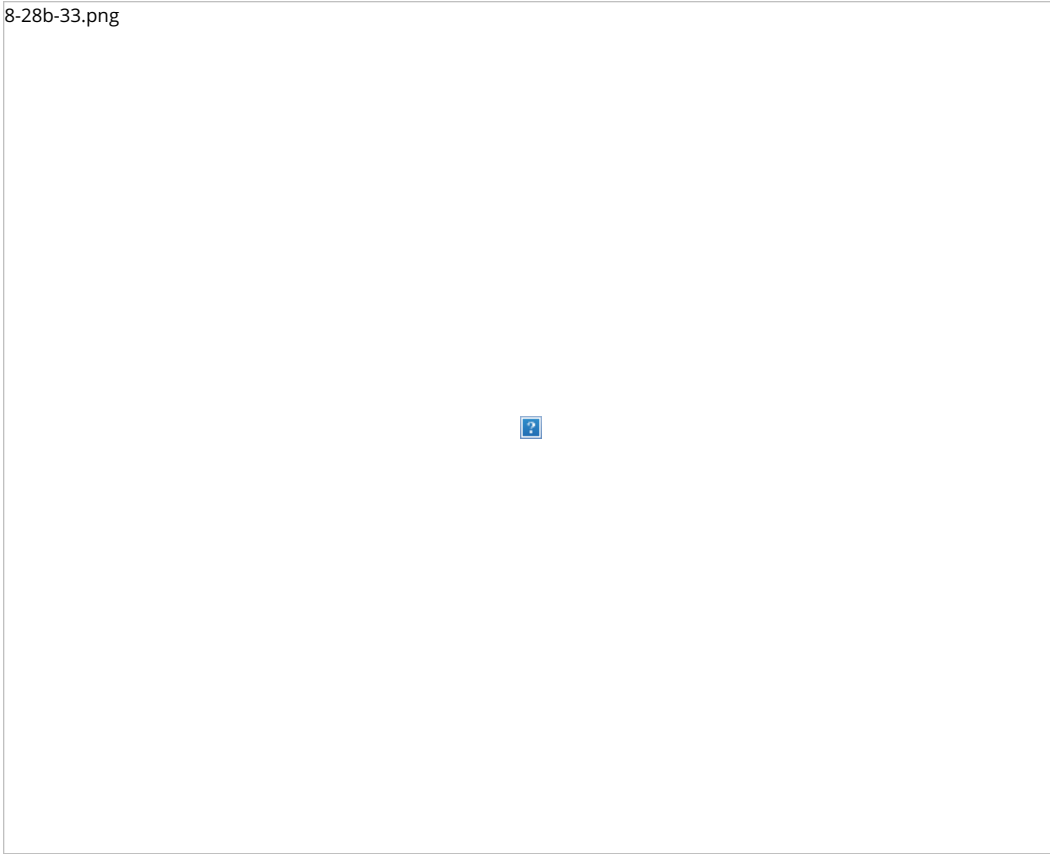
The HR-1: Core sub-district is intended to preserve existing buildings and to maintain the historic character of the two traditional centers on Haywood Road. Existing buildings should be reused where possible and new infill buildings should respect the existing form and context. Height requirements are set to ensure that existing buildings can compete successfully with new infill buildings. Buildings in the HR-1: Core sub-district are pulled up to the sidewalk to encourage pedestrian activity in the area. Mixed use is encouraged, and a variety of commercial uses are allowed on the ground floor. Residential and office uses are allowed in upper floors.

8-28b-32.png



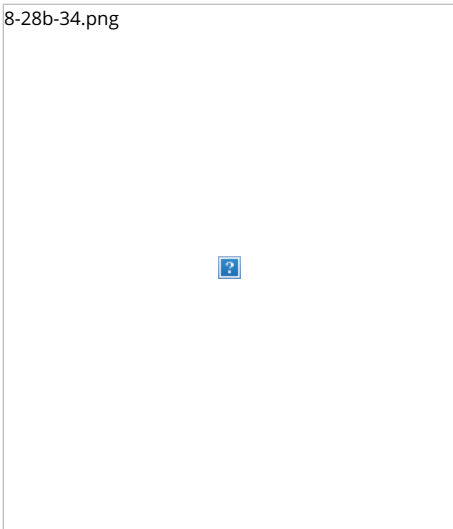
STREET CROSS-SECTION

8-28b-33.png



1. *Lot criteria.*

8-28b-34.png



2. *Siting.*

8-28b-35.png

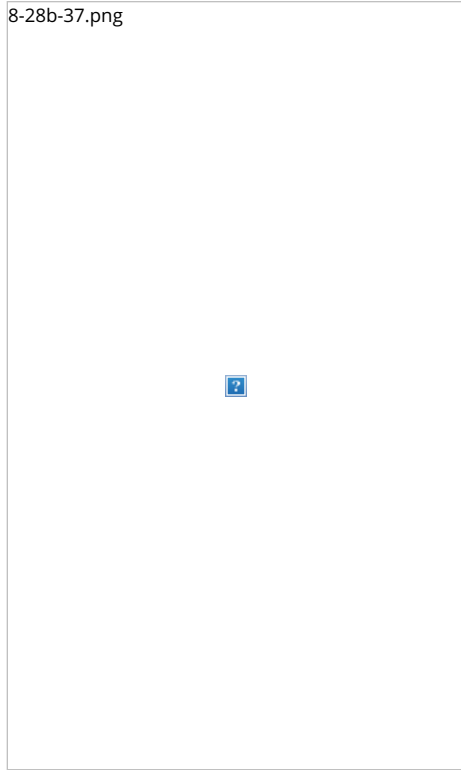


3. *Height.*

8-28b-36.png

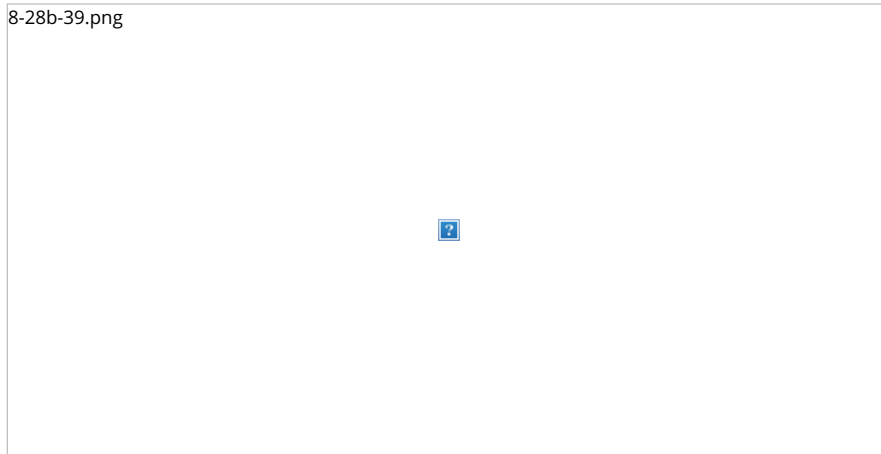


4. *Activation.*



2.4. *HR-2: Expansion.*

PURPOSE AND INTENT



The HR-2: Expansion sub-district is intended to extend the urban character of the Core. New buildings are encouraged in this sub-district. Since the majority of this area can be expected to redevelop, new buildings are allowed to be taller than in the Core. Mixed-use buildings in the HR-2: Expansion sub-district are pulled up to the sidewalk to encourage pedestrian activity in the area. Residential buildings are set slightly further back from the street. Mixed use is encouraged, and a variety of commercial uses are allowed on the ground floor. Residential and office uses are allowed in upper floors of mixed use buildings, and a totally residential building is also allowed.

8-28b-40.png



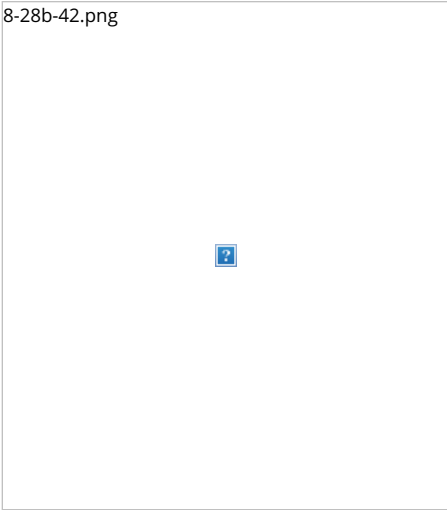
STREET CROSS-SECTION

8-28b-41.png



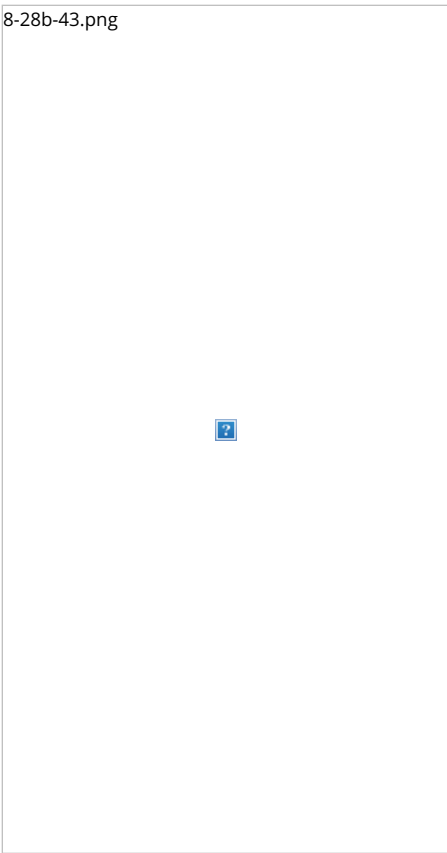
1. *Lot criteria.*

8-28b-42.png



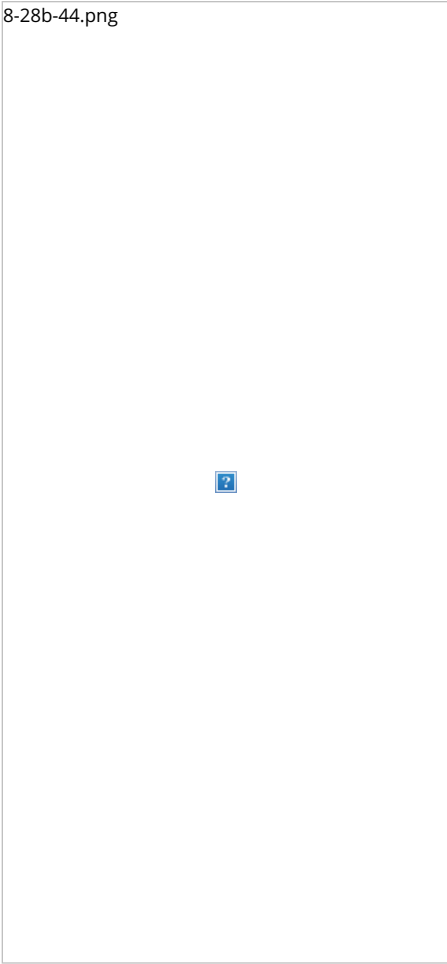
2. *Siting.*

8-28b-43.png



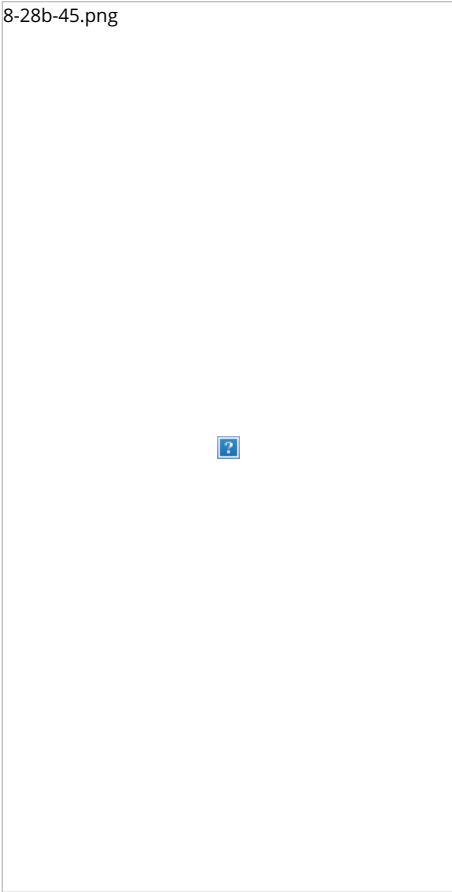
3. *Height.*

8-28b-44.png



4. *Activation.*

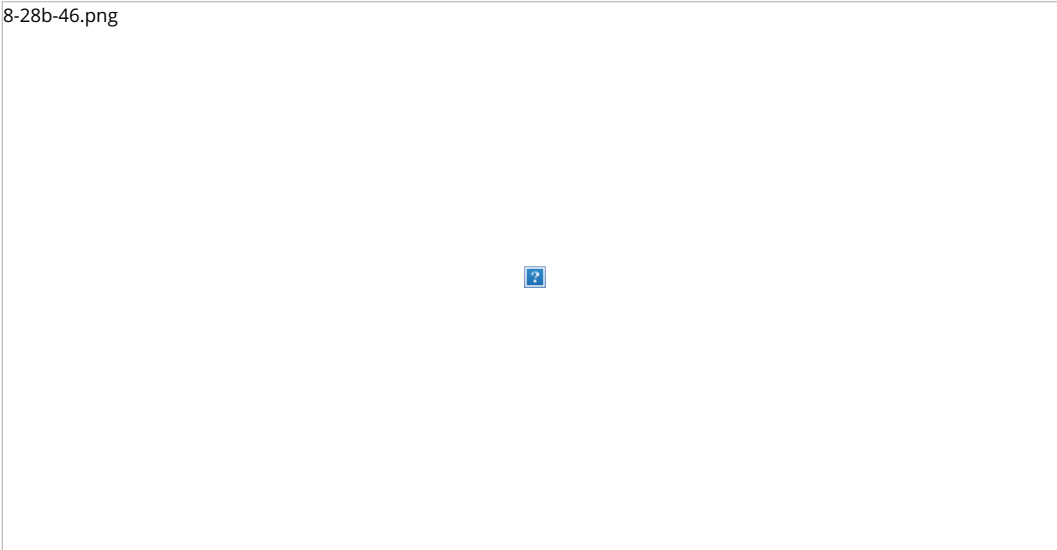
8-28b-45.png



2.5. *HR-3: Corridor.*

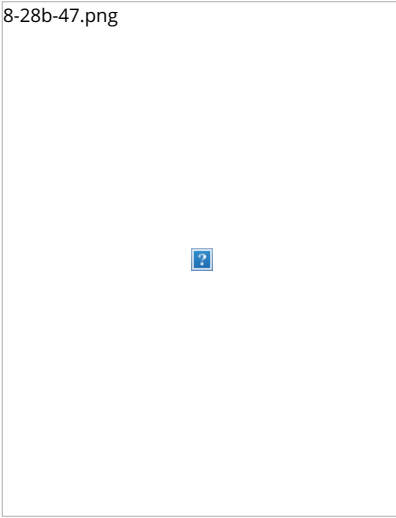
PURPOSE AND INTENT

8-28b-46.png



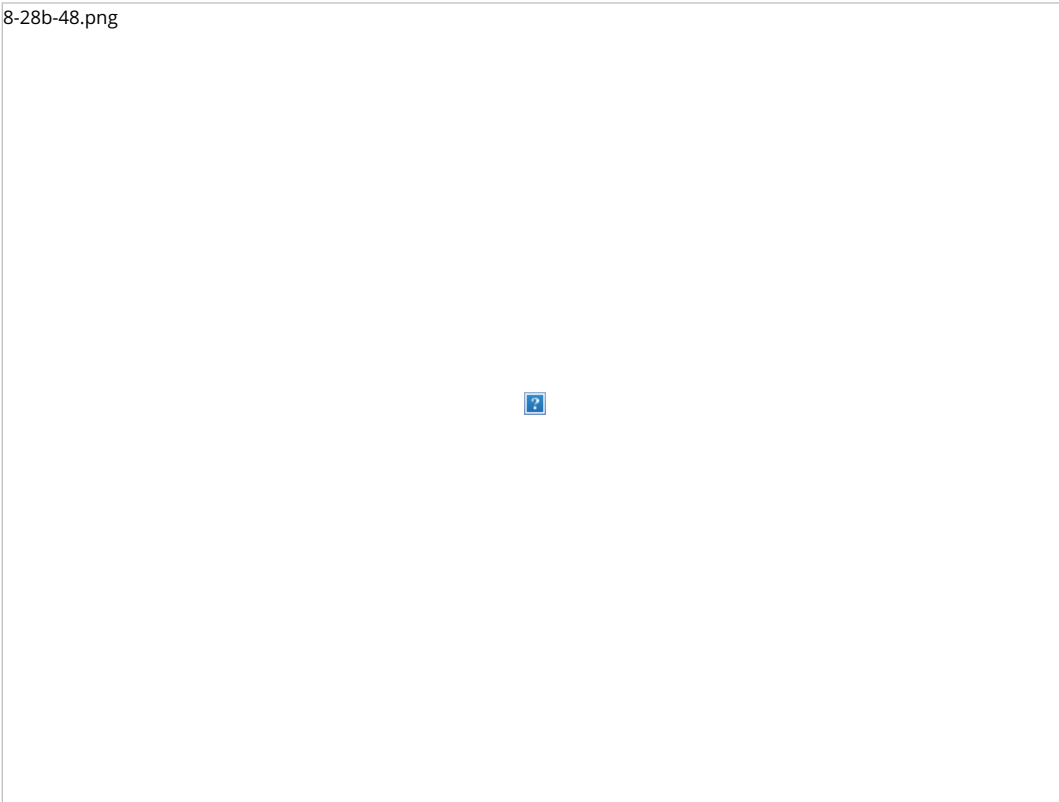
The HR-3: Corridor sub-district is intended to provide a green frontage along Haywood Road to provide relief from the urban areas of the Core and Expansion sub-districts. Existing buildings should be reused where possible and new infill buildings should respect the traditional form and context. Buildings in the HR-3: Corridor sub-district with active ground floors are pulled up to the sidewalk to encourage pedestrian activity in the area. Residential buildings are set slightly further back from the street, providing a green edge along Haywood Road. A variety of uses are allowed in this sub-district, with a focus on residential and office uses.

8-28b-47.png



STREET CROSS-SECTION

8-28b-48.png



1. *Lot criteria.*

8-28b-49.png



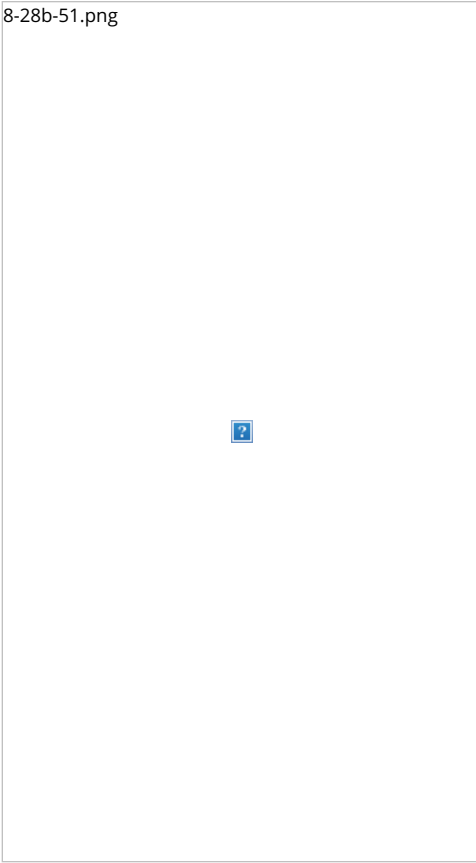
2. *Siting.*

8-28b-50.png



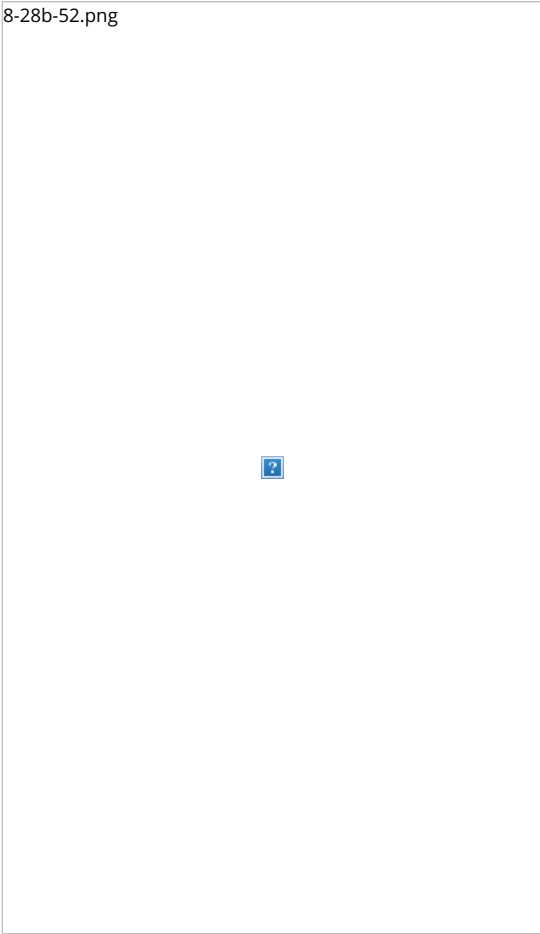
3. *Height.*

8-28b-51.png



4. *Activation.*

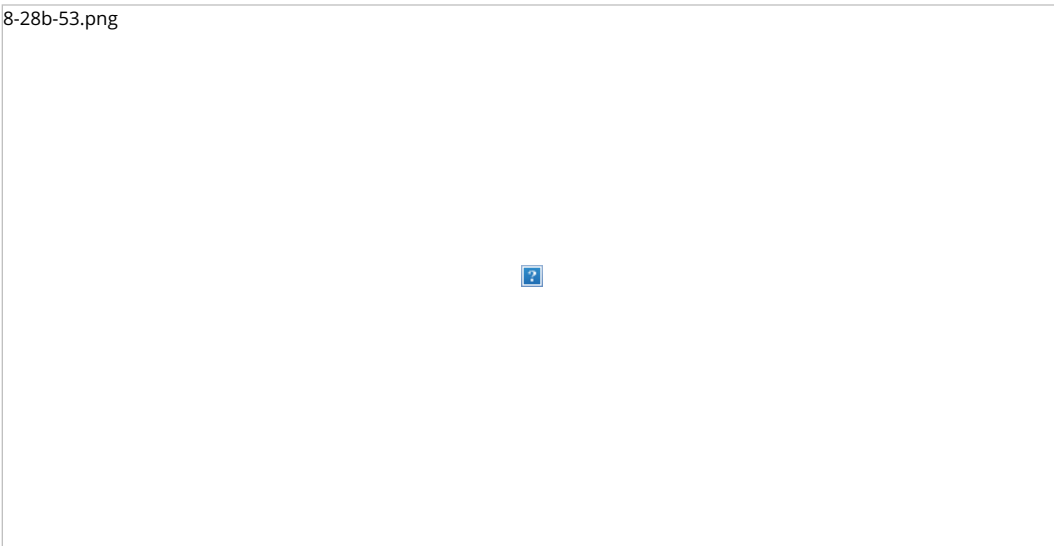
8-28b-52.png



2.6. *HR-4: Traditional.*

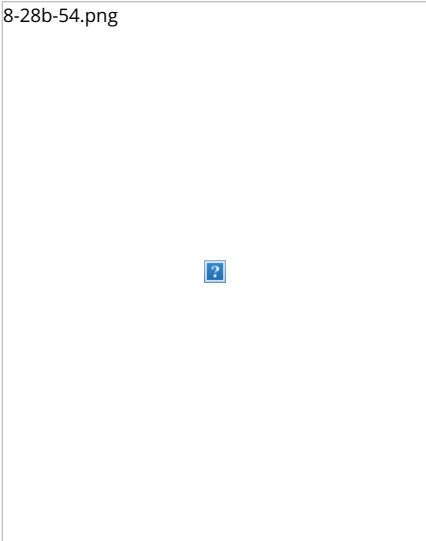
PURPOSE AND INTENT

8-28b-53.png



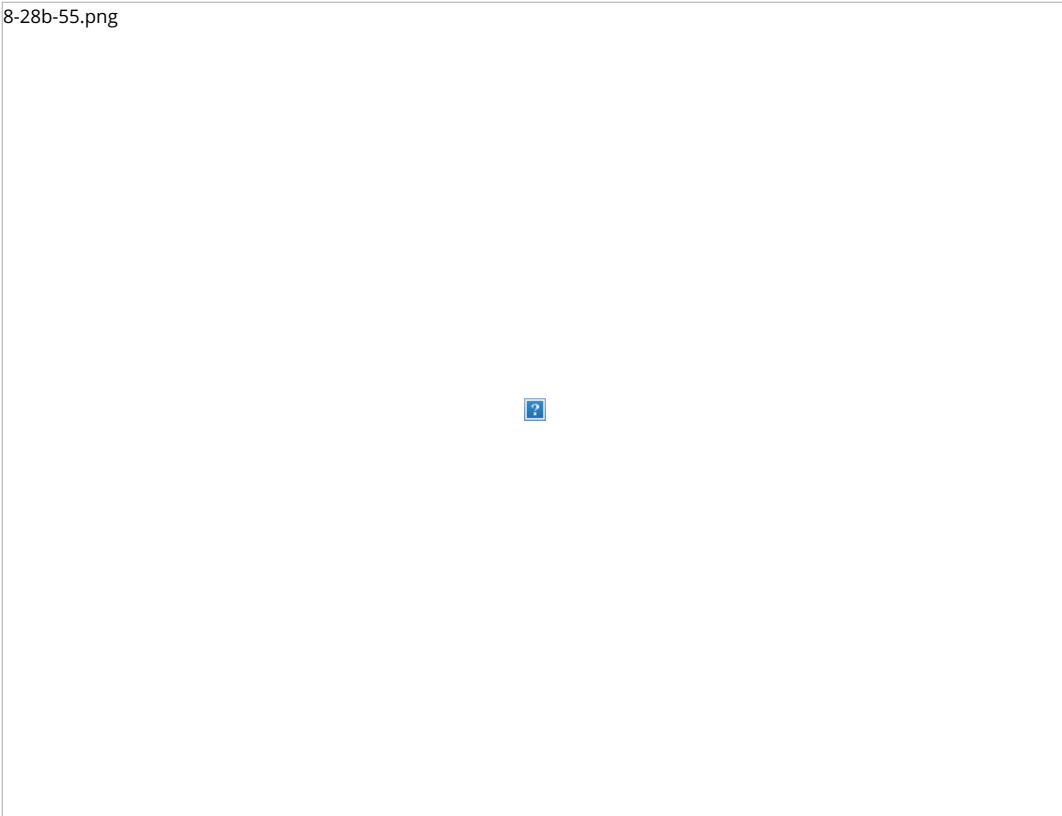
The HR-4: Traditional sub-district is intended to preserve existing buildings and to expand the historic character this center on Haywood Road. Existing buildings should be reused where possible and new infill buildings should respect the traditional form and context. Height requirements are set to ensure that existing buildings can compete successfully with new infill buildings. Buildings in the HR-4: Traditional sub-district are pulled up to the sidewalk to encourage pedestrian activity in the area. Mixed use is encouraged, and a variety of commercial uses are allowed on the ground floor. Residential and office uses are allowed in upper floors of mixed use buildings, and a totally residential building is also allowed.

8-28b-54.png



STREET CROSS-SECTION

8-28b-55.png



1. *Lot criteria.*

8-28b-56.png



2. *Siting.*

8-28b-57.png



3. *Height.*

8-28b-58.png



4. *Activation.*

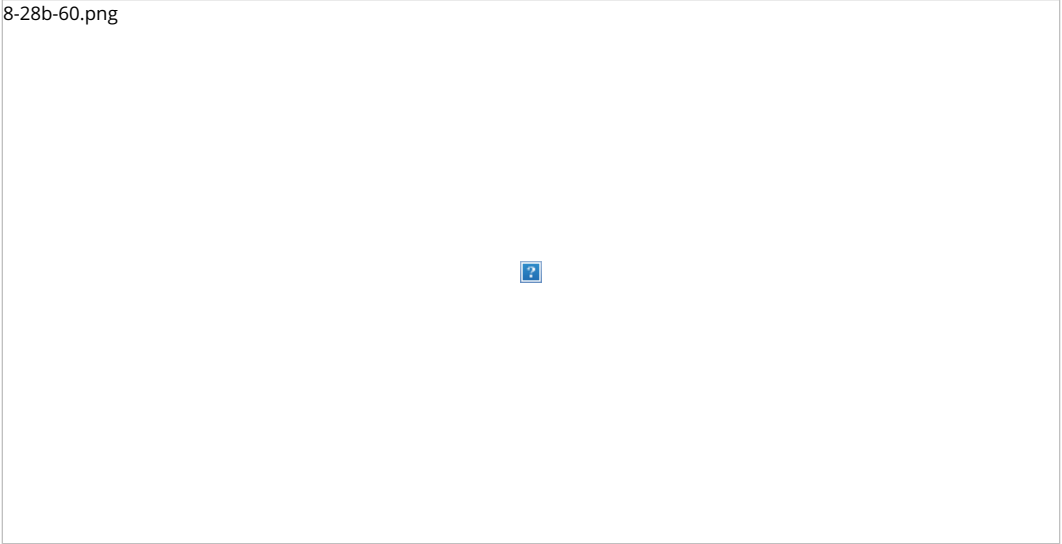
8-28b-59.png



2.7. *HR-5: Live-Work.*

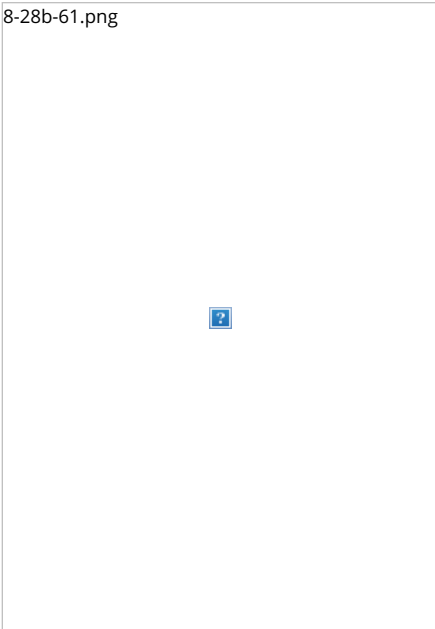
PURPOSE AND INTENT

8-28b-60.png



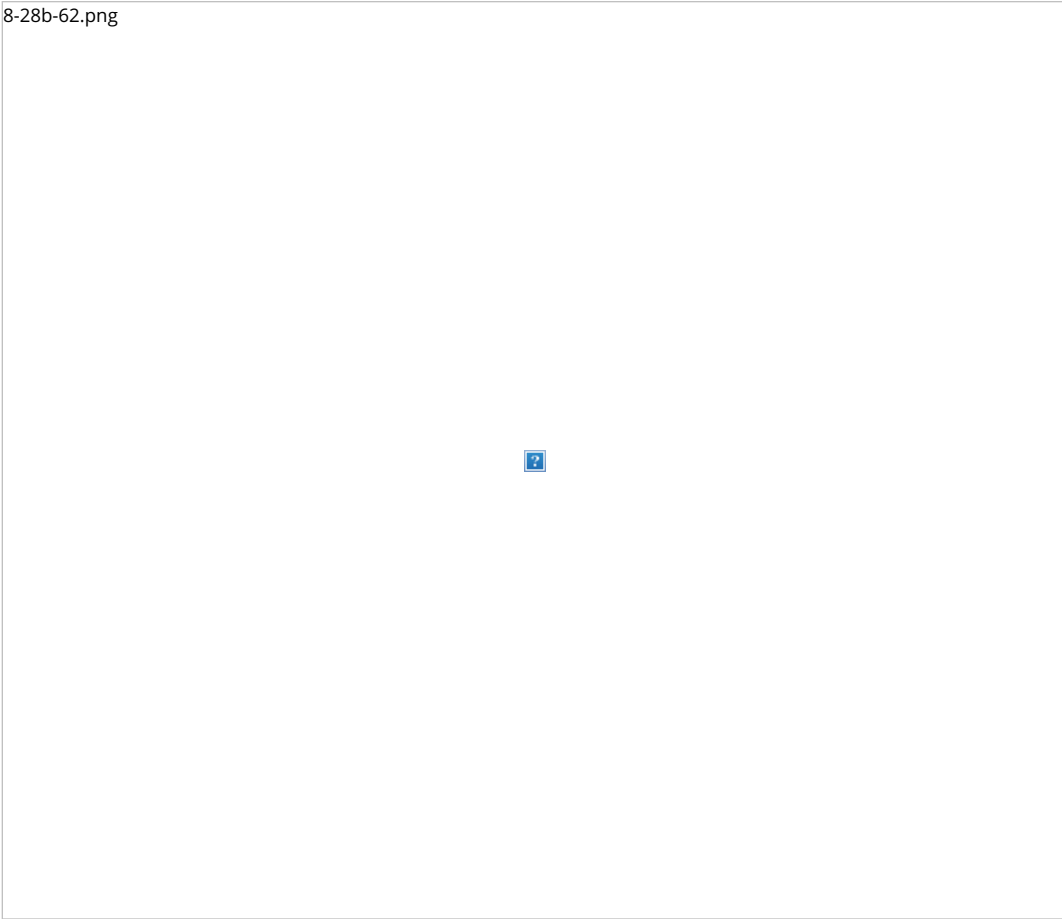
The HR-5: Live-Work sub-district is intended for new residential or live-work buildings that address and conform to the steep topography of the area. Live-work buildings in the HR-5: Live-Work sub-district are pulled up to the sidewalk to encourage pedestrian activity in the area. Residential buildings are set slightly further back from the street. A variety of live-work and residential uses are allowed in this sub-district.

8-28b-61.png



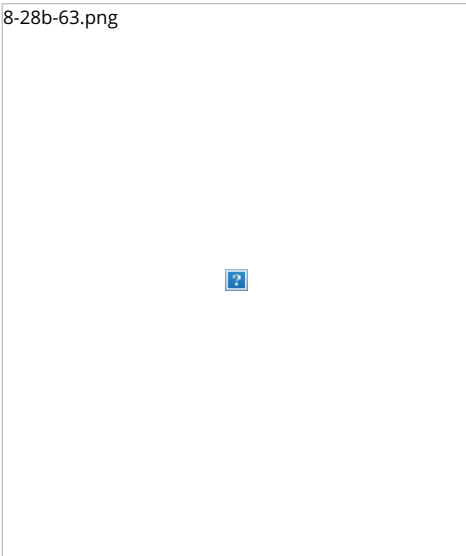
STREET CROSS-SECTION

8-28b-62.png



1. *Lot criteria.*

8-28b-63.png



2. *Siting.*

8-28b-64.png



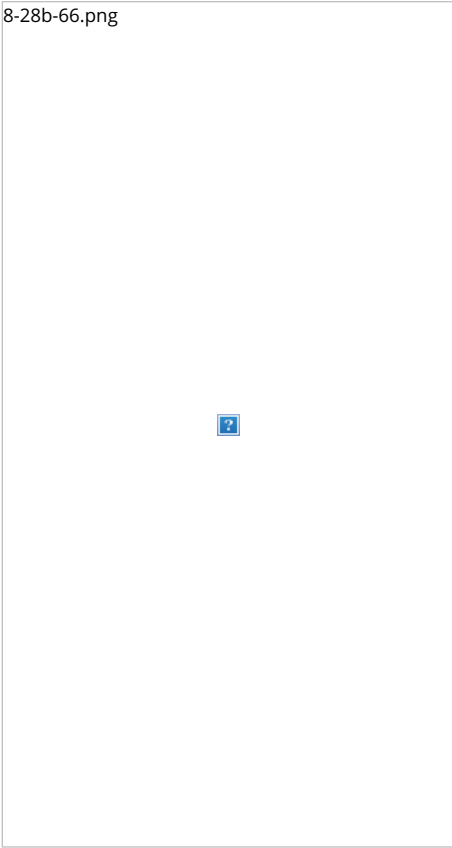
3. *Height.*

8-28b-65.png



4. *Activation.*

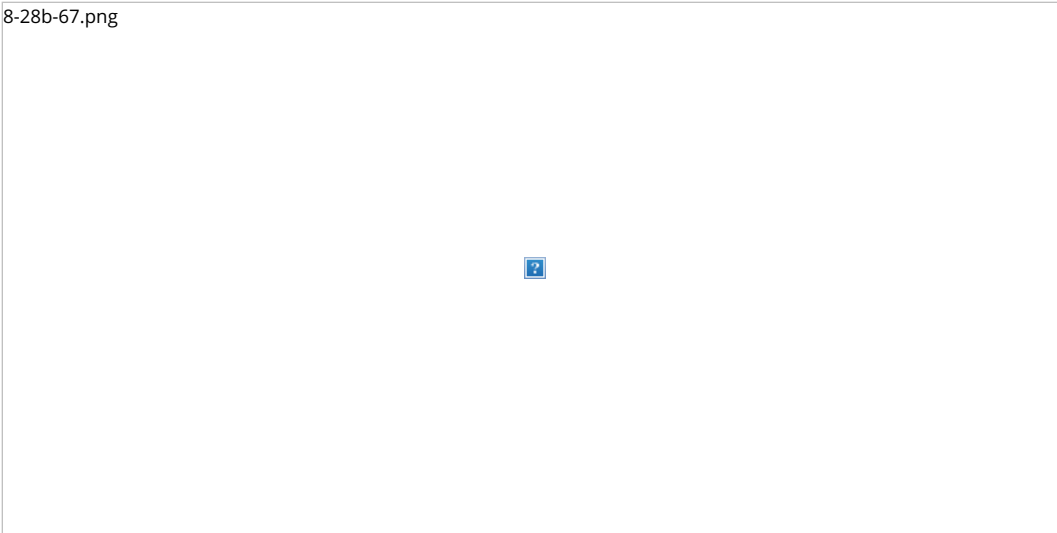
8-28b-66.png



2.8. *HR-6: Town.*

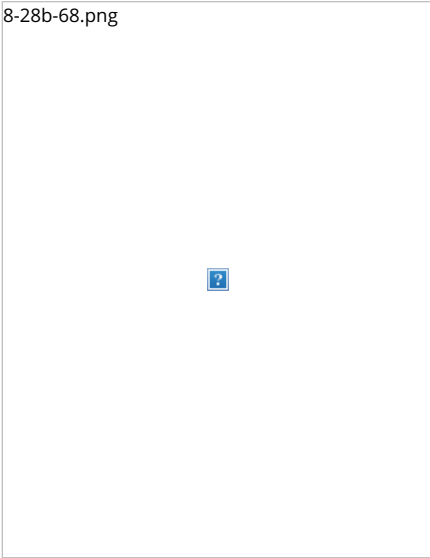
PURPOSE AND INTENT

8-28b-67.png



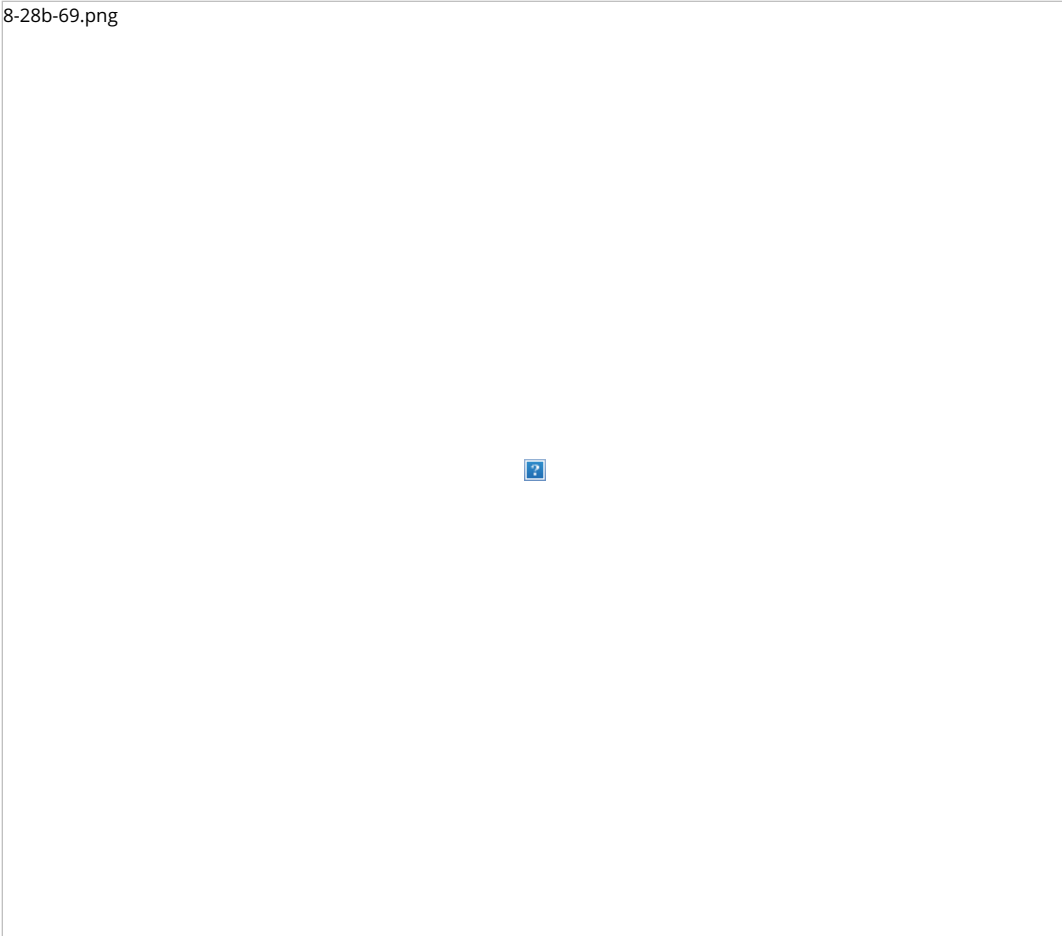
The HR-6: Town sub-district is intended to provide a new center of activity where Haywood Road meets Patton Avenue. Redevelopment with new, taller buildings is encouraged in this sub-district in order to take advantage of the spectacular views afforded by this hilltop location. Mixed-use buildings in the HR-6: Town sub-district are pulled up to the sidewalk along Haywood Road to encourage pedestrian activity in the area. Buildings along Patton Avenue may be pulled back to allow limited parking between the building and the street. Mixed use is encouraged, and a variety of commercial uses are allowed on the ground floor. Residential and office uses are allowed in upper floors of mixed use buildings.

8-28b-68.png



STREET CROSS-SECTION

8-28b-69.png



1. *Lot criteria.*

8-28b-70.png



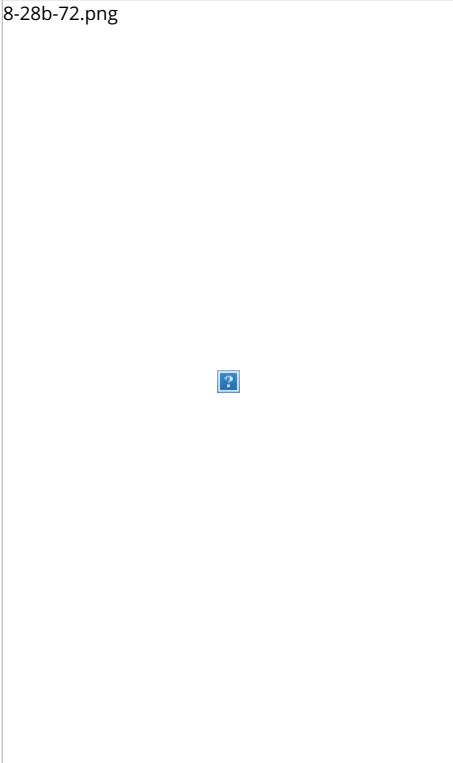
2. *Siting.*

8-28b-71.png



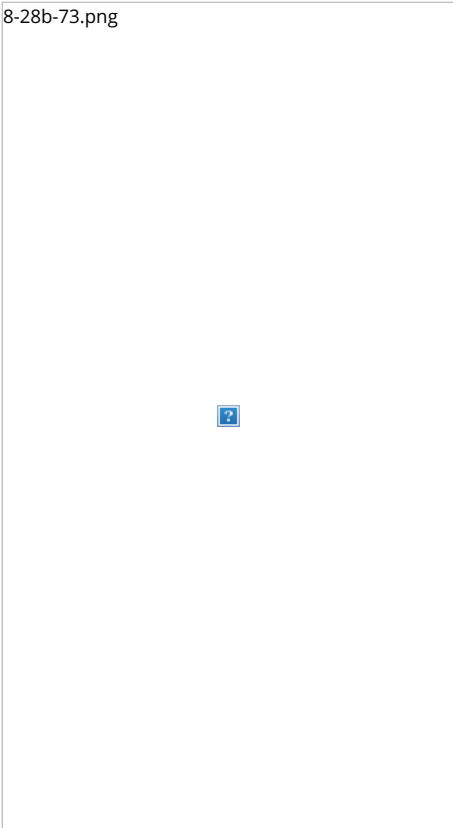
3. *Height.*

8-28b-72.png



4. *Activation.*

8-28b-73.png



3.0. *Land use.*

3.1. *Classification of uses.* This section establishes the uses allowed. A lot or building must be occupied with only the uses allowed in this section. Any one or more allowed uses may be established on a lot, subject to the requirements of this section, and in compliance with all applicable requirements of this Haywood Road Form District.

A. *Principal uses.*

1. Allowed principal uses by sub-district are shown in the permitted use table in subsection 3.2.

2. Any use not listed is not allowed unless the planning and development director determines that the use is similar to a listed use. Prohibited uses found in the Table of Uses in 7-8-1d of this chapter also apply to the Haywood Road Form District.
 3. When determining whether a proposed use is similar to a listed use, the planning and development director will consider the following:
 - a. The actual or projected characteristics of the proposed use.
 - b. The relative amount of site area or floor area and equipment devoted to the proposed use.
 - c. Relative amounts of sales.
 - d. The customer type.
 - e. The relative number of employees.
 - f. Hours of operation.
 - g. Building and site arrangement.
 - h. Types of vehicles used and their parking requirements.
 - i. The number of vehicle trips generated.
 - j. How the proposed use is advertised.
 - k. The likely impact on surrounding properties.
 - l. Whether the activity is likely to be found independent of the other activities on the site.
 4. Where a use is determined not to be similar to any listed use, a text amendment is required prior to establishment of that use.
- B. *Accessory uses.*
1. Accessory uses and structures are permitted in conjunction with an allowed principal use. Accessory uses and structures must be accessory and clearly and customarily incidental and subordinate to a permitted principal use or structure.
 2. No accessory use or structure may be established prior to the establishment of a permitted principal use or structure.
 3. All accessory structures must meet the requirements of subsection 2.0.
 4. The planning and development director is authorized to determine when a use or structure is accessory. In order to classify a use or structure as accessory, the planning and development director must determine that the use or structure:
 - a. Is subordinate to the principal use in terms of area, extent and purpose;
 - b. Contributes to the comfort, convenience or necessity of occupants of the principal use or structure served;
 - c. Is located on the same lot as the principal use or structure, or on a contiguous lot in the same ownership;
 - d. Does not involve operations not in keeping with the character of the principal use or structure served; and
 - e. Is not of a nature likely to attract visitors in larger numbers than would normally be expected for the principal use or structure.

3.2. *Permitted use table.*

	Core HR-1	Expansion HR-2	Corridor HR-3	Traditional HR-4	Live-Work HR-5	Town HR-6	Special Standards
Residential							
Dwelling, single family detached	—	—	P	—	P		
Dwelling, townhouse	—	P	P	P	P	P	
Dwelling, multifamily	—	P	P	P	P	P	
Dwelling, upper-story	P	P	P	P	P	P	
Assisted living facility	—	P	P	P	—	P	
Dormitory	—	P	P	P	—	P	
Group home	—	P	P	P	—	P	
Public and Institutional							
Civic, social service or fraternal organizations	—	P	P	P	—	P	
College, university, vocational or technical school	—	P	P	P	—	P	
Community center	—	P	P	P	P	P	
Day-care center, adult or child	P	P	P	P	—	P	
Fire or police station	P	P	P	P	P	P	
Government building and use	P	P	P	P	—	P	

Library, museum	P	P	P	P	—	P	
Park, playground, greenway	P	P	P	P	P	P	
Performance center	P	P	P	P	—	P	
Place of worship	P	P	P	P	P	P	
Post office without distribution facility	P	P	P	P	—	P	
Public utility and related facility	P	P	P	P	P	P	
School	P	P	P	P	P	P	
Food, Beverage and Entertainment							
Eating/drinking establishment	P	P	P	P	—	P	
Eating/drinking establishment with drive-through	—	—	—	—	—	S	Subsection 3.3.A
Microbrewery	P	P	P	P	—	P	
Movie theater	P	P	P	P	—	P	
Nightclub	P	P	P	P	—	P	
Recreational uses, commercial indoor	P	P	P	P	—	P	
Lodging							
Bed and breakfast inn	—	P	P	P	S	P	Subsection <u>7-16-1(c)(10)</u>
Boarding house	—	P	P	P	—	P	
Homestay	—	P	P	P	S	P	Subsection <u>7-16-1(c)(9)</u>
Lodging facility	P	P	P	P	—	P	
Retail, Service and Office							
Art gallery	P	P	P	P	S	P	Subsection 3.3.B
Barber shop or beauty salon	P	P	P	P	S	P	Subsection 3.3.B
Business incubator	P	P	P	P	S	P	Subsection 3.3.B
Clinic, medical	P	P	P	P	—	P	
Clinic, veterinary	P	P	P	P	—	P	
Farm products market, flea market	P	P	P	P	—	P	
Financial Institution	P	P	P	P	—	P	
Financial Institution with drive-through	—	—	S	—	—	S	Subsection 3.3.A
Funeral establishment	S	S	S	S	—	S	Subsection <u>7-16-1(c)(33)</u>
Gasoline sales	—	—	C	—	—	C	
Grocery store	P	P	P	P	—	P	
Hardware, garden supply store	P	P	P	P	—	P	
Health or fitness facility	P	P	P	P	—	P	
Hospital or medical center	—	P	P	P	—	P	

Instructional services	P	P	P	P	—	P	
Laundry or dry cleaning	P	P	P	P	—	P	
Laundry or dry cleaning with drive-through	—	—	—	—	—	P	Subsection 3.3.A
Motor vehicle or boat service and repair	—	P	P	P	—	—	
Motor vehicle service facility	—	P	P	P	—	P	
Office	P	P	P	P	S	P	Subsection 3.3.B
Pharmacy	P	P	P	P	—	P	
Pharmacy with drive-through	—	—	S	—	—	S	Subsection 3.3.A
Plant sales, nursery, greenhouse	P	P	P	P	—	P	
Print and publishing	P	P	P	P	S	P	Subsection 3.3.B
Research & technology production uses	P	P	P	P	—	P	
Retail sales	P	P	P	P	S	P	Subsection 3.3.B
Small engine service and repair	—	P	P	P	—	—	
Studio, gallery or workshop for arts and crafts, low impact	P	P	P	P	S	P	Subsection 3.3.B
Studio, gallery or workshop for arts and crafts, high impact	P	P	P	P	—	P	
Tailor or dressmaker	P	P	P	P	—	P	
Tattoo parlor	P	P	P	P	—	P	
Other Use Types							
Agriculture	S	S	S	S	S	S	Subsection <u>7-16-1(c)(4.1)</u>
Light industrial	P	P	P	P	—	P	
Live work units	S	S	S	S	S	S	Subsection 3.3.B
Parking deck, garage, structure	S	S	S	S	S	S	Subsection 3.3.C
Telecommunication tower	C	C	C	C	C	C	
Telecommunication tower/support structure concealed	C	C	C	C	C	C	
Wireless telecommunication facility, microcell	S	S	S	S	S	S	Subsection <u>7-16-1(c)(75)</u>
Wireless telecommunication facility, co-location	S	S	S	S	S	S	Subsection <u>7-16-1(c)(77)</u>
Wireless telecommunication facility, (concealed)	S	S	S	S	S	S	Subsection <u>7-16-1(c)(76)</u>
KEY: P = Permitted Use S= Permitted Use Subject to Special Standards C = Conditional Use — = Use Not Permitted							

3.3. *Special standards.*

A. *Drive-through facility.*

1. Adequate space must be made available on-site for the stacking, storage and queuing of vehicles.
2. Vehicles using drive-through facilities may not encroach on or interfere with the public use of streets and sidewalks by vehicles or pedestrians.
3. All drive-through areas, including but not limited to menu boards, stacking lanes, trash receptacles, ordering box, drive up windows, and other objects associated with the drive-through area, must be located to the side or rear of the building. Drive-through windows and lanes may not be placed between the street and the associated building.
4. A restaurant with a drive-through must provide at least four queuing spaces, measured from the first pick-up window.
5. A bank or pharmacy with a drive-through must provide at least three queuing spaces per drive-through lane, measured from the teller box or window.
6. All other uses determined by the city traffic engineer.

B. *Live-work.*

1. In a mixed-use building containing live-work units, at a minimum, the ground floor primary street-facing facade must be activated with permitted commercial uses. This does not preclude other commercial spaces being included in additional locations in the building.
2. The live-work unit cannot exceed 1,500 square feet in gross floor area.

C. *Parking structures.*

1. Parking structures must meet all the requirements for a principal structure as specified in subsection 2.0. In no case can structured parking exceed the height of the principal building on the site.
2. The ground story of a structured parking garage facing Haywood Road or Patton Avenue must have active uses (such as, but not limited to, residential, commercial, office or civic space, where permitted) located between the parking structure and the street (not including an alley).
3. Where upper stories of structured parking are at the perimeter of a building, they must be screened so that cars are not visible from ground level view from adjacent property or adjacent public street right-of-way (not including an alley).
4. Architectural and vegetative screens must be used to articulate the facade, hide parked vehicles and shield lighting. In addition, any ground floor facade treatment (building materials, windows, and architectural detailing) must be continued on upper stories.
5. Parking structure entries must not exceed 16 feet clear height and 25 feet clear width.

4.0. *Site development.*

4.1. *Parking.*

A. *Applicability.* The parking requirements of section 7-11-2 apply in the Haywood Road Form District, except the sections identified below:

1. Subsection 7-11-2(c), Off-Street Parking Requirements;
2. Subsection 7-11-2(d), Off-Street Loading Requirements; and
3. Subsection 7-11-2(e)(2), Remote Parking.

B. *Required parking.* The following minimum vehicle and bicycle parking spaces are required.

Use	Vehicle Parking Spaces (min)			Bicycle Parking (min)	
	HR-1: Core HR-2: Expansion	HR-3 Corridor HR-4: Traditional HR-6: Town	HR-5: Live-Work	Spaces	Short-term/ Long term
Existing Building					
Eating/drinking establishment, microbrewery, nightclub	1 per 250 sf	same as new building	same as new building	same as new building	same as new building
All other uses	none	same as new building	same as new building	same as new building	same as new building
New Building or Addition					
Dwelling, multifamily or upper-story	1 per unit (upper story only)	1 per unit	1 per unit	.5 per unit up to 2 bedrooms plus .25 per additional bedroom	80%/20%
All other residential uses	1 per unit	1 per unit	1 per unit	none	—
Park, playground, green-way, fire or police station, public utility or related facility	none	none	none	none	—
Place of worship	greater of 1 per 4 seats or 1 per 40 sf	greater of 1 per 4 seats or 1 per 40 sf	greater of 1 per 4 seats or 1 per 40 sf	1 per 5,000 sf 2 min	90%/10%
All other public and institutional uses	1 per 500 sf	1 per 500 sf	1 per 500 sf	1 per 5,000 sf 2 min	90%/10%
All food, beverage and entertainment uses	1 per 250 sf	1 per 250 sf	—	1 per 2,500 sf 2 min	80%/20%

All lodging uses	1 per guest room	1 per guest room	1 per guest room	1 per 2,500 SF 2 min	80%/20%
Health and fitness facility	1 per 250 sf	1 per 250 sf	1 per 250 sf	1/2,500 SF 2 min	80%/20%
All other retail, service and office uses	1 per 500 sf	1 per 500 sf	1 per 500 sf	1/2,500 SF 2 min	80%/20%
All other uses types	none	none	none	none	—

C. *Location of required vehicle parking.* Required vehicle parking must be located on the same lot as the use they are intended to serve, except as listed below.

1. *On-street parking.* See subsection [7-11-2.\(f\)](#).
2. *Remote parking.*
 - a. All required parking spaces, except required accessible spaces, can be located off-site if the remote parking area is located within 660 feet from the primary entrance of the use served.
 - b. Up to 50 percent of the required parking spaces may be located more than 660 feet off-site, if the parking area is located within 1,320 feet from the primary entrance of the use served.
 - c. Specifically designated parking spaces for employees may be located off-site up to 2,640 feet from the primary entrance of the use served.
 - d. All remote parking spaces used to meet an on-site parking requirement must be located within the boundaries of the Haywood Road Corridor District.
 - e. The off-site parking area is measured in walking distance from the nearest point of the remote parking area to the primary entrance of the use served.
 - f. Any remote parking spaces must be guaranteed by a written agreement between the owner of the remote parking area and the owner of the use served by the remote parking area. Change of ownership of either parcel requires a renewal of the agreement.

D. *Location of required bike parking.*

1. *General requirements.*
 - a. Bicycle parking spaces must be located on paved or pervious, dust-free surface with a slope no greater than three percent. Surfaces cannot be gravel, landscape stone, or wood chips.
 - b. Bicycle parking spaces must be a minimum of two feet by six feet. There must be an access aisle a minimum of five feet in width.
 - c. Each required bicycle parking space must be accessible without moving another bicycle and its placement must not result in a bicycle obstructing a required walkway.
 - d. Up to 25 percent of bicycle parking may be structured parking, vertical parking or wall mount parking, provided there is a five-foot access aisle for wall mount parking.
 - e. All racks must accommodate cable locks and "U" locks and must permit the locking of the bicycle frame and one wheel to the rack and must support a bicycle in a stable position.
2. *Short-term bicycle parking.* Required short-term bicycle parking spaces must be located in a convenient and visible area at least as close as the closest non-accessible vehicle parking and within 100 feet.
3. *Long-term bicycle parking.*
 - a. Required long-term bicycle parking spaces must be located in enclosed and secured or supervised areas providing protection from theft, vandalism and weather and must be accessible to intended users.
 - b. Required long-term bicycle parking for residential uses can not be located within dwelling units or within deck, patio areas, or private storage areas accessory to dwelling units.
 - c. With permission of the planning and development director, long-term bicycle parking spaces for nonresidential uses may be located off-site within 300 feet of the site.
 - d. The off-site parking area is measured in walking distance from the nearest point of the remote parking area to the closest primary entrance of the use served.

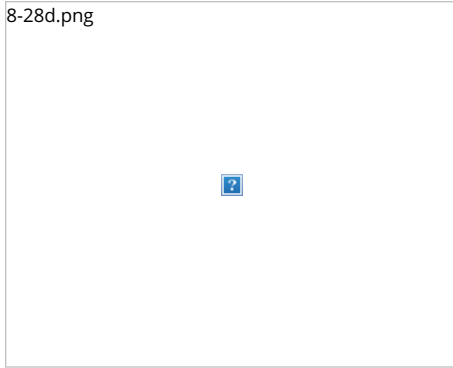
E. *Required vehicle loading.*

1. *General provisions.*
 - a. Loading and unloading activities may not encroach on or interfere with the use of sidewalks, drive aisles, queuing areas and parking areas by vehicles or pedestrians.
 - b. With the exception of areas specifically designated by the city, loading and unloading activities are not permitted in the public right-of-way.
 - c. If determined necessary by the planning and development director, adequate space must be made available on-site for the unloading and loading of goods, materials, items or stock for delivery and shipping.
2. *Location.* If a loading area is required or provided, it must meet the following.
 - a. The loading area must be located on the same lot occupied by the use served and must be accessible from a public street or alley.
 - b. The loading area must be located to the side or rear of buildings. Loading areas may not be placed between the street and the associated building.

4.2. *Landscaping and screening.*

A. *Applicability.* The landscape and buffering requirements of [section 7-11-3](#) apply in the Haywood Road Form District, except as identified below:

1. The Haywood Road Form District is exempt from subsection [7-11-3\(d\)\(5\)](#), Building impact landscaping and subsection [7-11-3\(d\)\(7\)](#), Tree save areas.
2. Any Haywood Road Form District may modify the street buffer requirement of subsection [7-11-3\(d\)\(5\)](#) by placing a wall at a minimum height of three feet in place of the required shrubs.
3. When abutting a RS or RM district, the property line buffer requirements of subsection [7-11-3\(d\)\(1\)](#) for a Type A Bufferyard apply, except that when a wall is used (as described below), the bufferyard may be provided as follows:



- a. Depth: 10 feet min.
- b. Wall height: 6 feet min./8 feet max.
- c. Evergreen Trees: 3.
- d. Deciduous Trees (large): 3.
- e. Shrubs (large): 8.

B. *Grading.*

- 1. Speculative grading of land is not permitted within the Haywood Road Form District. No grading or removal of vegetation is permitted prior to approval of a site development plan.
- 2. Natural slopes in excess of 45 degrees must not be graded, and existing vegetation must not be removed.

4.3. *Signs.*

A. *Applicability.* The sign requirements of Article XIII apply in the Haywood Road Form District, except as identified below:

- 1. Subsection 7-13-4(a)(8)(a). See subsection 4.3.H for temporary and permanent window sign requirements.
- 2. A-frame signs are permitted as temporary signs, provided they comply with the requirements of subsection 7-13-4(a)(8)(c).

B. *Sign types allowed by district.* Signs are allowed by sub-district as set forth below. Specific requirements for each sign are shown on the following pages.

	Core HR-1	Expansion HR-2	Corridor HR-3	Traditional HR-4	Live-Work HR-5	Town HR-6
Wall Sign	P	P	P	P	P	P
Awning Sign	P	P	P	P	P	P
Canopy Sign	P	P	P	P	P	P
Projecting Sign	P	P	P	P	P	P
Window Sign	P	P	P	P	P	P
Post Sign	—	P	P	P	—	P
Monument Sign	—	—	—	—	—	P*

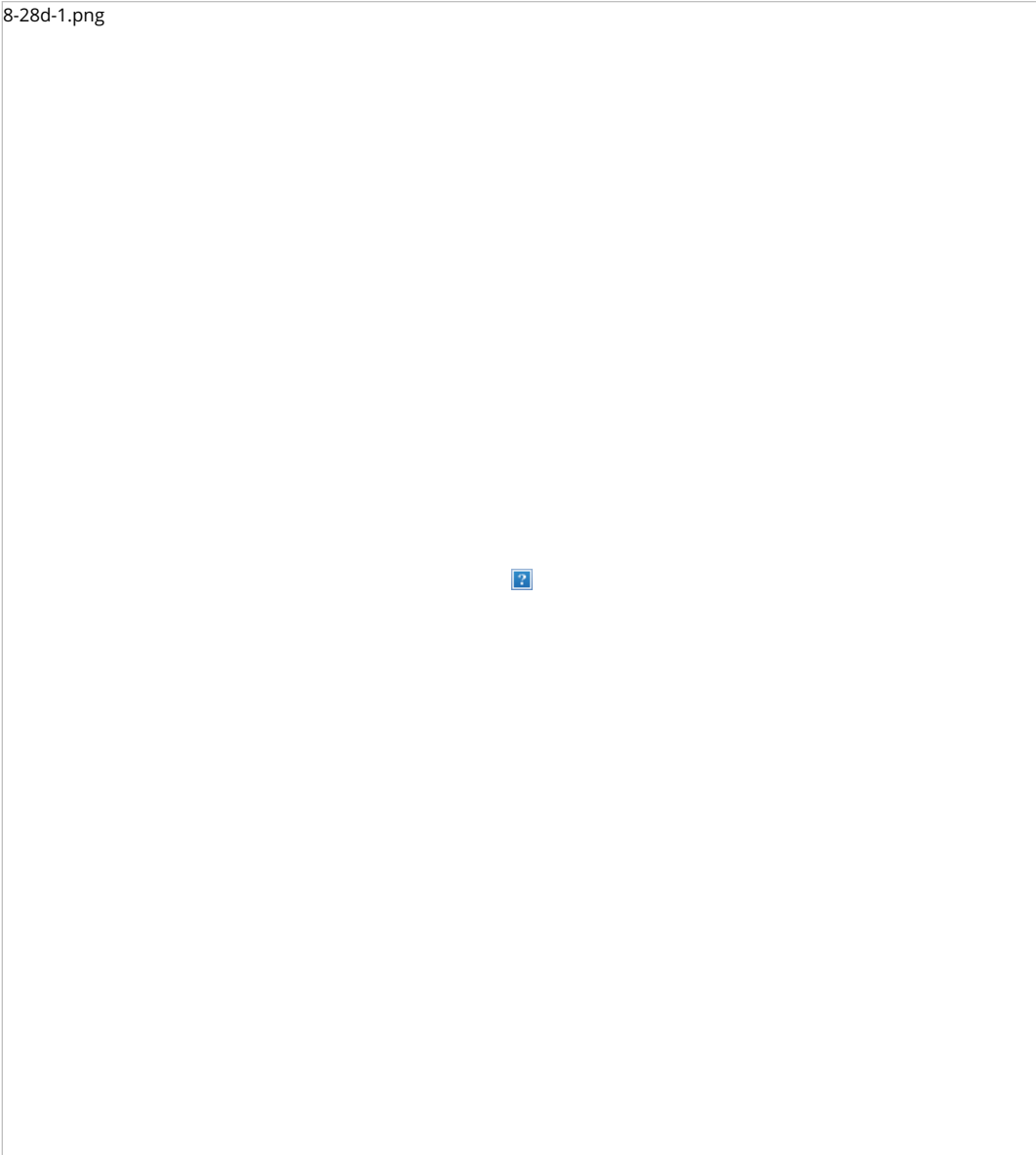
KEY: P = Sign type allowed — = Sign type not allowed * = Allowed on sites with street frontage on Patton Ave

C. *Number of signs allowed.*

- 1. *Wall signs, awning signs, canopy signs.* A maximum of two signs on a primary street (any combination of wall signs, awning signs or canopy signs) are allowed per tenant space. One additional sign is allowed on a side street.
- 2. *Projecting signs.* A maximum of one projecting sign is allowed per tenant space.
- 3. *Window signs.* The number of window signs is unlimited, provided the maximum percentage of all temporary and permanent signs covering ground story windows and doors is not exceeded.
- 4. *Post sign, monument sign.*
 - a. Where allowed, only one post sign or monument sign is allowed per street frontage, provided all signs are conforming.
 - b. One additional post sign or monument sign is allowed for properties with 1,000 feet or more of street frontage. Where more than one post sign or monument sign is allowed, signs along the same street frontage must be spaced a minimum of 500 feet apart.
 - c. Where a post sign is installed, only one wall, awning or canopy sign is allowed per tenant space.

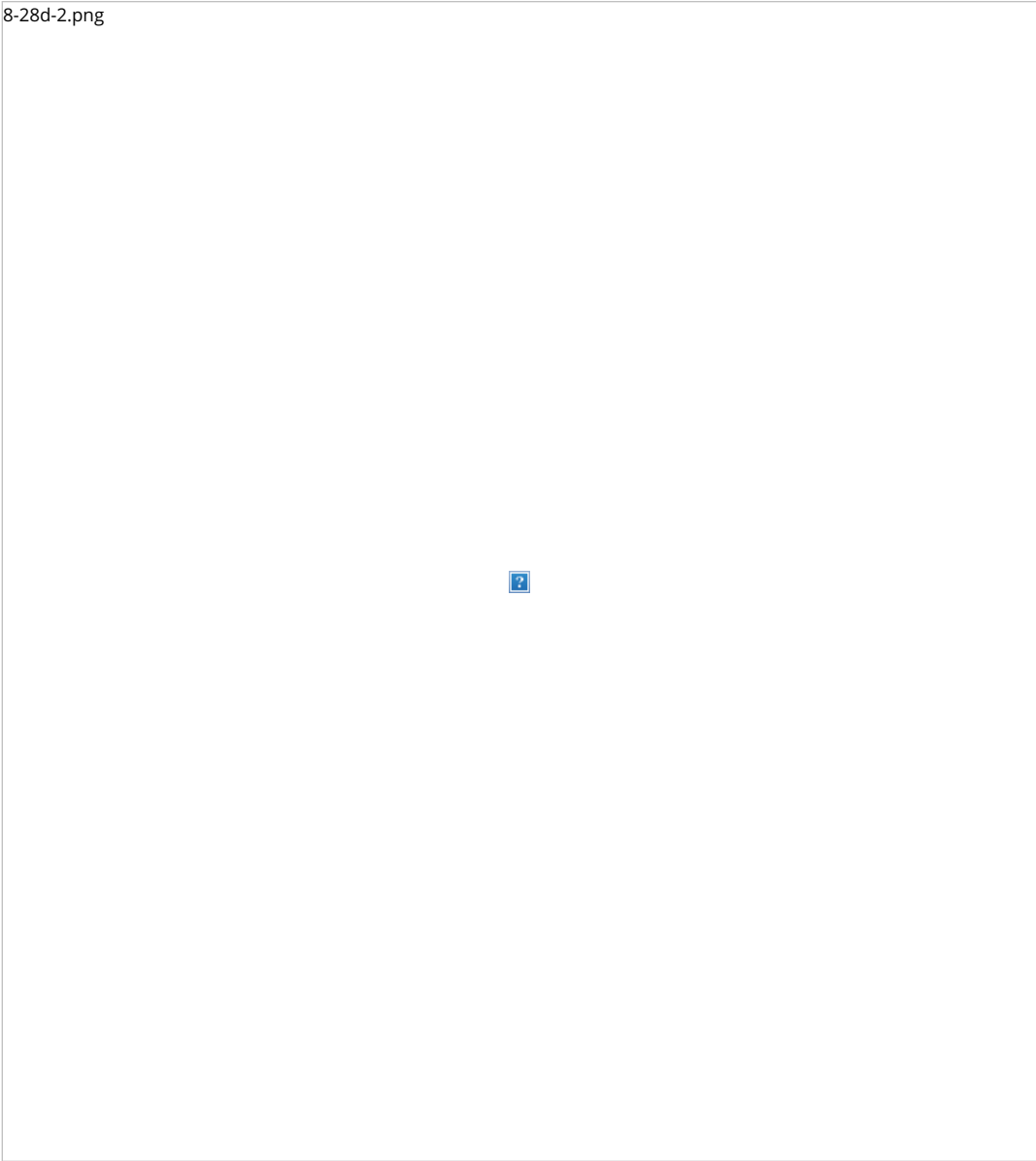
D. *Wall sign.*

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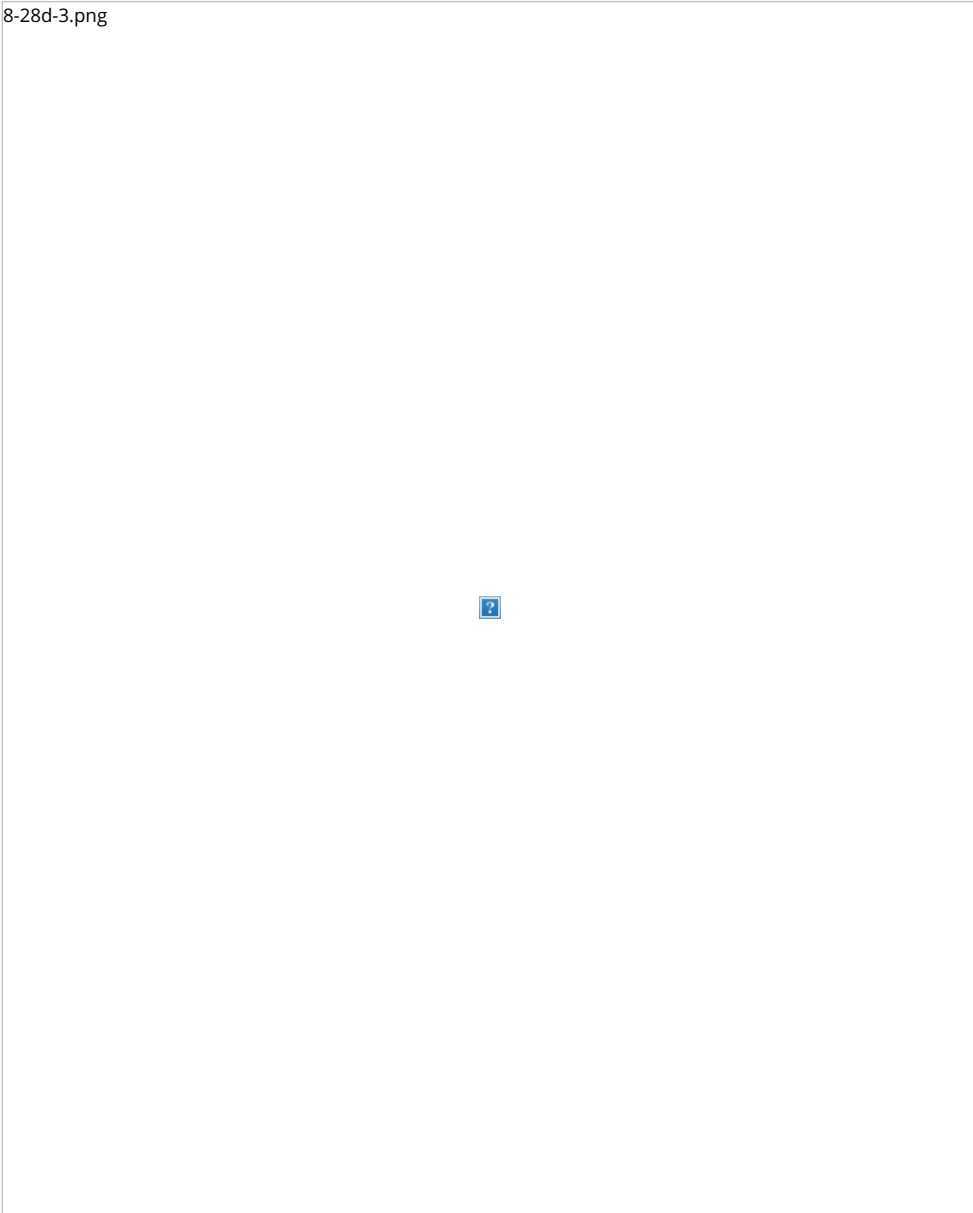
E. *Awning sign.*

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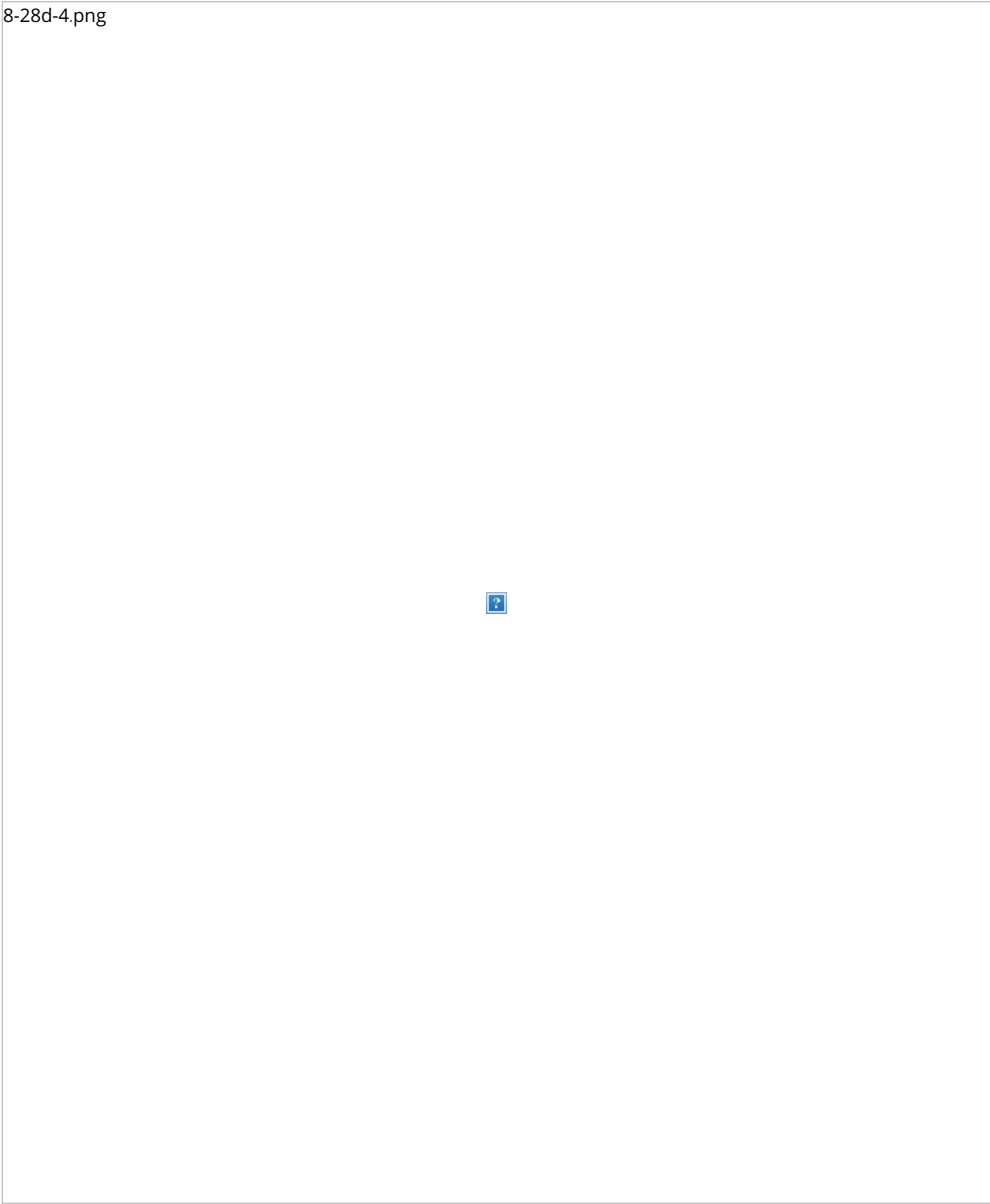
F. *Canopy sign.*

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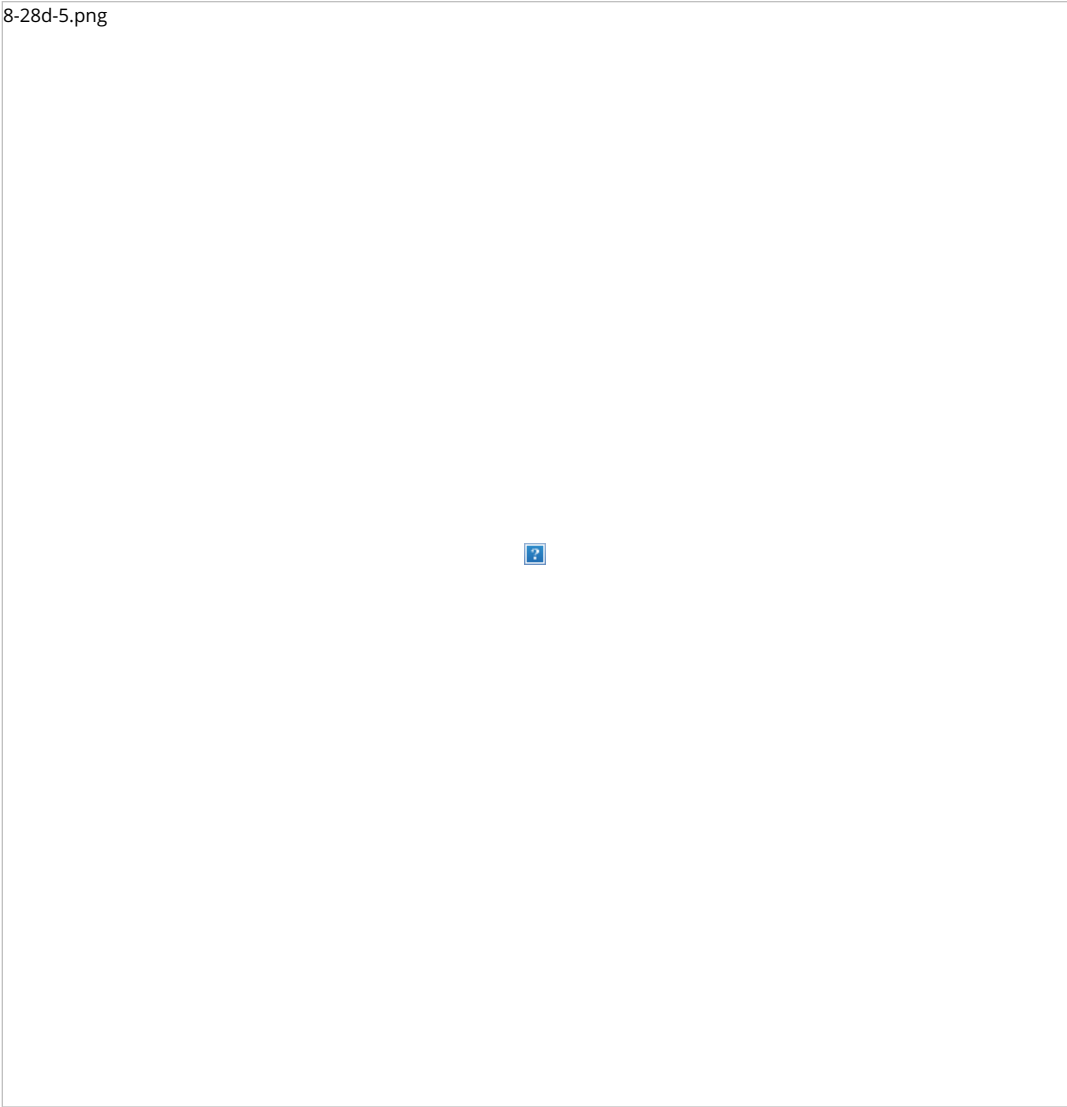
G. *Projecting sign.*

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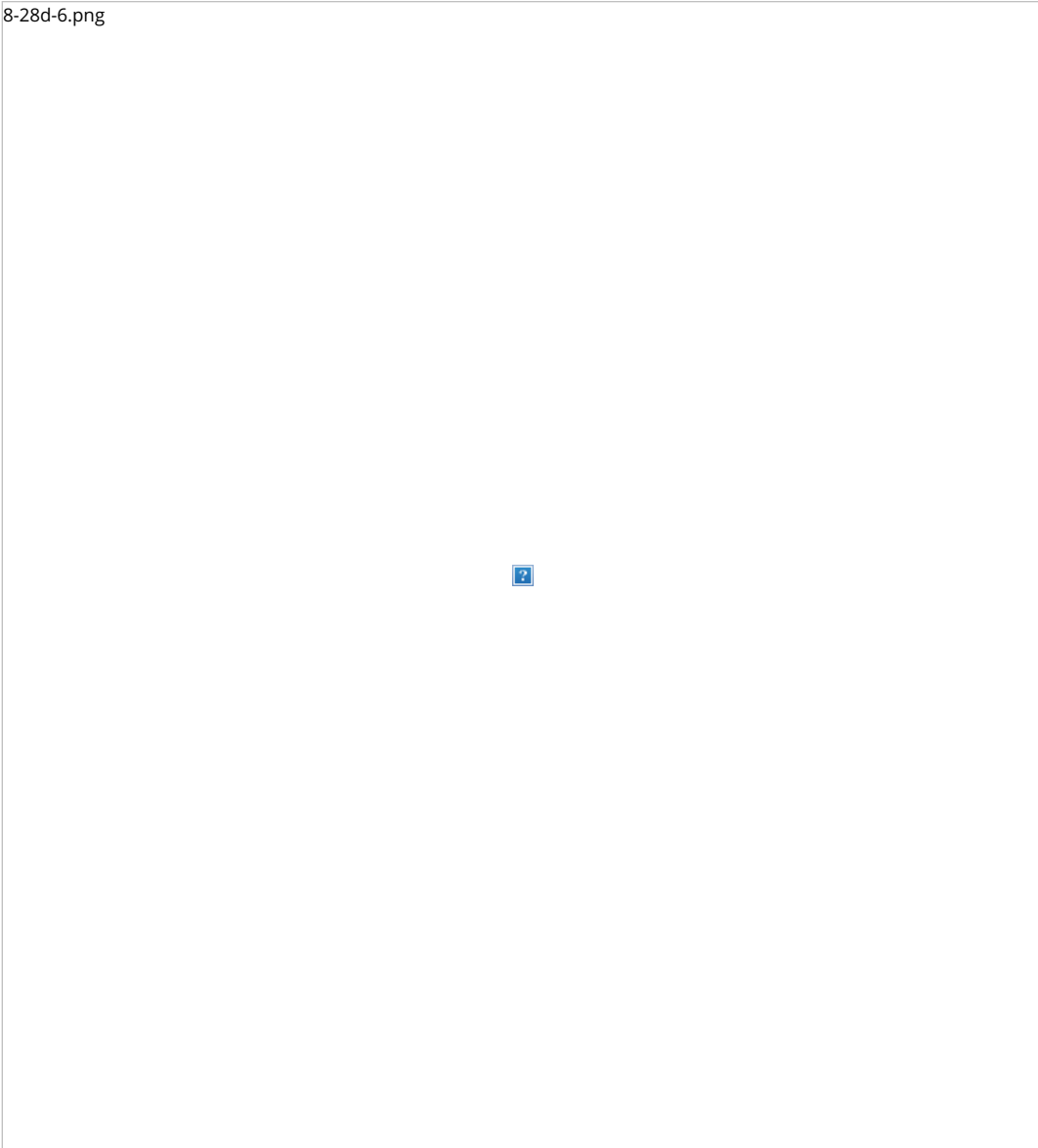
H. *Window sign.*

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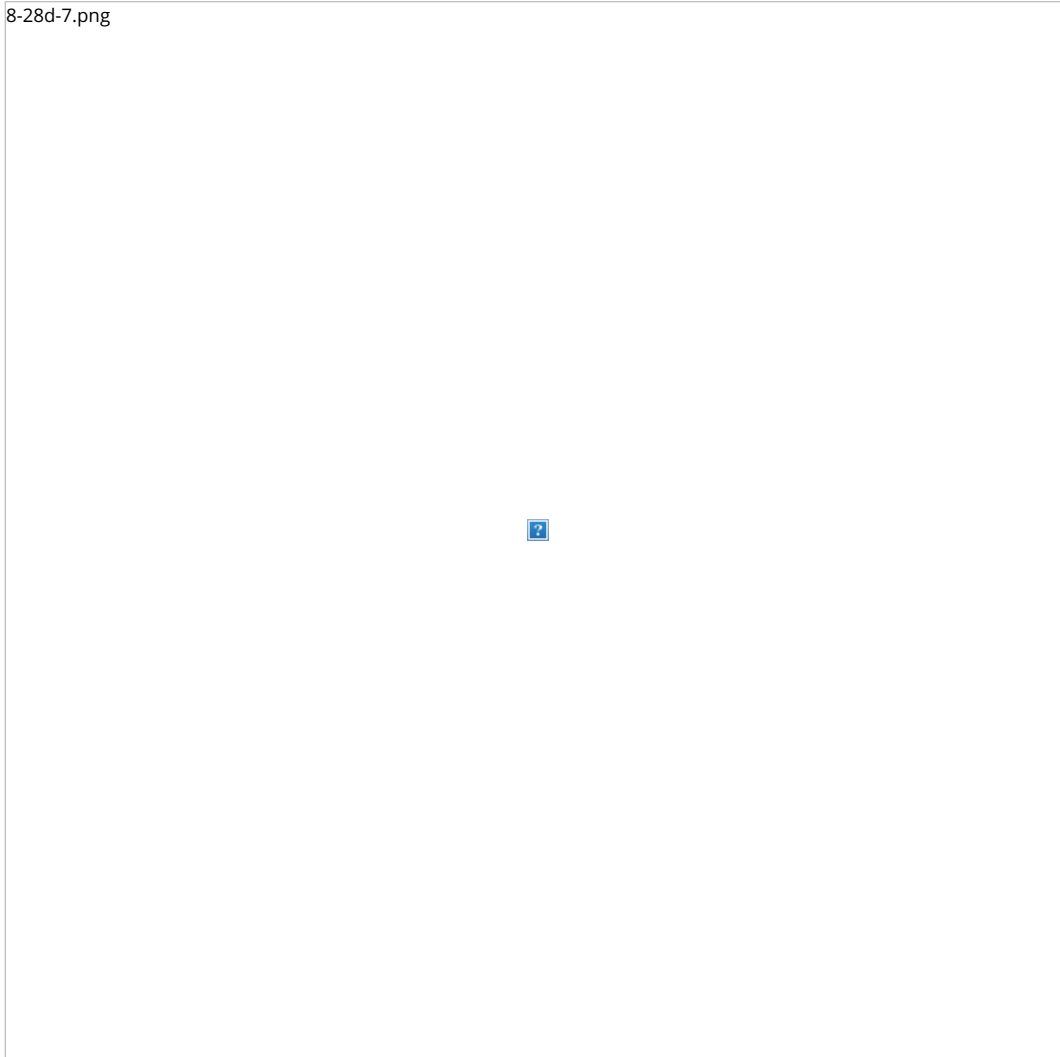
I. *Post sign.*

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j. *Monument sign.*

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K. *Illumination.* Illumination of signs must be in accordance with the following requirements.

1. Illumination permitted by sign type.

	Internal	External
Wall Sign	Yes	Yes
Awning Sign	No	No
Canopy Sign	Yes	Yes
Projecting Sign	No	Yes
Window Sign	No	No
Post Sign	No	Yes
Monument Sign	Yes	Yes

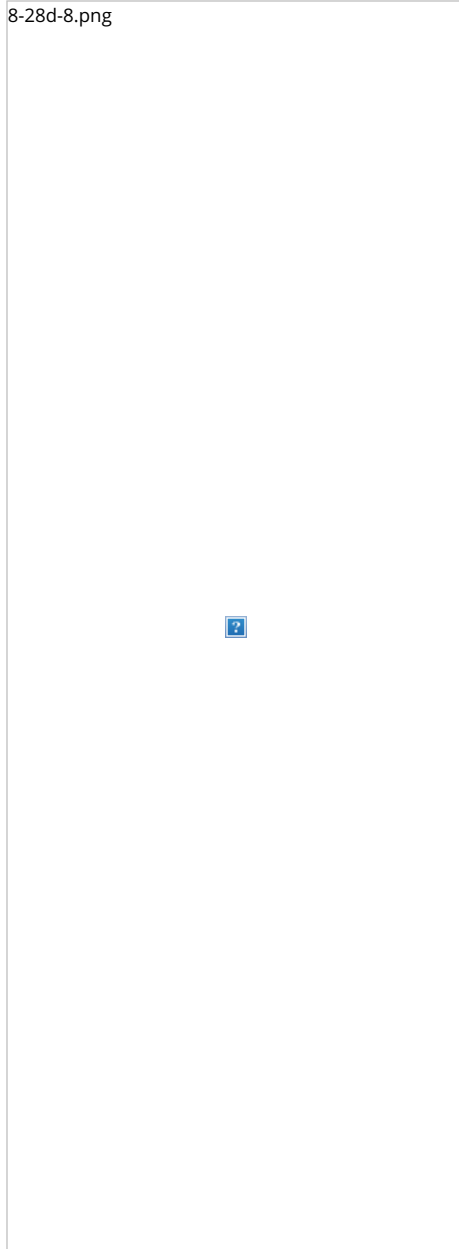
2. Prohibited light sources.

- a. Blinking, flashing and chasing.
- b. Bare bulb illumination.
- c. Colored lights used in any manner so as to be confused with or construed as traffic control devices.
- d. Direct reflected light that creates a hazard to operators of motor vehicles.
- e. Lights that outline property lines, sales areas, roof lines, doors, windows or similar area are prohibited, except for seasonal lighting or very low luminosity lighting displays using multiple lamps.

3. External illumination.

- a. Lighting directed toward a sign must be shielded so that it illuminates only the face of the sign and does not shine directly onto public right-of-way or adjacent properties.
- b. Lighting fixtures must be directed downward rather than upward.
- c. Projecting light fixtures used for externally illuminated signs must be simple and unobtrusive in appearance and not obscure the sign.

8-28d-8.png



4. Internal illumination.

- a. Channel letters may be internally lit or back-lit.
- b. For cabinet signs, the background must be opaque or a darker color than the message of the sign.
- c. Exposed neon may be used for lettering or as an accent.

5. Raceways and transformers.

- a. If a raceway is necessary, it cannot extend in width or height beyond the area of the sign.
- b. A raceway must be finished to match the background wall or canopy, or integrated into the overall design of the sign.
- c. Visible transformers are not allowed.

4.4. *Outdoor display and storage.*

A. *Applicability.* The requirements of this section apply where merchandise, material or equipment is stored outside of a completely enclosed building.

B. *Outdoor display.*

1. *Defined.*

- a.

The outdoor display of products actively available for sale. The outdoor placement of propane gas storage racks, ice storage bins, soft drink, video rentals or similar vending machines is considered outdoor display.

- b. Outdoor display does not include merchandise or material in boxes, in crates, on pallets or other kinds of shipping containers (see limited outdoor storage).

2. *Standards.*

- a. Outdoor display is only allowed with a permitted ground floor nonresidential use.
- b. Outdoor display must abut the primary façade with the principal customer entrance, and may not extend more than six feet from the façade or occupy more than 25 percent of the horizontal length of the façade.
- c. Outdoor display cannot exceed six feet in height.
- d. Outdoor display must be removed and placed inside a fully-enclosed building at the end of each business day, except propane gas storage racks, ice storage bins, soft drink, video rentals or similar vending machines may remain outside overnight.
- e. Outdoor display may not encroach upon any public right-of-way or sidewalk. Outdoor display may not impair the ability of pedestrians to use the sidewalk. There must be a minimum of six feet of clear distance of sidewalk at all times.

C. *Outdoor storage.*

1. *Defined.*

- a. Outdoor storage is the overnight storage of products or materials outside of a building.
- b. Outdoor storage includes merchandise or material in boxes, in crates, on pallets or in shipping containers, the overnight outdoor storage of vehicles awaiting repair, RV's and boats, garden supplies, building supplies, plants, fleet vehicles and other similar merchandise, material, vehicles, or equipment.

2. *Standards.*

- a. Outdoor storage is not permitted except with planning and zoning commission approval.
- b. The planning and zoning commission will determine where outdoor storage may be allowed on the site, and its extent (vertically and horizontally) must be shown on an approved site plan.

5.0. *Administration.*

5.1. *Form-based code administration.*

- A. *UDO administrative procedures apply.* The administrative procedures of the city's Unified Development Ordinance (chapter 7 of the Municipal Code) apply to this form-based code, except as expressly modified below.
- B. *Pre-application conference required.* A pre-application conference with the city's planning and development staff is required prior to any application for approval under this form-based code.

6.0. *Definitions.*

6.1. *Defined terms.*

A. *General meaning of words and terms.*

1. All words and terms used have their commonly accepted and ordinary meaning unless they are specifically defined in this Haywood Road Form District or the context in which they are used clearly indicates to the contrary.
2. When vagueness or ambiguity is found to exist as to the meaning of any word or term used, any appropriate canon, maxim, principle or other technical rule of interpretations or construction used by the courts of this state may be employed to resolve vagueness and ambiguity in language.
3. Terms defined for the purpose of the Haywood Road Form District may be found in [section 7-2-5](#)

(Ord. No. 4342, § 1e, 9-9-14)

ARTICLE IX. - OVERLAY DISTRICTS

Sec. 7-9-1. - Reserved.

Editor's note— Ord. No. 3328, § 1(j), adopted Jan. 24, 2006, deleted [§ 7-9-1](#) in its entirety. Former [§ 7-9-1](#) pertained to planned unit development overlay district and derived from Ord. No. 2369, § 1, May 27, 1997.

Sec. 7-9-2. - Historic Preservation Overlay District.

- (a) *Purpose.* Local historic districts are hereby deemed important assets of the City of Asheville. The historic districts are established for the purpose of protecting and conserving the heritage of the City of Asheville, Buncombe County and the State of North Carolina; for the purpose of safeguarding the character and heritage of the historic districts by preserving the historic districts as a whole and individual property therein that embodies important elements of its social, economic, cultural, political, archeological or architectural history; for the purpose of promoting the conservation of such historic districts for the education, pleasure and enrichment of the residents of the historic districts, the City of Asheville, Buncombe County, and the State of North Carolina as a whole; for the purpose of fostering civic beauty; and for the purpose of stabilizing and enhancing property values throughout the historic districts as a whole; thereby contributing to the improvement of the general health and welfare of the City of Asheville and the residents of the historic districts.
- (b) *Establishment of the historic districts.* Pursuant to N.C. Gen. Stat. sec. 160A-400. 4, local historic districts are hereby established as districts which overlay the general use zoning districts, the extent and boundaries of which historic districts are indicated on the official zoning maps for the City of Asheville. The city hereby re-adopts and designates as historic districts those historic districts described in Appendix 7E of this chapter. Additional local historic districts may be established following the required statutory procedure.
- (c) *Historic district commission.* The Asheville-Buncombe Historic Resources Commission established by the City of Asheville in Ordinance No. 1109, and by the County of Buncombe in Ordinance No. 1644, shall constitute a joint preservation commission and shall have the powers of a joint preservation commission as set forth in Part 3C of article 19 of Chapter 160A of the North Carolina General Statutes, or its successor.
- (d) *Permitted uses.* The historic districts contain several zoning classifications. All uses permitted in each of the zoning districts shall be permitted in the historic district pursuant to the requirements set forth in that zoning classification. Provided, however, when the provisions of this [section 7-9-2](#), and the guidelines and regulations promulgated hereunder, impose higher standards than are required for that zoning classification, the provisions of this section, and the regulations and guidelines promulgated hereunder, shall govern.
- (e) *Compliance with requirements.* Structures within the historic districts shall meet all requirements and standards of article VIII of this chapter in addition to those set forth in this section. Provided, however, no structure or part thereof within the historic districts shall extend nearer to or be required to be set back further from the front property line than the arithmetic mean distance of the setbacks of the nearest principal building within 150 feet on each side of such building and fronting on the same side of the

street.

(f) *Authentic restoration and reconstruction.*

(1) Authentic restoration or reconstruction is permitted, subject to approval of the historic resources commission, even though the authentic restoration or reconstruction does not meet with current setback and other requirements and standards of article VIII of this chapter. Authentic restoration or reconstruction shall mean exact replication of an historic structure to include, but not limited to siting, scale, massing, and materials of structure. Where it is found by the historic resources commission that an application for a building permit covers activity consisting of an authentic restoration or reconstruction in the same location as the original location and in the original structural conformation for a structure of historic and/or architectural significance to the historic district, such activity may be approved by the historic resources commission.

(2) The board of adjustment hears requests for variances from the requirements for setback and other standards established by article VIII of this chapter.

- a. The board of adjustment, may attach reasonable and appropriate conditions to the granting of such variances so that the public health, safety, and general welfare shall be protected.
- b. The board of adjustment shall not be authorized, in action undertaken by this subsection, to approve a use of property which is not permitted by right within the zoning district in which the property is located.

(g) *Parking waiver.* Where the historic resources commission, in considering an application for a certificate of appropriateness, shall find that the number of off-street parking spaces required by zoning regulations for a building or structure for which a building permit is requested would render the building incongruous with the historic aspects of the historic district, it may recommend to the board of adjustment that a variance be granted from the off-street parking requirements.

The board of adjustment may authorize a lesser number of off-street parking spaces provided the board finds, in addition to the required findings for granting a variance, as follows:

- (1) That the reduced number of spaces will not create problems due to increased on-street parking; and
- (2) That the reduced number of spaces will not constitute a threat to the public safety.

(h) *Certificate of appropriateness.*

(1) From and after the designation of a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, landscape and color or other appurtenant features), nor above ground utility structure, nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such historic district until after an application for a certificate of appropriateness has been submitted to and approved by the historic resources commission. Further, no archeological resource associated with such a structure or building shall be altered, moved, or removed within such historic district until after an application for a certificate of appropriateness as to the archeological evidence has been submitted to and approved by the historic resources commission.

No building permit granted for the purposes of constructing, altering, moving, or demolishing structures within the historic districts shall be issued prior to the issuance of a certificate of appropriateness by the historic resources commission.

A certificate of appropriateness may be issued subject to reasonable conditions to carry out the purposes of this section. A certificate of appropriateness shall be required whether or not a building permit is required. Any building permit or such other permit not issued in conformity with this section shall be invalid.

For the purpose of this section, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior building or other structure, including the kind, texture and color of the building materials, the size and scale of the building, and the type, color and style of all windows, doors, light fixtures, signs and other appurtenant fixtures and important landscape and natural features of the lot on which the building or other structure is located. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs.

The historic resources commission shall have no jurisdiction over interior arrangement and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the historic district which would be incongruous with the special character of the historic district.

- (2) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district which does not involve a substantial change in design, material, or outer appearance thereof, nor to prevent the construction, re-construction, alteration, restoration, or demolition of any such feature which the chief building inspector of his designee shall certify in writing to the historic resources commission is required by the public safety because of an unsafe or dangerous condition.
- (3) An application for a certificate of appropriateness authorizing the relocation, demolition, or destruction of a building or structure or the removal or obliteration of an archeological resource within the historic district may not be denied except for as set forth hereinafter. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval of the certificate of appropriateness. The maximum period of delay authorized by this subsection shall be reduced by the historic resources commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the historic resources commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building, structure of site. If the historic resources commission finds that the building, structure or site has no special significance or value toward maintaining the character of the historic district, it shall waive all or part of such period and authorize earlier demolition or removal.

If the historic resources commission has voted to recommend designation of an area as a historic district, and final designation has not been made by the city council, the demolition or destruction of any building, structure, or site located in the proposed historic district may be delayed by the historic resources commission for a period of up to 180 days or until the city council takes final action on the designation, whichever occurs first.

It shall constitute a violation of this chapter by the property owner where any building or structure which is located within a historic district is subject to demolition due to neglect; provided, however, where the property owner can show evidence of undue economic hardship satisfactory to the historic resources commission, no violation shall be deemed to have occurred.

An application for a certificate of appropriateness authorizing the demolition or destruction of a building, structure, or site determined by the state historic preservation officer, or his/her successor, as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the historic resources commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

The procedures for obtaining a certificate of appropriateness are set forth in [section 7-5-12](#) of this chapter.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-9-3. - Downtown Design Review Overlay District.

- (a) *Purpose.* Downtown design review assists in protecting the downtown local architectural heritage and in the preservation of the considerable economic investments that have occurred over the years. The downtown design review process seeks to encourage renovation and new development in a manner that will promote visual harmony, enhance the historical integrity, and develop creative design solutions. While the design guidelines will not dictate architectural styles, they will suggest a variety of design options for achieving compatibility within the designated boundaries.
- (b) *Establishment.* There is hereby established a Downtown Design Review District as follows:
Beginning at the intersection of Chestnut Street and Furman Street in the City of Asheville and running thence westerly along Chestnut Street to Elizabeth Place; then southerly along Elizabeth Place to Starnes Avenue; thence westerly along Starnes Avenue to Flint Street; thence southerly along Flint Street to Cherry Street; thence westerly along Cherry Street to Montford Avenue; thence northerly along Montford Avenue to Hill Street; thence westerly along Hill Street to Michael Street; thence crossing Interstate Highway 240 in a southerly direction following its entrance ramp to Haywood Street; thence southwesterly along Haywood Street, crossing Patton Avenue, and continuing southwesterly along Haywood Street to Knoxville Place; thence southeasterly along Knoxville Place to Hilliard Avenue; thence easterly along Hilliard Avenue to South French Broad Avenue; thence southerly along South French Broad Avenue to Dailey Drive; thence easterly along Dailey Drive to South Grove Street; thence southerly along South Grove Street to Blanton Street; thence southerly along Blanton Street to Choctaw Street; thence easterly along Choctaw Street to Biltmore Avenue; thence northerly along Biltmore Avenue to McCormick Place; thence northeasterly along McCormick Place to South Charlotte Street, thence northerly along South Charlotte Street to Martin Luther King Jr. Drive; thence northeasterly along Martin Luther King Jr. Drive to Mountain Street; thence easterly along Mountain Street to College Street; thence due north to Interstate Highway 240; thence westerly along Interstate Highway 240 to its intersection with a southerly projection of Furman Avenue; thence northerly along Furman Avenue to the point of beginning.
- (c) *Boundaries.* The Asheville Downtown Commission shall be and is hereby authorized to divide the Downtown Design Review District into the following boundaries as it may find appropriate:
- (1) *Core area.* The centralmost portion of the downtown area, wherein the greatest concentration of properties exist which reflect the unusual character and identity for the downtown area.
 - (2) *Gateway corridors.* Properties along major streets that lead into the core area and establish a sense of character for the downtown area.
 - (3) *Periphery.* That portion of the Downtown Design Review District not included in the core area or gateway corridors.
- The official Downtown Design Review District map can be reviewed in the planning and development department and at the permitting center.
- (d) *Authority to establish guidelines for new construction and rehabilitation.* The Asheville Downtown Commission shall be and is hereby authorized to establish guidelines for new construction and rehabilitation in the Downtown Design Review District, including new construction, rehabilitation, illumination, signs, color, painting and cleaning, and landscape and site design. The Asheville Downtown Commission may establish different guidelines for each of the three categories of property within the Downtown Design Review District.
- (e) *Review of work requiring permits, review, or variance.* All construction work that requires a building, sign, zoning, or demolition permit, or a variance, must be submitted to the planning and development department for review prior to the issuance of the permit. Routine maintenance shall not be subject to review, but procedures for cleaning and painting buildings must be reviewed. In addition, proposed exterior illumination, erection of fences and walls, and parking lot modifications must be reviewed.
- (f) *Application for design review.* Each person desiring to undertake an activity which is subject to review pursuant to this section shall submit to the planning and development department a written application for design review. In the case of new construction, rehabilitation construction, illumination, signs, landscape or site design, the application shall be accompanied by plans sufficient in detail to describe the proposed undertaking. In the case of applications for review regarding color, painting and cleaning, the application shall be accompanied by such written statement as may be required to describe sufficiently the proposed undertaking.
- (g) *Review of applications for design review.* Applications for design review shall be scheduled for review by the planning and development department and the Asheville Downtown Commission as follows:
- (1) Minor works, as defined in subsection 7-5-10(a)(1), shall be reviewed and processed by the planning and development department staff.
 - (2) For design review applications involving new construction over 5,000 square feet in size, significant rehabilitation, and site design and demolition, the Asheville Downtown Commission shall review the application at its first regular meeting immediately following the filing of the application and supporting documentation, without the necessity of giving notice of a public hearing.
- (h) *Recommendations on the design.* The Asheville Downtown Commission shall make recommendations regarding the design of the undertaking proposed by the applicant based upon the guidelines adopted by the downtown commission.
- (i) Implementation of plans according to recommendations. Applicants are strongly encouraged by the city council to implement their plans for such activities within the Downtown Design Review District in accordance with the recommendations of the Asheville Downtown Commission.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2624, § 2, 10-12-99)

Sec. 7-9-4. - Manufactured Housing Overlay District.

- (a) *Purpose.* The Manufactured Housing Overlay District is established to provide a procedure for identifying areas in which manufactured housing may be located on individual lots and to establish standards for the individual manufactured homes. This overlay district will expand the range of housing opportunities available to residents of Asheville while assuring that manufactured housing is compatible with existing homes in the area.
- (b) *Permitted uses.* In addition to the uses permitted in the underlying zoning district, individual manufactured homes located on individual lots shall be permitted in the Manufactured Housing District provided that manufactured homes meet the development standards set forth in subsection 7-9-4(c) below.
- (c) *Development standards.* Manufactured homes to be located on an individual lot shall meet the following standards. No variances shall be granted from these standards.
- (1) The manufactured homes must meet the standards set by the department of housing and urban development (hereinafter referred to as "HUD") as of the date the application is made for a zoning permit to locate the manufactured home on an individual lot. If the manufactured home does not meet the standards set by HUD as of that date, a zoning permit for location of the manufactured home on an individual lot may be issued only if the city, or county if in the extraterritorial jurisdiction of the city, building inspector inspects the plumbing, heating and air conditioning, and electrical systems of the manufactured home and determines that any deviations from the current HUD standards are not life threatening. After a zoning permit has been issued for the location of the manufactured home on an individual lot, a new zoning permit must be issued in order for it to be relocated to another individual lot. Before a zoning permit is issued for the relocation, the manufactured home must meet the standards of the North Carolina State Building Code in effect at the time of original construction.
 - (2) The tongue, axles, running lights, and removable towing apparatus must be removed prior to the issuance of a certificate of occupancy for the individual home.
 - (3) The manufactured home shall be placed so that its longest side is parallel to the front property line of the lot. Provided, however, the manufactured home may be placed so that its longest side is perpendicular to the front property line if an addition, whose design is compatible with the manufactured home, is attached to the manufactured home at the point nearest the front property line and if the width of the manufactured home with the addition exceeds 50 percent of its length.
 - (4)

Exterior siding of the manufactured home shall consist of wood, hardboard, or aluminum (vinyl covered or painted aluminum, but in the case of painted aluminum, the painted finish shall not exceed the reflectivity of gloss white paint). The exterior siding shall be comparable in composition, appearance, and durability to exterior siding commonly used in standard residential construction.

- (5) The manufactured home shall be attached to a continuous permanent foundation of brick or block which is unpierced except for required ventilation and access as required by the North Carolina State Building Code.
 - (6) The roof pitch for the manufactured home shall have a minimum vertical rise of three feet for each 12 feet of horizontal run. The roof shall be finished with a type of shingle that is commonly used in standard residential construction. All roof structures shall provide an eave projection of no less than six inches, which may include a gutter.
 - (7) The manufactured home may be attached to a basement structure, but the basement structure must meet the requirements of the North Carolina State Building Code.
 - (8) The length of the manufactured home shall not exceed four times the width of the home, excluding additions.
 - (9) Structural additions to manufactured homes (such as, but not limited to, porches and decks) are encouraged, but not required. Those structures shall comply with the standards of the North Carolina State Building Code.
 - (10) The manufactured home shall have a minimum of 1,100 square feet of enclosed and heated living area.
 - (11) The manufactured home must be set up in accordance with the standards established by the North Carolina Department of Insurance and shall be properly anchored in accordance with the North Carolina State Building Code. The set up and anchoring must be done by persons licensed by the State of North Carolina for such work.
 - (12) Walks and driveways for the manufactured home must be paved, graveled, or be of some other dustless, all-weather surface.
 - (13) Individual lot dimensions and yard requirements for manufactured homes on individual lots shall meet the standards established by the underlying zoning district for single-family residential development.
- (d) *Designation of manufactured housing districts.*
- (1) *Treated as map amendments.* Designation of properties as manufactured housing districts shall be treated as map amendments. The designation shall be subject to the procedures and requirements set forth in article VII of this chapter.
 - (2) *Guidelines for identifying manufactured housing districts.* The following guidelines shall be used in identifying potential areas for designation as manufactured housing districts:
 - a. Manufactured homes located on individual lots and meeting the development standards set forth in subsection 7-9-5(c) above would be architecturally compatible with existing site-built homes in the area;
 - b. Manufactured homes should be located in the area prior to its designation as a manufactured housing district and should comprise at least 20 percent of the homes in the area;
 - c. Vacant land should be available upon which to locate manufactured homes; and
 - d. The area should be a minimum of five acres.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-9-5. - Manufactured Housing Community Overlay District.

- (a) *Purpose.* The Manufactured Housing Community Overlay District is established to provide standards for the development of manufactured housing communities in Asheville and its area of jurisdiction. Manufactured housing communities can provide alternative, affordable housing opportunities for residents of the city. Standards are established in this district for the following additional purposes:
- (1) To establish requirements designed to assure that the design and construction of the street system, utilities, lot layouts, and other improvements in the manufactured housing community are in harmony with surrounding development; and
 - (2) To protect property values, preserve the character and integrity of the community or individual neighborhoods within the community, and promote the health, safety, and welfare of area residents through the provision of standards for infrastructure and open space.
- (b) *Permitted uses.* In addition to the uses permitted in the underlying zoning district, manufactured housing communities meeting the standards set forth in this section shall be permitted in this overlay district. Single manufactured homes are permitted on individual lots provided they comply with standards set forth in section 7-9-4(c) of this chapter.
- (c) *Design standards.*
- (1) *General requirements.*
 - a. No manufactured housing community shall be approved for a site less than three contiguous acres under single ownership or control.
 - b. Maximum allowable density in the manufactured housing community shall be seven dwelling units per buildable acre (land area excluding floodways, wetlands, and slopes in excess of 33 percent).
 - c. A manufactured housing community shall comply with the provisions for subdivision and multi-family development signs in Article XIII of this chapter.
 - d. A manufactured housing community may have a manufactured home as a designated office for the operator/manager.
 - e. There shall be no more than one manufactured home or mobile home per manufactured home space.
 - f. Each manufactured home shall be set up and installed in accordance with the State of North Carolina regulations for installation of manufactured homes adopted and published by the North Carolina Department of Insurance.
 - g. The operator/manager of a manufactured housing community shall designate and enforce an uniform type of underpinning of all manufactured homes in the community.
 - (2) *Manufactured home space requirements.*
 - a. Each manufactured home space shall have a minimum width of 50 feet and shall be open and unobstructed.
 - b. Minimum lot size for a manufactured home space shall be 5,000 square feet.
 - c. Each manufactured home shall be located at least 20 feet from any other manufactured home or structure within the community, excluding storage buildings for use with the individual home. Each home shall be at least 35 feet from any property line. If the property abuts a public street, the setback shall be 40 feet. Each home shall be setback at least 20 feet from streets within the community.
 - d. A manufactured home shall not occupy an area in excess of one-third of the area of its respective space. The total occupied area of the manufactured home and its accessory buildings shall not exceed one-half of the total area of the space.
 - e. Each manufactured home space shall have a permanent site number sign that is clearly visible from the street running in front of the home and located on the power panel box serving the home.

- f. There shall be front and rear steps for each manufactured home. If the residents elect to have decks, the home shall be required to have steps until the decks are completed. These decks shall comply with the North Carolina State Building Code. The deck area shall be not less than 16 square feet in area, and not less than four feet in width.

(3) *Open spaces.*

- a. A minimum of ten percent of the total area of the manufactured housing community shall be designated as common open space. This open space may include active or passive recreation facilities to cater to the occupants of the community. Such open spaces shall be centrally located and accessible to all manufactured homes within the community by means of sidewalks and walkways.
- b. The following areas shall not be included as open space:
1. Area within the required individual manufactured home space;
 2. Parking areas;
 3. Area used for landscaping along streets or at the perimeter of the property of the manufactured housing community; and
 4. Not more than 50 percent of the area required for setbacks shall be designated as open space.
- c. Open spaces shall be maintained in accordance with the standards set forth in subsection 7-9-5(c)(8) of this chapter.

(4) *Off-street parking.*

- a. A minimum of two parking spaces shall be provided for each manufactured home.
- b. A minimum of one parking space for every five manufactured homes shall be provided for visitor parking purposes.
- c. Handicapped parking shall be provided as required by the North Carolina Accessibility Code.
- d. Parking spaces shall be constructed with a minimum of three inches of compacted gravel, stone, or hard surface materials, bordered by landscaping timbers, brick, block, or other material which defines the edge of the parking area/driveway.

(5) *Street and walkways.*

- a. All streets within the manufactured housing community shall have a right-of-way width of 30 feet with a pavement width of at least 20 feet, not including parking spaces.
- b. Streets within the manufactured housing community shall be constructed to provide all weather access to all manufactured home areas. Streets shall be constructed with a minimum of six inches of compacted stone base and one and one-half inches of I-2 asphalt.
- c. The grade of streets within the community shall not exceed 15 percent.
- d. The street layout shall be designed to provide for the continuous flow of traffic with cul-de-sacs permitted. Cul-de-sac streets shall have a maximum length of 1,000 feet and shall include a cul-de-sac bulb of 45 feet radius. All dead-end streets shall have a turn-around area with a minimum 45-foot radius.
- e. Traffic control signs (stop, yield, and speed signs) shall be placed throughout the community where necessary as determined by the director of public works.
- f. Each street shall have a permanent sign installed with a designated name identifying each street. The sign shall be approved by the director of public works.
- g. Streets and parking areas shall be maintained by the operator/manager of the community.
- h. Each space within the community shall have direct access to a local community street. The driveway shall be an unobstructed area, not less than ten feet in width and shall be constructed with a minimum of three inches of compacted gravel, stone, or hard surface materials. It shall be well-drained and shall meet the standards of residential driveways as set forth in the City of Asheville Standard Specifications and Details Manual. If constructed of gravel or stone, the driveway shall be bordered with materials which define the edge of the driveway.
- i. The community shall abut a public street, with a minimum street frontage of 50 feet.
- j. Street lighting shall be provided throughout the community.
- k. Permanent, well-drained walks not less than four feet in width shall be provided from each manufactured home space to the community buildings and to public street or community streets.

(6) *Utilities.*

- a. An adequate, safe potable supply of water shall be provided for the community. The source of the water supply shall be either through a municipal or public water system, with the community connecting to the public water system within the city limits. When such a system is not available in the extraterritorial jurisdiction of the city, the community must be serviced by a water supply approved by the North Carolina Division of Environmental Management or the Buncombe County Health Department.
- b. An adequate and safe sewage disposal system shall be provided in the manufactured home community. If the park is located within the city limits, it must be connected to the sewer system of the Metropolitan Sewerage District of Buncombe County. In the extraterritorial jurisdiction of the city, the collection systems, sewage treatment facilities or individual septic tank systems shall be approved by the North Carolina Division of Environmental Management or the Buncombe County Health Department.
- c. Plans for utilities shall be approved by the appropriate regulatory agencies.
- d. There shall be a storage and disposable system for solid waste for the community in order to alleviate health and pollution hazards. The residents of each home shall have a sufficient number of containers that have adequate capacity and can be tightly sealed. It shall be the responsibility of the operator/manager of the community to see that a municipal or private solid waste disposable service is provided to the residents of the community on a weekly basis. This may or may not be at the expense of the residents.
- e. Each manufactured home space shall have proper drainage to prevent accumulation of water. Storm drainage facilities shall include suitable on-site detention facilities when deemed appropriate by the director of public works and/or the city engineer. Such facilities shall be sufficient to transport safely through the community all volumes of water generated upstream and on-site. Storm drainage shall be provided in accordance with the stormwater management regulations set forth in article XII of this chapter and all other applicable laws and regulations of the City of Asheville and other governmental agencies.

(7) *Landscape and buffering.*

- a. Buffering shall be provided around the boundaries of the community as required by section 7-11-3 of this chapter. In no case shall the required buffer be less than a type "B" buffer as described in section 7-11-3.
- b. Street trees shall be provided along internal streets within the community at the ratio established by section 7-11-3 of this chapter for street trees along public streets.
- c. Trees shall be provided along the lot lines of manufactured home spaces parallel to internal streets at the ratio of one tree per 40 feet of lot line.
- d.

Material and equipment storage buildings, outdoor storage areas, refuse collectors, and dumpsters shall be screened from view from adjoining properties, streets, and open spaces.

- (8) *Grounds and buildings.*
- a. The grounds of a manufactured home community shall be maintained free of debris, trash, and litter.
 - b. Grounds, buildings, and storage areas within the community shall be maintained to prevent the infestation of rodents, flies, mosquitoes, and other pests.
 - c. Grounds within the community shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, and other weeds.
 - d. All grounds within the community shall have proper drainage to prevent the accumulation of water.
 - e. All recreational areas provided by the owner of the manufactured home community shall be maintained in a safe and sanitary manner by the operator/manager.
 - f. The operator/manager of the community shall provide space on the grounds for mail service to the residents of the community.
- (d) *Inspection.* Employees of the City of Asheville shall have the right to make inspections of the community to determine that the requirements of this section are met. These inspections shall be conducted at least once a year. It shall be the responsibility of the operator/manager of the manufactured home community to see that the requirements of the section are met. The operator/manager shall be responsible for correcting any and all violations of this section.
- (e) *Expansion of existing manufactured housing communities.* Manufactured home communities existing at the time of adoption of this section shall not be allowed to expand or increase unless such expansion meets the requirements set forth in this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, § 10, 11-11-97; Ord. No. 3210, § 1, 1-25-05; Ord. No. 4208, § 1a, 6-25-13)

Sec. 7-9-6. - Blue Ridge Parkway Overlay District.

- (a) *Purpose.* Realizing the importance of the Blue Ridge Parkway to the economy of Asheville and western North Carolina, the Blue Ridge Parkway Overlay District is created to protect and preserve the unique features of this asset to the city and region. The standards established in this district will protect the scenic quality of the Blue Ridge Parkway and reduce encroachment on its rural setting.
- (b) *Applicability.* The provisions set forth in this section for the Blue Ridge Parkway Overlay District shall apply to all properties within 1,320 feet of the centerline of the Blue Ridge Parkway located within the corporate limits of the City of Asheville and its extraterritorial jurisdiction. Both privately and publicly owned property shall be subject to the requirements set forth herein.
- (c) *Development standards.*
- (1) *Setback requirements.*
 - a. *Principal buildings.* Principal buildings and structures to be located adjacent to the Blue Ridge Parkway shall have a minimum setback of 50 feet from the edge of property owned by the United States government and designated as the Blue Ridge Parkway if the buildings and structures are visible from the Blue Ridge Parkway roadway.
 - b. *Accessory buildings.* Accessory buildings and structures to be located adjacent to the Blue Ridge Parkway shall have a minimum setback of 30 feet from the boundary of property owned by the United States government and designated as the Blue Ridge Parkway if the buildings and structures are visible from the Blue Ridge Parkway roadway.
 - (2) *Building heights.* No building or structure shall be constructed with a height in excess of 40 feet within 1,320 feet of the centerline of the Blue Ridge Parkway.
 - (3) *Buffering requirements.* Development of any type, other than single-family residential, that is:
 - a. On property adjacent to Blue Ridge Parkway property; and
 - b. Is located within 1,320 feet of the centerline of the Blue Ridge Parkway; and
 - c. Which development will be visible from the Blue Ridge Parkway, shall provide a type "B" buffer, as described in subsection 7-11-2(d)(1)(a) of this chapter between the proposed development and the Blue Ridge Parkway. The preservation of existing trees within the bufferyard is encouraged.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3572, § 1(l), 1-8-08)

Sec. 7-9-7. - Transition Overlay District.

- (a) *Purpose.* Transition overlay districts address concerns unique to an area when other zoning mechanisms cannot achieve the desired results. An area may be unique based on natural, economic, or historic attributes; be subject to problems from gradual, rapid, or severe transitions of land use; or contain public facilities which require specific land use regulations for their efficient operation. Transition districts provide a means to modify zoning regulations for specific areas defined in special plans or studies.
- (b) *Establishment.* A Transition Overlay District may be established as the result of an area planning study following review and approval as set forth in section 7-5-7 of this chapter. A neighborhood plan, a corridor plan, or an area plan shall be completed prior to the establishment of the Transition Overlay District.
- (c) *Scope of transition overlay districts and relationship to other regulations.* Transition overlay district standards are applied in conjunction with the underlying zoning district. The transition district provisions may modify any portion of the standards of the underlying zoning district. The provisions may apply additional requirements or allow exceptions to general regulations. When there is conflict between the transition overlay district and the standards established by the underlying zoning district or other regulations of this chapter, the transition overlay district standards shall control.
- (d) *Adoption criteria.* A Transition Overlay District may be established if all the following criteria are met:
 - (1) The area proposed for the transition district has special characteristics or problems of a natural, economic, historic, public facility, or transitional land use or development nature which are not common to other areas of the city;
 - (2) Existing general use districts and other overlay zoning districts are inadequate to achieve a desired public benefit or to address an identified problem in the area;
 - (3) The proposed transition overlay district and standards are the result of a study and plan documenting the special characteristics or problems of the area and describing how a transition overlay district will best address the relevant issues; and
 - (4) The standards of the transition overlay district are in conformance with the comprehensive plan, or there is a determination that the comprehensive plan should be amended to reflect the proposed standards, and continue to meet the general purpose and intent of the underlying zoning district and any applicable overlay zoning district and do not prohibit uses or development allowed by the underlying zoning district without clear justification.
- (e) *Review.* Transition overlay districts and their standards shall be reviewed periodically to determine whether they are still needed, should be continued or amended. Transition overlay districts and their standards shall be reviewed as part of the process for the update of the comprehensive plan.
- (f) *Transition district overlay maps.* The boundaries of each transition district established shall be identified on the Official Zoning Maps of the City of Asheville. Copies of this map shall be maintained in the planning and development department.
- (g) *Standards.* In developing the transition overlay district, all standards for land development in the area may be addressed. Standards established for the transition overlay district shall be based upon recommendations set forth in the plan prepared for the area to be included in the transition overlay district. Standards for the transition overlay district may exceed or otherwise vary from the standards found in the underlying zoning district.

The standards which may be addressed in the transition overlay district include, but are not limited to, the following:

- Uses
- Setbacks
- Parking
- Lot dimensions
- Landscaping
- Signage
- Building scale and height

All standards must be approved as part of the transition overlay district in accordance with the procedure for text amendments and map amendments set forth in article VII of this chapter.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-9-8. - Head of Montford Transition Overlay District.

(a) *Purpose.* The Head of Montford Transition Overlay District is established to provide for the development of civic, office, limited retail, and residential uses in an area of transition between the Central Business District and the Montford neighborhood. The development standards for this overlay district are designed to be sensitive to the historic context of the area, to minimize impacts on adjacent residential uses, and to encourage compatibility in the design of new developments. This district should be sensitive to a significant pedestrian population, but also provide for adequate and safe vehicular access.

(b) *Permitted uses.*

Residential:

- Accessory apartments
- Dwellings, multi-family
- Dwellings, single-family detached
- Dwellings, single-family zero lot line

Recreational:

- Passive parks

Institutional:

- Civic, social service, and fraternal facilities
- Libraries
- Places of worship
- Schools

Public/semi-public:

- Community centers
- Fire/police stations
- Museums
- Public utilities and related facilities

Office/business:

- Offices
- Home occupations
- Residential related commercial service
- Studios, galleries, and workshops for artists, craftspeople, designers, photographers (shall not create noise, vibrations, glare, fumes or odors off premises)

Other:

- Accessory structures
- Parking lots as accessory to a principal use

(c) *Prohibited uses.* Any use not specifically listed as a permitted use, a use by right, subject to special requirements, or a conditional use in the Head of Montford Transition Overlay District is prohibited.

(d) *Uses by right subject to special requirements.*

- Antenna
- Bakeries
- Barber shops and salons

Grocery stores
 Pharmacies
 Restaurants
 Retail sales (excluding retail gasoline sales)
 Tailors/dressmaker shops
 Video rental stores

(e) *Conditional uses.* Those uses by right, subject to special requirements, which are allowed in this district and which exceed the total floor area of 5,000 square feet.

(f) *Development standards.*

- (1) *Density standards.* The maximum residential density per acre within the Head of Montford Transition Overlay District shall be 12 dwelling units.
- (2) *Structure size standards.* In no case shall the size of individual structures within the Head of Montford Transition Overlay District exceed 45,000 square feet.
- (3) *Lot size standards.* The minimum lot size for non-residential uses in the Head of Montford Transition Overlay District shall be one acre. The minimum lot size for residential uses in the Head of Montford Transition Overlay District shall be 5,445 square feet.
- (4) *Lot width standards.* The minimum lot width for non-residential uses in the Head of Montford Transition Overlay District shall be 100 feet. The minimum lot width for residential uses in the Head of Montford Transition Overlay District shall be 50 feet.
- (5) *Setback standards.* In no case shall the front setback for structures within the Head of Montford Transition Overlay District exceed 25 feet.
- (6) *Impervious surface standards.* The maximum impervious surface coverage in the Head of Montford Transition Overlay District shall be 80 percent.
- (7) *Height standards.* Front facades of structures within the Head of Montford Transition Overlay District shall not exceed three stories in height. Four story facades are permitted on the side and rear of structures within the district only if the lower level is completely below grade as measured at the front facade of the structure.
- (8) *Landscaping/buffering standards.* Landscaping and/or buffering shall be provided as required by [section 7-11-3](#) of this chapter. Parking lots exceeding ten spaces shall be buffered from all adjacent residential uses and schools by a type "D" buffer, as described in [section 7-11-3](#) of this chapter. In addition, parking lot landscaping [shall] be increased by 50 percent above the minimum required set forth in [section 7-11-3](#) of this chapter.
- (9) *Parking/loading standards.* Parking and loading facilities shall be provided as required by [section 7-11-2](#) of this chapter. No parking shall be permitted in any required setback. Parking lots exceeding ten spaces shall be located a minimum of 30 feet from Gudger Street and a minimum of 30 feet from properties housing residential uses or schools. Parking shall be provided at the side or rear and not closer to the street than the edge of the structure. Uses in the Head of Montford Transition Overlay District shall be permitted a 25 percent reduction in the minimum number of parking spaces required by [section 7-11-2](#) of this chapter.
- (10) *Sidewalk standards.* Sidewalks, as specified in the Asheville Standard Specifications and Details Manual, shall be required for all new construction and major improvements in the Head of Montford Transition Overlay District.
- (11) *Vehicular access standards.* Vehicular access to non-residential uses shall not be provided from Gudger Street.
- (12) *Recreational/open space standards.* Open space shall be provided as required by [section 7-11-4](#) of this chapter.
- (13) *Design and operation standards.* All new development within the Head of Montford Transition Overlay District shall be reviewed by the Historic Resources Commission (HRC) for consistency with the design guidelines for the Montford Local Historic District. All new development shall be required to conform to the requirements of the HRC with regard to structure and site design, massing, scale, building setbacks and height. An application for a certificate of appropriateness from HRC must be approved prior to submitting an application for any other review process as described in section 7-5 of this chapter.
 Drive through facilities and outdoor loudspeaker systems shall not be permitted. Lighting fixtures shall not exceed 12 feet in height and shall be shielded and directed away from adjoining residential properties and street right-of-way.

(Ord. No. 2622, § 1(a), 10-12-99; Ord. No. 3157, § 1(a)(6), 8-24-04)

Sec. 7-9-9. - Conditional Use District.

From and after July 1, 2005, the Conditional Use District shall not be available for use in rezoning property within the zoning jurisdiction of the City of Asheville. Any conditional use district ordinance adopted prior to July 1, 2005, shall remain valid and subject to the provisions contained herein and in the adopted ordinances establishing said districts.

- (a) *Purpose.* The Conditional Use District is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Additional standards and regulations may be attached to a proposed development to ensure compatibility with the surrounding uses and with applicable adopted plans in accordance with the requirements of this ordinance. When applying for designation as a Conditional Use District, the owner shall specify the nature of the proposed development and shall propose conditions to ensure compatibility between the development and the surrounding uses.
- (b) *General requirements.* The use of the Conditional Use District is strongly encouraged due to the refinement of requests permitted by this option. Conditional use overlay zoning affords a degree of certainty in land use decisions not possible when rezoning to a general use district.
 - (1) A Conditional Use District application shall be considered only upon request by the property owner or a duly authorized representative of the property owner.
 - (2) Prior to submittal of the application, it is strongly recommended that the applicant meet with representatives of the surrounding property owners and of the surrounding neighborhood(s) to discuss the proposed development.
 - (3) All standards and requirements of the underlying zoning district shall be met, except to the extent that the conditions imposed by the conditional use zoning are more restrictive than the underlying standards.
 - (4) No use shall be permitted except those allowed by approval of a conditional use permit.
 - (5) The conditions imposed pursuant to the conditional use permit approval shall be stated on the permit and may limit the uses which are permitted on the property. Such conditions may further specify location on the property of the proposed structure(s), the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the height of structures, the location and extent of rights-of-way and other areas to be dedicated for public purposes, and other such matters as may be identified as appropriate for the proposed development.
 - (6) Minor modifications of the approved conditional use permit may be approved by the planning and development director. The minor modifications authorized herein are intended to provide relief where conditions, established by the conditional use permit granted, create a hardship based upon a unique physical attribute of the property itself or some other factor unique to the property which was not known at the time of permit approval and which subsequently rendered the land difficult or

impossible to use due to the condition(s) imposed. The permit holder shall bear the burden of proof to secure the modification(s). Such modifications shall be limited to the following:

- a. A deviation of up to ten percent or 24 inches, whichever is greater, from the approved setback, provided that the conditions for approving a deviation from the required setback established by subsection 7-11-8(c)(1) of this chapter are met.
 - b. A reduction of up to 25 percent in the number of parking spaces required for the use provided that the conditions established by subsection 7-11-8(c)(2) of this chapter are met.
- (7) Any violation of a condition included in the approval of a conditional use permit shall be treated the same as any other violation of this chapter and shall be subject to the same remedies and penalties as any other such violation.
 - (8) If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to accept any condition, the approval of such Conditional Use District shall be null and void, the property shall revert to its previous zoning classification and the conditional use permit shall be deemed revoked, all without further action by the city council.
 - (9) If no action has been taken to begin development of the property in accordance with the approved conditional use permit within 24 months of its approval by city council, the Conditional Use District zoning shall be null and void, the property shall revert to its previous zoning classification and the conditional use permit shall be deemed revoked, all without further action of the city council.
 - (10) If the use or uses commenced pursuant to a permit issued under this section are deemed abandoned or discontinued pursuant to sections 7-17-5 or 7-17-6, then the conditional use permit issued pursuant to this section shall be deemed revoked, the Conditional Use District zoning shall be null and void, and the property shall revert to its previous zoning classification, without action by the city council.
- (c) *Application procedure.* Applications for Conditional Use District zoning and for issuance of a conditional use permit shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established by sections 7-7 and 7-5-5 of this chapter, except as otherwise provided below:
- (1) The application shall include site plans, landscape plans, building elevations, floor plans, and such other information required to provide the approving bodies with a complete and accurate description of the proposed development.
 - (2) The application and supporting materials shall be reviewed by the technical review committee in accordance with the procedures set forth in section 7-5-5 of this chapter prior to the meeting of the planning and zoning commission at which the application is to be considered. Notice of this meeting shall be provided as the same is required for a public hearing for rezoning property as set forth in subsection 7-5-20(a)(4) of this chapter. The recommendations and comments of the technical review committee shall be reported to the planning and zoning commission.
 - (3) In establishing conditional districts, the city council may prescribe dimensional requirements (height, setback, etc.) that are different from the requirements of the corresponding general zoning classification, and may prescribe development and design standards that are different from those set out in article XI; provided, that any request for a modification to a dimensional requirement or development and design standards (landscape, parking, etc.) that is less restrictive than would be applicable for the corresponding general zoning classification must be specifically described in any notices required for the public hearing on the conditional zoning application, if it is part of the application, and must be set out separately in any ordinance establishing said conditional zoning district, together with an explanation of the reason for the modification. Except as modified pursuant to this paragraph, or pursuant to paragraph (6), below, all standards and requirements of the corresponding general zoning district must be met. Variances to the standards established for any conditional zoning shall not be allowed.
 - (4) Upon receipt of the recommendations from the planning and zoning commission, the city council shall hold a public hearing on the requests for Conditional Use District zoning and issuance of a conditional use permit. Notice of the public hearing shall be provided in accordance with the provisions of section 7-5-20 of this chapter. The city council shall take separate actions on consideration of the zoning request and the conditional use permit request.
 - (5) The Asheville City Council shall not approve the conditional use permit unless and until it has approved the rezoning request. The standards for granting conditional use permits under this section shall be the same as for conditional use permits issued pursuant to subsection 7-16-2(c).
 - (6) Upon review of the requests for approval of Conditional Use District zoning, the Asheville City Council may authorize the amendment of the official zoning map of the City of Asheville to add the Conditional Use District zoning and issue the conditional use permit for the proposed development; deny the requests for the zoning and issuance of the conditional use permit; or continue the consideration of the requests in order to receive further information regarding the requests.
 - (7) In approving the conditional use permit, the Asheville City Council may impose such conditions and requirements as it deems necessary in order for the purpose and intent of this chapter to be served.
 - (8) The Conditional Use District zoning and conditional use permit authorized and approved as provided herein shall be perpetually binding upon the affected property unless subsequently changed or amended as provided for in this chapter.

(Ord. No. 2669, § 1, 2-22-00; Ord. No. 3237, § 1(a), 5-24-05; Ord. No. 3369, § 1(a), 6-27-06; Ord. No. 3374, § 1(v), 7-11-06; Ord. No. 3700, § 1f, 2-10-09)

Sec. 7-9-10. - Charlotte Street Transition Overlay District.

- (a) *General description.* The Charlotte Street Transition Overlay District is established to assist in the advancement and implementation of the Charlotte Street Corridor Plan (the "Plan"). The district provides for and encourages a mixture of uses, including medium density business and service uses serving several residential neighborhoods, and medium to high density residential uses. Additionally, the district encourages development which is compatible with its surroundings and provides incentives for property owners to develop property in a manner that is consistent with the goals and recommendations of the plan. This district may serve as a workplace and/or residence for many individuals and should be sensitive to a significant pedestrian population, but also provide for adequate and safe vehicular access.
- (b) *Permitted uses.* The uses permitted within the Charlotte Street Transition Overlay District shall be those listed as permitted uses within the underlying general use zoning district(s).
- (c) *Prohibited uses.* The uses prohibited within the Charlotte Street Transition Overlay District shall be those listed as prohibited uses within the underlying general use zoning district(s).
- (d) *Uses by right subject to special requirements.* The uses by right subject to special requirements within the Charlotte Street Transition Overlay District shall be those listed as uses by right subject to special requirements within the underlying general use zoning district(s).
- (e) *Conditional uses.* The conditional uses within the Charlotte Street Transition Overlay District shall be those listed as conditional uses within the underlying general use zoning district(s).
- (f) *Development standards.*
 - (1) *Structure size standards.*
 - a. New structures in the Charlotte Street Transition Overlay District may have a building footprint of not more than 6,000 square feet. The gross floor area of new structures shall not exceed 12,000 square feet.
 - b. Existing structures may not be expanded to exceed a footprint or gross floor area of 12,000 square feet.

- c. Structures may exceed the permitted structure size indicated in subsection a. above, up to 25 percent above the maximum structure size if the specific design criteria set forth in paragraph (2)b. below, are met.

(2) *Design criteria.*

a. General principles and intent of the design criteria:

The intent of the following design criteria is to maintain and strengthen the unique historic character of Charlotte Street by helping to ensure that new buildings are architecturally compatible with the historic character of the street and that design characteristics are employed which are consistent with the historic architectural vocabulary of the area. These characteristics include historic building forms and silhouettes, proportions, treatments, exterior materials, massing and/or architectural style. Additionally, it is intended that the front elevations and overall massing of new buildings be pedestrian scaled and related to the street.

It is not the intent that new buildings mimic historic designs, but rather that they combine elements from the historic design palette in new ways to achieve a design which is compatible with and complementary to the historic character of the street.

In general, the predominant historic style of architecture within the boundaries of the overlay district is of a residential form with pitched roofs, porches and paned windows and is less urban than the structures south of E. Chestnut Street. To a lesser degree, brick historic commercial structures exist in the corridor and these have pitched roofs and sometimes use a combination of brick and stucco.

When developing designs for new buildings, it is advisable to reference existing historic buildings or other documentation to identify elements that are to be used in the project.

b. *Specific design criteria:*

1. The proposed structure shall be two stories as measured from the Charlotte Street side of the building.
2. Roof forms shall be similar to those used historically within the boundaries of the overlay district. The dominant roof shapes shall be gabled or hipped. The minimum roof pitch shall be 5:12. Gable ends shall face the street. The addition of dormers is permitted. Areas of flat roofs are discouraged and shall not exceed 25 percent of the primary facade and shall be located behind a sloped roof or parapet.
3. All rooftop equipment shall be fully screened from view and the method of screening shall be integrated into the overall building design, for example within or behind pitched roofs. Ground mounted equipment shall be located to the rear of buildings and shall be screened with an enclosure compatible with the architectural style of the structure and/or evergreen plant material that provides an opaque screen.
4. Where new building facades will be wider than 35 feet, the facade surface shall be subdivided into portions not exceeding this distance by varying setbacks, roof forms and perhaps materials. This subdivision of the facade surface will break up the facade into increments similar to historic facade widths found within the boundaries of the overlay district.
5. Use building materials that are similar to those used historically. These include "pebbledash" or "rough-cast" stucco, wood shingles, and horizontal wood siding for buildings which are residential in character. Brick was typically used for original historic commercial structures, sometimes in combination with stucco above or as a foundation material for structures which are residential in character. Stone was also used, to a lesser degree, as a material at the foundation or first floor level with shingles or stucco above.
6. A minimum of 40 percent of the first floor and 20 percent of the upper floor(s) on the front facade shall have window/door fenestration. Windows shall be set to the inside of the building face wall. Tinted or mirrored glass is not permitted.
7. Skylights shall not be used on the front facades.

(3) *Additional design standards.* Structures which incorporate all of the design criteria in subsection (2)b. above, may further exceed the permitted structure size indicated in subsection (1) above, according to the total number of points received for incorporating the following elements in the proposed development.

Developments accumulating between 50 and 79 points shall be allowed to exceed the permitted structure size indicated in item (1) up to 50 percent above the maximum structure size. Developments accumulating 80 or more points shall be allowed to exceed the permitted structure size indicated in subsection (1) above, up to 75 percent above the maximum structure size.

- a. The proposed structure is a "mixed use" building, housing two or more distinct use types (i.e. retail, office, residential, etc.); and (point totals are cumulative):
1. No single use type exceeds 75 percent of the total gross square footage of the building: 30 points.
 2. If residential uses are provided which occupy at least 40 percent of the total gross square footage of the building: 40 points.
 3. If residential uses are provided which occupy at least 40 percent of the total gross square footage of the building and at least 25 percent of those units are designed to have a total net square footage of 600 square feet or less: 45 points.
- b. The proposed structure contains one or more of the following uses with an operable storefront entrance facing the street:
- Bakeries
 - Barber shops and salons
 - Bicycle shops
 - Bookstores
 - Candy, pastry, ice cream and snack shops
 - Delicatessens
 - Florists
 - Fruit and vegetable markets
 - Gift shops
 - Grocery stores
 - Hardware/garden supply stores
 - Pharmacies
 - Restaurants

Tailors/dressmaker shops

Video rental stores

Other similar uses which serve the surrounding community and which may generate significant pedestrian activity: 20 points

- c. The landscaping for the proposed development exceeds the requirements of subsections 7-11-3(f) and (g) of this Code by at least 50 percent. (Hardscape which incorporates features determined by the planning and development director to be pedestrian oriented may be used in combination with or instead of landscaping along the street frontage of the lot). Examples of these features include benches, outdoor dining, planting boxes, etc. Street trees and hardscape features shall be consistent with any approved streetscape plan for the area: 20 points.
- d. A connection is made between the parking area of the developing property and the parking area of one or both adjoining properties which allows for internal circulation between properties and results in there being only one drive entrance on Charlotte Street to access the developing property: 15 points.
- e. Entrances to the proposed structure are defined either by front porches, if designed with a residential character, or are recessed from the primary facade and defined with awnings or canopies: 15 points
- f. The proposed development is designed to sensitively preserve the principal historic structure(s) on the site. For the purposes of this section, historic buildings shall be defined as contributing structures within the boundaries of a National Register Historic District or those that are eligible for listing in the National Register of Historic Places: 20 points.
Demolition of a historic structure: Minus 20 points.

- g. A minimum of 25 percent of the total number of residential dwelling units provided in a proposed single-use residential development are designed to have a total net square footage of 600 square feet or less: 20 points.

(g) *Setback standards.* The following minimum setbacks shall be required for uses in the Charlotte Street Transition Overlay District.

Front:	5 ft. minimum 20 ft. maximum
Side:	None required
Rear:	None required
Corner lot, street side:	10 ft.

The landscape and buffering standards (section 7-11-3) may require additional setback; if so, the most restrictive requirement shall apply. The minimum spacing between structures shall, in addition, be as per the Asheville Fire Prevention Code.

- (h) *Other standards.* All other development standards for the Charlotte Street Transition Overlay District shall be the same as those required within the underlying general use zoning district(s).

(Ord. No. 2690, § 1, 4-25-00)

Sec. 7-9-11. - Adaptive Reuse Overlay District.

- (a) *General description.* The Adaptive Reuse Overlay District is created to implement several infill development, community compatibility, and economic development goals and strategies of the comprehensive plan through an overlay district that allows and provides incentives for adaptively reusing valuable existing buildings. Asheville has a stock of fine older buildings that greatly contribute to the city's quality of life and urban character. Due to design, location, and/or condition, these buildings may become physically or functionally obsolete for use under their current zoning. The application of an Adaptive Reuse Overlay District to properties containing these buildings permits a wider range of land uses to be available to these existing buildings for the purpose of extending their useful life.
- (b) *Permitted uses.* Those uses allowed as permitted uses under the underlying zoning district. Additionally:
 - (1) In single-family residential districts, multi-family and professional office uses are allowed as permitted uses subject to the development and design standards provided in this section; multifamily uses are not subject to the density limitations of the underlying zoning districts.
 - (2) In multi-family residential districts, except the urban residential district, professional office and gift shop uses are allowed as permitted uses subject to the development and design standards provided in this section; multi-family uses are not subject to the density limitations of the underlying zoning districts.
 - (3) In urban residential districts, those office/business uses allowed as permitted uses in the Neighborhood Business District are allowed as permitted uses subject to the development and design standards provided in this section; multi-family uses are not subject to the density limitations of the underlying zoning district.
 - (4) In office districts, those office/business uses allowed as permitted uses in the Neighborhood Business District are allowed as permitted uses subject to the development and design standards provided in this section; multi-family uses are not subject to the density limitations of the underlying zoning districts.
- (c) *Prohibited uses.*
 - Outdoor storage.
 - Uses with drive-through facilities.
 - Uses with outdoor loud speaker systems.
 - Any use not specifically listed in this section or specifically listed as a permitted use or a use by right, subject to special requirements, or a conditional use in the underlying zoning district is prohibited.
- (d) *Uses by right, subject to special requirements.* Those uses allowed as uses by right, subject to special requirements, under the underlying zoning district.
- (e) *Conditional uses.* Those uses allowed as conditional uses under the underlying zoning district.
- (f) *Development and design standards.*

- (1) *Application.* The provisions of the adaptive reuse overlay district shall be limited to the reuse of existing principal structures and shall not apply to new construction of principal structures or to accessory structures.
- (2) *Multistory structures.* For multistory structures in single-family and multi-family zoning districts, including the urban residential district, at least one story shall be devoted to residential use.
- (3) *Reduction in required off-street parking.* There shall be a 25 percent reduction in the minimum amount of required off-street parking for adaptive reuse projects; in addition to this provision, flexible development standards, as applicable, may also be utilized to further reduce the amount of required parking.
- (4) *Location of off-street parking.* Parking shall be located in the rear of the site and shall be screened with vegetation from adjacent single-family uses. The vegetative screening shall consist of the planting required for a Type A buffer or its equivalent as determined through the alternative landscape compliance process. On-street parking or parking in the front or side of the lot may be approved by the planning and development director provided that any off-street parking area can be adequately screened from adjacent residential uses and:
 - The topography of the site or the placement of the principal structure makes it impractical to access the rear of the property; or
 - The majority of the residentially-zoned properties on both sides of the street on the block on which the proposed use is to be constructed have parking located in the front or side; no more than three parking spaces shall be provided in front using this option in single-family zoning districts.
- (5) *Maintenance of architectural character.* The architectural character of the principal structure, including its fenestration (i.e., door and window openings), shall be maintained with regard to any facade that faces a street or is prominently visible from adjoining properties.
- (6) *Expansion.* The gross floor area of the principal structure may be increased by up to 25 percent provided that such expansion maintains the architectural character of the structure pursuant to subsection (5) above.
- (7) *Compliance with building and life safety codes.* The structure or use shall comply with all applicable building and life safety codes.
- (8) *Buffer and landscaping requirements.* The planning and development director may reduce or waive buffer and landscaping requirements to maintain consistency in appearance with the surrounding neighborhood.
- (9) *Compatibility.* The planning and development director may establish conditions regarding lighting, landscaping, hours of operation, and other operational and site design features necessary to maintain compatibility with surrounding properties.

(Ord. No. 3436, § 1(b), 1-23-07)

ARTICLE X. - GENERAL DEVELOPMENT AND PERFORMANCE STANDARDS

Sec. 7-10-1. - Number of principal buildings per lot.

- (a) *General.* There shall be no limit on the number of principal buildings on an individual lot, except as indicated in (b) below, and, provided that all other requirements set forth in this chapter or other federal, state, or local laws are met.
- (b) *Single-family dwellings.* There shall be no more than one single-family dwelling on an individual lot in a single-family residential zoning district. This requirement does not affect the use of accessory apartments in conjunction with the standards set forth in subsection 7-16-1(c)(1) or the development of duplexes, triplexes, and quadraplexes in accordance with the standards set forth in subsection 7-16-2(c)(3)d.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3328, § 1(k), 1-24-06)

Sec. 7-10-2. - Required setbacks; allowable encroachments into required setbacks.

- (a) *General.* A building, structure, or lot shall not be developed, used, or occupied unless it meets the minimum setback requirements set forth in article VIII and article X of this chapter for the use or overlay zoning district in which it is located, except as otherwise established in this chapter for particular uses or for encroachments as set forth in (f) below. See also section 7-10-4, Requirements for Lots Along Thoroughfares.
- (b) *Method of calculation.*
 - (1) *Minimum setback.* Minimum setback is the space defined by measuring perpendicularly from and along the entire boundary of the lot (property line) to the building line. Front setbacks shall be measured from the street right-of-way line, except, on streets greater than 45 feet in travel lane width, the setback shall be measured from the edge of the travel lane. The accompanying corner lot, street side setback shall also be measured from the edge of the travel lane. In no case shall the minimum setback be closer to the street than the right-of-way line. A setback may be the front, rear, or side setback. For illustrations of the location of front, rear, or side setbacks, see Figure 10-1. Except as set forth for through lots in subsection 7-10-2(d) below, there shall be one front setback area which is determined at the time of site plan approval or zoning permit issuance.

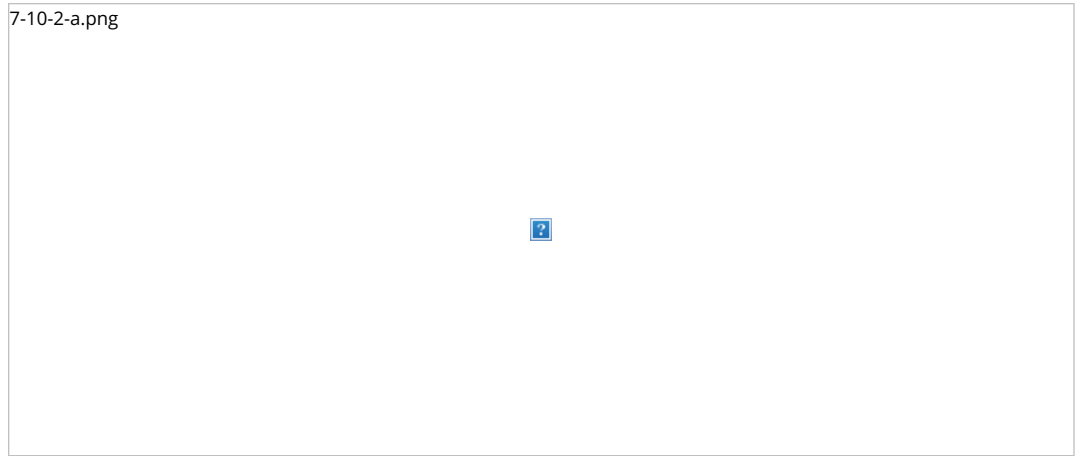


fig. 10-1

- (2) *Overlap of setbacks.* When more than one setback depth applies, the greatest setback dimension requirement must be met.
- (c) *Corner lots - setbacks.* Unless otherwise specified in the zoning district or overlay zoning district regulations, the second street side of a corner lot shall have a setback requirement of 50 percent of the front setback requirement in that district. Alleys are not classified as secondary side streets and would only require typical side setbacks.

7-10-2-b.png

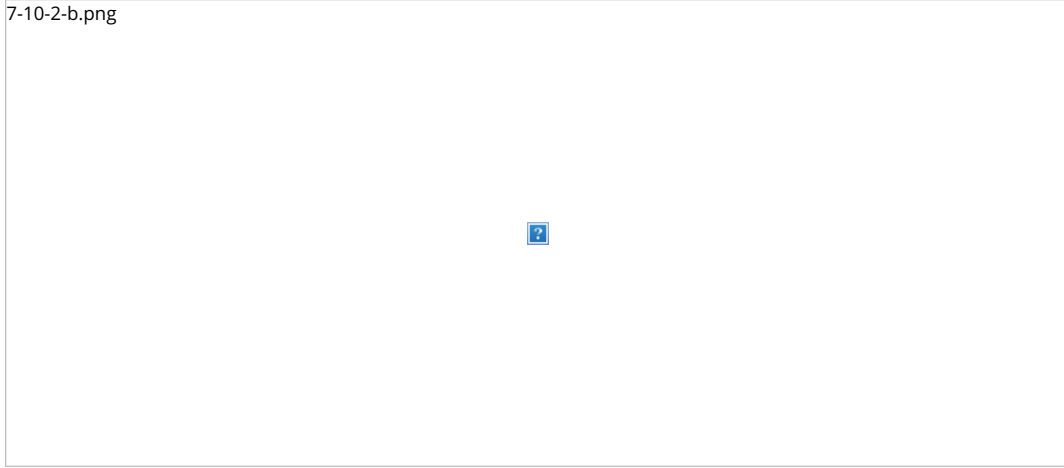


fig. 10-2

- (d) *Through lots - setbacks.* Unless otherwise specified in the zoning district or overlay zoning district regulations, both street sides of through lots shall be considered a front yard and shall conform to the front setback requirements or the established building lines in the area (see subsection [7-10-2\(e\)](#) below). Parcels abutting an alley at the rear of the lot are not considered through lots and rear setback requirements would apply along the rear property line.

7-10-2-c.png

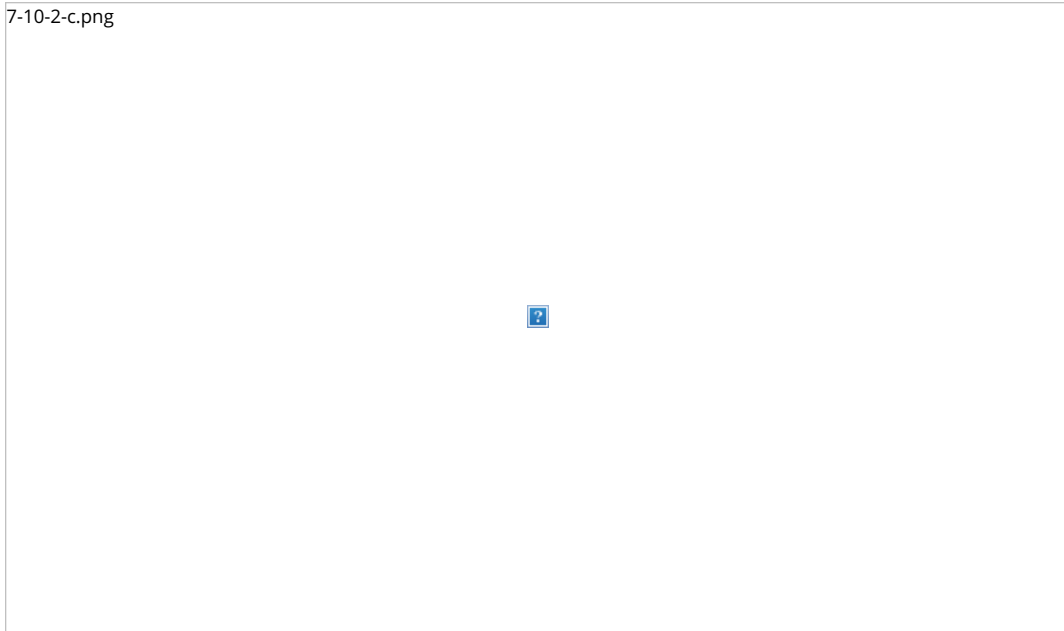


fig. 10-3

- (e) *Adjusting building lines.* Where there are lots which comprise 50 percent or more of the entire length of the street frontage on the same side of the street, and within the block, and which are developed such that buildings on those lots have front setback depths with a variation of not more than ten feet, no building hereafter erected or structurally altered shall be required to have a front setback greater than the average front setback depth of those lots. Provided further, no front setback need exceed the average setback of the two adjoining buildings on either side thereof, if such two adjoining buildings are less than 200 feet apart.

7-10-2-d.png

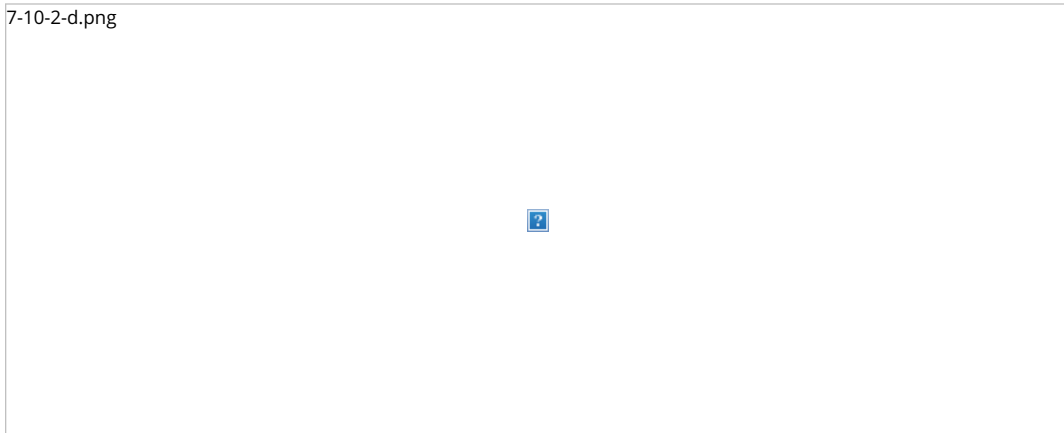


fig. 10-4

- (f) *Allowable encroachments into required setbacks.* The following buildings and structures may encroach upon required setbacks as set forth below unless specifically prohibited elsewhere in this chapter.
 - (1) Sills, cornices, and similar ornamental features projecting from the principal building may encroach up to 18 inches into any required setback.
 - (2) Bay windows, balconies, and similar features projecting from the principal building may encroach up to three feet into any required setback.
 - (3) Decks, steps, uncovered porches, patios, and terraces may encroach into a required side or rear setback, but no closer than six feet to the side or rear property line.
 - (4) Steps, terraces, and patios and uncovered decks with a height of not more than 30 inches may encroach up to ten feet into a required front setback. Handrails installed in conjunction with steps, decks, etc. shall not be included in figuring the height of the steps, terraces, patios and uncovered decks.
 - (5) Accessory buildings and structures (see article XIV of this chapter) may encroach into any required side and rear setback, but no closer than six feet to the side or rear property line. The term structure shall not include facilities for stormwater management, landscaping, or measures to control erosion.
 - (6) Fences and walls may be located within the required minimum front, side, or rear setback as set forth in [section 7-10-3](#)
 - (7) Handicapped accessibility and life safety features (such as ramps, fire escapes, etc.) that are required by the North Carolina State Building Code may encroach into any required setback, but no closer than three feet from a side or rear property line. If a handicapped accessibility or life safety feature cannot meet this requirement due to the location of an existing structure or other impeding site feature on a residential lot, then the setback requirement for these structures can be adjusted to the extent necessary by the planning director.
 - (8) Setbacks shall not be required for bus shelters and benches, which may overlap property lines and encroach into public right-of-way, provided they do not restrict vehicular or pedestrian flow or obstruct sight visibility triangles as required by subsection [7-11-2\(g\)](#) of this chapter.
- (g) *Outdoor storage and displays.*
 - (1) Where and when permitted, the outdoor storage and display of materials or products related to a business and not otherwise classified as temporary under subsection (2) must comply with all building setback requirements for the district in which the business is located. Should required buffers, street tree planting strips, or other landscaped areas exceed the width of the building setback, then the greater of these distances shall apply.
 - (2) The temporary outdoor display of products is allowed to encroach within required building setbacks, but cannot be located within required buffers, street tree planting strips, or other landscaped areas required under [section 7-11-3](#). For the purposes of this provision, temporary outdoor displays are defined as products that are placed outside during operating hours for the business and removed at other times.
 - (3) The placement of outdoor storage and displays shall not reduce the amount of parking on a site below the minimum standards defined in [section 7-11-2](#) (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, §§ 11, 12, 11-11-97; Ord. No. 2755, § 1, 10-10-00; Ord. No. 3063, § 1, 10-14-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3326, § 1, 1-24-06; Ord. No. 3700, § 1g, 2-10-09)

Sec. 7-10-3. - Fences and walls.

- (a) *Height standards.*
 - (1) Fences and walls located outside the minimum front, side, or rear setback may be erected to any height permitted for buildings in the zoning district in which they are located.
 - (2) Unless otherwise required to comply with other provisions of the Code of Ordinances of the City of Asheville fences and walls located within the minimum front setback shall not exceed six feet in height unless serving as a retaining structure. Fences and walls located within the minimum side or rear setback shall not exceed eight feet in height unless serving as a retaining structure. No fence or wall shall obstruct the site visibility triangles required by subsection [7-11-2\(g\)](#) of this chapter.
 - (3) All fences and walls shall comply with the applicable provisions of the North Carolina State Building Code, the Asheville Fire Prevention Code, and the Asheville Standard Specifications and Details Manual.
- (b) *Sight triangles.* No wall or solid fence higher than three and one-half feet shall be placed within the sight visibility triangle of a public street, private street, or driveway contained either on the property or on an adjoining property. See [section 7-11-2](#) concerning sight visibility triangles.
- (c) *Electrified security fences.* Private use of electrified security fences shall be allowed only in the Industrial, Commercial Industrial, and Light Industrial districts and only for the purpose of securing outdoor storage areas. Such fences are allowed by right with special standards in the Industrial and Light Industrial districts ([section 7-16-1](#)), and allowed by conditional use permit ([section 7-16-2](#)) in the Commercial Industrial district. Electrified security fences are also allowed for government facilities and utility facilities or if required by the U.S. Department of Homeland Security for public security purposes. (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, § 13, 11-11-97; Ord. No. 2776, § 1, 12-19-00; Ord. No. 4280, § 1, 2-11-14)

Sec. 7-10-4. - Reserved.

Editor's note— Ord. No. 3572, § 1(m), adopted Jan. 8, 2008, deleted [§ 7-10-4](#) in its entirety. Former [§ 7-10-4](#) pertained to requirements for lots along thoroughfares and derived from Ord. No. 2369, § 1, adopted May 27, 1997.

Sec. 7-10-5. - Retaining walls.

Retaining walls in excess of eight feet in height shall be faced with natural or artificial stone, brick, form-liner art or patterns, or vegetation in order to avoid a stark appearance. Foreground landscaping or attached vegetative screening of retaining walls or retaining wall sections over six feet in height and closer than 35 feet to a public or private street shall also be required in accordance with the following standards. Foreground landscaping or attached vegetative screening in accordance with the following standards shall also be required for any retaining walls or retaining wall sections over 20 feet in height regardless of location relative to a public or private street. Attached vegetative screening shall consist of stainless steel other approved vine supports structurally integrated into the wall to support vine planting from the approved species list for such applications. Foreground landscaping or attached vegetative screening may be considered part of any required buffer, as applicable. Retaining walls 15 feet or less in height shall be exempted from the foreground landscaping or attached vegetative screening requirements if faced with natural or artificial stone.

Terracing of retaining walls is allowed and encouraged, provided that no single retaining wall shall exceed 20 feet in height and each successive wall shall be setback at least five feet from the face of the lower wall. The application of foreground landscaping or attached vegetative screening shall be based on the cumulative height of the terraced walls except that a one level reduction in required landscaping from the following table shall be allowed.

Retaining Wall Height	Required Foreground Landscaping or Vegetative Screening (Either/Or)	
	Minimum Required Foreground Landscaping	Minimum Required Attached Vegetative Screening

>6—10 feet	5-foot wide planting strip at wall base with 3 gallon-sized bushes planted 5 feet on center	5-foot wide planting strip at wall base with attached vegetative screening supports covering 50% of wall face and plantings consisting of 2 gallon-sized vines planted 3 feet on center
>10—20 feet	5-foot wide planting strip at wall base with 3 gallon-sized bushes planted 5 feet on center plus 1 small maturing tree for every 30 linear feet	5-foot wide planting strip at wall base with attached vegetative screening supports covering 50% of wall face and plantings consisting of 2 gallon-sized vines planted 3 feet on center
>20—30 feet	8-foot wide planting strip at wall base with 3 gallon-sized bushes planted 5 feet on center plus 1 small maturing tree for every 30 linear feet	5-foot wide planting strip at wall base with attached vegetative screening supports covering 60% of wall face and plantings consisting of 2 gallon-sized vines planted 3 feet on center
>30 feet	10-foot wide planting strip at wall base with 3 gallon-sized bushes planted 5 feet on center plus 1 large maturing tree for every 40 linear feet	5 foot wide planting strip at wall base with attached vegetative screening supports covering 75% of wall face and plantings consisting of 2 gallon-sized vines planted 3 feet on center

(Ord. No. 3493, § 1, 6-19-07; Ord. No. 3572, § 1(n), 1-8-08)

ARTICLE XI. - DEVELOPMENT AND DESIGN STANDARDS

Sec. 7-11-1. - General.

The standards contained in this section are set forth to provide for the proper design and development of property within the City of Asheville's jurisdiction as it relates to parking, loading, access, landscape and buffering, open space and traffic impact analysis.

The following types of development must bring the entire site into full compliance with the requirements found in article XI, except those relating to sidewalks which shall be required as set forth in subsection 7-11-8(b):

- (1) Any new development public or private with the exception of single-family or two-family housing developments (refer to "new development" description below);
- (2) Changes of use to a higher impact use (refer to subsection 7-17-3(c) Land use impact table);
- (3) Major subdivisions of eight lots or greater;
- (4) Renovations with a total cost exceeding 75 percent of the appraised value of the building, as determined by Buncombe County Tax Assessor or by an MAI-certified real estate appraiser;
- (5) Building expansions or additions exceeding 50 percent of the pre-expansion floor area; and
- (6) Existing unpaved vehicular use areas of which 50 percent or more is paved or existing paved vehicular use areas of which 50 percent or more is demolished and repaved.

"New development" shall be interpreted to include the use of a building or property where the use has ceased for a period of more than 180 days. Refer to subsections 7-17-2(c) and 7-17-3(c) concerning "overcoming presumption of discontinuation of use."

The value of any expansion, addition, enlargement, or reconstruction of such structures over a three-year period occurring under the same ownership and/or developed by the same developer shall be used when calculating the 75 percent threshold.

Building expansions or additions occurring under the same ownership and/or developed by the same developer over a three-year period or less shall be considered to be one development and standards will be applied as such.

(Ord. No. 3417, § 1(a), 11-28-06; Ord. No. 3700, §§ 1h, i, 2-10-09; Ord. No. 3791, § 1a, 9-22-09)

Sec. 7-11-2. - Parking, loading, and access standards.

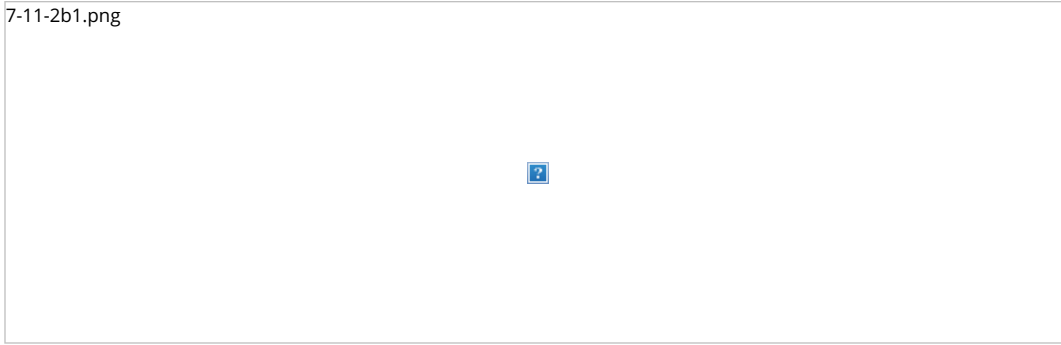
(a) *Purpose.* Off-street parking, loading, and access standards are established for the following purposes:

- (1) To ensure the proper and uniform development of parking areas throughout the City of Asheville and its extraterritorial jurisdiction.
- (2) To provide for safe and adequate space for the temporary storage of vehicles.
- (3) To relieve traffic congestion on public streets.
- (4) To promote the efficient use of parking areas.
- (5) To ensure the safe ingress and egress of vehicles entering and exiting the public street system.
- (6) To provide for immediate access for fire and emergency services.

(b) *Parking lot design.* The following standards shall be met in designing off-street parking facilities.

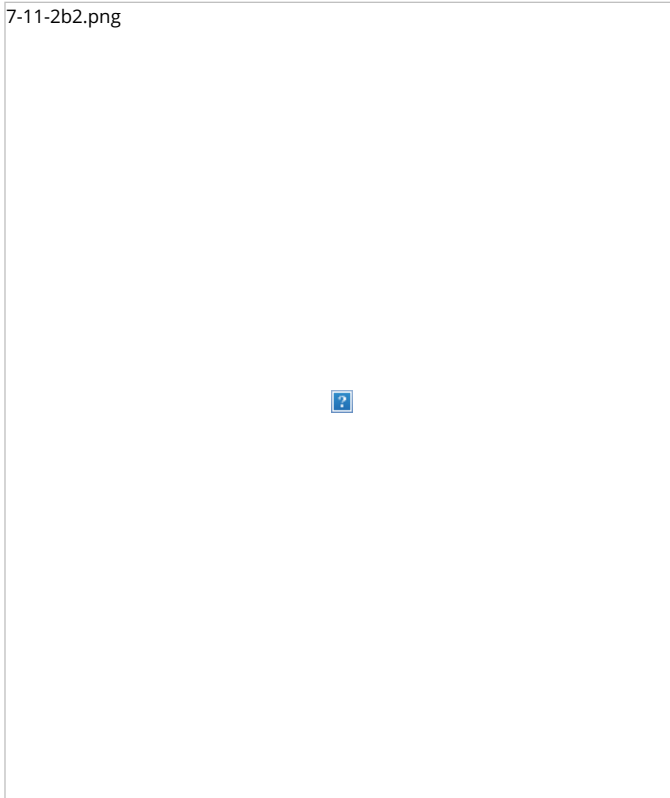
- (1) Parking aisle widths shall be as set forth in the Asheville Standards, Specifications, and Details Manual.

7-11-2b1.png



(2) *Dimensions of parking spaces.* Parking spaces shall be a minimum of nine feet by 18 feet, except handicapped spaces which shall be as set forth in (b)(3) below.

(3) 7-11-2b2.png



Handicapped parking spaces. The specifications for handicapped parking spaces shall meet the standards of the Americans With Disabilities Act, as amended, and are set forth below:

If parking spaces are provided for self-parking by employees or visitors, or both, then handicapped accessible spaces shall be provided as indicated in the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, and convenience are ensured.

Total Spaces in Lot	Required Minimum Number of Handicapped Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6

201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 and over	20 plus 1 for each 100 over 1,000

Handicapped parking spaces shall be a minimum of eight feet by 18 feet.

Access aisles adjacent to handicapped spaces, except access aisles adjacent to van accessible handicapped spaces, shall have a minimum width of five feet. One in every eight handicapped spaces, but not less than one, shall be served by an access aisle not less than eight feet wide and shall be designated "van accessible." Access aisles

7-11-2-b3.png

may be shared by adjacent handicapped parking spaces.



Figure 11-3

- (4) *Channelized automobile storage.* Channelization designs for parking structures are exempt from these standards but must be approved by the city traffic engineer and found to adequately address public safety and welfare. All other parking lot entrances from public rights-of-way shall provide channelized automobile storage space as follows:

Parking Lot Size in Spaces	Channelized Storage
less than 50	20 ft.
50 to 250	45 ft.
more than 250	90 ft.

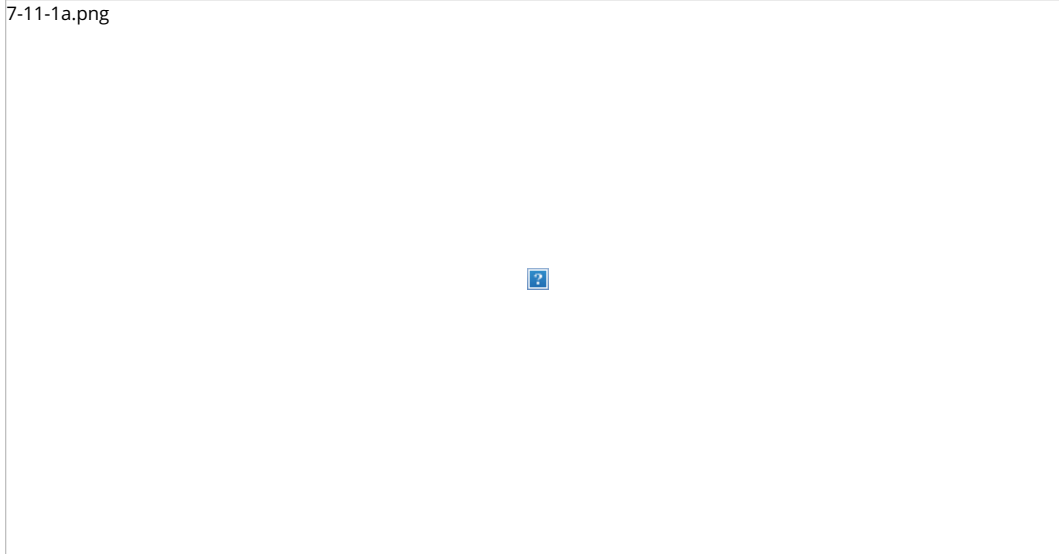


Figure 11-4

- (5) *Parking surface treatment.* The material for surface parking spaces and corresponding access drives required by this section shall consist of suitable paving material which will prevent the exposure of subsoil. Suitable paving material for required parking areas includes, but is not limited to asphalt, porous asphalt, concrete, compacted stone (road bond), gravel, and aggregates such as bituminous surface treatment (BST) and "chip and seal".

Porous paving blocks and pervious paving materials are permitted and encouraged as material for parking lots. The use of grass as a parking lot surface is permitted for overflow and intermittent parking. Pervious paving systems are required for parking spaces which exceed the maximum number of spaces required by subsection 7-11-2(c). The use of grass or other vegetation as a parking surface is permitted only for parking spaces which are provided in excess of the maximum number of parking spaces required by subsection 7-11-2(c) or used for intermittent or overflow parking. Parking lots associated with arenas, sporting facilities, amphitheaters, fairgrounds, and religious institutions may, however, use grass or other vegetation for the entire parking lot.

Additional requirements are as follows:

- a. Parking lots utilizing road bond, gravel or vegetative surfacing are prohibited within the Central Business District.
 - b. Parking lots utilizing road bond or gravel shall provide such material with a minimum thickness of at least four inches and must be maintained in a stable condition.
 - c. Parking lots utilizing road bond or gravel shall be designed and constructed such that siltation resulting from stormwater run-off does not enter adjacent properties or public rights-of-way. The lots must be designed so as to prevent loose stone, aggregate or other materials from leaving the lot.
 - d. All driveway aprons, which are defined as that portion of the parking lot entrance which abuts the street, shall consist of concrete, asphalt, or bituminous surface treatment for a length of at least ten lineal feet starting at the street and extending into the driveway. Subsection 7-11-2(g) sets forth specific driveway entrance requirements.
 - e. The individual parking spaces shall be delineated in all parking lots, except lots utilizing road bond, gravel, grass or other vegetative surfacing.
 - f. All handicapped parking spaces and corresponding access paths to the building entrance shall consist of concrete, asphalt or bituminous surface treatment.
 - g. All driveways with an average grade exceeding five percent shall consist of concrete, asphalt or bituminous surface treatment.
 - h. Parking spaces serving one, two, three and four family dwellings are exempt from the requirements of this subsection.
 - i. All driveways and parking lots shall be of sufficient strength and thickness to safely support fire emergency vehicles.
- (6) *Use of public rights-of way for access and maneuvering.* No access to individual off-street parking spaces shall be allowed directly from public rights-of-way. Public rights-of-way shall not be used for maneuvering in the process of entering or leaving individual off-street parking spaces. Public rights-of-way may be used for maneuvering by delivery vehicles entering or leaving off-street loading berths as set forth in subsection 7-11-2(c), but those berths shall be designed so that no public rights-of-way are blocked by parked delivery vehicles.
 - (7) Parking lot landscaping requirements are described in section 7-11-3 of this chapter.
 - (8) Parking lot sign requirements are described in article XIII of this chapter.
- (c) *Off-street parking requirements.*
 - (1) *Number of spaces required.* The requirements for off-street parking are set forth in the table below. For uses not covered in this table, the planning and development director shall select the appropriate number of maximum and minimum parking spaces based on the American Planning Advisory Service Report Number 432 (Off-Street Parking Requirements). Refer to subsection 7-11-2(d) below for specific requirements related to off-street loading. The square footage requirements below refer to gross floor area of the building being proposed. Please see subsection 7-11-2(b)(3) for handicapped accessible parking space requirements, subsection 7-11-2(c)(3) for bicycle parking space requirements, and subsection 7-11-2(f) for on-street parking allowances.

Type of Land Use	One Parking Space Required for Each:	
	Minimum	Maximum
Residential		
Boardinghouses	2 boarding rooms, plus 1 space for the resident manager	1 boarding room, plus 1 space for the resident manager

Dwellings, multi-family with 2 bedrooms or less	1 unit	0.5 unit
Dwellings, multi-family with 3 bedrooms or more	0.5 unit	0.33 unit
Dwellings, multi-family elderly or disabled	2 units	0.5 unit
Dwellings, single-family with 2 bedrooms or less	0.66 unit	0.5 unit
Dwellings, single-family with 3 bedrooms or more	0.5 unit	0.33 unit
Dwellings, subsidized low-income	1 unit	0.5 unit
Public Facilities and Institutions		
Assisted living facilities	2 employees, plus 1 space per 2 units	1 employee, plus 1 space per 2 units
Adult care facilities	2 employees, plus 1 space per 6 adults	1 employee, plus 1 space per 6 adults
Child care facilities	2 employees, plus 1 space per 10 children	1 employee, plus 1 space per 10 children
Churches and wedding chapels	1 space for each 4 seats or each 40 sq. ft. of floor area available for movable seats or for each 200 sq. ft. of gross floor area	1 space for each 3 seats or each 30 sq. ft. of floor area available for movable seats or for each 150 sq. ft. of gross floor area
Civic, social service, cultural, and fraternal facilities	350 sq. ft.	250 sq. ft.
Colleges and universities	3 employees, plus one space per 3 full-time students not residing on campus	1 employee, plus one space per each full-time student not residing on campus
Family care homes and group homes, children	2 employees	1 employee
Family care homes and group homes, adults	2 employees, plus 1 space per 5 adults	1 employee, plus 1 space per 5 adults
Museums and art galleries	350 sq. ft., plus one space per 2 employees on shift of greatest employment	250 sq. ft., plus one space per 2 employees on shift of greatest employment
Medical facilities	250 sq. ft.	200 sq. ft.
Schools	0.5 classrooms, plus 1 per 5 students for high schools	0.33 classrooms, plus 1 per 5 students for high schools
Shelters	2 employees on shift of greatest employment	1 employee on shift of greatest employment
Office, Business, and Industrial Uses		
Barber shops and salons	0.5 operator stations, plus one space per 2 employees on shift of greatest employment	0.33 operator stations, plus one space per 2 employees on shift of greatest employment
Bed and breakfast homestays and inns	1 room, plus 1 space for the resident manager/owner and 1 for each employee	0.5 room, plus 2 spaces for the resident manager/owner and 1 space for each employee
Car wash	0.5 wash bays, plus 2 stacking spaces per wash bay	0.33 wash bays, plus 2 stacking spaces per wash bay
Convenience stores with gas pumps	350 sq. ft. (spaces at gas pumps are not recognized as parking spaces)	200 sq. ft. (spaces at gas pumps are not recognized as parking spaces)
Electronic gaming operation	1 space for every 2 employees, plus 1 space for every 1.5 gaming terminals	1 space for every 1 employee, plus 1 space for every 1 gaming terminal
Funeral establishments	4 seats of largest public room, plus one space per 2 employees on shift of greatest employment	2 seats of largest public room, plus one space per 2 employees on shift of greatest employment
Health and fitness facilities	200 sq. ft.	<u>100</u> sq. ft.

Hotels and motels	2 guest rooms, plus additional spaces as required for other uses within the hotel/motel	1 guest room, plus additional spaces as required for other uses within the hotel/motel
Live-work unit	Residential unit plus each 350 sq. ft. of office/business space	Residential unit plus each 250 sq. ft. of office/business space
Manufacturing, assembly or finishing operations	2 employees on shift of greatest employment	1 employee on shift of greatest employment
Office	350 sq. ft.	250 sq. ft.
Rental establishments	350 sq. ft.	250 sq. ft.
Repair and service businesses providing on-site services	300 sq. ft.	200 sq. ft.
Repair and service businesses providing off-site services	2 employees	1 employee
Restaurants, bars, night clubs (plus 11 spaces for stacking if drive-through service is proposed)	3 seats, plus one space per 2 employees on shift of greatest employment	2 seats, plus one space per 2 employees on shift of greatest employment
Retail sales	350 sq. ft.	200 sq. ft.
Self-service storage facility	10 storage units, plus one space per 2 employees on shift or greatest employment 250 sq. ft. of office space (with 24' drive aisles adjacent to units to accommodate drive-up temporary parking for loading and unloading)	5 storage units, plus one space per 2 employees on shift of greatest employment 125 sq. ft. of office space (with 24' drive aisles adjacent to units to accommodate drive-up temporary loading and unloading)
Servicing, packaging, and storage of commodities	2 employees on shift of greatest employment	1 employee on shift of greatest employment
Taxi stands	2 employees on shift of greatest employment, plus one space per taxi	1 employee on shift of greatest employment, plus one space per taxi
Theaters, stadiums, arenas, and sports fields and courts	4 seats	3 seats
Vehicle service stations and auto repair garages (spaces at gas pumps are not recognized as parking spaces)	1 service bay, plus one space per 2 employees on shift of greatest employment	0.33 service bays, plus one space per 2 employees on shift of greatest employment
Warehouses, wholesale, and distributive businesses	2 employees on shift of greatest employment, plus one space per 350 sq. ft. of area open to the public	1 employee on shift of greatest employment, plus one space per 350 sq. ft. of area open to the public

- (2) *Parking areas exceeding the maximum number of spaces.* The number of parking spaces for a proposed use may exceed the maximum number of spaces permitted only if a pervious paving system is used and provided that the pervious paving system is approved by the planning and development director. Parking areas exceeding the maximum number of spaces shall provide additional landscaping as required by subsection 7-11-3.G.2 of this chapter.
- (3) *Bicycle parking.* Bicycle parking shall be provided for all uses except single-family and two-family dwellings. The minimum number of bicycle parking spaces required shall be equal to five percent of the total number of automobile parking spaces in the lot. Bicycle parking facilities shall include standard bike racks or other secured, lockable facilities.
- (4) *Parking requirements for urban residential developments.* Residential developments located within the area described below shall not be required to provide off-street parking if on-street parking is permitted on the street(s) on which the development is proposed and the developer investigates with the Asheville Transit Authority the provision of a transit stop to serve the development. The boundaries of the area shall be:
 To the north, one mile from the Central Business District boundary;
 To the south, one mile from the Central Business District boundary;
 To the west, the French Broad River; and
 To the east, the ridge of Town Mountain and the ridge of Beaucatcher Mountain.
 This area shall be identified on a map kept in the office of the City of Asheville Planning and Development Department.
- (5) *Parking requirements for the River Parking Reduction Area.* All properties located within the River Parking Reduction Area (see map: Planning and Development Department) will be eligible for reductions based on the following:

- a. Projects with a base requirement of 30 spaces or less may receive a 50 percent reduction.
- b. Projects with a base requirement of 31—50 spaces may receive a 30 percent reduction.
- c. Projects with a base requirement of 51—75 spaces may receive a 20 percent reduction.

These reductions may not be combined with other reductions offered through individual zoning districts.

(d) *Off-street loading requirements.*

- (1) An area shall be provided for loading and unloading delivery vehicles for all institutions, businesses, or industries of more than 5,000 square feet in gross floor area, except in the Central Business District.
- (2) The minimum size of an off-street loading berth shall be 250 square feet plus any additional area needed for maneuvering delivery vehicles.
- (3) The number of berths required is based on the gross floor area of the building and is as follows:

Gross Floor Area (Sq. Ft.)	Minimum Number of Berths
5,000 - 24,999	1
25,000 - 49,999	2
50,000 - 74,999	3
75,000 and over	4 plus 1 for each additional 50,000 sq. ft.

(e) *Shared and remote parking.*

- (1) *Shared parking.* The planning and development director shall approve the joint use of up to 100 percent of the required parking spaces for two or more uses located on the same parcel or adjacent parcels, provided that the developer can demonstrate that the uses will not overlap in hours of operation or in demand for the shared spaces.
Any sharing of required parking spaces by uses located on different parcels shall be guaranteed by a written agreement between the owner of the parking area and the owner of any use located on a different parcel and served by the parking area.

Should the uses change such that the new uses overlap in hours of operation or in demand for the shared spaces, the shared parking approval shall become void. Parking meeting the requirements of this chapter shall then be provided for each use.

- (2) *Remote parking.* If the required number of parking spaces for any land use cannot be reasonably provided on the same lot on which the principal use is located, such parking space may be provided on any land within 500 feet walking distance of the property on which the principal use is located, provided that the zoning use regulations for the district in which the remote parking space is located permit the principal use which the parking spaces serve.
Any remote parking spaces located on a different parcel than the use for which the remote parking spaces serve shall be guaranteed by a written agreement between the owner of the remote parking area and the owner of the use located on a different parcel and served by the remote parking area. Change of ownership of either parcel shall require a renewal of the agreement.

(f) *On-street parking.* On-street parking spaces may be counted toward the fulfillment of the off-street parking requirements for a development, subject to the following standards. Any on-street parking space meeting these standards shall count as 0.75 of a required off-street parking space.

- (1) The on-street parking spaces are newly constructed as part of a development. No existing on-street parking spaces may be counted except as permitted for a particular use district.
- (2) There shall be a minimum of four contiguous on-street spaces constructed for the development.
- (3) All counted spaces must be parallel on-street parking spaces unless otherwise approved by the city traffic engineer.
- (4) Parking spaces must be located not more than 500 feet from the proposed development. Parking spaces that are located more than 150 feet from the proposed development must be located within a zoning classification that permits the use served and must not be located adjacent to property that is not within a zoning classification that permits said use.
- (5) Sidewalks must abut all counted on-street parking spaces in such a fashion as to allow direct pedestrian connectivity to the building or development served by the spaces. For the purpose of this section, parking spaces located directly across a street from a building or development may be counted, if a crosswalk (marked or unmarked) is provided for convenient pedestrian access.
- (6) The city traffic engineer shall approve the overall design of street modifications (including curbs, sidewalks, paving and marking locations) associated with any counted on-street parking. Parking shall not restrict existing travel lanes unless approved by the city traffic engineer nor shall counted parking restrict current or future access to abutting parcels.
- (7) Any on-street spaces created in accordance with this provision shall be public parking spaces and not for the exclusive use of the development. Full access easements or rights-of-way incorporating the parking and the abutting sidewalks shall be conveyed to the city.
Approved on-street parking spaces shall not be considered to violate the provisions of this chapter restricting parking within setbacks or those provisions of this chapter requiring that parking be provided at the side or rear of a development and that it be no closer to the street than the edge of the structure.

(g) *Access point requirements.* The following standards shall be met when designing vehicular access points from public streets to individual properties, excluding single and two-family residential:

- (1) *Width of access points.*

	Minimum	Maximum
One-way	14 feet	20 feet
		(with proper

		radius)
Two-way	24 feet (with proper radius)	36 feet

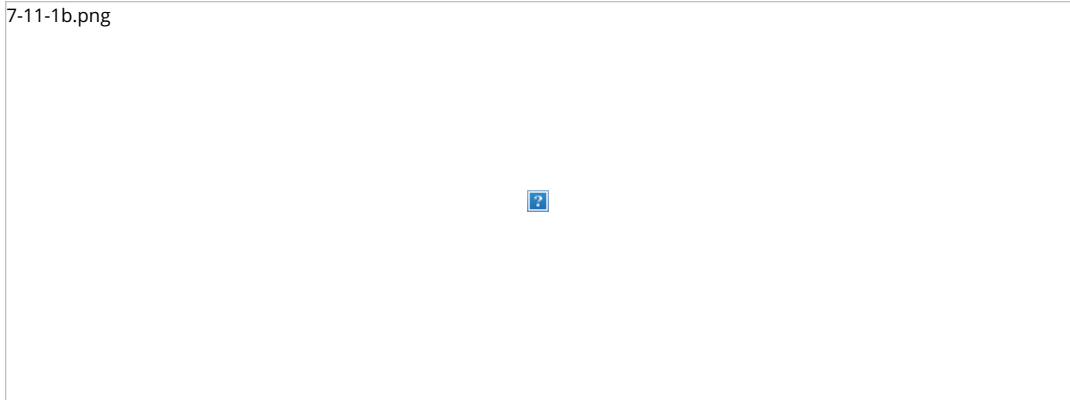


Figure 11-5

(2) Distance from street intersections.

- a. Minimum distances between access points and street intersections shall be determined by the access triangle. No access points shall be permitted within the access triangle. The access triangle is that triangle formed by the intersecting undisturbed right-of-way lines ("A" and "B" in the graphic below) and a line connecting the ends of the undisturbed right-of-way lines.

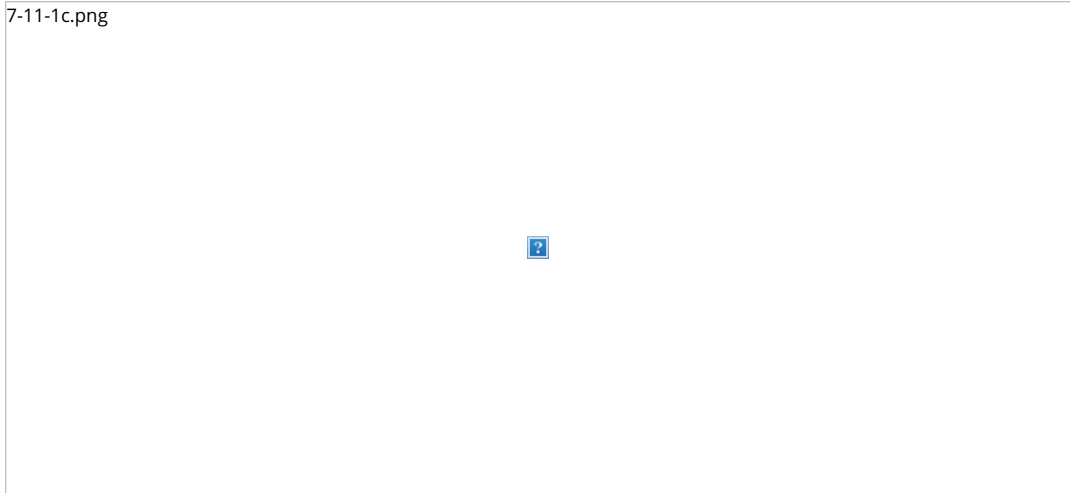


Figure 11-6

- b. The undisturbed right-of-way lines ("A" and "B" in the graphic above) extend from the intersection of the right-of-way lines and have a specific length as defined by the table below.

Street Type	Length of Undisturbed Right-of-way "A"	Length of Undisturbed Right-of-way "B"
Residential Access	25 feet	25 feet
Residential Subcollector	50 feet	50 feet
Residential Collector	75 feet	75 feet
Arterial	100 feet	100 feet

- c. Where the length of the required undisturbed right-of-way exceeds the street frontage of the lot, one access point shall be permitted along the property line furthest from the intersection.

- (3) Distance from other access points. The distance measured along the right-of-way line between the tangent projection of the inside edges of adjacent access points shall be at least 25 feet.

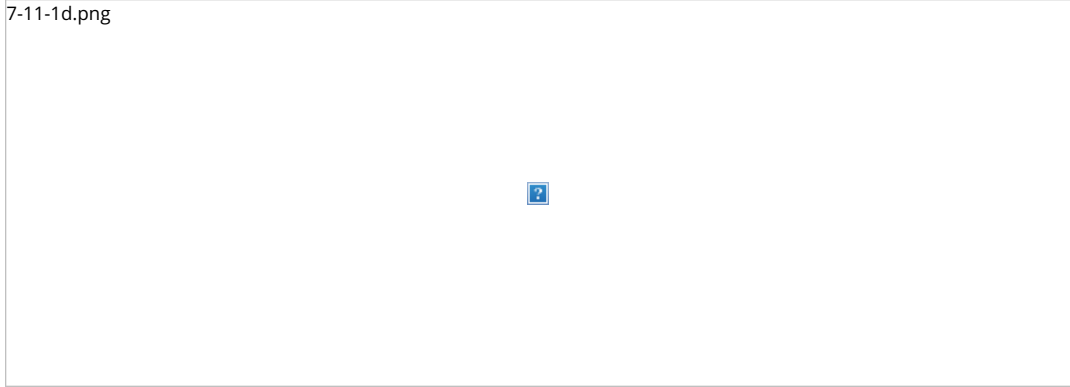


Figure 11-7

- (4) *Distance from property line.* Unless the access point will be shared between two or more adjoining properties, all access points shall be located at least five feet from all property lines perpendicular to the street.

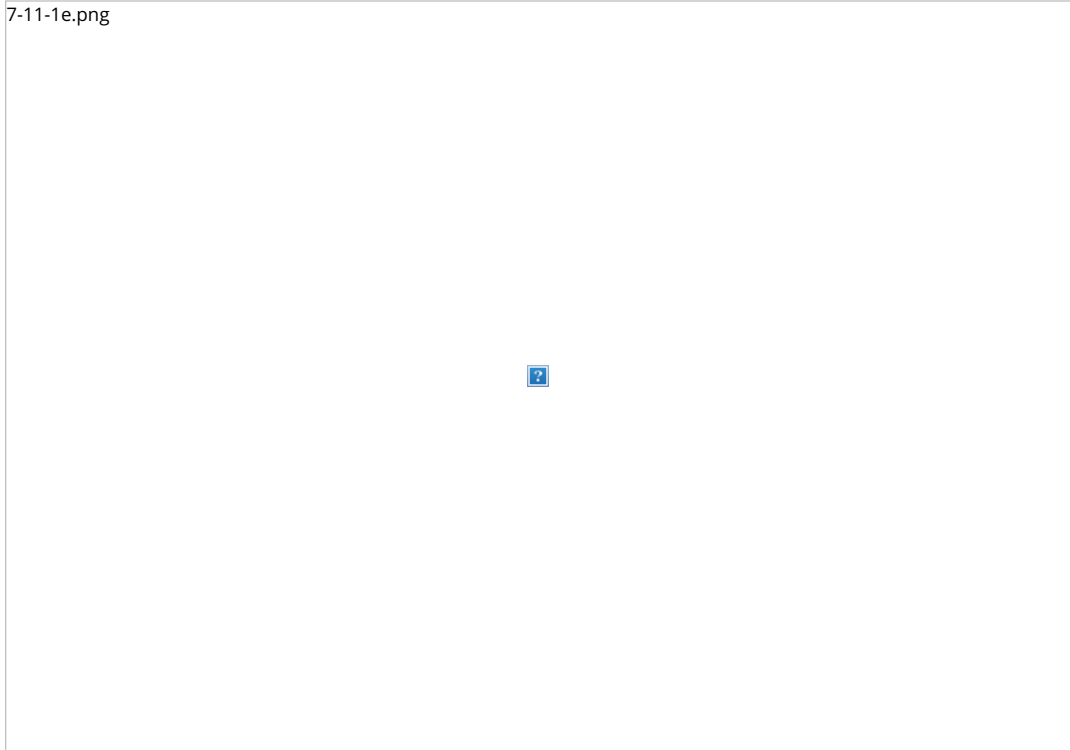


Figure 11-8

- (h) *Sight visibility triangles at street intersections.*
 - (1) *Sight visibility triangle required.* In order to ensure visibility at intersections, sight visibility triangles shall be maintained at all intersections of public streets, private streets, and driveway access points.
 - (2) *Public street intersections.* At an intersection of two public streets with no traffic sign or other device, a sight visibility triangle is that triangle formed by the street right-of-way lines and a line connecting them at points 50 feet from the intersection of the street right-of-way lines.
 - (3) *All other intersections.* At all other types of intersections, a sight triangle is defined as that triangle formed by a ten-foot side measured along the right-of-way of the minor approach from the right-of-way of the major approach, and a 50-foot side measured along the right-of-way of the major approach from the right-of-way of the minor approach.

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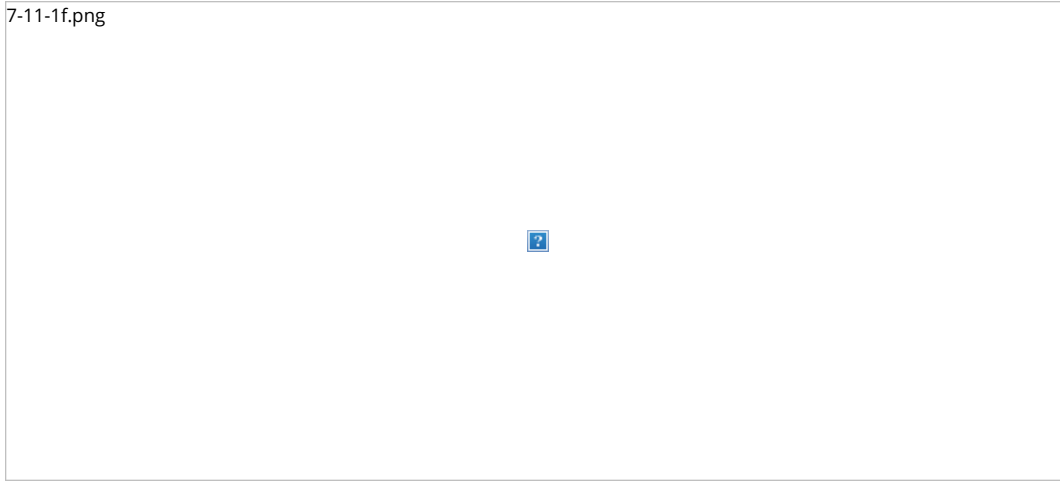


Figure 11-9

- a. For intersections formed by two public streets with a traffic control sign or other device, the minor approach is the street which must stop or yield.
- b. For intersections formed by a public street and a private street or driveway, the public street is the major approach.
- c. For a private street or driveway, the short side of the sight visibility triangle shall be measured along the edge of the private street or driveway.

7-11-1g.png

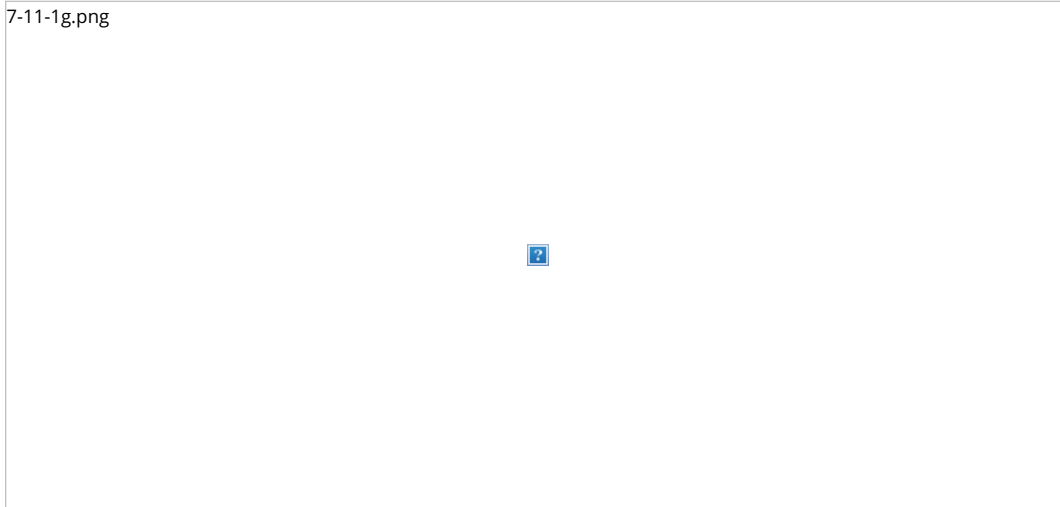


Figure 11-10

- d. For a public or private street or driveway where the building displays a 0-foot setback, the long side of the triangle shall be measured along the face of curb, with additional measures to be applied if deemed necessary by the city's traffic engineer in accordance with sound engineering principals.

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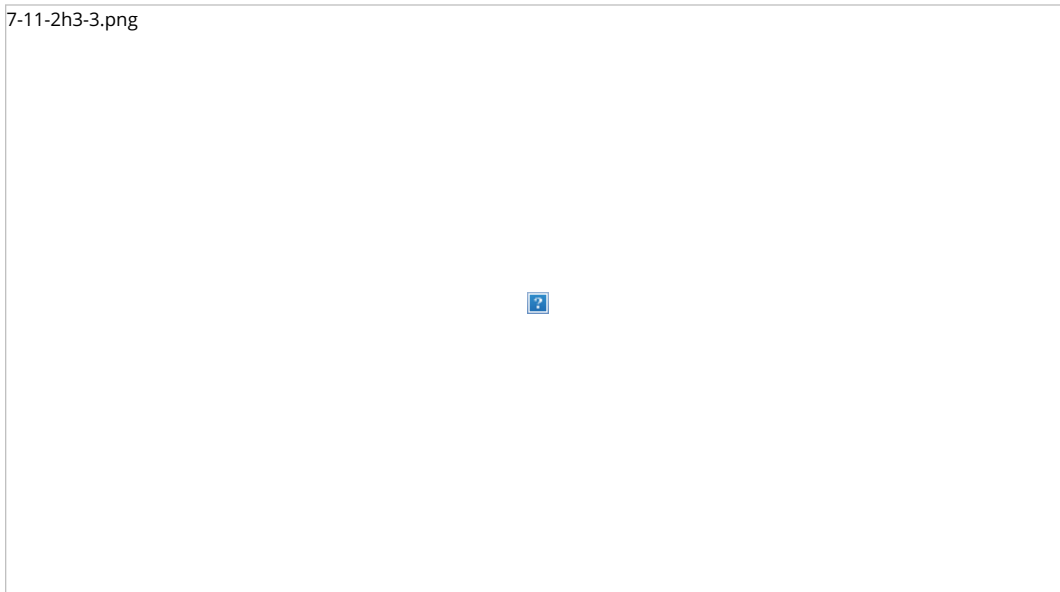


figure 11-11

- (4) *Sight visibility at state-maintained intersections.* On roadways maintained by the North Carolina Department of Transportation, additional sight visibility triangle requirements may be applied by that department.
- (5) *Applicability and exemptions.* Within the triangles identified above, and except as provided below, no structure, sign, plant, shrub, tree, berm, fence, wall, or other object of any kind or parking or storage of automobiles shall be installed, constructed, set out or maintained so as to obstruct cross-visibility at a level between three and ten feet above the level of the center of the street intersection. These restrictions shall not apply to:
- Existing natural grades which, by reason of natural topography, rise three feet above the level of the center of the intersection;
 - Trees having limbs and foliage trimmed in such manner that no limbs or foliage extend into the area between three and ten feet above the level of the intersection;
 - Fire hydrants, public utility poles, street markers, governmental signs, and traffic control devices;
 - Any structure, sign, plant, shrub, tree, berm, wall, or fence located in the Central Business District;
 - Trees which are planted in order to meet the street tree requirement as set forth in subsection 7-11-3(f).
- (i) *Access onto residential streets by nonresidential uses*
- (1) *Access onto residential streets limited.* In order to preserve the residential character of streets that function primarily to provide direct access to residences, access onto these streets by nonresidential uses shall be limited. Those streets abutted primarily by residential uses and that provide direct access to these residences shall be considered to be a residential street. These standards shall not apply to those nonresidential uses permitted by right, subject to special requirements, or as conditional uses in residential zoning districts. Furthermore, these standards shall not apply to nonresidential uses located in nonresidential or mixed use zoning districts that are located on residential streets and have their only access from residential streets.
- (2) *Standards for access for nonresidential uses.* Except as provided for below, nonresidential uses located on corner lots, through lots, or other lots with frontage on more than one street shall have their access from the street that is abutted by uses most consistent with the use located on or proposed for the lot for which access is being sought. Nonresidential uses having frontage on more than one street may have access onto a residential street if the traffic engineer for the City of Asheville determines that the access results in improved traffic flow and that the access does not negatively impact the residential uses on the street by promoting cut-through traffic, creating conflicts with residential driveways/access, or endangering pedestrian safety.
- (j) *General requirements for access to streets for residential lots.*
- (1) *Access to public or private streets.*
- General.* Except as set forth in subsection (i)(2) below, all residential lots must abut a public street or an approved private street built to public street standards: Residential lots shall meet the minimum lot width requirements of the applicable zoning district where they abut a public street, except for lots on a cul-de-sac or flag lots.
 - Lots on a cul-de-sac.* A lot on a cul-de-sac shall be a minimum of twenty-five (25) feet at the front property line, and shall be 80 percent of the required lot width at the front setback line.
 - Flag lots.* A lot that abuts a public street with a narrow street frontage (flag lot), may be approved by the planning and development director if it meets the following requirements:
 - A flag lot shall serve only one single-family dwelling and its accessory buildings.
 - Minimal width of the flagpole portion of the lot shall be 20 feet.
 - The flagpole portion of the lot shall not be used to calculate compliance with minimum lot area, width, and depth or to provide off-street parking.
 - Where public water is available, any occupied building on the flag lot must be within 500 feet of a fire hydrant, as specified in the Asheville Fire Prevention Code. This distance shall be measured along the street, then along the flagpole portion of the lot, and then in a straight line to the building location.
 - Where public sewer is available, occupied buildings on the flag lot shall have a gravity sewer service line, or the sewer requirement shall be noted on the preliminary plat.
 - Use of a single driveway to serve a flag lot and an adjoining lot is permitted and encouraged.
 - Maximum length for the flagpole portion of the lot shall be 250 feet.
 - No more than one lot in a subdivision of less than eight lots shall be a flag lot. No more than two lots or ten percent of the total lots in the subdivision, whichever is greater, shall be flag lots in a subdivision of eight or more lots.
- (2) *Alternative access for small (four single-family lots or less) subdivisions.*
- General.* Where there is a division of land into not more than four lots and it is proposed that those lots are or will be developed with no more than one single-family dwelling unit (and permitted accessory structures) per lot, the requirement for each lot to have access to a public street or approved private street may be satisfied by alternative access meeting the standards set forth below. Alternative access under this section may not be used for more than one subdivision out of a single tract or parcel existing as a matter of record in the register of deeds as of the effective date of this ordinance (March 8, 2005), and no subdivision using alternative access may be approved if it is located closer than 1,500 feet to any other subdivision for which alternative access has been approved, or where the existing access is not via a public street or approved private street.
 - Dedicated right-of-way standards for small subdivision alternative access.* Where a subdivision is proposing to use alternative access, the following standards shall apply to said access.
 - A minimum 20-foot right-of-way shall be provided. Said right-of-way must intersect at one of its ends with an existing public road.
 - The right-of-way area must have a minimum 16-foot paved surface, with six-inch CABC stone and one and one-half-inch overlay of asphalt.
 - A notation must appear on the recording instrument stating that the right-of-way is to provide permanent public egress, ingress and utility access for all lots served by the right-of-way.
 - If the road length exceeds 150 feet, a paved turnaround may be required meeting all engineering and fire department codes.
 - The slope of the road shall not exceed 20 percent.
 - Only single-family homes may be accessed off of this private right-of-way.
 - The curb cut for the access road shall meet all applicable city driveway standards.
 - The access road must be completed or the applicant must post a bond or letter of credit for 150 percent of the cost of the access road prior to recordation of the final plat.
- c.

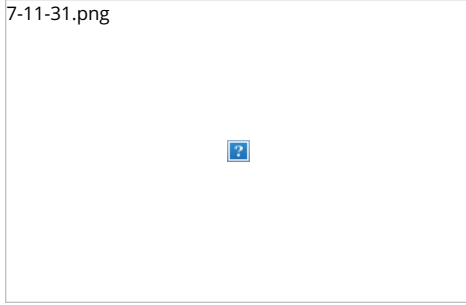
In order to achieve greater compatibility with surrounding development, single-family homes and accessory structures erected in alternative access subdivisions shall comply with the following design standards. For the purpose of this subsection, "general vicinity" shall mean within a radius of 500 feet as measured from the property lines of the alternative access subdivision.

1. The rear or side of any single-family home or accessory structure within 35 feet of an adjoining street right-of-way shall not face the street right-of-way.
 2. Exterior siding materials for single-family homes and accessory structures shall be similar to the siding on other residential structures in the general vicinity; approved materials include clapboard (wood, vinyl, or fiber-cement), stucco, stone, or brick or a combination thereof.
 3. The height of single-family homes and accessory structures shall be no more than four feet taller than the height of the tallest single-family residential structure located in the general vicinity.
 4. The roof design, pitch and materials proposed for single-family homes and accessory structures shall be similar to the roof design, pitch and materials of residential structures located in the general vicinity.
 5. A front porch shall be provided on the single-family homes if a majority of the residential structures in the general vicinity have front porches; this porch shall contain a minimum floor area of 80 square feet and shall have a minimum dimension of eight feet along any one side.
 6. Window and door placement and styles shall be similar to that of the residential structures in the general vicinity.
 7. The floor area of single-family homes shall not be more than 150 percent larger or 25 percent smaller than the average floor area of single-family residential structures located in the general vicinity.
- (k) *General requirements for access to streets for non-residential lots.* Except as set forth below, lots used for non-residential purposes must abut a public street or an approved private street built to public street standards. Lots or parcels used for non-residential purposes are not required to abut a public street if all of the following requirements are met.
- (1) An easement or right-of-way with a minimum width of 30 feet connects the lot to a public street.
 - (2) The easement or right-of-way is recorded in the Office of the Register of Deeds for Buncombe County.
 - (3) A paved road with a minimum width of 20 feet (not including parking) provides access from the lot(s) or parcel(s) to a public street.
 - (4) The access road is located within the recorded easement or right-of-way.
 - (5) The access road shall be constructed to the standards established by the City of Asheville for commercial streets.
 - (6) A road maintenance agreement, which identifies the responsibilities for the maintenance of the access road and clearly states that the City of Asheville is not responsible for maintenance of the road, is prepared and recorded in the Office of the Register of Deeds for Buncombe County.
 - (7) Not more than five lots nor more than ten acres shall be served by the easement or right-of-way.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, § 14, 11-11-97; Ord. No. 2823, § 1, 6-26-01; Ord. No. 3157, § 1(a)(7), 8-24-04; Ord. No. 3209, § 1c, 1-25-05; Ord. No. 3223, § 1, 3-22-05; Ord. No. 3272, § 1(c), 7-26-05; Ord. No. 3367, § 1, 6-13-06; Ord. No. 3417, § 1(b), 11-28-06; Ord. No. 3466, § 1(e), 4-24-07; Ord. No. 3484, §§ 1(a)—(c), 6-12-07; Ord. No. 3700, § 1j, 2-10-09; Ord. No. 3712, § 1, 3-10-09; Ord. No. 3739, § 1a, 6-9-09; Ord. No. 3856, § 1c, 5-25-10; Ord. No. 3956, § 1a, 3-22-11; Ord. No. 4016, § 1, 9-13-11)

Sec. 7-11-3. - Landscape and buffering standards.

- (a) *Purpose.* The City of Asheville has an abundant and diverse tree and vegetative cover that contributes to the aesthetic value of the city and provides numerous ecological and economic benefits. Asheville's location on the habitable edge of the Appalachian Mountains (one of the oldest ranges in the world); its truly fascinating cultural heritage; the accidents of history that endowed the city with more of than its share of memorable architecture; its site on the French Broad River (one of the country's oldest rivers—and the only one in the Southeast that flows north); and its location in the center of a geographical area that includes four neighboring states, make Asheville truly different from all other American cities. The landscape and buffering standards set forth below require landscaping between dissimilar zoning, along public rights-of-way, in and around parking lots and outdoor storage areas, and on properties supporting new development or extensive re-development, in order to:
- (1) Encourage the preservation and health of existing trees, tree canopies, and other existing vegetation, and to replenish removed vegetation;
 - (2) Improve and protect the visual quality of the City of Asheville, city forests, and forested view sheds, and minimize potential negative impacts of development such as noise, dust, glare of lights, parking lots, traffic, heat, overcrowding, and odor;
 - (3) Provide environmental benefits, such as climate modification, decreased energy consumption, reduced stormwater runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;
 - (4) Provide a transition between dissimilar zoning districts to protect abutting properties from potential negative impacts of neighboring development, particularly between residential-commercial interfaces, and to preserve the character and value of a property and provide a sense of privacy;
 - (5) Improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of Asheville while allowing flexibility to promote well designed and creative landscape plantings.
 - (6) Enforce the maintenance of landscaping installed to meet the requirements of these high standards to ensure that the landscaping continues to thrive and enhance the visual quality of the City of Asheville.
- (b) *Applicability.* Landscape standards are required for developments within the City of Asheville's zoning jurisdiction, including the extraterritorial jurisdiction. Applicants are advised to meet with planning and development department staff prior to submitting a site plan to discuss applicable landscape requirements, other ordinance requirements, and coordination of plantings with utility plans. A landscape plan drawn to scale must be submitted with the site plan and prepared in accordance with the standards established by the planning and development department. Separate landscape requirements are considered cumulative unless noted otherwise.
- (1) Development of property as referenced in [section 7-11-1](#) must bring the entire site into full compliance with the requirements of article XI of this chapter (parking, loading, access, landscape and buffering, open space and traffic impact analysis).
 - (1.1) The following types of development must only comply with the landscape and buffering standards that are specifically defined in each of the following sections:
 - a. Existing unpaved vehicular use areas of which less than 50 percent is paved or existing paved vehicular use areas of which less than 50 percent is demolished and repaved must meet the parking lot landscape requirements in subsection [7-11-3\(d\)\(4\)](#) only for the disturbed area. For properties where the area of disturbance is located along the perimeter of the vehicular use are the following landscape standards shall also be required adjacent to the disturbed area, if applicable: property line buffer, street buffer, street trees. Maintenance and repair of disturbed areas less than 500 square feet are exempt from this requirement with an exception that any landscaping removed to accommodate the maintenance or repair of such areas must be replaced with vegetation equivalent to that which was removed.
 - b. Building expansions or additions that are less than 50 percent of the pre-expansion floor area must meet the landscaping requirements only in the area around the addition which is parallel to any edge of the expansion area and extending to the property line or street pavement edge (see illustration below):



expansion /addition

- c. Building expansions or additions occurring on properties zoned Commercial Industrial or Industrial that result in an expansion of less than five percent of the pre-expansion floor area or 3,000 square feet in size whichever is less, are not required to meet additional landscape standards. Cumulative expansions occurring over a three-year period that exceed this threshold shall have to meet all applicable landscape standards.
- (2) *Central business district alternatives.* In order to preserve and promote existing development patterns within the Central Business District specific landscape requirements are described below:
 - a. The CBD areas within the Downtown Design Review Overlay District are exempt from building impact landscaping and property line buffers;
 - b. Other CBD areas are exempt from building impact landscaping but developers will be required to provide a property line buffer which may be the standard buffer outlined in [section]7-11-3 or an alternative buffer described in the ordinance for the district [in section]7-8-18
 - c. All CBD areas may modify the requirement for a street buffer by placing a wall at a minimum height of three feet in place of the required shrubs;
 - d. Street tree, parking lot and screening requirements shall apply as described in the ordinance.
- (3) *Urban zoning district exemption.* In order to promote a high density, urban form of development within these districts, the tree save requirements of this subsection shall not apply to properties zoned Urban Village (UV), Neighborhood Corridor (NCD), Urban Residential (URD), and Urban Place (UP).
- (c) *Preservation and protection of existing vegetation.* Preserving existing vegetation protects the visual quality of the City of Asheville's urban landscape and should be encouraged.
 - (1) *Credits and other incentives to preserve vegetation.* Projects intending to preserve existing vegetation in order to receive credit for required landscaping must graphically show the location of each tree on a the landscape plan and must note the dbh (diameter at breast height) and species of each tree. Any development that proposes to preserve existing vegetation will receive credit for that vegetation at the rate of:

Diameter at Breast Height	# of Tree Credits
2" — 6"	1
7" — 12"	2
13" — 18"	3
19" — 24"	4
25"	+5
Shrubs will be credited at a rate of 1:1	

In order to receive credit, preserved vegetation must be in good health and condition and must meet the spacing requirements of the standards it is intended to satisfy. Protective barriers must also be shown on the landscape and grading plans in accordance with the requirements of this section. If a preserved tree dies within 24 months of completion of the project, it must be replaced with the total number of trees which were credited to the existing tree. No credit will be given to invasive-exotic species.

- (2) *Protection of existing trees during construction.* No grading or other land-disturbing activity can occur on a site with existing trees which are designated to be preserved in order to meet the landscaping requirements until protective barriers are installed by the developer and inspected by the planning and development director. The dbh of the preserved trees and the location of protective barriers must be shown on the landscape and grading plans with the dimension between the tree trunk and barrier indicated.
 - a. *Placement of protective barriers.* Barricades shall be placed around the critical root zone of preserved trees that are within 50 feet of any grading or construction activity. The critical root zone is a circle extending around the tree with a one-foot radius for every one inch of tree diameter. All protective barriers must include clear and visible signage that describes the delineated area as a "Tree Protection Area", or equivalent. All protective barriers and signs must be maintained throughout the building construction process.

b. *Protective barriers shall consist of either:*

- A fence which is at least three feet high and constructed in a post and rail configuration, using two by four posts and one by four rails; or

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- A fence with two by four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing.

tree/fence

c. *Prohibited activities.* All contractors must be made aware of the areas designated for protection. No disturbance can occur within the tree protection area including:

- Grading
- Filling
- Parking
- Storage of debris or materials, including topsoil
- Sedimentation and erosion control measures
- Disposal of hazardous wastes or concrete washout
- Attaching of nails, ropes, cables, signs, or fencing to any preserved tree.

d. *Permissible encroachments.* Where physical site constraints exist, utilities may encroach into the tree protection area provided they are tunneled at least two feet directly below the tree roots to minimize root damage. A construction detail shall be required. Other encroachments various in nature may be permitted provided that the contractor follows-through on the written recommendation of a certified arborist or consulting arborist to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.

e. *Silt fencing.* If silt fencing is required to control sedimentation, the fencing must be placed along the uphill edge of a tree protection zone in order to prevent sediment from accumulating in the critical root zone area (refer to the City of Asheville's Standards and Specifications Manual for details).

(d) *Standards.* Landscape requirements are broken down in the following categories:

- a. *Property line buffer* — Landscaping along property lines separating different zoning districts.
 - b. *Street buffer* — Landscaping along street rights-of-way between parking areas and pedestrian zones.
 - c. *Street trees* — Shade trees planted along street frontages to improve the pedestrian environment and enhance the urban streetscape.
 - d. *Parking lot landscaping* — Landscaping in and around vehicular use areas.
 - e. *Building impact landscaping* — Landscaping used to enhance the site.
 - f. *Screening* — Landscaping around utility use, outdoor storage, and loading areas.
 - g. *Tree save areas* — Tree preservation and/or replanting areas for residential developments.
- (1) *Property line buffer.* Some land uses may create an adverse impact when developed adjacent to other less intensive land uses commonly found in certain zoning districts. Bufferyards shall be required for proposed developments adjacent to parcels of dissimilar zoning designations to provide a transition between districts of varying intensities. The bufferyard width and number of plantings required will vary depending on the degree of difference between the zoning designations and shall be the responsibility of the property owner developing or changing the land use.

a. *Bufferyard types.* The amount of plant material required in a bufferyard area is measured per 100 linear feet and is based on the following table.

Bufferyard Type	Evergreen Trees	Deciduous Trees (Large)	Deciduous Trees (Small)	Shrubs (Large)	Shrubs (Small)
A — 20' wide	4	3	3	10*	10*
B — 30' wide	6	5	5	15*	15*

* 50 percent of all shrubs must be evergreen.

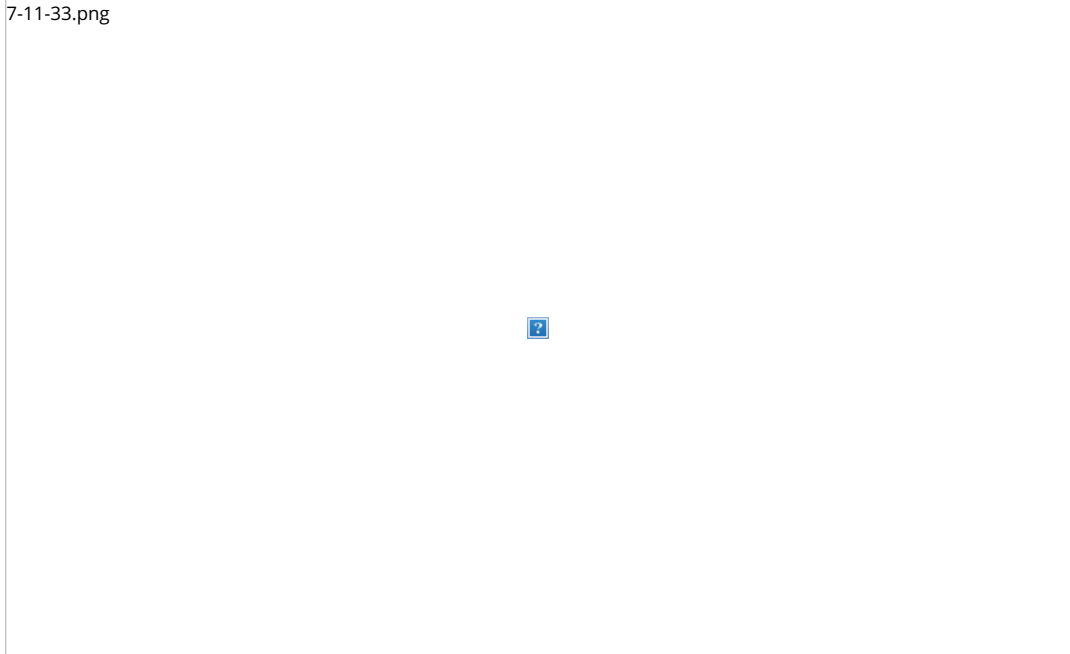
b.

Buffer determination. The type of buffer required is based on the following table. Table is to be read in one direction only starting from the proposed development site zoning column.

Proposed Development Site Zoning	Adjacent Zoning & Required Buffer	
	RS	RM
RS	N/A	N/A
RM	A	N/A
O, OII, NB	A	A
OB, CB-I, CB-II, RES, INST, HB, RB, RIVER, CI, IND, LI	B	A
UV, NCD, UR, UP	B	A

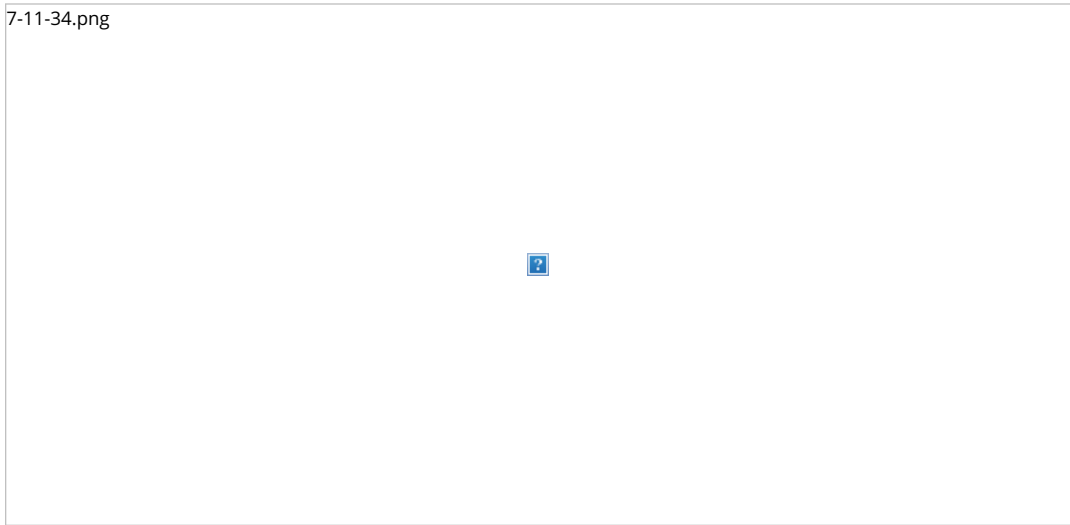
- c. *Buffer location.* Buffers shall extend along the entire property line which is adjacent to the properties of dissimilar zoning designation. Buffers are to be located on the property of the person developing the new or changing land use, between the property line and any vehicular use areas, buildings, storage, service areas, or other area of activity.
- d. *Species composition.* Plantings in buffer areas shall be an appropriate mix of native species or other species suitable to naturalizing in woodland settings. Buffers in the river district shall be composed of species appropriate to a river environment. Consult the City of Asheville Recommended Species List for a list of approved species. Species not identified in the list may be approved by the planning and development director.
- e. *Placement of buffer plantings.* The exact placement of the required plants shall be the decision of the developer or designer, but shall be approved by the planning and development director. Plants should be placed in a manner to serve as an effective and attractive screen year-round when viewed from any area accessible to the public or from adjacent properties. Trees or shrubs should be planted at least five feet away from the property line to ensure maintenance access and to avoid encroaching upon neighboring property.
- f. *Setbacks.* Wherein a setback and bufferyard are required along the same property line that with the greatest dimensional width shall be applicable. If the setback is greater than the bufferyard, the total number of required plant material shall be distributed throughout the wider setback.
- g. *Corner lots and through lots.* No buffer will be required along the front property line of any lot; however, a lot with more than one street face will require a buffer along the secondary street face when it is adjacent to a dissimilar zoning district. Buffer requirements are waived in lieu of street trees and street buffers, as applicable, provided the building facade is that street frontage is pedestrian oriented with functioning pedestrian entrances that open onto public sidewalks.
- h. *Encroachments.* The following site features may be permitted to penetrate or encroach into a required buffer area provided that the total number of required plantings is still met.
 - Approved driveway openings
 - Pedestrian or bicycle paths
 - Designated greenways
 - Utilities
 - Walls/fences
- i. *Prohibitions in a buffer.* The following are specifically prohibited from encroaching into required buffer areas:
 - Loading areas
 - Storage areas
 - Parking areas
 - Driveways and drive aisles, other than approved openings
 - Dumpsters
 - Stormwater retention/detention structures
- j. *Buffer along the Blue Ridge Parkway.* In order to preserve views and mitigate the impacts of adjacent development from the Blue Ridge Parkway or other scenic corridors officially designated by city council or the North Carolina Department of Transportation, new developments adjacent to these corridors shall provide a Type 'B' buffer as required by this subsection.
- k. *Grading activity in the bufferyard.* When possible, grading should not occur within a required bufferyard. If grading within the required bufferyard proves necessary then the developer is required to plant trees and shrubs which are 50 percent larger than otherwise required in order to quickly re-establish a visual buffer. Grading in the required bufferyard shall not exceed a 3:1 slope.

- I. *Overlapping requirements.* Fifty percent of buffer plants that are within 15 feet of a vehicular use area may also be counted towards the parking lot landscaping.
- (2) *Street buffers.* Street buffers are designed to provide for a separation of activities and a more comfortable pedestrian environment. The street buffer is required in addition to the street trees planted in a ten-foot planting strip as required in subsection 7-11-2(d)(3)(c).
 - a. *Street buffer determination.* Vehicular use areas greater than 4,000 square feet that are located within 50 feet of the edge of a street must be buffered from the street.
 - b. *Calculating the requirement.* One evergreen or deciduous shrub planted for every five linear feet of buffer required. Species selected must achieve a minimum of three feet in height at maturity.



street buffer

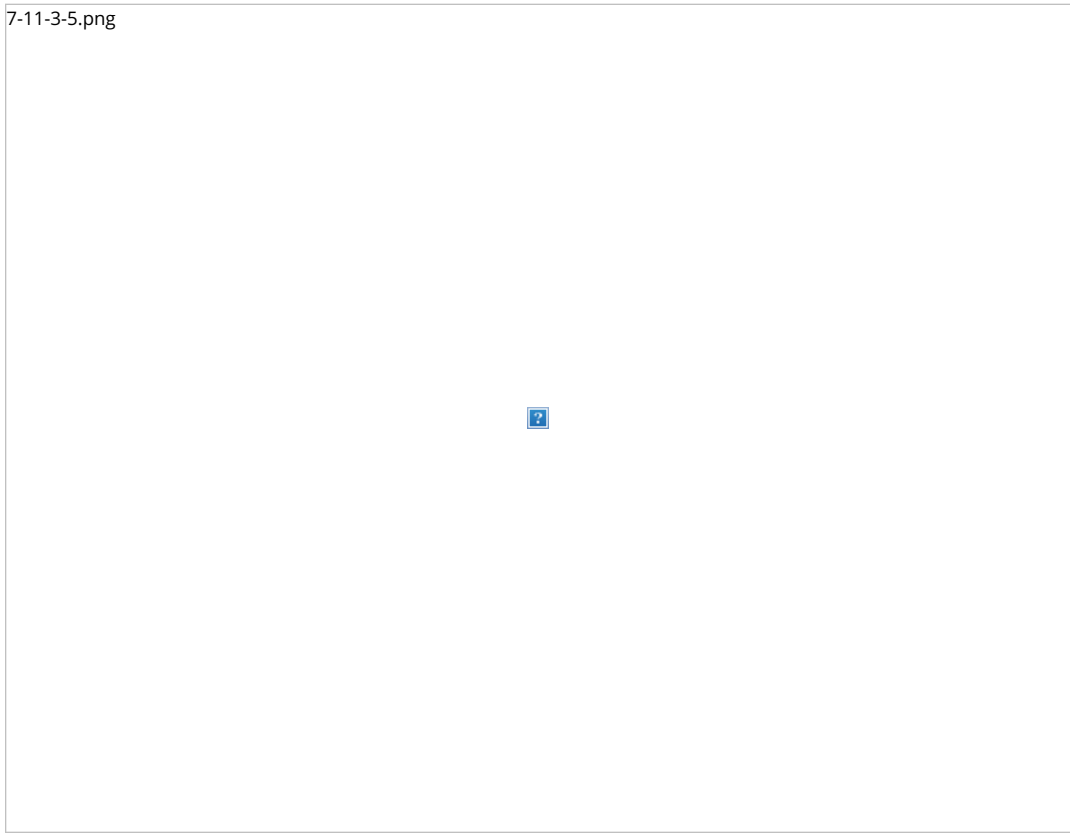
- (3) *Street trees.* Street trees are required for all new developments except for single- or two-family homes. This requirement is designed to create or enhance an attractive streetscape pattern while contributing to Asheville's urban forest and a more comfortable pedestrian environment.
 - a. *Street tree determination.* Street trees are required along all street frontages.
 - b. *Calculating the requirement.* Street tree requirements are as follows:
 - Overhead utilities present — One small maturing tree (less than 35 feet in height at maturity) for every 30 linear feet of property abutting a street.
 - All other conditions — One large maturing tree (greater than 35 feet in height at maturity) for every 40 linear feet of property abutting a street.
 - c. *Street tree spacing.* Trees may be evenly spaced or staggered to accommodate other site features. In no case shall a required street tree be closer than 15 feet or farther than 65 feet from another required tree. No street tree shall be farther than 20 feet from the edge of pavement or, in cases of planned road widening, 20 feet from the proposed edge of pavement. Existing trees credited towards street tree requirements shall meet spacing requirements.



tree spacing

- d. *Planting strip.* Trees shall be placed in a planting strip the width of which may vary but shall maintain a minimum of not less than seven feet and an average width of ten feet. The planting area must be covered with living material, including groundcover and/or shrubs, except for mulched areas directly around the trees so that no soil is exposed. No stone mulch is permitted in the planting strip. Sidewalks may interrupt the planting strip provided the width on either side of the sidewalk totals ten feet. (See the City of Asheville Standards and Specifications Manual for detail(s))

- e. *Street trees in Urban Zoning Districts.* Street trees required within the Central Business, Urban Village, Neighborhood Corridor, Urban Residential and Urban Place districts may utilize other urban forms and technologies such as tree pits with grates or trenches. New trees where sidewalk construction is required shall provide a minimum root zone area of 300 cubic feet of organically amended soil, or structural soil alternative, in one of the following forms:
 - i. A reinforced suspended sidewalk system around a tree grate;
 - ii. A continuous planting area between trees that is a minimum of four feet wide;
 - iii. A system of tree grates or previous paving that allows water infiltration and oxygen exchange for tree root systems;
 - iv. An on-street bulb-out which has been reviewed and approved by the traffic engineer for traffic safety.
 - f. *Trees in public rights-of-way.* Street trees may be located within the city's rights-of-way but must be of a species approved by the city arborist. Trees located in other public rights-of-way must provide an encroachment agreement from the regulating agency.
- (4) *Parking lot landscaping.* Trees and shrubs are required in and around parking lots in order to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, reduce glare from parking lots, and to help filter exhaust from vehicles.
- a. *Parking lot determination.* Parking lots with six or more spaces shall require parking lot landscaping.
 - b. *Calculating the requirement.* One deciduous tree and four shrubs for required for every 1,500 square feet of vehicular use area (VUA). At least 75 percent of the required deciduous parking lot trees must be large-maturing trees. Trees and shrubs must be planted within 15 feet of the vehicular use area to count as parking lot landscaping.
 - c. *Interior rows of parking.* When more than four trees are required in a parking lot with interior rows, 50 percent of the trees and shrubs must be planted in islands or medians located within the parking lot.
 - d. *Multiple parking bays.* When more than four bays of parking are proposed, an interior island with an average width of 20 feet and a length equivalent to the length of the average parking bay is required. This island must be planted and include a pedestrian walkway no less than five feet wide and placed in a location that enhances pedestrian circulation, preferably leading directly to a building entrance or sidewalk.



parking bays

- e. *Perimeter parking spaces.* All continuous runs of 15 or more parking spaces shall be interrupted by a tree island.

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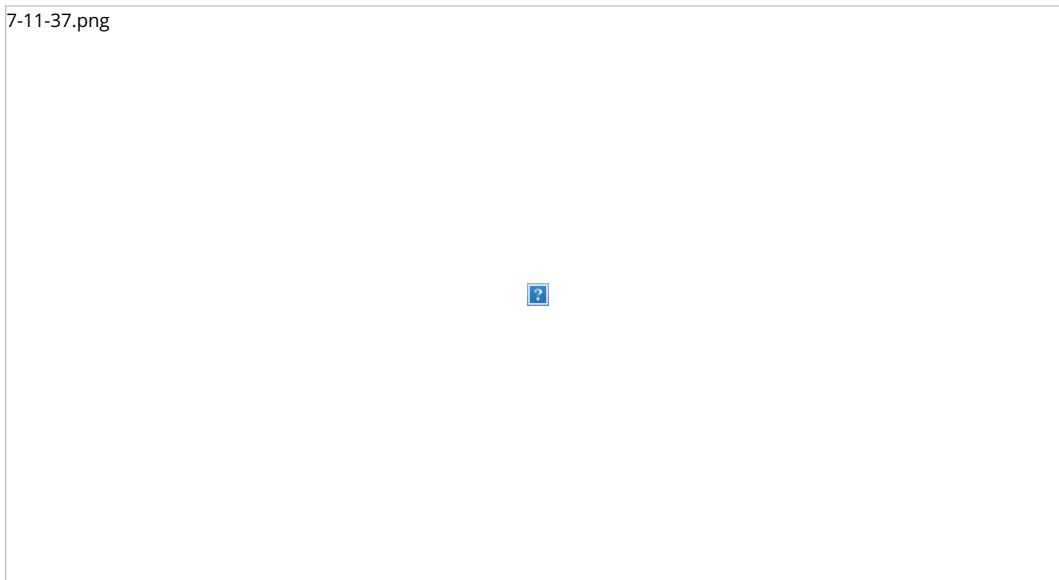
perimeter parking

- f. *Minimum island size.* The minimum island size shall be 200 square feet of pervious planting surface per tree. Islands must maintain an average width of ten feet with a minimum width no less than five feet.
 - g. *Protection of trees.* Curbing, bollards, or parking barriers shall protect trees and shrubs within five feet of the edge of the pavement. Trees and shrubs in islands should be set back at least three feet from the curb so as not to interfere with car doors opening.
 - h. *Canopy coverage.* Each parking space shall be located within 60 feet of a tree as measured from the trunk of the tree to the closest point of the parking space.
 - i. *Parking decks.* Exposed parking decks are required to plant a minimum of one tree and two shrubs for every 30 linear feet of the parking structure's perimeter. Trees shall be planted within 20 feet of the structure. This requirement shall be waived for any side of the structure where the property line buffer standards of subsection 7-11-2(d)(1) require a greater number of plantings.
 - j. Additional landscaping required for parking lots exceeding the maximum number of parking spaces. When the number of parking spaces exceeds the maximum city parking standards as set forth in section 7-11-1, one tree and two shrubs per 1,000 square feet of the additional vehicular use area shall be required in addition to the minimum requirements of this subsection.
 - k. Landscaping of parking areas and other uses by right, subject to special requirements and conditional uses. All parking areas required for specified uses outlined in article XVI shall be screened from adjacent properties with a mix of evergreen and deciduous trees and shrubs to result in a vegetative screen that is 75 percent opaque year round.
- (5) *Building impact landscaping.* Building impact landscaping shall be required for new or existing buildings in order to soften views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, reduce glare, and to help enhance the urban landscape.
- a. *Building impact determination.* All new developments with an existing or proposed building with a footprint greater than 3,000 square feet. Developments with more than one building shall combine the total footprint areas.
 - b. *Calculating the requirement.* One tree and two shrubs for every 1,000 square feet of building footprint. Trees and shrubs may be planted anywhere on site.

- (6) *Screening of dumpsters, loading docks, outdoor storage areas, and utility structures.* All dumpsters, loading docks, or utility structures visible from a public street or adjacent property line shall be screened unless already screened by an intervening building or bufferyard. All enclosed outdoor storage areas greater than 25 square feet shall also be screened from adjacent properties and streets. Screen types include:
 - A continuous hedge of evergreen trees and/or densely twigged deciduous trees planted in a seven-foot strip spaced no more than eight feet apart.
 - Fence or wall with a minimum height of six feet with the finished side of the fence facing the abutting property or street. Fences longer than 25 linear feet shall be landscaped with trees and/or shrubs planted in a minimum five-foot planting area, except around access areas, spaced no farther than eight feet apart in order to screen at least 50 percent of the fence or wall.
- (7) *Tree save areas.* Residential projects shall preserve a portion of a site area dedicated to the preservation and/or establishment of natural woodland areas. These areas shall be delineated on the required site plan or final plat.
 - a. *Tree save area determination.* All new residential multi-family developments of eight or more units and major subdivisions of eight or more lots are required to have dedicated tree save areas. See subsection 7-11-3(b)(3) for exemptions.
 - b. *Calculating the requirement.* Thirty percent of the total site area must be delineated on an approved site plan or an approved preliminary and final plat as tree save area. Each acre of designated tree save area must be planted at the following rate; areas less than one acre will be required a pro-rated amount plants:

Minimum Number of Trees/Shrubs	Minimum Size
14 Large Maturing Trees	2 inch caliper
7 Large Maturing Trees	3 inch caliper
5 Understory Trees	1.5 inch caliper
50 Shrubs	18" high or 3 gal. container

- c. *Species composition.* Trees and shrubs native to Western North Carolina must be used. No single tree species shall constitute more than 20 percent of the total requirement. No single species shall constitute more than 30 percent of the total shrub requirement; native rhododendron or mountain laurel may constitute 50 percent of the total shrub requirement.
 - d. *Minimum tree save area size.* Tree save areas may be divided into more than one pocket provided no single area is less than 5,000 square feet.
 - e. *Qualifying areas.* Open, common space areas and required property line buffers may be included in the required tree save areas. For major subdivisions, a minimum of 50 percent of the required open space area shall also be tree save area.
- (e) *Alternative compliance.* The landscape requirements are intended to set minimum standards for quality development and environmental protection; site conditions or other reasons may justify the need to request an alternate method of compliance. The applicant must submit a plan of the area for which alternative compliance is requested to the planning and development director. The site plan shall show existing site features and any newly proposed features, if applicable.
- (1) *Alternative buffers.* Buffer requirements may be adjusted through an alternative compliance determination if one or more of the following objective standards are met:
- a. *Vertical separation.* When a topographical change greater than 15 feet exists, a buffer width may be reduced by 50 percent provided the balance of the buffer material is placed at the top of the bank. Plantings may be placed on the high side of the bank provided the bank does not exceed a 3:1 slope. A section drawing is required.



vertical sep

- b. *Horizontal separation.* When an undisturbed area is greater than twice the required buffer width, the number of required plant material in a buffer may be reduced by 50 percent.

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horizontal sep

- c. *Geologic features, drainage channels or streams.* The placement of plant material may be adjusted to accommodate the natural features of a site provided the total amount of required plant material is provided.
 - d. *Plant communities.* The composition of a plant material in a buffer may be adjusted to accommodate a naturally occurring plant community or a documented historical pattern provided an equivalent number of plants are provided.
 - e. *Site constraints.* For all infill and/or adaptive re-use sites where existing utilities, structures, and/or other infrastructure creates a physical constraint to providing the required buffers; buffer widths and plantings may be reduced by 50 percent with the installation of a six-foot high, opaque privacy fence or wall (finished face out). Plantings must be located within a seven-foot side planting area located on the exterior of the fence facing the adjacent property. This alternative may not be used when existing parking infrastructure exceeds minimum parking requirements.
- (2) *Alternative buffering from the street.* Buffering from the street requirements may be adjusted through an alternative compliance determination if the following objective standards are met:
- a. A natural grade change or manmade berm creates a minimum three-foot vertical separation and is completely covered with trees, shrubs, perennials, and/or groundcover.
- (3) *Alternative parking lot landscaping.* Parking lot landscaping requirements may be adjusted through an alternative compliance determination if one or more of the following objective standards are met:
- i. *Island size.* The minimum island size of 200 square feet of planting area per tree may be reduced to:
 - 100 square feet per tree provided that a minimum width of four feet is maintained and, when combined with a subsurface structure, provides a total aerated area greater than 300 square feet per tree. Construction detail must be provided.
 - 150 square feet per tree provided that a minimum width of five feet is maintained and, when combined with a pervious block paver, provides a total pervious surface area greater than 300 square feet. Construction detail must be provided.
 - 150 square feet per tree provided that the islands are existing and the trees are found to be in good health and are identified to be preserved on the landscape plan.
 - ii. *Interior plantings (total number of plantings).* The requirement for plantings in interior islands may be reduced by 30 percent if all interior islands and/or perimeter parking lot landscaping are designed to allow for water collection and retention. These islands shall be planted with water tolerant species and shall not be fenced. Construction detail(s) must be provided.
 - iii. *Tree spacing and interior planting.* The requirement for all parking spaces to be located within 60 feet of a tree may be waived for businesses whose parking fields double as outdoor display or storage areas, and the requirement for plantings in interior islands may be reduced by 50 percent, provided that the total interior island requirements are met with larger consolidated islands where a minimum of 50 percent (total square footage) of the islands are designed to allow for water collection and retention. The islands shall be focused towards the perimeter of the site or in a central area and designed so that stormwater runoff can be captured through bio-swales and or constructed wetlands installed in these areas. These islands shall be planted with water tolerant species and shall not be fenced. In no case shall this standard be applied to typical parking lots where the vehicles are not owned by a single entity. Construction detail(s) must be provided. This reduction for tree spacing and interior planting shall not be applied to other categories of landscaping required by this ordinance.
- (4) *Alternative street tree requirements.* Street tree requirements may be adjusted through alternative compliance if one or more of the following objective standards are met:
- a. *Planting strip width.* The required ten-foot wide planting strip for street trees may be reduced if one or more of the following objective standards apply:
 - An existing sidewalk, building(s) and/or other infrastructure prevents its installation. In no case shall the planting strip be less than five feet wide or planting area less than 200 square feet per large maturing tree, or 150 square feet per small maturing tree.
 - The predominant existing street tree pattern within 500 feet (both directions on both sides of the street) displays a different pattern. In no case shall the planting strip be less than five feet wide.

- A subsurface structure is used to allow for an aerated area of 200 square feet per tree. Construction detail must be provided.
 - An adopted streetscape plan, corridor plan, and/or neighborhood plan calls for a different standard and the development complies with this standard.
- (5) *Other alternative compliance requests.* All other alternative compliance requests not identified in this subsection may be reviewed by the Asheville Tree Commission who will act as an advisory board to the planning director. The applicant for such a request shall submit a list of all adjacent property owners to be notified by mail at least ten days in advance of the meeting of the tree commission where the request is to be considered. All notices shall be sent with delivery confirmation and shall state:
- A general description of the request
 - The time and place of the meeting
 - Contact information
 - The requirements of this section (i—vii) with a description of how the request meets each of these standards.

The commission, upon consideration of such a request may recommend approval, approval with conditions, or denial of the request. After receiving the recommendations of the tree commission, the planning director shall make the final decision on such requests, and shall provide a copy of that decision to any adjacent property owners who have requested one. In the event that the planning director rejects the tree commission's recommendation, all adjacent property owners will be notified in writing. Except as set forth in subsection 7-11-3(e)(5)b. below, the tree commission may not recommend, nor the planning director approve, an alternative that reduces the standard requirements by more than 50 percent. Applicants or other aggrieved parties may appeal a decision to the Asheville Board of Adjustment in the manner provided for appeals of administrative decisions in article VI of this chapter.

- a. *Alternative compliance standards.* No request for alternative compliance under this section may be approved unless the information provided in support of the request shows the following:
- i. The site in question is affected by physical conditions or constraints, not attributable to proposed site design or building design, that make compliance with the standard requirements practically impossible.
 - ii. The physical conditions or constraints are not a result of the applicant's own actions.
 - iii. The proposed alternative will not present a safety hazard.
 - iv. That proposed alternative will, upon maturity, provide landscaping that is equal to or better than the standards requirements.
 - v. The proposed alternative is designed to address plant health and vigor.
 - vi. The proposed alternative is reasonably compatible with the natural and topographic features of the site.
 - vii. The proposed alternative supports the purpose statement noted in 7-11-2(a).
- b. *Alternative compliance with existing structures and utilities.* The Asheville Tree Commission may recommend (and the planning director may approve) landscape alternatives with a greater than 50 percent reduction where the location of existing structures or utilities creates a situation where an applicant wishing to reuse/rehabilitate a structure is unable to comply. In these situations, the tree commission may recommend any degree of reduction but shall also consider on-site alternatives to the landscape standards in order to mitigate the loss of the required landscaping. Mitigation measures should be considered by the commission in addition to the alternative compliance standards set forth in subsection a. above.
- (f) *Compliance and maintenance.* Vegetation shall be planted and maintained to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant materials
- (1) *Certificate of compliance.* Landscaping must be installed and inspected by the City of Asheville prior to receiving a certificate of compliance. If the season or weather conditions prohibit planting the materials, the developer may provide a bond, an irrevocable letter of credit, or other financial surety in an amount equal to one and one-half times the estimated cost of installing the required landscaping to guarantee the completion of the required planting. Upon approval of the financial surety, the certificate of compliance shall be issued. The financial surety shall be for a period not to exceed 12 months; the planning and development director may grant a single extension of this time period for up to 12 months upon submittal by the applicant of sufficient justification for the extension. The surety shall be canceled and/or returned upon completion of the required landscaping.

If a developer provides satisfactory evidence that a bond or surety as required by this paragraph has been requested and that the developer and project otherwise qualify for said bond or surety, and that said request has been turned down by two or more financial institutions for reasons unrelated to the qualifications of the developer or project, the planning director may enter into an agreement with the developer for the delayed completion of the required work; provided, that said agreement may not apply to improvements or features that are required for safety purposes, or are prescribed by statute or state codes or regulations. By way of illustration and not limitation, said agreement (1) shall establish a schedule for the completion of improvements, (2) shall contain provisions relating to enforcement of its terms, and (3) shall specify penalties for breach, (4) shall be subject to approval of the city attorney, and (5) may be recorded in the office of the register of deeds wherein the property is located.
 - (2) *Maintenance.* The owner or lessee of the property where landscaping is required shall be responsible for the maintenance and protection of all required and preserved plant and screening material. Landscaped areas shall be maintained in good condition and kept free of debris.
 - (3) *Plant specifications.*
 - a. *Recommended plant species.* Plants may be chosen from the recommended plant species list. (See Appendix 7-C.) Specific riparian species, as identified in the recommended species list, trees and shrubs for damp sites and river districts, shall be required for developments located within the 100-year flood plain. The list encourages the use of plant materials which are indigenous to this region and are readily available from local nurseries. Plant materials which are not on the list may also be used following approval from the planning and development director.
 - b. *Minimum plant size requirements.* All required vegetation shall meet the following minimum size requirements at planting. Additionally, all plants must meet the requirements of the most recent edition of the American Standards for Nursery Stock, ANSI 260.1. Plants must be healthy, well-branched, and free of disease and insect infestation.
 - i. *Large-maturing deciduous tree:* Greater than 35 feet at maturity. Minimum size at planting shall be two inches caliper and 12 to 14-foot height.
 - ii. *Small-maturing deciduous tree:* Smaller than 35 feet at maturity. The minimum tree size shall be at least one and one-half inch caliper or eight to ten feet high at time of planting.
 - iii. *Evergreen tree:* Minimum height of six feet at time of planting.
 - iv. *Large shrub:* Minimum five gallon container or ten-inch root ball with a height of 24 inches at time of planting.
 - v. *Small shrub:* Minimum three gallon container or eight-inch root ball with a height of 18 inches at time of planting.

- (4) *Tree pruning standards.* Trees located within the city's public right-of-way cannot be pruned or removed without a permit from the Asheville Public Works Department as required by chapter 20 of the Code of Ordinances of the City of Asheville. All other required trees shall be pruned in accordance with the American National Standard for Tree Care operations A300 published by the American National Standards Institute. Tree owners and their agents are encouraged to hire businesses that employ certified arborists who can supervise the pruning work on site and ensure that proper pruning is being performed (See the City of Asheville Standards and Specifications Manual for details). In addition, the following standards shall apply to required trees:
 - a. Co-dominant stems less than four inches in diameter at the fork shall be pruned off and one main stem shall remain.
 - b. Pruning shall be done such that a tree's natural form is maintained by the greatest extent possible.
 - c. Tree topping or heading is not permitted.
 - d. Reasons for which tree pruning is not permitted include, but are not limited to:
 - Sign installation, clearance, or visibility; excluding traffic, directional, warning, or information signs owned by any public or semi-public agency.
 - Visibility of a structure and/or outdoor display area.
 - Clearance for equipment traffic or storage, the erection of temporary structures, or materials storage within the tree protection zone.
 - (5) *Failure to maintain.* Failure to maintain or replace dead, damaged, or diseased material or failure to maintain or repair a fence or wall installed as a buffer shall constitute a violation of this chapter and shall be subject to the penalty provisions in section 7-18-2 if not corrected or replaced within 30 days of notification. If an act of God or other catastrophic event occurs which destroys a large quantity of vegetation, the owner or lessee shall have 120 days to replant. Replaced plant material must be in compliance with the minimum size, spacing, and quantity standards of this chapter.
 - (6) *Un-approved removal or noncompliant pruning.* Removing required landscaping or undertaking pruning actions that do not conform to the requirements of this section shall constitute a violation of this chapter and shall be subject to the penalties described in chapter 10, appendix B. Additionally, all affected areas must be replanted to current standards.
 - (g) *Clearing of land time limit.* In districts where speculative grading is prohibited and land is cleared through issuance of a grading permit; the owner shall be required to replant the cleared property to its original state based on tree counts and other information originally submitted to the City of Asheville if construction does not begin within six months from the date that the grading activity ceases. A single six-month extension of the above limit may be issued at the discretion of the planning and development director.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2638, § 1, 11-9-99; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(8), 8-24-04; Ord. No. 3479, § 1(a), 5-22-07; Ord. No. 3700, § 1k, 2-10-09; Ord. No. 3708, § 1, 3-10-09; Ord. No. 3710, § 1, 3-10-09; Ord. No. 3740, § 1, 6-9-09; Ord. No. 3741, § 1, 6-9-09; Ord. No. 3791, § 1b, 9-22-09; Ord. No. 3929, § 1e, 11-23-10; Ord. No. 4305, § 1, 4-22-14)

Sec. 7-11-4. - Open space standards.

- (a) *Purpose.* The open space standards contained herein are established to provide for the reservation of open spaces in both residential and non-residential developments located in the City of Asheville and its area of jurisdiction. Preservation of open space in developing areas serves a variety of purposes, including meeting the recreational needs of residents, improving the aesthetic character of the community, reducing stormwater runoff, and enhancing air quality. The standards set forth below provide for the protection of open space in both residential and non-residential developments.
- (b) *Definitions.* For the purpose of this section, the following terms are defined.
 - Active recreational facilities* mean tot lots, tennis or basketball courts, playgrounds with equipment such as swing sets and climbing apparatus, swimming pools, pavilions or covered decks available for common recreational use, or similar facilities.
 - Suburban open space amenities* mean open water, wetlands, floodplains, woodlands, land which exceeds a 25 percent slope or is otherwise governed by the steep slope and ridgetop requirements, land used for stormwater retention, land available to residents or tenants for active or passive recreation, including clubhouses, parks, walking trails not used to meet sidewalk requirements, playgrounds, swimming pools, benches, picnic tables, and similar amenities.
 - Urban open space amenities* mean public sidewalks significantly in excess of standard sidewalk requirements, streetscape and hardscape areas accessible to the public including sidewalk cafe areas, areas containing public art, and similar amenities.
- (c) *Open space requirement.* Open space shall be provided in accordance with the following table for: initial residential development containing eight or more units or redevelopment or additional development that adds eight or more units; for initial nonresidential or mixed use development of lots containing one acre or more in area; or for redevelopment or additional development that adds 25 percent more nonresidential or mixed use floor area on lots containing one acre or more in area. The CBD district and single-family residential subdivisions with a minimum lot size of one acre or more are exempt from the requirements of this section.

ZONING DISTRICT	REQUIRED OPEN SPACE
All residential districts, except URD (NOTE: single-family residential subdivisions with a minimum lot size of one acre or more are exempt from the open space requirements)	Single-family/duplex subdivisions: 20% of subdivision lot area. Other residential: 500 square feet of open space per unit or 15% of lot area, whichever is greater. In no case shall the amount of open space devoted to active recreational facilities constitute more than 10% of lot area. Nonresidential uses (e.g., churches, schools, etc.): 20% of lot area.
All other districts, including URD (except as otherwise noted for the: CBD, Industrial, Commercial Industrial)	5% of lot area for development that primarily includes urban open space amenities 15% of lot area for development that primarily includes suburban open space amenities 5% of lot area for industrial uses (as noted in the Table of Uses) in Commercial Industrial No open space requirements; CBD and Industrial

Regardless of the requirements and exemptions of this subsection, any portion of the site of the proposed development that is designated as future open space or greenway in the greenway master plan of the City of Asheville shall be reserved for open space. This area may be counted toward the total amount of open space required for the development.

If the total amount of land required to comply with the greenway master plan is less than the total amount required for the development by the above table, then the developer shall provide additional open space to meet the requirement of the above table. If the total amount of land required to be reserved to comply with the greenway master plan exceeds the total amount required by the above table, then the developer must still provide the open space required by the greenway master plan.

As compensation for any open space dedication associated with implementing the greenway master plan above that requirement listed in the above table, the developer is eligible for a density bonus of one dwelling unit per each 1,000 square feet of land area in excess of that required in the above table or 500 square feet of nonresidential gross floor area per each 1,000 square feet of land area in excess of that required in the above table, up to a maximum of a 25 percent increase above the maximum density or intensity allowed in the applicable zoning district, provided hillside, river resource yard, flood protection, and other environmental preservation regulations are complied with. Alternatively, upon approval by the parks and recreation director, open space fee-in-lieu funds may be used to purchase the additional requirement, or the additional requirement may be reduced by the parks and recreation director.

Individual areas designated as open space areas shall not contain less than 500 square feet when developed with urban open space amenities and 2,000 square feet when developed with suburban open space amenities, although smaller areas may be approved by the planning and development director if the intent of this ordinance is determined to be met.

- (d) *Land acceptable for open space designation.* The classes of land enumerated in the subparagraphs below may be utilized to meet the requirements of this section. For subdivisions, open space shall consist of land that is accessible from a public or approved private street either directly or via an easement of at least ten feet in width. For other developments, open space shall be land that is visible from public rights-of-way or otherwise visually-accessible to the public. Land that is burdened with easements may be used provided that the easements do not interfere with the use of the land for open space purposes. In no case shall the following land be used for open space; land that is contaminated with hazardous or toxic waste or materials as defined by state or federal regulations (except land covered by an approved mitigation plan and deemed acceptable to the city); land occupied by streets, drives, parking areas, required landscape buffers, or structures other than recreational structures; and land with a minimum width less than 24 feet unless part of a greenway system or specifically approved by the planning and development director. Urban-scale mixed use districts (NCD, UV, URD, UPD) are exempt from the minimum width requirement. Public use of the open space may be limited to residents of the development except for land used for public sidewalks as described in subsection (3) below.
- (1) Open water, wetlands, and undisturbed floodplains (up to 50 percent of the requirement); River Resource Yard (up to 100 percent of the requirement).
 - (2) Land used for public sidewalks significantly in excess of standard sidewalk requirements, streetscape and hardscape areas accessible to the public including sidewalk cafe areas, areas containing public art, and similar urban open space amenities.
 - (3) Land on which locally or nationally designated historic structures are located and determined to be contributing to the designation.
 - (4) Land which exceeds a 25 percent slope or is otherwise governed by steep slope and ridgetop requirements may be used to provide up to 50 percent of the required open space if existing slopes and vegetation so designated remain undisturbed.
 - (5) Land used for stormwater retention, provided such land is natural in appearance and is not separately fenced, may be used for up to 50 percent of the required open space; green roofs are eligible to be counted as open space under this provision. Additionally, land used for stormwater retention, provided such land is natural in appearance and is not separately fenced, that is developed using best management practices (e.g., constructed wetlands, rain gardens, green roofs or similar features), and either exceeds the required amount of retention or treats off-site stormwater may be used for up to 100 percent of the required open space at the discretion of the planning and development director after consultation with the city engineer.
 - (6) Land available to residents or tenants for active or passive recreation, including clubhouses, parks, walking trails not used to meet sidewalk requirements, playgrounds, swimming pools, benches, picnic tables, and similar land uses or facilities. This land may include steep slope lands, floodplains, and land used for stormwater retention so long as the land is provided with active or passive recreational amenities.
- (e) Reductions in required open space reservation. The amount of land required to be designated for open space may be reduced by the planning and development director in the following situations:
- (1) If public parks or public recreational facilities are constructed on the land designated as the open space consistent with a plan approved by the parks and recreation director, the open space requirements may be reduced in proportion to the extent of the improvements made by the applicant as determined by the parks and recreation director.
 - (2) If the land proposed for designation as open space adjoins or is otherwise immediately accessible and connected to parkland or other existing public open space, the open space requirements may be reduced by up to a maximum of 25 percent of the total requirement, provided access to the parkland is provided via an easement or other connection acceptable to the parks and recreation director.
 - (3) If active recreational facilities are provided to serve the residents of the development, the open space requirements may be reduced in proportion to the value of the improvements made by the applicant up to a maximum of 25 percent of the total requirement as determined by the planning and development director.
- (f) *Maintenance.* The owner or lessee of the property designated as the open space shall be responsible for the maintenance of the open space area. Landscaped areas shall be maintained in good condition and the entire area shall be kept clear of debris. Failure to maintain the area shall constitute a violation of this chapter and subject the violator to the penalty provisions of [Section 7-18-2](#) if not corrected within 30 days of notification. Alternatively, if acceptable to the parks and recreation director and/or public works director, as applicable, the land may be dedicated to the city for public use and thereafter maintained by the city.
- (g) *Fee-in-lieu.* For open space requirements of 10,000 or less square feet in area and not involving property affected by the Greenway Master Plan, a property owner may elect to pay a fee-in-lieu of open space instead of providing the open space. For other required open space areas, a property owner may pay a fee-in-lieu of open space designation for all or a portion of the open space requirement if such fee-in-lieu is acceptable to both the parks and recreation director and planning director. This fee shall be calculated by using the pro rata value of the designated property relative to the value of the entire site to be developed using tax appraisal data; for properties covered by agricultural or other exemptions, the city may utilize a separate appraisal method in its sole discretion. Funds collected in this manner shall be maintained in a separate account and shall be used to purchase or to enhance recreational use of property necessary to implement features of the greenway master plan or the Parks and Recreation Master Plan of the City of Asheville provided such features are reasonably proximate to the site(s) from which the funds are collected. Where practical, the collected fees for each project shall be designated for specific parks and recreation acquisitions and/or enhancements by the parks and recreation director. For developments and subdivisions containing more than 50 residential units, the fee-in-lieu option may only be used for up to 50 percent of the open space requirements in order to ensure that these larger projects provide on-site open space for their residents; developments in urban-scale mixed use districts (NCD, UV, URD, UPD) are exempt from this requirement and up to 100 percent of the open space requirements may be accommodated through fee-in-lieu payments regardless of development size.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3328, § 1(l), 1-24-06; Ord. No. 3417, § 1(d), 11-28-06; Ord. No. 3492, § 1, 6-19-07; Ord. No. 4244, § 1, 10-22-13)

Sec. 7-11-5. - Zoning vested right.

- (a) *Purpose.* The purpose of this section is to implement the provisions of N.C. Gen. Stat. sec. 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.
- (b) *Approving authority.* The Asheville City Council shall be the approving authority for zoning vested rights.
- (c) *Establishment of a zoning vested right.*
- (1) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the Asheville City Council of a site specific development plan, following notice and public hearing.
 - (2) The Asheville City Council may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.
 - (3) A site specific development plan shall be deemed approved upon the effective date of the Asheville City Council's action.
 - (4) Notwithstanding the above information, approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
 - (5) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulation by the City of Asheville, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.
 - (6) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.
- (d) *Approval procedures and approving authority.*
- (1) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the Asheville City Council for the specific type of zoning or land use permit or approval for which application is made.
 - (2) Notwithstanding the provisions referenced above, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee, or administrative official other than the Asheville City Council or the board of adjustment of the City of Asheville, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the Asheville City Council, following notice and public hearing as provided in N.C. Gen. Stat. sec. 160A-364.
 - (3) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the City of Asheville, that a zoning vested right is being sought.
 - (4) Each map, plat, site plan, or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under N.C. Gen. Stat. sec. 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
 - (5) Following approval or conditional approval of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
 - (6) Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this chapter.
- (e) *Duration.*
- (1) A zoning right that has been vested as provided in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the Asheville City Council at the time the amendment or modification is approved.
 - (2) Upon issuance of a building permit, the expiration provisions of N.C. Gen. Stat. sec. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.
 - (3) A zoning permit, conditional use permit, or approval of a preliminary plat for a proposed subdivision shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.
- (f) *Termination.* A zoning right that has been vested as provided in this section shall terminate:
- (1) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
 - (2) With the written consent of the affected landowner;
 - (3) Upon findings by the Asheville City Council, by ordinance after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
 - (4) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
 - (5) Upon findings by the Asheville City Council, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Asheville City Council of the site specific development plan; or
 - (6) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the Asheville City Council may, by ordinance after notice and a hearing, modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.
- (g) *Voluntary annexation.* A petition for annexation filed with the City of Asheville under N.C. Gen. Stat. sec. 160A-31 or N.C. Gen. Stat. sec. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under N.C. Gen. Stat. sec. 160A-385.1 or N.C. Gen. Stat. sec. 153A-344.1. A statement that declares that no zoning vested right has been established under N.C. Gen. Stat. sec. 160A-385.1 or N.C. Gen. Stat. sec. 153A-344.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.
- (h) *Limitations.* Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to N.C. Gen. Stat. sec. 160A-385.1.
- (i) *Repeal.* In the event that N.C. Gen. Stat. sec. 160A-385.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

- (j) *Building permit vested right.* Amendments, modifications, supplements, repeal, or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to lots for which building permits have been issued pursuant to N.C. Gen. Stat. sec. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to N.C. Gen. Stat. sec. 160A-418 and unrevoked pursuant to N.C. Gen. Stat. sec. 160A-422.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3417, § 1(d), 11-28-06)

Sec. 7-11-6. - Traffic impact analysis.

- (a) *Purpose.* The purpose of this section is to ensure that applicants for new construction, additions and/or expansions to existing structures, and/or changes of use consider and mitigate the impact of the development on the existing and/or proposed roadway system. While the city and the State of North Carolina recognize their responsibility to build and maintain a public transportation system, the project applicants may need to assist in improving transportation facilities in order to maintain the existing level of service by accommodating additional traffic generated by the development. These transportation facilities involve pedestrian, non-motorized vehicular traffic and motorized vehicular traffic. The city's traffic engineering division will provide any necessary assistance in the preliminary review of these requirements.
- (b) *Traffic impact analysis required.* All proposals for new construction, additions and/or expansions to existing structures, and/or changes of use which will result in total peak hour trips equal to or greater than 100 peak hour trips using trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers shall include an analysis of the traffic to be generated. The traffic impact analysis shall be submitted with the project application and shall include the following information:
- (1) *Introduction and summary.*
 - a. Purpose of report and study objectives.
 - b. Executive summary.
 1. Site location and study area.
 2. Development description.
 3. Principal findings.
 4. Conclusions.
 5. Recommendations.
 - (2) *Proposed development (site and nearby)*
 - a. Off-site development - provide map (the city's traffic engineer will identify).
 - b. Description of on-site development.
 1. Land use and intensity.
 2. Location - provide vicinity map.
 3. Site plan.
 4. Zoning.
 5. Phasing and timing.
 - (3) *Area conditions.*
 - a. Study area (includes the project area and extends to any intersection where the volume of peak hour traffic on any approach leg will be increased by ten percent or more as a result of the additional traffic generated by the proposed use).
 1. Area of influence - provide map.
 2. Area of significant traffic impact - provide map. (signalized/unsignalized intersections and driveways)
 - b. Study area land use.
 1. Existing land uses.
 2. Existing zoning.
 3. Anticipated future development.
 - c. Site accessibility.
 1. Area roadway system.
 - a. Existing.
 - b. Planned completion by horizon year (shall be the year in which the project is to be completed).
 - c. Future (the city's traffic engineer will identify) proposed roadway improvements must be under construction and proposed for completion at the time of the issuance of the initial certificate of occupancy for the development in order for the improvement to be considered in the impact analysis.
 2. Traffic volumes and conditions.
 - a. Provide a figure showing existing daily traffic volumes and peak hour turning movements for identified study intersections.
 - b. Provide all documentation in an appendix to the report.
 3. Transit service.
 - a. Review existing transit routes serving the proposed site.
 - b. Review proposed transit routes serving the proposed site.
 - c. Provide adequate transit facilities for the proposed site.
 4. Pedestrian access and circulation.
 - a. Review proposed pedestrian access and circulation amenities.
 - b. Provide adequate pedestrian facilities.
 5. Other modes as applicable.
 - (4) *Projected traffic.*
 - a. Site traffic - existing and proposed zoning.
 1. Trip generation* - provide tables.
 - a. Daily.

- b. Peak hour - in/out and total - a.m./p.m.
 - 2. Pass-by trips - to be determined by traffic engineer.
 - 3. Trip distribution - provide figures.
 - 4. Modal split - if applicable.
 - 5. Trip assignment - provide figures.
 - b. Background traffic (horizon year shall be the year in which the project is to be completed).
 - 1. Method of projection (the city's traffic engineer will provide factor).
 - 2. Non-site traffic for anticipated development in study area.
 - a. Trip generation.
 - b. Trip distribution.
 - c. Modal split - if applicable.
 - d. Trip assignment.
 - 3. Background traffic.
 - c. Total traffic (horizon year - provide two figures).
 - 1. Background + (non-site) + (site-existing zoning) = total for each traffic movement.
 - 2. Background + (non-site) + (site-proposed zoning) = total for each traffic movement.
- (5) *Traffic analysis - highway capacity manual/software.*
- a. Site access (review all access points).
 - b. Capacity and level of service - provide summary/worksheets in Appendix - include a copy on diskette.
 - 1. Driveways (site).
 - 2. Internal street intersections - if applicable.
 - 3. External signalized/unsignalized intersections and driveways in study area as identified by the city's traffic engineer.
Provide comparative table for existing conditions, horizon year with existing zoning/non-site development, and horizon year with proposed zoning/development.
 - c. Review impact of cut-through traffic.
 - d. Traffic safety.
Analyze accident history including adjacent roadway system at signalized and unsignalized intersections as per city traffic engineer.
 - e. Traffic signals.
The City of Asheville reserves the right to install traffic signals at the time the development is completed. The developer may be desirous of placement and operation of a traffic signal to promote easier and safer ingress and egress to the development both on-site and off-site at an earlier date than the city would normally schedule and fund installation. The developer can purchase and install the traffic control signal hardware, meeting the specifications of the City of Asheville, including pre-emption hardware to expedite emergency vehicle response. The developer shall release, give or donate the traffic signal to the City of Asheville and shall retain no rights or ownership of personal property therein. Warrants (MUTCD) for any proposed traffic signals are to be provided in the appendix to the report.

NCDOT may require developer to fund any warranted traffic signal modifications on state system streets in Asheville.
 - f. Other traffic impact reviews. Review to include, but not limited to, parking analysis, internal circulation analysis, traffic calming measures and techniques, and traffic demand management requirements.
- (6) *Improvements analysis.*
- a. Improvements to accommodate site traffic.
 - b. Alternative improvements.
 - c. Status of improvements already funded, programmed or planned.
 - d. Evaluation.
*Institute of Transportation Engineers (I.T.E.) Trip Generation Handbook, latest edition.
- (c) *Improvements required.* In those cases where the City of Asheville or the North Carolina Department of Transportation requires certain improvements to be constructed in order to accommodate additional traffic generated by the proposed developments, the improvements shall be funded and/or constructed by the project developer in accordance with the standards and direction provided by the City of Asheville or by the North Carolina Department of Transportation. The improvements shall be in place or under construction prior to issuance of any certificate of occupancy or certificate of completion required for any phase or portion of the project.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, § 15, 11-11-97; Ord. No. 2446, § 1, 1-13-98; Ord. No. 3417, § 1(d), 11-28-06)
- Sec. 7-11-7. - Flexible development standards.
- (a) *Purpose.* The purpose of this section is to provide the planning and development director, design review boards, and city council, as applicable, with the authority to allow deviations from the development standards for setbacks, front and corner side setbacks, lot area and dimension, number of parking spaces, signage, open space, landscaping, height, and building floor area set forth in this chapter provided that certain conditions exist. The intent of this section is to promote the orderly and efficient development of property.
 - (b) *Approval of flexible development standards.* Regardless of the minimum development standards otherwise required in this Code, the planning and development director shall administer the following flexible development standards for the purpose of facilitating the orderly development and redevelopment of property within the City of Asheville. Determination of the applicability of flexible development standards shall be made by the planning and development director, design review boards, and city council, as applicable and as provided in this section. The planning and development director, design review boards, and city council may place conditions on an approval to assure that the circumstances which warranted the application of the flexible development standards are maintained. Decisions by the planning and development director shall be in writing and may be appealed to the board of adjustment by following the procedures for such appeals provided in section 7-6-2 of this chapter.
 - (c)

Flexible development standards permitted. The cumulative total of any flexible development standard applied to a property by category or location shall not exceed the maximums set forth in this section. The planning and development director shall maintain appropriate records to insure compliance with this provision.

- (1) *Setbacks.* The planning and development director is authorized to approve requests that deviate from required setbacks set forth in article VIII of this chapter by up to ten percent of the required setbacks or 24 inches, whichever is greater, upon determination that one or more of the following conditions exists:
 - a. There are site or structural conditions that preclude strict adherence to the setback requirements, such as, but not limited to: the lot does not meet the dimensional standards established for the zoning district in which it is located; the lot has topographic limitations that require placement of the structure into the required setback area; or the structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.
 - b. The part of the proposed structure that would encroach into the minimum setback area is less than 50 percent of the width of the affected building facade(s), provided the part of the structure that would encroach into a front setback shall either be open (such as a porch or screen room) or not subject to occupancy (such as a chimney).
 - c. The part of the proposed structure that encroaches into the minimum setback area is necessitated by a life-safety code, flood hazard reduction, Americans with Disabilities Act standard, or other public safety code requirements.
 - d. The proposed structure will allow the preservation of significant existing vegetation.
- (2) *Parking garages and parking lots.* Except for parking required for residential development of less than five units, the planning and development director is authorized to approve parking garages and parking lots in connection with a permitted use that has up to 25 percent less than the required number of spaces set forth in article XI of this chapter upon determination that one or more of the following conditions exists:
 - a. The applicant has presented a written parking needs analysis for the proposed use that demonstrates that a lower parking requirement adequately serves the parking needs of the use. This parking needs analysis shall be prepared by a North Carolina registered engineer or architect or by a certified planner or other professional qualified to do such analysis.
 - b. The applicant is proposing an adaptive reuse of an existing structure with a permitted use and there is insufficient space on site to accommodate the required parking.
 - c. The applicant is constructing an addition to an existing structure or site and sufficient new parking will be provided to accommodate the additional square footage without reducing the amount of parking serving the existing structure or site prior to the addition.
 - d. The proposed parking lot or garage will allow the preservation of significant existing vegetation.
- (3) *Lot area and lot dimension.* The planning and development director is authorized to approve requests to permit a reduction of up to ten percent in the lot area or lot dimensional standards set forth in article VIII of this chapter, upon finding that the following conditions exist:
 - a. The reduced lot area and/or lot dimensions are in keeping with the historic pattern of development in the area; and
 - b. The reduced lot area and/or lot dimensions will not inhibit the reasonable use of the lot.
- (4) *Structures undergoing design review.* Structures or lots subject to design review pursuant to this chapter by any official design review board established in this chapter which are found to comply with the applicable design guidelines shall be exempt from the signage, open space, landscaping, off-street parking, setback, building height and building floor area, lot width, and lot area requirements of the underlying zoning district to the extent that those requirements conflict with the applicable design guidelines.
- (5) *Front and corner side setbacks.* Front and corner side setbacks establish the basic street orientation for buildings in a subdivision. In some circumstances, the front and corner side setbacks established for particular zoning districts require modification in order to create a more practical use of land in response to environmental or topographic considerations or to promote consistency with existing or proposed patterns of development. The intent of this section is to provide for an administrative reduction in required front and corner side setbacks for entire residential subdivisions and in portions of residential subdivisions in routine circumstances where conditions warrant and a variance would be justified. Such conditions include, but are not limited to: The protection of significant existing vegetation; accommodation of trails and greenways; provision of a more usable lot arrangement due to topographical circumstances; and maintenance of consistent appearance within the subdivision or with similarly situated property in the vicinity of the subdivision. It is not the intent of this section to simply provide a means to increase the buildable portion of a lot or lots. Consequently, the planning and development director and/or city council, as applicable, may impose those conditions reasonably necessary to ensure that the intent of this provision is carried out; such conditions may include, but are not limited to, the establishment of: additional required setbacks to the side or rear of properties, build-to lines, trail or greenway easements, and conservation easements. Due consideration shall be given to the existing development pattern of the surrounding area and no approval of flexible development standards shall be approved that would result in a substantial inconsistency with that pattern of development.
 - a. *Front and corner side setbacks for entire residential subdivisions.* This section applies to lots in all residential zoning districts. The planning and development director is authorized to approve requests to permit a reduction of up to ten feet in the required front and/or corner side setbacks for entire subdivisions as part of the plat approval process. For subdivision plats requiring approval by the city council, the city council is authorized to approve a reduction of up to ten feet in the required front and/or corner side setbacks for the entire subdivision. In no case shall these approvals reduce the required front and/or corner side setbacks to less than ten feet. The applicant shall record a note regarding required front and/or corner side setback reduction on the final plat of the subdivision, along with any conditions that may be imposed.
 - b. *Front and/or corner side setbacks in portions of residential subdivisions.* For lots in all residential zoning districts except the RS-2 zoning district, the planning and development director is authorized to approve requests to permit a reduction of up to ten feet in the required front and/or corner side setbacks for up to ten percent of the lots in all subdivisions. For lots in the RS-2 zoning district, the planning and development director is authorized to approve requests to permit a reduction of up to 20 feet in the required front and/or corner side setbacks for up to ten percent of the lots in all subdivisions. In no case shall these approvals reduce the front and/or corner side setbacks to less than ten feet. In either case, the applicant shall record a note regarding front and/or corner side setback reduction on the final plat of the subdivision, along with any conditions that may be imposed.
- (6) *Variances.* No variances shall be allowed under article VI of this chapter with regard to deviations from development standards that have been approved pursuant to this section of the city Code nor shall any deviations from these development standards make void or otherwise modify any variance decision by the board of adjustment.

(Ord. No. 2637, § 1(a), 11-9-99; Ord. No. 2777, § 1(j), 12-19-00; Ord. No. 2896, § 1, 2-12-02; Ord. No. 2912, §§ 1(a)—1(c), 4-9-02; Ord. No. 3118, § 1, 5-11-04; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3417, § 1(d), 11-28-06)

Sec. 7-11-8. - Sidewalk requirements.

- (a) *Purpose.* The purposes of this section are to insure that adequate provision of transportation and other public requirements, the promotion of health, safety and the general welfare and the coordination of streets and other public facilities are considered in the development and use of property and that development and use of property are done in accordance with an adopted City of Asheville (herein "city"), transportation or corridor plan, including but not limited to such plans as the Transportation Improvement Program (TIP), greenway, neighborhood, small area, and pedestrian thoroughfare plans. The city council hereby incorporates by reference as if set forth in full

herein the findings of the city's pedestrian thoroughfare plan and further finds and declares that the construction of sidewalks advances those interests of the city and, in order to accomplish those purposes, this section sets out requirements for the construction of sidewalks and, where a developer requests it and certain conditions exist, for the payment of a fee in lieu of the requirement for construction of sidewalks.

- (b) *Guidelines for requiring sidewalks.* Sidewalks shall be required for all new construction and for renovations, additions and/or expansions to existing structures which fall into one or more of the following categories:
- (1) All new single-family residential development which consists of 20 or more single-family homes (see "new development" explication below);
 - (2) AH new multi-family residential development, except for the construction of less than ten units (see "new development" explication below);
 - (3) All new office, institutional, commercial, and industrial development (see "new development" explication below);
 - (4) All existing office, institutional, commercial, and industrial development additions or expansions to structures where the expansion results in an increase of more than 50 percent value of the structure as defined in section 7-11-1 of this chapter;
 - (5) All new streets, improved streets or extension to streets.
- "New development" shall be interpreted to include all new construction in addition to the use of a building or property where the use has, ceased for a period of more than 180 days. See also subsections 7-17-5(c) and 7-17-5(d) concerning "overcoming presumption of cessation of use". This does not include minor additions or expansions that do not meet the city's threshold standards identified in subsection (3) above.
- (c) *Additional conditions for requiring sidewalks.* Notwithstanding (b) above, the following findings must be made prior to the city engineer/designee requiring the construction of a new sidewalk or a "fee in lieu of constructing a sidewalk for an applicable project. One or more of the following conditions must be met, as determined by the city engineer/designee.
- (1) The applicable project area, including the street frontage, is identified as a needed pedestrian linkage within an adopted city transportation or corridor plan, including but not limited to such plans as the Transportation Improvement Program (TIP), greenway, neighborhood, small area, and pedestrian thoroughfare plans.
 - (2) The current or projected (within five years) average daily traffic count (ADT) for the street is 300 vehicles per day or more as determined by the city traffic engineer. Traffic generated from the applicable project or any additions to the applicable project will be included in calculating the ADT for this condition.
- In the event that the sidewalk is not required, the developer must provide a recorded easement, if necessary, for the future development of the sidewalk. The developer wherever practical shall grade for the future development of a sidewalk.
- (d) *Public and private streets.* Sidewalks shall be constructed along all public and private street frontages that meet the requirements of section 7-11-8(c) of the lot for which the development is proposed.
- All sidewalks shall be constructed in accordance with the standards set forth in the city's Standard Specifications and Details Manual.
- (e) *Fee in lieu of construction.* Where a new sidewalk is required to be constructed, the city engineer/designee may waive the requirement that a sidewalk be constructed provided that the applicant make a written request to the city engineer/designee for a waiver. The waiver will be granted under the conditions that the city engineer/designee determine that one or more of the following conditions exists and that the applicant pay a fee in lieu of constructing the sidewalk as described in the Fees and Charges Manual.
- (1) The pedestrian facility is not identified in the current Pedestrian Thoroughfare Plan as a needed pedestrian linkage.
 - (2) The sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk.
 - (3) The pedestrian facility is identified on the Pedestrian Thoroughfare Plan but is a part of a NCDOT or city-funded project that includes sidewalks.
 - (4) The pedestrian facility is identified in the current Pedestrian Thoroughfare Plan as a needed linkage but the cost of the construction of the sidewalk would exceed 15 percent of the total cost of the approved project. In this case, the developer would only be required to pay 15 percent of the construction costs of the proposed project.
- If a developer is eligible for the fee in lieu of construction as described in subsection 7-11-8(e) and the Standard Specifications and Details Manual does not require that a sidewalk be placed on both sides of the street, the developer may pay no more than 50 percent of the fee in lieu of construction amount as defined in the Fees and Charges Manual.
- In no case shall the fee in lieu of constructing the sidewalk exceed 15 percent of the total cost of the approved project. The total cost of the project shall include all construction costs associated with the improvement as approved by the city.
- In the event that a fee in lieu of constructing a sidewalk is approved, the developer must provide a recorded easement if necessary for the future development of the sidewalk.
- The developer wherever practical shall grade for the future development of a sidewalk.
- The fee in lieu of construction will not apply to Level III projects unless specifically approved by the city engineer/designee. The fee in lieu of construction will not apply to new or reconstructed streets unless condition (e)(2) above applies.
- (f) *Appeals.* In the event that a developer wishes to appeal the ruling of the city engineer/designee, the developer must provide a letter to the city manager/designee within ten working days of receiving written notice of the ruling from the city engineer/designee.
- (g) *Appeal committee.* There is hereby created a three-member sidewalk appeals committee for the city. The committee shall consist of the city manager or his/her designee and two other city department directors appointed by the city manager. The city manager/designee shall serve as the chair and have overall responsibility for the proper functioning of the committee. The committee's jurisdiction shall be limited to hearing appeals from the city engineer/designee regarding this section 7-11-8 of the UDO pertaining to sidewalks.
- (h) *Powers of the committee.* The committee may affirm, reverse, modify or amend the rulings of the city engineer/designee by a majority vote. In reviewing the decision of the city engineer/designee, the committee shall determine whether the city engineer/designee's decision is consistent with the purpose and intent of the code requiring sidewalks. In order to reverse a decision of the city engineer/designee, the committee must first find that the city engineer/designee's interpretation of the pertinent section of 7-11-8 is wrong. The committee's decision may be appealed to the board of adjustment on the record, in accordance with the Board's Rules and section 7-6-2 of the UDO.
- (i) *Use of fees.* All fees collected by the city pursuant to these provisions shall be accounted for separately from other monies, shall be expended only for the construction or rehabilitation of sidewalks or other pedestrian improvements in the city and shall be expended within a reasonable amount of time after completion of the development (not to exceed five years) or returned to the developer.

(Ord. No. 2664, § 1(a), 2-8-00; Ord. No. 2904, § 1(a), 3-12-02; Ord. No. 3417, § 1(e), 11-28-06; Ord. No. 3791, §§ 1c, d, 9-22-09; Ord. No. 3816, § 1, 12-15-09)

Sec. 7-11-9. - Emergency wireless communications.

- (a) *Purpose.* The purpose of this section is to ensure that buildings and structures shall not interfere with the city's communication network. Developments shall be modified to accommodate the needs of the city's communications network, to eliminate any interference a development would create or otherwise accommodate the needs of the city's communication network within the development proposal. Adequate provisions shall be made for a radio signal booster system which will correct for a reduction in the radio signal to a level below that required to assure the 95 percent area coverage reliability needed for public safety communications.
- (b) *Radio signal booster system required.* Except as otherwise provided no person shall maintain, own, erect, or construct, any building or structure or any part thereof, or cause the same to be done which fails to support adequate radio coverage for public safety entities, including, but not limited to, firefighters, emergency medical services and police officers. The following structures are exempt from these requirements:
- (1) Single-family residential buildings; any building constructed of wood frame; any building 25 feet high or less; as long as none of the aforementioned buildings make primary use of metal on concrete construction or contain below grade storage or parking areas. For purposes of this section, parking structures are included in the definition of buildings, and stair shafts are included in the definition of all parts of a building, but elevators may be excluded.
 - (2) Buildings constructed prior to the effective date of this section (February 12, 2008) shall be required to comply with public safety radio coverage provisions of this section. However, should exempted structures undergo renovation or modification where the cost of the renovation or modification exceeds 75 percent of the appraised value of the structure this exemption shall not apply.
- (c) *Easements.* The city may require an easement to utilize the roof for communications infrastructure components to support current and future public safety communication needs. This includes, but is not limited to a 12 feet x 25 feet rooftop area for; antennas, base stations, UPS power supplies, and microwave dish antennas. The building owners shall provide a secure climate controlled environment, no less than ten feet x 20 feet x ten feet, suitable for sensitive electronic equipment. This room shall be located within the top floor of roof area to allow for less than 100-foot cable runs to the antenna locations. Power for the equipment in this room shall be fed from the building emergency generator. Additional construction specifications will be made available as required.
- (d) *Specifications.* All emergency wireless communications shall be constructed in accordance with the standards set forth in the City of Asheville Standards and Specifications Manual.
- (e) *Alternative standards.* Based on sound telecommunication engineering practices, the information technology director or his designee may approve alternative standards that are equal to or better than those set forth in this chapter and in the City of Asheville Standards and Specifications Manual.
- (Ord. No. 3583, § 1(b), 2-12-08; Ord. No. 3791, § 1e, 9-22-09)

Sec. 7-11-10. - Outdoor lighting standards.

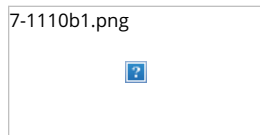
- (a) *Purpose.* The purpose of this section is to promote the public health, safety, security, and the nighttime use and enjoyment of property, including:
- To protect and improve safe travel for all modes of transportation;
 - To reduce light pollution, light trespass, glare, and unnecessary high light levels and intensity;
 - To promote energy efficient lighting practices and systems; and
 - To maintain and improve nighttime aesthetics of Asheville, including preservation of the night sky.

This ordinance provides basic outdoor lighting requirements based on industry standards. Creative use of outdoor lighting to supplement building architecture, enhance outdoor enjoyment and other uses of lighting are encouraged within the framework of ordinance requirements.

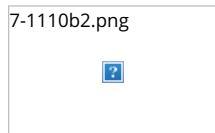
- (b) *Definitions.* For the purposes of this section, the following terms are defined.

Cutoff Classifications:

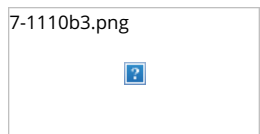
Full cutoff. A luminaire light distribution where zero candela intensity occurs at or above an angle of 90° above nadir. Additionally the candela per 1,000 lamp lumens does not numerically exceed 100 (ten percent) at or above a vertical angle of 80° above nadir. This applies to all lateral angles around the luminaire.



Cutoff. A luminaire light distribution where the candela per 1,000 lamp lumens does not exceed 25 (2.5 percent) at or above an angle of 90° above nadir, and 100 (ten percent) at or above a vertical angle 80° above nadir. This applies to all lateral angles around the luminaire.



Semicutoff. A luminaire light distribution where the candela per 1,000 lamp lumens does not exceed 50 (five percent) at or above an angle of 90° above nadir, and 200 (20 percent) at or above a vertical angle 80° above nadir. This applies to all lateral angles around the luminaire.



Noncutoff. A luminaire light distribution where there is no candela limitation in the zone above maximum candela.

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**Other Definitions:**

Backlight, uplight, and glare (BUG) rating. A luminaire classification system that classifies backlight (B), uplight (U), and glare (G) ratings to evaluate luminaire optical performance related to light trespass, sky glow, and high angle brightness control.

Ballast. A device used with an electric-discharge lamp to obtain the necessary circuit conditions (voltage, current, and waveform) for starting and operating.

Candela. The metric unit luminous intensity (that is, power emitted by a light source in a particular direction, with wavelengths weighted by the luminosity function, a standardized model of the sensitivity of the human eye).

Direct glare. Glare resulting from high luminances or insufficiently shielded light sources in the field of view. It is usually associated with bright areas, such as luminaires, ceilings, and windows that are outside the visual task or region being viewed. A direct glare source can also affect performance by distracting attention.

Directional lighting. Lighting provided on the workplane or on an object. Light that is predominantly from a preferred direction.

Fixture. See luminaire.

Flood lamp. A form of lighting designed to direct its output in a specific direction with a reflector formed from the glass envelope of the lamp itself. Such lamps are so designated by the manufacturers and are typically used in residential outdoor area lighting.

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Flood light. A form of lighting designed to direct its output in a diffuse, more or less specific direction, with reflecting or refracting elements located external to the lamp. These lights are prohibited in the City of Asheville.

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Footcandle (FC). A quantitative unit measuring the amount of light (illumination) falling onto a given point. One footcandle equals one lumen per square foot.

Fully shielded. A light fixture constructed, installed and maintained in such a manner that all light emitted from the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the fixture, is projected below the horizontal plane through the fixtures lowest light emitting part.

Glare. The effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, to cause annoyance, discomfort, or loss of visual performance and ability.

Horizontal footcandles. A quantity of illumination (footcandle(s)) at a given point that is measured or calculated at a specified height in a plane parallel to the line of sight when looking at the brightest light source in the field of view.

IESNA. The Illuminating Engineering Society of North America, a non-profit professional organization of lighting specialists that has established recommended design standards for various lighting applications.

Illuminance. The amount of light (luminous flux incident) at a point on a surface (measured in lux or footcandles).

Internal refractive lens. A glass or plastic lens installed between the lamp and the sections of the outer fixture globe or enclosure. Refractive refers to the redirection (bending) of the light as it goes through the lens, softening and spreading the light being distributed from the light source thereby reducing direct glare.

Lamp. The device in a lighting fixture that provides illumination, typically a bulb, florescent tube, or light emitting diode (LED).

Light source. The element of a lighting fixture that is the point of origin of the lumens emitted by the fixture.

Light trespass. Unwanted light spilling onto an adjacent property and/or an excessive brightness (i. e. glare) is occurring in the normal field of vision.

Low luminosity lighting. Lighting fixtures whose lumen output does not exceed 1,000 lumens. See also Very low luminosity lighting.

Low level decorative lighting. Lighting fixtures whose lumen output does not exceed 60 lumens.

Low voltage lighting. Lighting equipment powered through a transformer such as a cable conductor that lowers the voltage supplied to the luminaires to 25v or less.

Lumen. A quantitative unit used to identify the amount of light emitted by a light source. A lamp is generally rated in lumens.

Luminaire (light fixture). A complete lighting unit consisting of a lamp or lamps and ballast(s) (when applicable) together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply.

Lux. A unit of illuminance. One lux equals one lumen per square meter. One footcandle equals 10.76 lux (often rounded to 10 lux for ease of use).

Maintained footcandles. Illuminance of lighting fixtures adjusted for a maintenance factor accounting for dirt build-up and lamp output depreciation. The maintenance factor used in the design process to account for this depreciation cannot be lower than 0.72 for high-pressure sodium and 0.64 for metal halide and mercury vapor.

Medium base. The size of lamp socket designed to accept a medium or Edison base lamp (typical size used in the home).

Nadir. The point directly below the luminaire.

Outdoor display area. Areas used to show products, merchandize, or other items for evaluation (i.e. cars, RVs, boats, etc.).

Outdoor performance area. An area permanently dedicated to the public presentation of music, dance, theater, media arts, storytelling, oratory, or other performing arts, whether publicly or privately owned, including but not limited to amphitheatres and similar open or semi-enclosed structures.

Post mounted decorative fixtures. Luminaires/fixtures that are mounted on a post (typically a 20-foot mounting height or less) and are decorative in style and appearance.

Right-of-way. An interest in land to the city which provides for the perpetual right and privilege of the city, its agents, franchise holders, successors, and assigns to construct, install, improve, reconstruct, remove, replace, inspect, repair, maintain, and use a public street, including related and customary uses of street rights-of-way such as sidewalks, bike paths, landscaping, mass transit facilities, traffic control, traffic control devices and signage, sanitary sewer, stormwater drainage, water supply, cable television, electric power, gas, and telephone transmission and related purposes in, upon, over, below, and across the rights-of-way.

Seasonal lighting. Holiday/temporary lighting displays to be utilized less than 30 days in any one year.

Shield. A device that is attached onto or inserted into a luminaire to alter the direction of light being emitted. A luminaire that has a shield attached or inserted is considered to be "shielded".

Street light. A luminaire that is used to light a street or roadway.

Top shield. A shield that is attached onto the top part of the luminaire or inserted into a luminaire to reduce/prevent uplight.

Uplight. The portion of luminous flux (light) from a luminaire emitted at angles above the horizontal.

Vehicular canopy. A roofed, open, drive-through structure designed to provide temporary shelter for vehicles and their occupants while making use of a business' services.

Vertical footcandles. A quantity of illumination (footcandle(s)) at a given point that is measured or calculated at a specified height in a plane perpendicular to the line of sight when looking at the brightest light source in the field of view.

Very low luminosity lighting. Temporary, seasonal, or permanent lighting fixtures whose luminosity does not exceed 15 lumens. See also low luminosity lighting.

Wall-mounted fixture. A luminaire/fixture that is typically mounted on or attached to a wall, column or building surface.

Wall pack. A type of light luminaire/fixture typically flush-mounted on a vertical wall surface.

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Wide-body refractive globe. A translucent lamp enclosure used with some outdoor fixtures to provide a decorative look (including but not limited to acorn- and carriage light-style fixtures). "Wide-body" refers to a wider than average size globe (greater than 15.75 inches in diameter). "Refractive" refers to the redirection (bending) of the light as it goes through the lens, rendering the light fixture more effective. Wide-body refractive globes are intended to soften and spread the light being distributed from the light source thereby reducing direct glare.

(c) *Light measurement technique.* Light level measurements shall be made at the property line of the property upon which light to be measured is being generated. If measurement on private property is not possible or practical, light level measurements may be made at the boundary of the public street right-of-way that adjoins the property of the complainant or at any other location on the property of the complainant. Measurements shall be made at finished grade (ground level), with the light-registering portion of the meter held parallel to the ground pointing up. The meter shall have cosine and color correction and have an accuracy tolerance of no greater than plus or minus five percent. Measurements shall be taken with a light meter that has been calibrated within two years. Light levels are specified, calculated and measured in footcandles. All footcandle values below are maintained footcandles.

7-1110c.png



(d) *Applicability.* This section shall apply to all outdoor lighting fixtures and land uses established after the effective date of this ordinance [November 25, 2008] in all of the following conditions:

- (1) New development requiring Level I, II, or III site plan review pursuant to section 7-5-9 of this chapter;
- (2) New one- and two-family dwelling units;

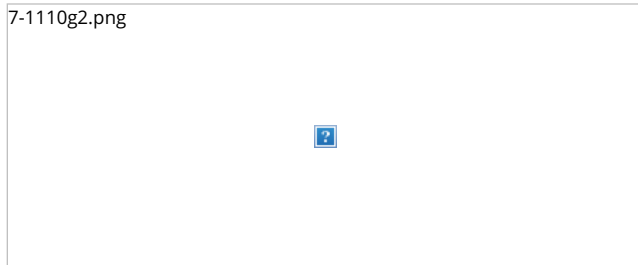
- (3) All new street lighting for all private and publicly maintained streets within the City of Asheville and all streets that are subject to City of Asheville construction standards and subdivision review pursuant to section 7-5-8
- (4) New outdoor lighting systems as part of an existing commercial, industrial, or multi-family residential lighting installation even if the original lighting installation was purchased and/or installed before the effective date of this ordinance, unless part of an expansion not greater than ten percent of the original outdoor fixture count.
- (e) *Exemptions to outdoor lighting standards.* The following conditions are exempted from the standards set forth in this subsection, provided that they do not constitute a public safety concern or create a nuisance, and are maintained in a safe condition.
 - (1) All lighting required by state and federal agencies.
 - (2) Seasonal lighting displays or very low luminosity lighting displays using multiple lamps.
 - (3) Temporary lighting for emergency, repair, construction, special events or similar activities.
 - (4) Ornamental gas lights that meet the definition of low level decorative lights.
 - (5) Historic landmark structures.
 - (6) Lighting fixtures located in a local Historic District when compliance with these standards conflicts with the district's guidelines.
 - (7) Low voltage landscape lighting, but such lighting should be shielded in such a way as to eliminate glare and light trespass.
- (f) *Lighting prohibitions.* The following types of outdoor lighting are specifically prohibited:
 - (1) Lighting that could be confused for a traffic control device.
 - (2) Lighting that is oriented upward, except as otherwise provided for in this ordinance.
 - (3) Search lights, laser source lights, or any similar high intensity lights unless otherwise exempt.
 - (4) Blinking, flashing, moving, flickering, changing intensity, changing color lights not otherwise permitted in this ordinance.
 - (5) Any exposed lamp or bulb visible from the property boundary of the parcel on which the light is located.
 - (6) A suspended string of lights with individual lamps larger than 15 lumens.
 - (7) Any lighting fixture or device that is operated in such manner as to constitute a hazard or danger to persons, or to safe vehicular operation.
 - (8) Unshielded accent building mounted luminous tube (such as neon, LED, fluorescent or other similar technology).
 - (9) Flood lights.
 - (10) Internally illuminated wall panels.
 - (11) Lighting of any angled building surface (i.e. roof pitch).
- (g) *General standards for new outdoor lighting.*
 - (1) All exterior light fixtures shall be classified as providing full cutoff light distribution unless otherwise allowed or exempted by this ordinance.
 - (2) The maximum light level at any property line shall be 0.5 footcandle maintained.
 - Exceptions:
 - a. Unless otherwise allowed or exempted by this ordinance.
 - b. Where required by the NC Building Code as a component of the minimum requirements for a means of egress system.
 - (3) Directional lighting allowed by the ordinance shall be directed downward unless otherwise allowed or exempted by this ordinance.
 - (4) All flood lamps shall not exceed 1,250 fixture lumens and must be shielded and aimed down 60 degrees from horizontal. Lamps shall be aimed such that the main beam from the light source is not visible from adjacent properties or the public street right-of-way.

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- (5) All pole mounted lights shall not exceed 37-foot mounting height above grade.
- (6) All new dusk-to-dawn security lights shall be full cutoff fixtures with a maximum rating of not to exceed 9,500 fixture lumens (6,000 fixture lumens in residential zoning districts) or comply with subsection (n) (Non-conformities) with a mounting height not to exceed 25 feet.
 - a. All new dusk-to-dawn utility type fixtures must be equipped with a reflector shield that provides a full cutoff light distribution as defined in subsection (b) of this article. An approved alternative is to install a different type of fixture that has a full cutoff light distribution with a maximum rating of not to exceed 9,500 lumens.
 - b. All new LED dusk-to-dawn utility type fixtures shall comply with the LED standards listed in subsection (8) below.

7-1110g2.png



- (7) Where land elevations to be lighted are higher or lower than a nearby street, residential dwelling or other type of facility and the lighting installation causes offensive light trespass and/or glare, the city planning director may require shields to be installed on the fixtures at the time of the installation or afterwards. If shields do not correct the problem sufficiently, the planning director may require that one or more of the following measures may be implemented in order to mitigate the conflict to the maximum extent possible:

- a. Change the aiming of offending fixtures,
 - b. Change the location and/or mounting height or the offending poles,
 - c. Change the light distribution pattern of the offending fixtures, or
 - d. Remove the offending poles and fixtures from the site.
- (8) All LED lighting shall meet the B-U-G ratings noted in the applicable subsections and comply with all other applicable requirements, and shall also meet the following standards:
- a. The LED correlated color temperature (CCT) shall not be higher than 4,300 K (Kelvin degrees).
 - b. The maximum number of fixture lumens shall not exceed 6,500 in residential districts and no more than 20,000 lumens in non-residential districts or for legal non-residential uses in residential districts, unless otherwise allowed or exempted.
- (9) Where these standards conflict with those required by the current editions of the NC Building Codes, the most restrictive standard shall apply. Where subsections of this ordinance are in conflict with each other, the most restrictive standard shall apply.
- (h) *Street lighting.*
- (1) The director of public works shall be responsible for executing the street lighting program and policies.
 - (2) The director of public works or his designee shall evaluate requests for additions, removals or other changes to street lighting and respond to the requestor within 30 days.
 - (3) These standards shall not apply to residential subdivisions lawfully established prior to the effective date of this ordinance (November 25, 2008) or extend to those properties acquired as part of such communities prior to November 25, 2008, provided it can be demonstrated that these properties were included in a documented community master plan.
- (3a) Existing non-LED street lights may be replaced with similar non-LED fixtures where warranted by NCDOT and approved by the director of public works.
- (4) General design standards.
- a. *Spacing.* Newly installed standard pole mounted street lights shall be placed at the following intervals as measured along the street centerline:
 - i. In residential areas street lights shall be placed at intervals of 125 feet to 150 feet. The public works director may approve wider spacing for low density residential subdivisions provided the overall density is less than two units per acre and both the streets and light fixtures are privately maintained.
 - ii. On major arterial roadways, street lights shall be placed at intervals of 75 feet to 100 feet.
 - iii. In business districts, street lights shall be placed at intervals of 55 feet to 80 feet.
 - iv. Preference in placement shall be given to street intersections and street curves.
 - v. Alleys are excluded from the spacing and placing requirements of this policy but are encouraged to be illuminated using private security lights, wall packs, or other fixture utilizing a full-cutoff design.
 - vi. In areas where post-mounted fixtures (18-foot mounting height or less) are installed, the spacing of posts should be adjusted to the particular fixtures used and as approved by the director of public works or his/her designee. IESNA Recommended Practice 8 (Roadway Lighting) should be used as a guide for street lighting design.
 - b. *Alignment.* Street lighting on newly constructed streets shall be alternately staggered on each side of the street wherever possible.
 - c. *Luminance.* Newly installed street lighting fixtures shall utilize the city's standard and meet the following lumen ratings:
 - i. In residential districts — no greater than 6,500 fixture lumens, with exceptions noted in subsection (5) below.
 - ii. In commercial districts — no greater than 20,000 fixture lumens, with exceptions noted in subsection (5) below.
 - d. *Mounting support.* It is preferred that existing poles and associated mounting hardware be used to mount street lights. However, decorative poles and associated mounting hardware may be used upon agreement between the requestor, Progress Energy and the City of Asheville.
 - e. *Historic district.* Full cut-off fixtures are required, however, semi-cutoff and cutoff decorative post-mounted fixtures (18-foot mounting height or less) may be used in historic districts when compliance with the district's design guidelines require it. All fixtures should limit glare, light trespass and light pollution.
 - f. *Interstate highway lighting.* The installation of lighting on existing or future interstate highways within the City of Asheville shall require a municipal agreement between the city and the NC Department of Transportation.
 - g. *Assumption of private street lighting.* The City of Asheville may also, upon approval of the governing body, assume responsibility for streetlights that at the time of construction of private roadways, providing the following conditions are met:
 - The street lights are installed in accordance with this policy.
 - The private roadway(s) served by the streetlights are accepted into the City of Asheville or NCDOT road system.
 - h. *Variations in land elevations.* Where land elevations vary and cause the street lighting poles to be installed higher or lower than adjacent roads or property, thus causing offensive light trespass and/or glare, the standards set forth in subsection (g)(7) may also be applied to street lighting.
- (5) All LED street lighting shall comply with the standards in subsection (g)(8) and shall have a maximum BUG rating of B3, U3, G3 on commercial streets and major arterial DOT and City of Asheville roads, and a maximum of B2, U1, G2 on residential streets.
- Exceptions:
- a. Use of LED street lights in residential areas over 6,500 and up to 8,200 fixture lumens are allowed at intersections and safety sensitive locations, as deemed necessary by the director of public works.
 - b. Use of LED street lights on commercial and major arterial roads over 20,000 fixture lumens are allowed to ensure public safety as deemed necessary by NCDOT and by the director of public works.
- (6) The director of public works may grant exceptions to these standards when, based on the director's determination, conditions (including but not limited to topography, road geometry, heavy foliage, and criminal activity, etc.) are adversely impacting public safety and welfare.
- (i) *Site lighting.* All ground mounted light fixtures shall comply with the general standards listed in subsection (g) above as well as the standards listed here.
- (1) Pedestrian lighting on posts with a mounting height of 18 feet or less shall be directed to paths and sidewalks. Lighting should be placed to provide good uniformity, to limit glare, light trespass, light pollution and the casting of shadows on sidewalks. All pedestrian lighting fixtures shall comply with the other sections of this ordinance.
 - (2) Outdoor display areas, as defined in article 2 of this chapter, shall have a maximum average of illuminance of 20 maintained footcandles.
 - (3) The mounting height of all outdoor lighting, except outdoor sports field lighting and outdoor performance area lighting, shall not exceed 37 feet above finished grade.

- (4) Illumination of all open or surface parking and outdoor commercial areas shall comply with the following light levels limits, uniformity ratios and other criteria listed below:
 - a. Open parking facilities - For lighted parking lots the recommended minimum light level shall be no less than 0.2 footcandles. All light levels are measured at ground level. The minimum light level requirements vary depending on the activity classification. The specified minimum FC value above 0.2 FC as outlined in the following table means that the lowest light level point or location in the parking lot must not exceed the minimum stated FC value in the table (i.e. 0.9 FC for large shopping centers). An average to minimum uniformity ratio of 4:1 means that the average FC to minimum FC ratio cannot be worse (higher) than 4:1. See the following table:

Light Levels for Open Outdoor Parking Facilities*		
Use/Task	Maintained Footcandles	Uniformity Avg./Min.
(a) Parking, residential, multi-family		
• Low to medium vehicular/pedestrian activity	Range from 0.2 Min. to 0.7 Min.	4:1
(b) Parking, industrial/commercial/Institutional/municipal		
• High activity, i.e. large shopping centers/fast food facilities, major athletic/civic cultural events	0.9 Min.	4:1
• Medium/low activity, i.e. community shopping, office parks, hospitals, commuter lots, cultural/civic/recreational events, residential neighborhood shopping, industrial employee parking, schools, church parking	Range from 0.2 Min. to 0.7	4:1

* Source: IESNA 8th Edition Lighting Handbook; Modifications: Medium and Low Activity Level recommendations have been combined and modified.

Notes:

1. Illumination levels are horizontal on the task, e.g. pavement or area surface.
 2. Uniformity ratios dictate that average illuminance values shall not exceed minimum values by more than the product of the minimum value and the specified ratio. For example, for commercial parking medium/low activity, the average footcandles shall not be in excess of 2.8 (0.7 × 4).
 3. The planning director or his/her designee shall be responsible for determining the activity level for a development. Any project that requests a light level that exceeds the footcandle values outlined above must demonstrate a need for a higher light level to the City of Asheville planning director or his/her designee.
- (5) All LED site lighting shall comply with the standards in subsection (g)(8) and comply with the following.
 - a. Post-mounted decorative fixtures shall have a maximum BUG rating of B3, U1, G1 when 9,500 fixture lumens or less and not taller than 18-feet, unless otherwise exempted.
 - b. LED site lighting greater than 9,500 fixture lumens or taller than 18 feet shall have a maximum BUG rating of B3-U0-G3, unless otherwise excepted.
 - (6) Historic districts require the use of full cut-off fixtures; however, semi-cutoff and cutoff decorative post-mounted fixtures (18-foot mounting height or less) may be used in historic districts when compliance with the district's design guidelines requires it. All fixtures should limit glare, light trespass and light pollution.
 - (7) Post mounted lawn luminaires may be installed in residential applications provided the fixture delivers a maximum of 1,000 lumens output (equivalent to a 60 watt incandescent bulb) and utilizes a translucent lens covering the light source. The height of the post shall not exceed eight feet above the finished grade.
 - (8) All ornamental or aesthetic lighting of buildings and landscaping lighting not attached to a building shall be located, aimed, and shielded so that direct illumination is focused exclusively on the building facade, plantings, and other intended site feature and away from adjoining properties, the night sky, and the public street right-of-way. Additionally, these fixtures shall also meet the following standards:
 - a. Illumination on any vertical surface shall not exceed .5 FC average maintained and shall not spill over roof lines or building edges. Reflected glare bouncing off windows or other glazing that is visible from adjacent property is prohibited.
 - b. All ground mounted landscape and residential facade lighting systems not aimed downward shall utilize low level decorative lighting fixtures and shall be aimed no greater than 60 degrees from the horizontal ground level. The luminaires shall be shielded and aimed such that the light source cannot be seen from adjacent property or public areas or rights-of-way.
 - (j) *Lighting attached to structures or buildings.* All light fixtures attached or mounted against a building or structure shall comply with the general standards listed in subsection (g) above as well as the standards listed here.
 - (1) *Covered parking facilities.* Top levels of garages open to the sky shall comply with the requirements outlined in subsection (i)(4) for open parking facilities. The mounting height on the top level of a garage shall not be greater than 22 feet above the parking deck top floor including raised foundations and the light fixture classification shall be full cutoff. Additionally, all lighting within open parking garages shall be fully shielded so as not to create glare off-site.
 - (2) *Lighting for vehicular canopies.* Areas under a vehicular canopy shall have an average maximum horizontal illuminance of 20 maintained footcandles (FC). Areas outside the vehicular canopy shall be regulated by the standards of subsection (i) above. Lighting under vehicular canopies shall be designed so as not to create glare off-site. Acceptable methods include one or more of the following:
 - a. Recessed fixture incorporating a lens cover that is either recessed or flush with the bottom surface (ceiling) of the vehicular canopy that provides a full cutoff or fully shielded light distribution.
 - b. Surface mounted fixture incorporating a flat glass that provides a full cutoff light distribution.

- (3) *Skylights.* Buildings equipped with skylights or other horizontal daylighting openings must control the light trespass and light pollution that is projected upward from the interior lighting system through the daylight glazing into the outdoor night environment and shall also meet the following standards:
 - a. Skylight glazing shall specify a maximum light transmission of 20 percent.
 - b. Businesses operating on a 24-hour basis shall employ the use of shielding, louvers or other approved control devices installed to restrict light trespass, light pollution and glare.
 - c. Light fixtures shall not be located in or directly below light wells that are not utilizing shielding or louvers.
Exception: This subsection does not apply to one- and two-family dwelling units.
- (4) *Ornamental and general use lighting.* All ornamental and general use fixtures attached to buildings or structures shall be located, aimed, and shielded so that direct illumination is focused exclusively on the building facade or the ground immediately below the fixture. Additionally, these fixtures shall also meet the following standards:
 - a. All wall-mounted fixtures, wall packs, porch lights, ceiling mounted and pendant style fixtures shall be full cutoff fixtures.
Exception: The fixture delivers a maximum of 1,000 lumens output (equivalent to a 60 watt incandescent bulb) and utilizes a translucent lens covering the light source.
 - b. All recessed ceiling fixtures incorporating a lens cover shall be restricted to lenses that are either recessed or flush with the ceiling.
 - c. Lamps providing minimum exit discharge lighting as required by the NC Building Codes shall be shielded unless otherwise exempt.
 - d. Dual purpose fixtures (general use and exit discharge) fitted with battery back-up for emergency use shall be full cut-off. Those fixtures that come on only during an emergency or power outage are exempt.

Comparison of efficacy by power
(120 Volt incandescent lamps)

Output (Lumens)	Power (Watt)		
	Incan	CFL	LED
500	40	8—10	9
850	60	13—18	12—15
1,200	75	18—22	15
1,700	100	23—28	18

- (5) All LED lighting attached to buildings or structures shall comply with the standards in subsection (g)(8) and shall have a maximum BUG rating of B2, U0, G2, unless otherwise exempted or excepted.
- (k) Outdoor sports field/outdoor performance area lighting.
 - (1) The mounting height of outdoor sports field and outdoor performance area lighting fixtures shall not exceed 80 feet from finished grade.
 - (2) All outdoor sports field and outdoor performance area lighting fixtures shall be equipped with a glare control package (louvers, shields, or similar devices). The fixtures must be aimed so that their beams are directed and fall within the primary playing or performance area.
 - (3) The hours of operation for the lighting system for any game or event shall not exceed one hour after the end of the event.
 - (4) All outdoor sports field and outdoor performance area lighting shall also meet the general standards set forth in subsection (g).
- (l) *Signs.*
 - (1) Lighting fixtures illuminating signs shall be carefully located, aimed, and shielded so that light is directed only onto the sign façade and glare is significantly reduced. Lighting fixtures shall not be aimed toward adjacent streets, roads, or properties.
 - (2) Internally illuminated signs are permitted so long as the sign is not too bright from the surroundings and does not create a nuisance or hazard to motorists.
 - (3) Lighting fixtures shall be directed downward rather than upward.
 - (4) This ordinance does not regulate signs. See the City of Asheville sign ordinance for this information.
- (m) *Permits.* The applicant for any permit required for work involving outdoor lighting shall submit documentation at time of site plan or plot plan approval that the proposed lighting plan complies with the provisions of this Code. The submission shall contain, but not be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in this Code:
 - (1) For all Level III projects, a point-by-point footcandle array in a printout format indicating the location and aiming of illuminating devices must be furnished. For lower level projects, a point by point array must be furnished upon request. The printout shall indicate compliance with the maintained footcandle limit required by the appropriate section of this Code.
 - (2) For all Level III projects, a description of the illuminating devices, fixtures, lamps, supports, reflectors, poles, raised foundations and other devices including but not limited to manufacturers or electric utility catalog specification sheets and/or drawings, and photometric report indication fixture classification (cutoff fixture, wallpack, flood light, etc) must be furnished. For lower level projects, this same information will be required upon request.
 - (3) All Level III projects, conditional use permit projects and conditional zoning projects will be evaluated on a case specific basis and may be held to a standard that exceeds those minimum standards set forth in this ordinance. Council may modify these standards per subsection 7-9-9(c)3.
 - (4) Inspection or plan review personnel may waive any or all of the above permit requirements, provided the applicant can otherwise demonstrate compliance with this Code.
- (n) *Non-conformities.*

- (1) Any lighting fixture lawfully in place or approved by the city prior to the adoption of this ordinance shall be exempt from these requirements. Routine maintenance, including changing the lamp, starter, photo control, lens, and other required components is permitted for all existing fixtures.
 - (2) All dusk to dawn utility type lights installed prior to November 25, 2008, will be exempted from full cutoff requirements for five years from this date. After five years, all such lights shall be discontinued, removed or made to conform to the provisions of this ordinance.
 - (3) All utility owned flood lights installed prior to [insert effective date here] will be exempted from the prohibition on flood lights for five years from this adoption date. After five years, all such lights shall be discontinued, removed or replaced with conforming fixtures. Existing floodlights that are privately owned may continue to be used provided the light fixture is angled down and/or shielded so that it produces a full cutoff distribution.
 - (4) Should the property owner fail to bring the lighting system into compliance, the owner shall be subject to the civil penalties set forth in subsection 7-18-2(b).
- (o) *Appeals.* Appeals regarding the interpretation or application of this ordinance may be taken to the board of adjustment in the manner provided in article VI. (Ord. No. 3676, § 1, 11-25-08; Ord. No. 4148, § 1, 12-11-12; Ord. No. 4275, § 1, 1-28-14)

ARTICLE XII. - ENVIRONMENTAL PROTECTION STANDARDS

Sec. 7-12-1. - Flood protection.

(a) *Authority, purpose, objectives, findings.*

- (1) *Authority:* This section is adopted pursuant to Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes.
- (2) *Purpose:* It is the purpose of this section to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within floodprone areas by provisions designed to:
 - a. 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;
 - b. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
 - c. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation and restraint of floodwaters;
 - d. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
 - e. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.
- (3) *Objectives:* The objectives of this section are to:
 - a. Protect human life, safety, and health; 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;
 - b. Minimize expenditure of public money for costly flood control projects; minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - c. Minimize prolonged business losses and interruptions; ensure that potential buyers are aware that property is in a special flood hazard area;
 - d. Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood damage.
- (4) *Findings:*
 - a. The floodprone areas within the jurisdiction of the City of Asheville (city) 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 hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damage.

(b) *General provisions.*

- (1) *Applicability:* This section shall apply to all special flood hazard areas within the city's territorial and extra-territorial jurisdiction.
- (2) *Effect upon outstanding floodplain development permits:* Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this section; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this section.
- (3) *Special flood hazard areas:* The special flood hazard areas are those identified under the Cooperating Technical State (CTS) Agreement between the State of North Carolina, FEMA, its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Buncombe County dated January 6, 2010, all of which are adopted by reference and declared to be a part of this section. For purpose of grandfathering, the initial FIRMs for the Buncombe County unincorporated area are dated August 1, 1980 and for the City of Asheville are dated July 16, 1980.
- (4) *Compliance:* No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this section and other applicable regulations.
- (5) *Abrogation and greater restrictions:* This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions; however, where this section and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (6) *Interpretation:* In the interpretation and application of this section, all provisions shall be: (a) considered as minimum requirements; (b) liberally construed in favor of the city; and (c) deemed neither to limit nor repeal any other powers granted under state statutes.
- (7) *Warning and disclaimers of liability:* The degree of flood protection required by this section 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. This section does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decision lawfully made hereunder.

(c) *Administration.*

- (1) *Floodplain administrator:* The public works director is hereby designated to administer and implement the provisions of this section. Except as specifically stated, any act authorized by this section to be carried out by the floodplain administrator may be carried out by his/her designee.
- (2)

Duties and responsibilities of the floodplain administrator: In addition to all other customary and incidental powers of the floodplain administrator as well as the powers and duties that may be conferred by other ordinances of the city and other applicable laws, statutes, rules and regulations, the floodplain administrator shall perform, but not be limited to, the following duties:

- a. Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this section have been satisfied.
 - b. Review all proposed development within special flood hazard areas to assure that all necessary local, state, and federal permits have been received.
 - c. 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 (FEMA).
 - d. Assure that maintenance is provided within the altered or relocated portion of the watercourse as referenced in the preceding paragraph, so that the flood-carrying capacity is maintained.
 - e. Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of subsection 7-12-1(e)(5) are met.
 - f. 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 subsection 7-12-1(d)(3); and obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of subsection 7-12-1(d)(3).
 - g. Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been flood-proofed, in accordance with the provisions of subsection 7-12-1(d)(3).
 - h. When flood-proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of subsection 7-12-1(d)(3) and subsection 7-12-1(e)(2)b.
 - i. 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), make the necessary interpretation.
 - j. When base flood elevation (BFE) data has not been provided in accordance with subsection 7-12-1(b)(3), obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to subsection 7-12-1(e)(3)b.2, in order to administer the provisions of this section.
 - k. When base flood elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with subsection 7-12-1(b)(3), 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 section.
 - l. Permanently maintain all records that pertain to the administration of this section and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
 - m. Make on-site inspections of work in progress and make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community; issue stop-work orders, revoke floodplain development permits, serve notice of violations and issue civil penalty assessments.
 - n. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with subsection (b)(2), including any revisions thereto, letters of map change, issued by FEMA. Notify state and FEMA of mapping needs; coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).
 - o. Review, provide input, and make recommendations for variance requests; and apply and enforce any and all provisions of this section.
- (d) *Floodplain development application, permit and certification requirements.*
- (1) *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. Along with the application, the applicant must submit the following additional information for a floodplain development permit:
 - a. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in subsection 7-12-1(b)(3), or a statement that the entire lot is within the special flood hazard area;
 - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in subsection 7-12-1(b)(3);
 - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in subsection 7-12-1(b)(3);
 - (v) The base flood elevation (BFE) where provided as set forth in subsection 7-12-1(b)(3); subsection 7-12-2(c)(2); or subsection 7-12-1(e)(3);
 - (vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
 - (vii) The certification of the plot plan by a registered land surveyor, landscape architect, or professional engineer.
 - b. Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:
 - (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to mean sea level to which any non-residential structure in zones referenced on the FIRM as AE, A or AO will be flood-proofed; and
 - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or flood-proofed;
 - c. If flood-proofing, a flood-proofing certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of flood-proofing measures.
 - d. A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this section are met. These details include but are not limited to:
 - (i) 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);
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with subsection 7-12-1(e)(2)d.3 when solid foundation perimeter walls are used in the zones referenced on the FIRM as A, AO, AE, and A1-30;
 - e. Usage details of any enclosed areas below the lowest floor.
 - f.

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.

- g. Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.
 - h. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of subsection 7-12-1(e)(2)f. and g. are met.
 - i. 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 plot plan) showing the location of the proposed watercourse alteration or relocation.
- (2) *Permit requirement:* A floodplain development permit shall be required in conformance with the provisions of this section prior to the commencement of any development activities within special flood hazard areas. The floodplain development permit shall include, but not be limited to:
- a. A description of the development to be permitted under the floodplain development permit.
 - b. The special flood hazard area determination for the proposed development in accordance with available data specified in subsection 7-12-1(b)(3).
 - c. The regulatory flood protection elevation required for the reference level and all attendant utilities.
 - d. The regulatory flood protection elevation required for the protection of all public utilities.
 - e. All certification submittal requirements with timelines.
 - f. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
 - g. The flood openings requirements, if in zones A, AO, AE or A1-30 as referenced on the FIRM.
 - h. Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).
- (3) *Certification requirements:*
- a. *Elevation certificates.*
 - (i) An elevation certificate (FEMA Form 81-31), which includes among other requirements, the highest adjacent grade, the lowest adjacent grade and top of bottom floor, 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.
 - (ii) 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.
 - b. *Flood-proofing certificate.* If non-residential flood-proofing is used to meet the regulatory flood protection elevation requirements, a flood-proofing 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 flood-proofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Flood-proofing 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.
 - c. *Foundation certificate.* If a manufactured home is placed within the zones as referenced on the FIRM as A, AO, 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 subsection 7-12-1(e)(2)c.2.
 - d. *Certified report.* If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation, 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 a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
 - e. *Certification exemptions.* The following structures, if located within the zones shown on the FIRM as A, AO, AE or A1-30, are exempt from the elevation/flood-proofing certification requirements specified in items (1) and (2) of this subsection:
 - (i) Recreational vehicles meeting requirements of subsection 7-12-1(e)(2)f.1;
 - (ii) Temporary structures meeting requirements of subsection 7-12-1(e)(2)g; and
 - (iii) Accessory structures less than 150 square feet meeting requirements of subsection 7-12-1(e)(2)h.
- (e) *Flood hazard reduction.*
- (1) *General standards:* In all special flood hazard areas, the following shall apply:
 - a. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
 - b. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - c. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
 - d. 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.
 - e. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
 - f. 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 flood waters.
 - g. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

- h. Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this section, shall meet the requirements of "new construction" as contained in this chapter.
 - i. Nothing in this section shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this section 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, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this section.
 - j. 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 subsection 7-12-1(f)(5). 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 flood-proofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of subsection 7-12-1(d)(3).
 - k. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
 - l. 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.
 - m. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
 - n. 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 U.S.C. 1334.
 - o. 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.
 - p. 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.
- (2) *Specific standards:* In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in subsection 7-12-1(b)(3), or subsection 7-12-1(e)(3), the following provisions, in addition to the provisions of subsection 7-12-1(e)(1), are required:
- a. *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 7-2-5.
 - b. *Non-residential construction.* New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation as defined in section 7-2-5. Structures located in zones referenced on the FIRM as A, AE, AO, and A1-30, may be flood-proofed 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 the effect of buoyancy. For AO zones, as reference on the FIRM, the flood-proofing elevation shall be in accordance with subsection 7-12-1(e)(6)b. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in subsection 7-12-1(d)(3), along with the operational and maintenance plans.
 - c. *Manufactured homes.*
 - 1. 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 7-2-5.
 - 2. 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 of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to N.C.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.
 - 3. All enclosures or skirting below the lowest floor shall meet the requirements of subsection 7-12-1(e)(2)d.
 - 4. 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.
 - d. *Elevated buildings.* Fully enclosed areas of new construction and substantially improved structures which are below the lowest floor:
 - 1. 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;
 - 2. Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation;
 - 3. Shall include, in zones A, AO, AE, and A1-30, as referenced on the FIRM, 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:
 - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - (ii) 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;
 - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - (iv) The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;
 - (v) 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
 - (vi) 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 above.
 - e. *Additions/improvements.*
 - 1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvement is in combination with any interior modifications to the existing structure are:

- (i) Not a substantial improvement: the addition and/or improvement must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (ii) A substantial improvement: Both the existing structure and the addition and/or improvement must comply with the standards for new construction.
2. 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.
 3. Additions and/or improvements to post-FIRM structures when the addition and/or improvement is in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement: the addition and/or improvement must only comply with the standards for new construction.
 - (ii) A substantial improvement: Both the existing structure and the addition and/or improvement must comply with the standards for new construction.
- f. *Recreational vehicles.* Recreational vehicles shall either:
1. Be on site for fewer than 180 consecutive days and 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
 2. Meet all the requirements for new construction.
- g. *Temporary non-residential 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(s) 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:
1. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
 2. The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 3. 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);
 4. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 5. Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.
- h. *Accessory structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:
1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking, or restroom areas);
 2. Accessory structures shall not be temperature-controlled;
 3. Accessory structures shall be designed to have low flood damage potential;
 4. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 5. Accessory structures shall be firmly anchored in accordance with the provisions of subsection 7-12-1(e)(1)a;
 6. All service facilities such as electrical shall be installed in accordance with the provisions of subsection 7-12-1(e)(1)d; and
 7. 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 7-12-1(e)(2)d.3.
- An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or flood-proofing certificate. Elevation or flood-proofing certifications are required for all other accessory structures in accordance with subsection 7-12-1(d)(3).
- (3) *Standards for floodplains without established base flood elevations:* Within the special flood hazard areas designated as approximate zone A as referenced on the FIRM and established in subsection 7-12-1(b)(3), where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of subsection 7-12-1(e)(1), shall apply:
- a. 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.
 - b. The base flood elevation (BFE) used in determining the regulatory flood protection elevation shall be determined based on the following criteria:
 1. When BFE data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this section and shall be elevated or flood-proofed in accordance with standards in subsection 7-12-1(e)(1) and (2).
 2. When floodway data is available from a federal, state, or other source, all new construction and substantial improvements within floodway areas shall also comply with the requirements of subsection 7-12-1(e)(2) and (5).
 3. All subdivision, manufactured home parks and other development proposals shall provide BFE data if 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 subsection 7-12-1(b)(3) and utilized in implementing this chapter.
 4. When BFE data is not available from a federal, state, or other source as outlined above the reference level shall be elevated or flood-proofed (nonresidential) to or above the regulatory flood protection elevation. All other applicable provisions of subsection 7-12-1(e) shall also apply.
- (4) *Standards for riverine floodplains with BFE but without established floodways or non-encroachment areas:* Along rivers and streams where BFE data is provided by FEMA or is available but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:
- a. Standards of subsection 7-12-1(e)(1) and (2); and
 - b. 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 during the occurrence of the base flood more than one foot at any point within the community.
- (5) *Floodways and non-encroachment areas:* Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in subsection 7-12-1(b)(3). 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. The following provisions, in addition to standards outlined in subsection 7-12-1(e)(1) and (2), shall apply to all development within such areas:
- a. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - 1.

It is demonstrated that the proposed encroachment will not increase the water surface elevations during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed by a registered professional engineer in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of floodplain development permit, or

2. A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.
 - b. If subsection 7-12-1(e)5a is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this section.
 - c. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 1. The anchoring and the elevation standards of subsection 7-12-1(e)2c; and
 2. The no encroachment standard of subsection 7-12-1(e)5a.
 - d. No new habitable structures or substantial improvements to habitable structures shall be permitted in floodways and non-encroachment areas, except this subsection shall not be applicable to structures that have substantial damage.
- (6) *Standards for areas of shallow flooding (zone AO as referenced on the FIRM):* Located within the special flood hazard areas established in subsection 7-12-1(b)3, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to subsection 7-12-1(e)1 and (2), all new construction and substantial improvements shall meet the following requirements:
- a. The reference level shall be elevated at least as high as the depth number specified on the flood insurance rate map (FIRM), in feet, plus a freeboard of two feet, above the highest adjacent grade; or at least two feet above the highest adjacent grade if no depth number is specified.
 - b. Non-residential structures may, in lieu of elevation, be flood-proofed to the same level as required in subsection 7-12-1(e)6a, so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with subsection 7-12-1(d)3 and subsection 7-12-1(e)2b.
 - c. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
- (7) *Nonconforming uses:* A structure(s) or the use(s) of a structure or premises which are lawful before the effective date of this section, or before any amendment to this section after that date, but which is not in conformity with the provisions herein may be continued as a nonconforming use, or for the purposes of this section may be changed to another nonconforming use (changes in use shall be made in conformance with subsection 7-12-1(e)). Changes in ownership of any property under the jurisdiction of this section shall not affect the continued operation of the nonconforming use. All nonconforming uses shall be subject to the following conditions:
- a. Any substantial improvement of a nonconforming structure shall be made in compliance with the provisions of this section.
 - b. If the nonconforming use is discontinued for a period of 180 or more consecutive days, and there are no substantial good faith efforts to re-establish the use during this period, any future use of the building and/or premises shall conform to this section. Obtaining permits to maintain the existing use or significant continuous efforts to market the property for sale or lease for the existing use (e.g., MLS listing, realtor contract, etc.), shall be regarded as substantial good faith efforts. A nonconforming use shall be deemed discontinued after a period of more than two years regardless of any substantial good faith efforts to re-establish the use and any future use of the building and/or premises shall conform to section.
 - c. If any nonconforming use or structure or substantial improvement is destroyed by any means, including floods, said use or structure may be replaced provided the replacement of said structure and/or substantial improvements thereto will not result in an increase in the level of the current regulatory flood level. In all instances, a registered professional engineer or architect shall provide the floodplain administrator with an acceptable certification demonstrating that said replacement would not result in an increase in the current regulatory flood levels.
 - d. Any use which has been permitted as a restricted use and is in full compliance with this section and attached standards shall be considered a conforming use.
 - e. Any change of a nonconforming use as specified herein shall be approved by the board of adjustment under the provisions of this section. Proposed changes in a nonconforming use to a residential use shall be expressly prohibited.
- (f) *Variances.*
- (1) *Petition for a variance:* Any aggrieved person may petition for a variance to the board adjustment for the following:
 - a. 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.
 - b. Functionally dependent facilities provided the provisions of subsections 7-12-1(f)3 and (f)4 have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
 - c. Any other type of development, provided it meets the requirements of this section.
 - (2) *Prerequisites to considering a request for a variance:* Prior to considering a request for a variance, the board of adjustment shall be provided with a written report from the floodplain administrator specifying whether all technical evaluations, all relevant factors, all standards specified in this section have been met. Additionally, a separate written report addressing each of the following factors shall be submitted with the application for a variance:
 - a. Whether there exists any danger that materials may be swept onto other lands to the injury of others;
 - b. Whether there is any danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location as a functionally dependent facility, where applicable;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. 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
 - k. 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.

- (3) *Requirements for the granting of variances:* The board of adjustment may only grant a variance if the applicant satisfies all of the following requirements:
- The variance is the minimum necessary, considering the flood hazard, to afford relief.
 - No development permit has been approved.
 - A showing of good and sufficient cause.
 - Failure to grant the variance would result in exceptional hardship.
 - 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.
 - The granting of the variances will not make the structure in violation of other federal, state, or local laws, regulations, or ordinances; and
 - The granting of the variance is within the designated floodway or non-encroachment area and will not result in any increase in flood levels during the base flood discharge.
- (4) *Conditions:* The board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this section.
- (5) *Special facilities:* Solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, auto salvage-wrecking yards, and chemical storage facilities that are located in special flood hazard areas are prohibited unless, in addition to meeting all of the above mentioned variance requirements, the following additional requirements are met.
- The use serves a critical need in the community.
 - No feasible location exists for the use outside the special flood hazard area.
 - The reference level of any structure is elevated or flood-proofed to at least the regulatory flood protection elevation.
 - The use complies with all other applicable federal, state and local laws.
 - The city has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of an application for the issuance of a variance at least 30 calendar days prior to the consideration of the variance request.
- (6) *Notice:* The floodplain administrator shall provide written notice to any applicant to whom a variance is granted 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.
- (7) *Records:* The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (g) *Entry upon public/private property.*
- City inspections:* The floodplain administrator and each member of his or her inspections department shall perform routine, random, complaint based, systematic inspections or a combination hereof to ensure continued compliance with the requirements of this section. The city may also conduct joint inspections with other agencies inspecting under environmental or safety laws. Notice of the right to inspect shall be included in the approval of each permit application. Inspections may include, but are not limited to, compliance checks of the approved permit, reviewing for compliance according to the provisions of this section and to carry out enforcement duties.
 - City investigations:* The city shall have the power to conduct an investigation as it may reasonably deem necessary to carry out its duties as 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 activity regulated in this section. No person shall refuse entry or access to any authorized representative or agent of the city, who requests such entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, willfully resist, delay or interfere with any such representative while in the process of carrying out his/her official duties.
 - Administrative inspection warrant:* If the owner or occupant of any property refuses to permit a city inspection, the floodplain administrator shall proceed to obtain an administrative inspection warrant pursuant to N.C.G.S. 15-27.2. No person shall obstruct, hamper or interfere with the office of the floodplain administrator while carrying out the official duties of this section.
- (h) *Violations and notices.*
- General violations:* It shall constitute a violation of this section for any person to fail to obtain a permit prior to any development located in special flood hazard areas, fail to comply with an approved permit or fail to comply with any other requirements set forth in this section. Each day a violation continues shall constitute a separate and distinct violation.
 - Notice of violation:* If through inspection, it is determined that a person has violated this section, the office of the floodplain administrator shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure. The notice of violation shall be served upon the violating party, if known and the property owner. The violation notice shall contain the following:
 - That the building or property is in violation of this section, the measures needed to comply, the time within such measures must be completed and warn that failure to correct the violation within the time period shall subject the violator and/or property owner to civil and/or other enforcement action.
 - In determining the measures required and the time allowed for compliance, the office of the floodplain administrator shall take into consideration the economic feasibility, technology, the quantity of work required, and shall set reasonable and attainable time limits of compliance.
 - Failure to take corrective action:* If the violator and/or property owner should fail to take prompt corrective action to remedy the violation, then the floodplain administrator shall proceed in accordance with subsection 7-12-1(i) of this section.
- (i) *Enforcement.*
- Civil penalty:* Any person who violates the flood protection regulations of this section shall be subject to a civil penalty. The maximum civil penalty for a violation is \$25,000.00. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. The floodplain administrator is hereby charged with the responsibility of preparing a table of civil penalties, setting forth the per day and maximum penalties that may be assessed for violations of this section taking into consideration the guidelines for penalty assessment as outlined herein, so as to be in compliance with the \$25,000.00 maximum civil penalty involving the same subject matter within a six-month period of time.
 - Civil penalty assessment:* Upon the failure to comply within the time frame set forth in the notice of violation, the floodplain administrator shall give notice of assessment of a civil penalty by providing notice of the civil penalty amount and the basis for assessment to the person assessed. The assessment of a penalty shall be served personally or by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure and shall direct the violator to either pay the assessment or contest the assessment in writing, within 30 days after receipt of the notice of assessment. The office of the floodplain administrator shall initially assess the civil penalty.

- (3) *Guidelines for penalty assessment:* In determining the amount of the penalty to assess, the floodplain administrator shall be guided by the degree and extent of harm to the natural resources of the city, to the public health, or to private property resulting from the violation; the duration and gravity of the violation; the effect on water quality; the cost of rectifying the damage; the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violation in complying or failing to comply with this ordinance.
 - (4) *Criminal penalties:* A violation of this section subjects the offender to a civil penalty pursuant to the authority granted by N.C.G.S. 160A-175 and does not subject the offender to the criminal penalty provisions of N.C.G.S. 14-4 and section 1-5 of Chapter 1 of the Code of Ordinances of the City of Asheville.
 - (5) *Stop work order:* If, through inspection, it is determined that a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this section, 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(s) for the stoppage, and the condition(s) under which the work may be resumed. The stop work order shall be served by the sheriff of Buncombe County or some other person duly authorized by law to serve process as provided by Rule 4 of the N.C. Rules of Civil Procedure.
 - (6) *Revocation:* The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of state or local laws; or for 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. The notice may be served by any means authorized under Rule 4 of the NC Rules of Civil Procedure. A new permit application and approved plan including all permit fees must be submitted prior to reinstatement of the revoked permit. For permit reinstatement, the site must be deemed to be in compliance with the requirements of this section and all penalties have been paid in full or penalty appeal has been filed within the given time frame.
 - (7) *Order to abate:* If, subsequent to an appeal hearing, the floodplain administrator find that the building or development is in violation of this section, a written order shall be issued to the property owner requiring the owner to remedy the violation and such remedial action may consist of an order to alter, vacate, remove, or demolish the building, as long as the notice of violation provided prior notice that such an order may be entered and such order may require that such remedial action be taken 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, the order may require that corrective action be taken in such lesser period as may be feasible. An appeal may be taken from the order as set forth herein.
 - (8) *Action for failure to comply and failure to appeal and/or pay:* If violations are not cured or corrected within the time specified in the notice of violation and/or the violator fails to give timely notice of appeal or fails to pay the civil penalty assessed within the prescribed time period, then the matter may be referred to the city's debt set-off program and/or referred to the city attorney for institution of a civil action in the name of the city in a court of competent jurisdiction. In addition to, or in lieu of, the other remedies set forth in this section, the city attorney may institute an injunctive action, mandamus action, or other appropriate proceeding. Upon determining that an alleged violation is occurring or is threatened, a court hearing an appeal for relief shall enter such orders and/or judgments as are necessary to abate or prevent the violation. The institution of an action for injunctive or other relief under this section shall not relieve any party to such proceeding from any civil penalty prescribed by this section for violations of this section.
- (j) *Appeals.*
- (1) *Appeals:* Any aggrieved party may file an appeal for or from the issuance of a variance, or from a penalty assessment, notice of violation, permit disapproval, order, requirement, determination or interpretation rendered under the provisions of this section. The appeals process shall be as follows:
 - a. *To the floodplain administrator:* With the exception of appealing for the issuance of a variance, all appeals must initially be heard by the floodplain administrator. The appeal must be submitted in writing within 30 days of receipt of an adverse action and shall specify the specific grounds for relief and what relief is requested. The floodplain administrator shall schedule a hearing no later than 30 days from receipt of the written notice of appeal. The owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter. Further appeal may be taken to the board of adjustment as set forth below. In the absence of an appeal, the order of the floodplain administrator shall be final.
 - b. *To the Asheville Board of Adjustment:* Further appeal may be taken to the Asheville Board of Adjustment in accordance with and pursuant to the written requirements of the board and section 7-6-2 of the UDO.
 - c. *To the Buncombe County Superior Court:* Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in the office of the board or after a written copy thereof is delivered to every person who has filed a written request for such copy with the board at the time of its hearing of the case, whichever is later. The appeal shall be limited to the record before the board. Provided however, nothing herein shall modify, abrogate or amend the requirements set forth in N.C.G.S. 143-215.57 and to the extent of conflict, the language of the statute shall prevail.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2902, §§ 1(k)—1(s), 3-12-02; Ord. No. 3381, § 1(c), 7-25-06; Ord. No. 3730, § 1, 4-28-09; Ord. No. 3809, § 1, 11-24-09)

Sec. 7-12-2. - Stormwater, soil erosion and sedimentation control, illicit discharge and connection ordinance.

(a) *Authority, purpose, objective, findings, jurisdiction, applicability, exemptions.*

- (1) *Authority:* This section is adopted pursuant to NCGS 143-214.7 and applicable rules promulgated by the North Carolina Environmental Management Commission (NCEMC) thereunder; Session Law 2006-246; Chapter 160A (Cities and Towns), Article 14 and Article 19 (Planning and Regulation of Development); Section 5 of the North Carolina Constitution; Chapter 113A, Article 4 (Sedimentation Pollution Control); Article 21, Part 6 (Floodway Regulations).
- (2) *Purpose:* It is the purpose of this section to comply with the federal and corresponding state stormwater discharge National Pollution Discharge Elimination System (NPDES) regulations; to protect, maintain and enhance the environment of the City of Asheville (City), by establishing minimum requirements and procedures to control the potential adverse effects of increased stormwater runoff associated with both future development and existing developed land and non-point and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems; to regulate the clearing, grading, excavation, filling and manipulation of the earth and the moving and storing of waters in order to control and prevent accelerated soil erosion and sedimentation; and to establish decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources.
- (3) *Objectives:* To assure the city of the authority to take any action required by it to obtain and comply with its NPDES permit for stormwater discharges. Among other things, these regulations require the city to establish legal authority which authorizes or enables the city at a minimum to:
 - a. Control the contribution of pollutants to the city's MS4 and receiving waters by stormwater discharges associated with residential, commercial, industrial, and related facility activity and the quality of stormwater discharged from sites of residential, commercial, industrial, and related facility activity; and
 - b. Prohibit illicit discharges and illicit connections to the city's MS4 and receiving waters; and control the discharge to the city's MS4 and receiving waters, of spills, dumping or disposal of materials other than stormwater; and
 - c. Control through intergovernmental agreements, contribution of pollutants from one municipal stormwater system to another; and
 - d. Control accelerated erosion and sedimentation; and

- e. Require compliance with conditions in ordinances, permits, contracts or orders as follows:
 1. To establish and implement all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition of illicit discharges and illicit connections to the city's MS4 and receiving waters;
 2. To require that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm in order to reduce flooding, stream bank erosion, non-point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats for biological/ecological function and drainage;
 3. To encourage the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space and other conservation areas to the maximum extent practicable (MEP);
 4. To establish provisions for the short-term and long-term responsibility for and maintenance of structural and non-structural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety; and to minimize public and private property damage resulting from erosion, sedimentation and flooding; and to regulate developments that create demand for public investment in flood control works.

(4) *Findings:*

- a. Stormwater runoff can have a significant adverse impact on the health, safety and general welfare of the city and on the quality of life of its citizens. These impacts can be in the form of pollution to our water bodies, erosion and sedimentation, flooding and other degrading impacts.
- b. The sedimentation of streams, lakes, wetlands and other waters of this State constitute a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters. Control of erosion and sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose.
- c. Changes in land use can create adverse impacts. The city has been designated a Phase II Municipal Separate Storm Sewer System (MS4) Community under the NPDES and is required to obtain a permit pursuant to the 1972 Federal Water Pollution Control Act as amended in 1987 as well as the applicable and statutory laws promulgated thereunder. In response to these requirements this jurisdiction is compelled to adopt minimum stormwater controls such as those included in this section.
- d. The city is in a unique geographic area with steep slopes, erodible soils, extreme rainfall patterns and other unique factors that require special attention and specifically different requirements from other jurisdictions.

(5) *Jurisdiction:* With the exception of applying subsection 7-12-2(k), pertaining to the prohibition, detection and elimination of illicit connections, illicit discharges and improper disposal to the stormwater system in the city's extraterritorial jurisdiction, this section shall apply to the territorial and extraterritorial jurisdictions of the city as well as to all properties owned by the city within Buncombe County to include the areas designated on the map entitled "Phase II Stormwater Map of the City of Asheville, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith along with all explanatory matters contained thereon and made a part of this section.

(6) *Applicability:* Unless exempted pursuant to subsection 7-12-2(a)(7) below, beginning with and subsequent to its effective date, this section shall be applicable as follows:

- a. All development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and land disturbing applications.
- b. The provisions of subsection 7-12-2(k), pertaining to prohibition, detection and elimination of illicit connections, illicit discharges and improper disposal to the stormwater system shall apply to all properties, lands, city's MS4 and waters of the state within the territorial jurisdiction of the city as well as to all properties owned by the city within Buncombe County.

(7) *Exemptions:*

- a. The following activities for land disturbance shall be exempt from the provisions of the erosion prevention and sediment control regulations of subsection 7-12-2(e):
 1. 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: forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts, dairy animals and dairy products, poultry and poultry products, livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats, bees and apiary products, and fur producing animals.
 2. An activity undertaken on forestland 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 and the Forestry Best Management Practices Manual, as adopted by the North Carolina Division of Forest Resources. If land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality and the Forestry Best Management Practices Manual, the provisions of this section shall apply to such activity and any related land disturbing activity on the site.
 3. An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the North Carolina General Statutes.
 4. Land disturbing activities over which the State of North Carolina has exclusive regulatory jurisdiction as set forth in NCGS 113A-56(a).
 5. An activity which is essential to protect human life during an emergency and those done for the purpose of fighting fires;
 6. The stock-piling of fill dirt, raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage;
 7. Individual gravesites;
 8. Maintenance of existing lawns where there is no change in contours;
 9. Gardens, similar horticultural activities that disturb less than one acre; and
 10. Land disturbing activities totaling 500 square feet or less and located 50 feet or greater from a perennial or intermittent stream.
- b. The following activities for land disturbance shall be exempt from provisions of the post-construction stormwater control regulations of subsection 7-12-2(f)(1) and (2):
 1. Development that cumulatively disturbs less than one acre and will have a proposed impervious surface area on completion of development of 50 percent or less of the total acreage of the development site; provided however, such is not exempt if part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
 2. Redevelopment that cumulatively disturbs less than one acre and will have a proposed impervious surface area on completion of development of 50 percent or less of the total acreage of the development site; provided however, such is not exempt if part of a larger common plan of redevelopment or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
 3. Development and/or redevelopment of a single one- or two-family dwelling that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale.
- c. The following activities for land disturbance shall be exempt from all provisions of the post-construction stormwater control regulations of subsection 7-12-2(f):
 - 1.

Redevelopment that results in no net increase in built-upon area and that provides equal or greater stormwater control than the previous development on the site.

2. Activities that are exempt from the permit requirements of Section 404 of the Federal Clean Water Act (CWA), as specified in 40 CFR 302 (primarily, ongoing farming and forestry activities).

(b) *Administration.*

- (1) *Stormwater administrator:* The city manager shall appoint a stormwater administrator to administer and enforce all provisions of this section. Except as specifically stated, any act authorized by this section to be carried out by the stormwater administrator may be carried out by his/her designee.
- (2) *Powers of the stormwater administrator:* In addition to all other customary and incidental powers of the office of stormwater administrator as well as the powers and duties that may be conferred by other ordinances of the city and other applicable laws, statutes, rules and regulations, the stormwater administrator shall have the following powers:
 - a. Day to day coordination, implementation and enforcement of this section and the Stormwater Management Program (SWMP), to include, but not limited to: monitoring construction site runoff, illicit discharges and improper disposal.
 - b. The coordination and enforcement of the city's NPDES permit and the coordination of the city's activities with other federal, state, and local agencies, which manage and perform functions relating to the protection of receiving waters.
 - c. To render interpretations, perform reviews, make recommendations including permit fees and revisions to fees and charges manual, approve or disapprove permit applications with or without conditions, establish timelines for the submittal and appeals of application decisions and to establish policies to include refund of permit fees.
 - d. To enter into agreements with other governmental and private entities to carry out the purposes of this section upon approval of the city manager. These agreements may include, but are not limited to, enforcement, resolution of disputes, cooperative monitoring, cooperative management of stormwater systems and cooperative implementation of stormwater management programs.
 - e. To designate what programs and activities represent the promotion of improving water quality to receive funding from the city's civil penalty mitigation fund.
 - f. To exercise powers not expressly reserved for other agencies or restricted by statute for the protection and preservation of receiving waters.
- (3) *Duties of the stormwater administrator:* The duties and responsibilities of the stormwater administrator include, but are not limited to:
 - a. Developing and maintaining a stormwater BMP manual in accordance with the approved SWMP. The stormwater BMP manual shall serve as guidance for permitting, design, construction, and maintenance of facilities which discharge stormwater both during construction and post-construction.
 - b. Providing information on how and where to obtain the stormwater BMP manual, which shall be made available to the public.
 - c. Providing an opportunity for comment by interested persons after making recommended revisions/amendments to the stormwater BMP manual and publishing the same.
 - d. Preparing and updating annually the stormwater map, consistent with the city's NPDES permit requirements.
 - e. Creating a civil penalty mitigation fund whereby all monies collected by the office of the stormwater administrator arising out of the enforcement of this section shall be used solely and directly for the purpose of promoting, providing and improving water quality.

(c) *Requirements and process for compliance.*

- (1) *General requirements:*
 - a. *Protection of property:* In addition to the requirements contained in this section, persons conducting development or redevelopment and associated land disturbing activity shall take all reasonable measures to protect natural resources and all public and private property from damage caused by such activity.
 - b. *Financial responsibility and ownership:* A financial responsibility and ownership statement shall be required as a part of all completed permit applications. This financial responsibility and ownership statement shall be signed by the person financially responsible for the land disturbing activity or his/her attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the property, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with this section. If the applicant is not the owner of the property to be disturbed, the permit application must include the owner's written consent for the applicant to submit a permit application and to conduct the proposed development, redevelopment or land disturbing activity.
 - c. *Flood protection:* No grading and stormwater permit shall be issued for development or redevelopment and associated land disturbing activity in the regulated floodplain prior to meeting the requirements of the floodplain regulations of [section 7-12-1](#) of the UDO.
 - d. *Release of building permits:* The director of building safety shall not issue any building permits for projects on sites where a grading and stormwater permit is required unless and until the grading and stormwater permit has been issued.
- (2) *Permit application requirements:*
 - a. *Plan and permit:* An approved plan along with a grading and stormwater permit shall govern the design, installation, and construction of erosion and sediment control and stormwater management, control practices and measures on the site for both during construction and post-construction.
 - b. *Permit application:* A permit application, intended to provide a mechanism for the review, approval, and inspection of the practices and measures for erosion, sediment and stormwater management and control, is required for all development and redevelopment unless exempt pursuant to this section.
 - c. *Contents of permit application package:* At a minimum, the permit application package shall include: an application form, a design plan, appropriate fees and a statement of financial responsibility and ownership.
 - d. *Additional permit application requests:* Depending on the scope of the development, redevelopment or land disturbing activity, additional items may include, but are not limited to, design calculations, certificate of inspection agreements, approved encroachment agreements, easements, and approved permits from other local, state or federal agencies.
 - e. *Prerequisites to issuance of a permit:* Prior to the issuance of a permit pursuant to this section, all of the following requirements must be met:
 1. A pre-construction conference, if required by the stormwater administrator, along with the submittal and review of a permit application.
 2. Submittal of an authorized statement of financial responsibility and ownership.
 3. Notification to the stormwater administrator of the date that land disturbing activity will begin.
 4. Installation of the erosion control measures which are required for the initial stage of land disturbance per the approved plan and having the control measures inspected and a compliance report filed.
 5. A certificate of inspection agreement, if applicable, as required by [subsection 7-12-2\(g\)\(5\)d.1](#).

6. A security for re-vegetation, if applicable, as required by subsection 7-12-2(e)(2)h.3.
- f. *Duration of permit:* The approved plan and permit remains valid for one year after the date of approval; provided however, for maintenance of facilities, such as golf courses and large institutional grounds keeping, the approved plan and permit remains valid for five years. Prior to the initiation of any land disturbing activity, the applicant shall comply with the notification requirement of subsection 7-12-2(c)(2)e.3 herein.
- g. *Extensions:* Extensions of a plan approval may be granted once by the stormwater administrator, for a maximum of one-year duration, upon written request of the person responsible for the land disturbing activity. A written request for an extension must be submitted to the stormwater administrator no more than 60 days prior to the expiration of the original permit.
- (3) *Permit application process:* The permit application process shall be as follows:
- a. *Application submittal:* All permit applications shall be submitted to the development services center at least 30 days prior to the commencement of the proposed land disturbing activity.
- b. *Who can apply:* All permit applications shall be complete and submitted by the property owner or the property owner's duly authorized agent. A permit application shall be considered complete only when it contains all required documents.
- c. *Incomplete application:* If a permit application is incomplete, which may include the absence of an environmental document required by the North Carolina Environmental Policy Act (NCEPA) (NCGS 113A-1 et seq.), the applicant shall be notified of what documents are missing and shall be provided with an opportunity to submit a complete application.
- d. *Consequences of submittal of an incomplete application:* The submittal of an incomplete application shall not suffice to meet a deadline or start the time allotted for review nor shall the time limit for review begin until a complete permit application has been submitted.
- e. *Commencement:* The land disturbing activity shall not commence until the permit application has been approved and an inspection has been performed by a North Carolina professional engineer or landscape architect or a city inspector to ensure that the protective measures shown on the approved plan have been installed in accordance with the approved plan and a permit is issued.
- f. *Notification to other agencies:* Upon approval of a permit for proposed land disturbance of one acre or greater, the stormwater administrator will send a notification of the proposed project to the Regional Office of the North Carolina Department of Environmental and Natural Resources (NCDENR)—Division of Water Quality (DWQ) and to the Buncombe County Metropolitan Sewage District. The notification shall include the applicant's name and contact information and the proposed site location.
- (4) *Design plans:* A design plan shall be submitted with the permit application for all land disturbing activity, unless exempt pursuant to this section. The following are the minimum design plan requirements:
- a. *Sketch plan:* For proposed development, redevelopment or land disturbing activity with a proposed disturbance area of less than 10,000 square feet and which is exempt from the post-construction stormwater control regulations of subsection 7-12-2(f), a sketch plan must be submitted. At a minimum, the sketch plan shall include the information on the form entitled "Requirements for Non Formal Sketch Plans," available upon request from the office of the stormwater administrator.
- b. *Formal plan exempt from post-construction stormwater regulations:* For proposed development, redevelopment or land disturbing activity with a proposed disturbance area of 10,000 square feet or greater but which is exempt from the post-construction stormwater control regulations of subsection 7-12-2(f), a formal design plan shall be submitted. Design plans shall be submitted and at a minimum shall include the information on the form entitled "Requirements for Formal Grading/Erosion Plans," available upon request from the office of the stormwater administrator.
- c. *Formal plan not exempt from post-construction stormwater regulations:* For proposed development, redevelopment or land disturbing activity that is required to meet the post-construction stormwater control regulations of subsection 7-12-2(f), a formal design plan shall be submitted. Design plans shall be submitted and at a minimum shall include the information required in the preceding paragraph b. above and the requirements on the form entitled "Requirements for Stormwater Plans," available upon request from the office of the stormwater administrator.
- d. *Certification of design plan:* All formal plans shall be prepared by a qualified registered North Carolina professional engineer or landscape architect, and the professional shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete permit applications, that the design and plans are sufficient to comply with applicable standards and that the design and plans ensure compliance with this section.
- e. *Approval of design plan:* The design plan shall not be considered approved without the inclusion of an approval stamp with a signature and date on the design plan by the stormwater administrator. The stamp of approval on the design plan is solely acknowledgement of satisfactory compliance with the requirements of this section and shall not serve as a warranty to the applicant or any other person concerning the safety, appropriateness of effectiveness of any provision, or omission from the design plan.
- f. *Review of the design plan by other agencies:* Upon approval of a permit for proposed land disturbance of one acre or greater, the stormwater administrator will forward, as required, one copy of the design plan to the Buncombe County Soil and Water Conservation District ("district") for its review. The district shall review the design plan and submit its comments and recommendations to the stormwater administrator within 20 days after the district received the design plan. Failure of the district to submit its comments and recommendations to the stormwater administrator within the prescribed time shall not delay final action on the permit application by the stormwater administrator.
- (5) *Review and approval:*
- a. *Preconstruction conference:* When deemed necessary by the stormwater administrator due to the complexity, risk or ingenuity of a project, a preconstruction conference may be required.
- b. *Timeline for review of permit applications:* The stormwater administrator will review each complete permit application with formal plans within 30 days and for sketch plans within 15 days of receipt thereof and notify the person submitting the permit application that it has been approved, approved with conditions, approved with performance reservations, or disapproved.
- c. *Approval:* If the stormwater administrator finds that the permit application complies with the standards of this section, the stormwater administrator shall approve the application. The stormwater administrator may impose conditions of approval as needed to ensure compliance with this section, or other local, state or federal regulations. The conditions shall be included as part of the approval.
- d. *Disapproval for content:* The stormwater administrator shall disapprove a permit application if it is found that the application fails to comply with the standards of this section, and shall notify the applicant of the reason(s) for the disapproval. The applicant shall have an opportunity to submit a revised application.
- e. *Other disapproval:* The stormwater administrator shall disapprove a permit application if implementation of the permit application would result in a violation of the rules adopted by the NCEMC to protect riparian buffers along surface waters. In the event that a permit application is disapproved pursuant to this paragraph, the stormwater administrator shall notify the director of the Division of Land Resources (DLR) of NCDENR of such disapproval within ten days. The city shall advise the

applicant and the director of the DLR in writing as to the specific reasons that the plan was disapproved. A permit application may also be disapproved upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant is:

1. Conducting or has conducted development, redevelopment or land disturbing activity without an approved plan, or has received notice of violation of an approved plan and grading and stormwater permit previously approved by NCEMC or a local government pursuant to the Sedimentation Pollution Control Act (Act) and has not complied with the notice within the time specified in the notice.
 2. 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.
 3. Has been convicted of a misdemeanor pursuant to NCGS 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or (For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date).
 4. Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.
- f. *Failure to timely approve:* Failure to approve, approve with modifications, or disapprove a complete permit application with formal plans within 30 days of receipt shall be deemed approved. Failure to approve, approve with modifications, or disapprove a permit application with a sketch plan within 15 days of receipt shall be deemed approved.
- g. *Review of revised permit application:* The stormwater administrator will review each revised permit application submitted and within 15 days of receipt thereof, will notify the person submitting the permit application that it has been approved, approved with modifications, approved with performance reservations, or disapproved.
- h. *Failure to recognize:* Any failure of the stormwater administrator in administering this section to include but not limited to: recognizing hazardous conditions, failure to disapprove the permit application, failure to inspect, to issue a notice of violation, assess a civil penalty or file a civil action, shall not relieve the owner from responsibility for the conditions or damages resulting therefrom and shall not result in the city, its officers or employees, being responsible for the damages resulting therefrom.
- i. *Failure to timely submit revised application:* If a revised permit application is not resubmitted within 180 days from the date the applicant was notified of the disapproval, the permit application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.
- j. *Amendment to a plan:* Applications for amendment of a permit application in written and/or graphic form may be made at any time under the same conditions as the original permit application. Until such time as said amendment is approved by the stormwater administrator, the land disturbing activity shall not proceed except in accordance with the permit application as originally approved. The review process for the amendment shall be the same as for a new permit application submittal.
- (6) *Other considerations of the review and approval process:*
- a. *Display of approved plan and permit:* The approved plan and grading and stormwater permit must be kept on file at the job site until the job is stabilized and completed.
 - b. *Revised permit application after approval:* The stormwater administrator may, after approving a permit application, require a revised application upon making the following findings:
 1. Either upon review of such permit application or on inspection of the job site, determines that a significant risk of accelerated erosion, off-site sedimentation, or risk of damage due to stormwater flows exists.
 2. Upon finding that the erosion and sedimentation control or the post-construction stormwater control measures presented in the permit application are inadequate to meet the requirements of this section.
 - c. *Status of work:* Pending the preparation of the revised permit application, work shall cease or may continue under conditions outlined by the stormwater administrator.
- (d) *Permit close out and release requirements.*
- (1) *Permit close out:* For all development, redevelopment and land disturbing activity, which requires a grading and stormwater permit pursuant to the provisions of this section, no certificate of compliance or occupancy shall be issued by the city without a final release of the grading and stormwater permit by the stormwater administrator, except where multiple units are served by a single grading and stormwater permit, in which case the city may elect to withhold a percentage of permits or certificates of occupancy until a final release of any required performance securities.
 - (2) *Final release requirements:*
 - a. *As-built record drawings:* For all development, redevelopment and land disturbing activity which require structural BMPs, stormwater management control facilities, conveyances and related improvements, an as-built record drawing must be submitted and approved by the stormwater administrator. The as-built record drawing shall be certified, signed and sealed by a North Carolina professional engineer or landscape architect. Requirements for the as-built record drawing and submittal can be found in the stormwater BMP manual.
 - b. *Certificates of completion:* For all development, redevelopment and land disturbing activity which require structural BMPs, stormwater management control facilities, conveyances, and related improvements, a certificate of completion must be submitted by the professional engineer or landscape architect, the property owner, the developer and the contractor to the stormwater administrator. The certificate serves to certify that all facilities and improvements have been constructed and installed per the approved design plan, as-built record drawing and requirements set forth in the stormwater BMP manual. The certificate of completion form shall be available from the office of the stormwater administrator.
 - c. *Operation and maintenance agreement:* For all development, redevelopment and land disturbing activity which require structural BMPs or stormwater management control facilities, an operation and maintenance agreement must be submitted and approved by the stormwater administrator, on a form available from the office of the stormwater administrator.
 - d. *Slope stability certifications:* For all development, redevelopment and land disturbing activity which require a slope stability certificate in accordance with the provisions of this section, the slope stability certificate must be submitted and approved by the stormwater administrator. The slope stability form shall be available from the office of the stormwater administrator.
 - e. *Other requirements:* Depending on the scope of the development, redevelopment and land disturbing activity, other items may be required for final approval. These may include, but are not limited to, easements and plats.
 - (3) *Final inspection:* The stormwater administrator shall perform a final inspection verifying that all disturbed areas have been stabilized, that all permanent erosion control measures and stormwater management BMPs, facilities and improvements have been installed per the approved design plan, as-built record drawing and compliance with all requirements set forth in the stormwater BMP manual. A certificate of occupancy shall not be issued until there is a final inspection signed by the stormwater administrator.
- (e) *Erosion prevention and sediment control.*

- (1) *Basic control objectives:* An erosion and sedimentation control plan shall be disapproved if the plan fails to address the basic control objectives. The basic control objectives which are to be considered in developing and implementing an erosion and sedimentation control plan are:
 - a. *Identify critical areas:* On-site areas which are subject to severe erosion and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention;
 - b. *Limit time of exposure:* All land disturbing activities are to be planned and conducted to limit exposure to the shortest practicable time;
 - c. *Limit exposed area:* All land disturbing activities are to be planned and conducted to limit the size of the area to be exposed at any one time;
 - d. *Control surface water:* Surface water runoff originating upgrate of exposed areas shall be controlled to reduce erosion and sediment loss during the period of exposure;
 - e. *Control sedimentation:* All land disturbing activities shall be planned and conducted so as to prevent off-site sedimentation damage; and
 - f. *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 in the stream.
- (2) *Mandatory standards for land disturbing activity:*
 - a. Land disturbing activity subject to this section shall be undertaken in accordance with the following requirements:
 - 1. Land disturbing activity shall not occur within a 30-foot undisturbed buffer around all perennial and intermittent surface waters.
 - 2. Land disturbing activity described in subsection (a)(7)(c)(1) of this section shall observe a buffer zone around lakes and natural watercourses 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.
 - 3. Land disturbing activity occurring pursuant to a decision rendered under subsection (j) of this section shall meet the buffer requirements established in that decision.
 - 4. Measurement of aquatic buffer width: The width of the undisturbed buffer is measured horizontally from the top of bank to the landward side of the watercourse (i.e. moving perpendicularly away from the water toward uplands or disturbed areas).
 - 5. Overgrowth of greenery: Removal of invasive species, undergrowth and selective thinning of trees smaller than four inches in diameter is allowed within the aquatic buffer provided notice is given to the office of the stormwater administrator.
 - 6. Stabilization of riverbanks: Most land disturbing activities in and on the bank of perennial and intermittent waters are regulated by the U.S. Army Corps of Engineers under Section 4040 of the Federal CWA and the North Carolina Division of Water Quality under Section 401 of the Federal CWA. In addition, a grading permit is required unless the activity is exempt as described in subsection 7-12-2(a)(7). In all cases, and to the maximum extent practicable, riverbank stabilization activities must use bioengineering methods and principles of natural design rather than concrete walls and other hardened structures.
 - 7. Trout buffers: No land disturbing activity shall be undertaken within an aquatic buffer adjacent to designated trout waters, as classified by the NCEMC that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards." Exceptions and variances to buffers along designated trout streams may only be granted by DENR—Division of Land Resources.
 - b. *Grading activity in a designated landscape buffer zone.* When developing a site in a designated landscape buffer zone, the following shall apply:
 - 1. Land disturbance is permitted in the designated landscape buffer zone and the developer is required to plant trees and shrubs which are 50 percent larger than normally required in order to reestablish quickly a visual buffer.
 - 2. Utilities are to be installed along the edge of the designated landscape buffer zone and cross perpendicular to the designated landscape buffer zone. Land disturbance that occurs in a designated landscape buffer zone shall not result in a slope that exceeds 3:1. Developers will be encouraged to provide as gradual a slope as practicable in the buffer area to provide increased soil stability and a better planting environment for buffer trees and shrubs.
 - 3. The land disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.
 - c. *Grading along property line:* For land disturbing activities for which a formal erosion and sedimentation control plan is required by this section, no grading activity or land disturbance may be conducted within ten feet of any property line unless written notice of the grading activity or land disturbance has been provided to the adjacent property owner and approval of the stormwater administrator has been received. Grading for access point and utility extensions shall be exempt from this subsection.
 - d. *Grading without an approved development plan:* Land disturbance without an approved development plan, defined as the grading of a site for which no development plan has been approved, is permitted in all districts except the residential districts and the river district if the following conditions are met:
 - 1. A landscape plan must be approved by the planning department and an erosion control plan must be approved by the stormwater administrator prior to initiation of the land disturbing activity. No grading and stormwater permits shall be issued prior to review and approval of the landscape plan by the planning department.
 - 2. The landscape plan must show the location of existing trees to be preserved and the location and type of any required buffer yard trees and street trees which will remain. The determination of the type of buffer required shall be based upon the most intense development permitted in the zoning district in which the project being graded is located.
 - 3. All required trees shall be planted within 30 days of completion of the land disturbance activity or within 12 months of the date the land disturbance activity was initiated, whichever is less. This time period may be extended through the posting of a financial guarantee as provided for in section 7-11-2 of the UDO.
 - 4. An effective permanent ground cover shall be applied on the site within 14 days of completion of the land disturbing activity unless completion occurs outside a growing season, in which case an effective temporary ground cover shall be applied within 14 days. No ground cover shall be required for bare rock.
 - e. *Graded slopes and fills:*
 - 1. *Angle:* The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 14 days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints. The use of gunite or similar materials is not allowed as a method for slope stabilization.
 - 2. *Benches:* Terracing or slope breaks should be used on steep slopes to reduce the length of cut and fill slopes to prevent erosion and formation of gullies. Benches should be five feet wide, rounded at the edges, and spaced according to the following table:

Slope	Spacing
50% (2:1)	No more than 20 vertical feet

33% (3:1)	No more than 35 vertical feet
25% (4:1)	No more than 45 vertical feet

3. *Compaction requirement:* All fill slopes shall be compacted full depth to not less than 95 percent maximum density (Standard Proctor), shall be placed on a surface cleared of growth and debris, and be properly benched and drained.
 4. *Severe slopes:* All constructed severe slopes greater than 2:1 shall be designed by a North Carolina registered professional engineer. Additionally, for constructed severe slopes greater than five feet in height, an inspection and a stability certificate are required by a North Carolina registered professional engineer with geotechnical expertise sufficient to perform the inspection and stability analysis. For all constructed severe slopes within proposed or existing public rights-of-way, periodic inspections and compaction reports are required by a North Carolina registered professional engineer with geotechnical expertise.
 5. *Slope setback requirements:* Setback from existing adjacent property and rights-of-way lines is required for retaining walls and constructed moderate and severe slopes as indicated. For the purpose of this subsection, constructed moderate and severe slopes shall include those created for the construction of retaining walls. The setback shall be measured from and applied for both the head and the toe of the slope.
 - a) The setback shall be equal to the maximum height of the slope.
 - b) The required setback may be reduced if a subsurface exploration analysis of the area is completed by a North Carolina registered professional engineer with geotechnical expertise and the analysis indicates that the reduction in the setback will not cause greater risk of damage to adjacent public and private properties.
 6. *Stability certificate findings:* At a minimum, the stability certificate must state that the slope is free of failures, including, but not limited to cracks, sloughs and slippages, that the compaction requirement as set forth above has been met, that soil should remain in its original configuration and that temporary or permanent ground cover is provided. The stability certificate must be submitted and approved before a certificate of occupancy is issued.
 - f. *Fill material:* Unless a permit from NCDENR—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 degradable materials, masonry, concrete and brick in sizes exceeding 12 inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.
 - g. *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.
 - h. *Allowable disturbances:*
 1. *Maximum limits of disturbance at one time:* Land disturbance in any area with a natural average slope in excess of 15 percent shall be limited to disturbing not more than five acres at a time. Any one disturbed area must be stabilized per the requirements of the soil erosion and sediment control standards as set forth in this section prior to beginning disturbance on any subsequent area.
 - a) The stormwater administrator may grant a waiver to the five-acre limitation but only if: (i) the disturbance does not exceed 20 acres; and (ii) the erosion and sediment controls in the formal plan are designed for a 50-year storm; and (iii) a North Carolina licensed registered professional is contracted with to perform all required inspections as required by subsection 7-12-2(g)(5); and (iv) the area of disturbance is located a minimum of 50 feet from a perennial or intermittent stream or down slope properties.
 - b) For the purposes of this provision, non-contiguous areas located within 1,500 feet of each other and owned and/or developed by the same person(s) shall be considered the same project.
 2. *Steep slope and others:* For properties where steep slope and/or ridgetop protection regulations apply, as defined in section 7-12-4 of the UDO, limits on maximum allowable disturbance shall be as indicated by those applicable regulations. The as-built record drawing must be submitted and approved by the stormwater administrator prior to final inspection approval for any phase of land disturbing activity.
 3. *Security for re-vegetation:* A security for re-vegetation is required for all land disturbances which exceeds five acres. The security shall be in the form of a construction bond, letter of credit, or certified check and must be provided prior to the issuance of the grading and stormwater permit. The security shall be sufficient to re-vegetate proposed disturbed areas and shall be valid for one year from the issuance of the permit and be updated throughout the process.
 - i. *Borrow and waste area:*
 1. 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 NCDENR—Division of 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.
 2. The formal plan shall include a soil volume balance calculation and state if there will be borrowed or waste fill material used. If borrowed or waste fill material is generated, an approved grading permit must be secured for the borrow or waste material site prior to initiation of any land disturbing activity, unless the site is not excluded by the mining or landfill act.
- (3) *Design and performance standards:*
- a. *Design storm protection:* Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. 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. If an area has been listed on the watershed overlay zone inventory by the stormwater administrator, erosion control measures for such sites or specific measures on a site shall be designed for, at a minimum, the 25-year storm. The watershed overlay zone inventory is available from the office of the stormwater administrator. The watershed overlay zone inventory shall be subject to a bi-annual review, the process and method for such a review shall be established by policy of the stormwater administrator.
 - b. *Innovative measures:* Erosion and sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the stormwater administrator if it can be demonstrated that such techniques and ideas are likely to produce successful results.
 - c. *Watershed overlay zone:* In watershed overlay zones, the following design standards shall apply:
 - 1.

Uncovered areas in watershed overlay zones shall be limited at any time to a maximum total area of 20 acres within the boundaries of the site. Only the portion of the land disturbing activity within a watershed overlay zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the site with the written approval of the stormwater administrator.

2. Erosion and sedimentation control measures, structures, and devices within watershed overlay 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 United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or other calculations or procedures generally recognized in the field including those adopted by any other agency of this state or the United States or any generally recognized organization or association and approved by the stormwater administrator.
 3. Sediment basins within watershed overlay zones shall be designed and constructed such that the basin will have an overall sediment removal efficiency of at least 85 percent and a settling efficiency of at least 70 percent for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or other calculations or procedures generally recognized in the field including those adopted by any other agency of this state or the United States or any generally recognized organization or association and approved by the stormwater administrator.
 4. Newly constructed open channels in watershed overlay zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical (2:1) 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 sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a watershed overlay zone within 14 days following completion of construction. When construction activity has ceased in a particular site of a larger development, effective permanent ground cover must be applied within 14 days from the date of the last land disturbing activity.
 6. Any additional reasonable measures determined by the stormwater administrator to be required to bring the City of Asheville into compliance, or to maintain compliance with, provisions of the city's NPDES stormwater discharge permit, a total maximum daily load (TMDL) once approved by the State of North Carolina or the U.S. Environmental Protection Agency for one or more pollutants, a consent decree or other order issued under the provisions of the Clean Water Act (33 USC 1251 et seq.) or other federal or state law or regulation.
- (4) *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:* Persons engaged in land disturbing activity shall conduct such activity so that the post-construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 1. The non-erosive velocities for the downstream channel conditions as specified in the North Carolina Erosion and Sediment Control Planning and Design Manual, or
 2. The velocity of the ten-year storm runoff in the receiving watercourse prior to development.
 - 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 city 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 dissipaters 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. *Non-applicability:* This subsection pertaining to stormwater outlet protection shall not apply where the applicant can demonstrate through engineer analysis on the sealed plans that stormwater discharge volumes and velocities will not create an erosion problem in the receiving watercourse.
- (5) *Operations in lakes or natural watercourses:* Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse falls within the jurisdiction of appropriate state and federal agencies, including but not limited to NCDENR—Division of Water Quality and the Army Corps of Engineers. Developers should consult with the appropriate state and/or federal agencies to obtain the necessary permits and requirements. In all cases and to the maximum extent practicable, operations in lakes and natural watercourses shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.
- (6) *Uncovered areas:*
- a. *Ground cover:* Whenever land disturbing activity is undertaken on a site, the person conducting the land disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the site during construction upon and development of said site, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 14 days following completion of construction or development. To the maximum extent practicable, native or indigenous plant species shall be used for permanent ground cover.
 - b. *Existing uncovered areas:* All uncovered areas existing on the effective date of this section which resulted from land disturbing activities, and 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.
 - c. *Extensive control measures:* The stormwater administrator reserves the right to require preparation and approval of an erosion control plan in any instance wherein extensive control measures are required.
 - d. *Planned reservoir:* This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.
 - e. *Fee:* No fee shall apply to work required under this subsection except when the stormwater administrator exercises the right to require an erosion control plan.
- (7) *Responsibility for installation, operation, and maintenance of temporary and permanent soil erosion and sedimentation control measures:*

- a. *During construction:* During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent soil erosion and sedimentation control measures as required by the approved plan, by any provision of this section, by any order adopted pursuant to this section, or any provision of the North Carolina Sediment Pollution Control Act.
 - b. *After construction:* After site development, the property owner or person in possession or control of the land shall install and/or maintain all necessary permanent soil erosion and sedimentation control measures, except those installed within a road or street right-of-way or easement accepted for maintenance by a government agency.
 - c. *Clean up requirements:* When sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.
 - d. *Cost of clean-up by city:* If the city must clean-up off-site sedimentation or mitigate other erosion related public safety and environmental hazards, the person in violation will be charged for the cost of the cleanup in addition to the civil penalty. The cleanup cost shall include personnel wages, equipment usage, and related administrative overhead costs. If the violator does not pay for the cleanup cost, revoked permits shall not be re-issued. Additionally, the city shall proceed in accordance with the enforcement provisions of this section to collect the cost of the clean up.
 - e. *Restoration of land and waters:* The city may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS 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 penalty or equitable relief.
 - f. *Additional measures:* Whenever the city determines that significant erosion and 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.
- (f) *Post-construction stormwater control.*
- (1) *Standards for stormwater quantity control:* All development and redevelopment to which this subsection applies shall comply with the standards herein. The design of facilities to comply with these standards shall be based on procedures contained in the stormwater BMP manual or as approved by the stormwater administrator guided by the spirit, purpose and intent of this section. The minimum "post-construction" stormwater control requirements included in the stormwater management plan shall provide management measures necessary to accomplish the following:
 - a. Limit the two-year and ten-year developed peak discharge rates to pre-developed peak discharge rates using a duration of 24-hours with a SCS Type II design storm and pass the 50-year, 24-hour storm event. The stormwater administrator may require control to pre-development rates for the 25-year, 24-hour storm, if by using existing watershed master plan analysis it is found that that additional flow reduction is required to protect downstream properties, natural and built drainage facilities due to the additional peak flows from the 25-year 24-hour storm event.
 - b. Provide extended detention for the difference between the pre-development and post development volume of the 2-year 24-hour SCS Type II design storm. The increase in runoff volume must be detained between 24-hours to 72-hours. Provided that the stormwater administrator may require volume control for the difference between the pre-development and post development volume of the 25-year 24-hour storm if by using existing watershed master plan analysis it is found that that additional volume reduction is required to protect downstream properties, natural and built drainage facilities due to the additional runoff volumes from the 25-year 24-hour storm event.
 - (2) *Standards for stormwater quality control:* All development and redevelopment to which this subsection applies shall comply with the standards herein. The design of facilities to accomplish these standards shall be based on procedures contained in the stormwater BMP manual or approved by the stormwater administrator. The minimum "post-construction" stormwater control requirements included in the stormwater management plan shall provide management measures necessary to accomplish the following:
 - a. Control and treat the stormwater runoff leaving the site from the first one inch of rain. The volume of runoff from the first inch of rain must be detained between 48 hours to 120 hours.
 - b. All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85 percent average annual removal for total suspended solids.
 - c. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H.1008(c).
 - d. If the developer utilizes stormwater sheetflow measures across aquatic buffers, filtration, [bioretention], enhanced on-site infiltration, and/or other effective measures thereby managing both the stormwater quantity and quality, the post-construction stormwater control standards described in subsection 7-12-2(f)(1) and (2) above shall be altered or waived by the stormwater administrator to the extent that the measures provide the same level of treatment, discharge, and velocity control as would be accomplished under the post-construction stormwater control standards using the methods defined in the BMP manual.
 - (3) *Aquatic buffers: Post construction:*
 - a. *Aquatic buffer:* A 30-foot undisturbed aquatic buffer shall be required along perennial and intermittent waterbodies. Landowners may challenge the classification of a stream (i.e. perennial, intermittent, ephemeral), using the methods for delineating waters developed by the North Carolina Division of Water Quality. Property owners are responsible for the cost of having the necessary field investigations performed by competent persons. By approval of this ordinance, the North Carolina Division of Water Quality hereby authorizes appropriately trained city staff to make a field determination of the stream classification.
 - b. *Reduction of excess aquatic buffer:* Property owners may petition the stormwater administrator for reduction of the portion of any undisturbed aquatic buffer that exceeds state minimum requirements if the property owner agrees to establish and maintain:
 - 1. Vegetation within the aquatic buffer to meet standards set forth in the best management practices manual or approved by the stormwater administrator as being in accord with such manual; and
 - 2. A level-spreader outside of the aquatic buffer ensuring sheet flow entering the buffer or undertakes other mitigating stormwater management measures approved by the stormwater administrator as acceptable under industry standards.
 - c. *Buffer width:* The width of the undisturbed aquatic buffer is measured horizontally from the top of bank to the landward side of the watercourse. (i.e. moving perpendicularly away from the water toward uplands or disturbed areas).
 - d. *Substantial improvements:* For substantial improvements on parcels that have previously been developed, the aquatic buffer must be restored by removing built-upon areas from the aquatic buffer and by planting and landscaping the aquatic buffer per landscape requirements as set forth in the UDO where practicable. If complete restoration of the aquatic buffer is not practicable, other mitigating stormwater management measures that enhance the function of the available buffer or otherwise substantially replace the function of the aquatic buffer may be used for compliance with this section, as approved by the stormwater administrator.
 - (4) *Additional standards for special situations:*
 - a.

Trout waters: In addition to the standards for stormwater handling set out in the stormwater BMP manual, development and redevelopment that drains in whole or in part to trout waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature and allow on-site stormwater treatment devices such as infiltration areas, bio-retention areas, and level spreaders as added controls, while meeting the other requirements of this section.

- b. *Watershed overlay zones:* In addition to the standards for stormwater handling set out in the stormwater BMP manual, development and redevelopment that is in whole or in part within a watershed overlay zone shall implement additional measures determined by the stormwater administrator to be required to bring the City of Asheville into compliance or to maintain compliance with provisions of the city's NPDES stormwater discharge permit, a total maximum daily load (TMDL) once approved by the State of North Carolina or the U.S. Environmental Protection Agency for one or more pollutants, a consent decree or other order issued under the provisions of the Clean Water Act (33 USC 1251 et seq.) or other federal or state law or regulation.
- (5) *On-site waste water:*
- a. *Operation and maintenance requirements:* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance must be approved and permitted by the Buncombe County Health Department. Both the Buncombe County septic permit and documentation showing the operation and maintenance for the system are required before a permit may be issued.
- b. *Standards for operation and maintenance:* Onsite systems for domestic wastewater covered by this section shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the seepage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.
- (6) *Standards for stormwater control measures:*
- a. *Stormwater BMP manual:* To assist in the design and evaluation of stormwater management facilities in the city, the stormwater administrator shall prepare and adopt a stormwater BMP manual. The stormwater BMP manual shall contain recommended design procedures and criteria presented for conducting evaluations of practices. The intention of the stormwater BMP manual is to establish uniform design practices; it neither replaces the need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used to evaluate practices if approved by the stormwater administrator.
1. If the specifications or guidelines of the stormwater BMP manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the stormwater BMP manual.
 2. If the standards, specifications, guidelines, policies, criteria, or other information in the stormwater BMP manual are amended subsequent to the submittal of an application for approval pursuant to this section but prior to approval, the old information shall control and shall be utilized in reviewing the application and in implementing this section with regard to the application.
 3. The stormwater BMP manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.
- b. *Evaluation according to contents of the stormwater BMP manual:* All stormwater control measures and stormwater treatment practices (also referred to as best management practices, or BMPs) required under this section shall be evaluated by the stormwater administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the stormwater BMP manual. The stormwater administrator shall determine whether they will be adequate to meet the requirements of this section.
- c. *Determination of adequacy; presumptions and alternatives:* Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the stormwater BMP manual will be presumed to meet the minimum water quality and quantity performance standards of this section. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the stormwater BMP manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this section. The stormwater administrator may require the applicant to provide such documentation, calculations, and examples as necessary to determine whether such an affirmative showing is made.
- (7) *Locations and dedication of BMPs, facilities and improvements:*
- a. Upon review and recommendation of the stormwater administrator and the director of public works, city council may approve BMPs being located within the city's public rights-of-way. In determining whether to allow a BMP within a city public right-of-way, the factors to consider shall consist of, but not be limited to, whether the BMP is a public benefit, the annual cost to the city to maintain the BMP, the potential liability the BMP exposes to the city, and any other related factors.
- b. The city may accept dedication, subject to final approval from city council, of any existing or future BMPs and stormwater management facilities for maintenance, provided such facility meets all the requirements of this section and any other policies of the city and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. The city may require as a condition of public acceptance, that the owner arrange for funding costs associated with future maintenance of the BMP or stormwater management facility. Nothing herein shall require the city to accept maintenance of any BMP or stormwater management facility.
- (8) *Operation and maintenance of structural BMPs:*
- a. *Operation and maintenance agreement:* The applicant or owner of a site that is required to have a structural BMP pursuant to this section must execute an operation and maintenance agreement prior to issuance of a certificate of occupancy for development or redevelopment. The form "Operation and Maintenance Agreement," shall be provided by the office of the stormwater administrator.
- b. *Content of operation and maintenance agreement:* The operation and maintenance agreement shall require the property owner(s) to maintain, repair, and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP, and the right of the city to abate a violation. Additionally, it shall grant the city a right of entry in the event the stormwater administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP. In no case, however, shall the right of entry confer an obligation on the city to assume responsibility for the structural BMP. Additionally, the agreement shall include language to bind the parties thereto and all subsequent owners, successors and assigns, of the site, portions of the site, and lots or parcels served by the structural BMP.
- c. *Maintenance responsibility:* The final responsibility for complying with the operation and maintenance agreement provided herein remains with the property owner.
- d. *Failure to maintain:* If the owner fails to maintain the structural BMP in accordance with the operation and maintenance agreement, the city shall proceed in accordance with subsection 7-12-2(i). Any costs incurred by the city to abate such failure shall be recovered by the city at 120 percent of the actual cost.
- e. *Recordation:* The operation and maintenance agreement shall be referenced on the final plat; and if there is no final plat, then the agreement shall be referenced on an as-built record drawing and also recorded in the Buncombe County Register of Deeds Office, so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles, at the expense of the owner/applicant prior to the issuance of the certificate of occupancy.

- f. *Deed restrictions and protective covenants:* Upon conveyance of real property that is subject to or should be subject to a recorded operation and maintenance agreement, the property owner shall include in the deed of conveyance, deed restrictions, and protective covenants, imposing upon the new owner the responsibility for maintenance of the structural BMPs. Failure to know of the existence of structural BMPs on property prior to purchase is not an excuse from the obligation to maintain the structural BMPs. A failure to include deed restrictions and protective covenants as required by this subsection constitutes negligence per se.

(g) *Inspections and investigations.*

(1) *City inspections:*

- a. *Inspections:* The city shall perform routine, random, complaint based, systematic inspections or a combination hereof to ensure continued compliance with the requirements of this section. The city may also conduct joint inspections with other agencies inspecting under environmental or safety laws during or post construction. Notice of the right to inspect shall be included in the approval of each permit application.
- b. *Purpose of inspections:* Inspections may include, but are not limited to, compliance checks of the approved plan and the grading and stormwater permit, reviewing for compliance with the standards of the stormwater BMP manual, reviewing land disturbing activity and plan effectiveness, reviewing maintenance and repair records, sampling discharges, surface water, groundwater, and material or water in BMPs, and evaluating the condition of BMPs.

- (2) *City investigations:* The city shall have the power to conduct an investigation as it may reasonably deem necessary to carry out its duties as 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 activity regulated in this section. No person shall refuse entry or access to any authorized representative or agent of the city, who requests such entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, willfully resist, delay or interfere with any such representative while in the process of carrying out his/her official duties.

- (3) *Administrative inspection warrant:* If the owner or occupant of any property refuses to permit such inspection, the stormwater administrator shall proceed to obtain an administrative inspection warrant pursuant to NCGS 15-27.2. No person shall obstruct, hamper or interfere with the office of the stormwater administrator while carrying out the official duties of this section.

- (4) *Written statements/filing of reports:* The city shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to activity under this section.

(5) *Private inspections during construction:*

- a. *Contract inspections:* A contract is required between the person financially responsible and a licensed professional for all initial inspections required by subsection 7-12-2(g)5.d.2. below.
- b. *Contract requirements:* The contract required by subsection a. above shall at a minimum provide that the licensed professional will be available for the duration of the construction of the project in order to design new stormwater measures and/or more effective or different erosion sedimentation control measures in the event that the initial controls are ineffective and provide effective and immediate alternatives for compliance with this section should a dispute arise between the parties.
- c. *Exemptions:* The following lots or sites shall be exempt from the inspection requirements of this subsection:
1. Land disturbance of 25,000 square feet or less; provided however, steep slope lots with a perennial or intermittent stream located within 100 feet downhill of land disturbance are limited to the percentage of disturbed area on the lot as shown in the table of allowable disturbances set forth in section 7-12-4 of the steep slope regulations of the UDO.
 2. For steep slope areas as set forth under section 7-12-4 of the steep slope regulations of the UDO, only those disturbances that fall within the table of allowable disturbances shall be exempt from the inspection requirement of this subsection.
 3. Sites where land disturbance for construction of a single-family home or comparable structure such as a duplex that disturbs less than 40 percent of the lot and retains, at a minimum, a 30-foot aquatic buffer. Conveyance channels in the buffer area shall be protected in accordance with the field manual of the N.C. Department of Natural Resources.
- d. *Inspection requirements:*
1. *Certificate of inspection agreement:* A notarized certificate of inspection agreement on a form available from the office of the stormwater administrator stating the existence of the contract required hereinabove must be received and approved by the Stormwater administrator before a grading and stormwater permit is issued. All stormwater management facilities and BMPs must be inspected.
 2. *Initial inspection:* A licensed North Carolina registered professional such as an engineer or landscape architect must perform all initial inspections and must sign the initial inspection report. Initial inspections shall be conducted for the purpose of ensuring that installations required by the approved plan are in place and have been installed consistent with the approved plan. An initial inspection shall be performed as many times as necessary for the licensed registered professional to render a professional opinion as to whether the measures installed on site have been properly installed and are substantially sufficient to comply with the control regulations of this section.
 3. *Weekly inspections:* A North Carolina registered professional engineer, landscape architect or an inspector holding certification from an erosion and sediment control inspection program acceptable to the stormwater administrator shall conduct weekly inspections for lots where steep slope and/or ridgetop protection regulations apply.
 4. *Bi-weekly inspections:* A North Carolina registered professional engineer, landscape architect or an inspector holding certification from an erosion and sediment control inspection program acceptable to the stormwater administrator shall conduct bi-weekly inspections on all non-exempt sites of land disturbing activity after the initial inspection.
 5. *Additional inspections:* If a determination is made by the office of the stormwater administrator that a site continues to violate the provisions of this section, meaning that the site has been issued a written notice of violation three or more times in a six-month time frame, the stormwater administrator shall require that all inspections, whether weekly or bi-weekly, be performed by a professional engineer or landscape architect only.
 6. *Inspection filings:* The initial and signed inspection report must be filed with the stormwater administrator prior to the commencement of any land disturbing activity. All weekly inspections and bi-weekly inspections must be kept on inspection logs and retained at the site.
 7. *Inspection violations:* It shall constitute a violation of this section if inspection logs are not on site or made available to city inspectors upon request.
- e. *Falsification of reports.* Falsification of reports shall constitute a violation of this section.
- f. *Forms.* Standardized certificate of inspection agreements, reporting forms and reporting process are available upon request from the office of the stormwater administrator.

(6) *Private inspections post-construction:*

- a.

Due diligence: The owner of each structural BMP installed pursuant to this section shall continuously perform due diligence inspections to ensure that the structural BMP is continuing to function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.

- b. *Annual maintenance inspection and report by owner:* The owner of any structural BMP installed pursuant to this section shall annually submit to the stormwater administrator an inspection report from a qualified registered North Carolina professional engineer or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:
 1. The name and address of the property owner;
 2. The recorded book and page number of the lot of each structural BMP;
 3. A statement that an inspection was made of all structural BMPs;
 4. The date the inspection was made;
 5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this section; and
 6. The original signature and seal of the engineer or landscape architect.

(7) *Records of installation and maintenance activities:* The owner of each structural BMP shall keep records of inspection, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the stormwater administrator.

(h) *Violations and notices.*

- (1) *General violations:* Among other violations not specifically set forth herein, it shall constitute a violation of this section for any person to fail to comply with an approved plan, the grading and stormwater permit, applicable requirements including the failure to provide ground cover, standards, or limitations imposed by this section, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this section; to engage in land disturbing activity without the required approved plan and permit and to falsify reports required under this section. Each day a violation continues shall constitute a separate and distinct violation.
- (2) *Immediate violations:* It shall constitute an immediate violation of this section if through inspection the office of the stormwater administrator determines that an immediate civil penalty is warranted based upon the table of penalties set forth hereinafter.
- (3) *Notice of violation:* If through inspection, it is determined that a person has violated this section, the office of the stormwater administrator shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure. The notice of violation shall be served upon the financially responsible party. If the financially responsible party is not the property owner, the notice shall also be served upon the property owner and contain the following:
 - a. The measures needed to comply, the time within such measures must be completed and warn that failure to correct the violation within the time period shall subject the violator to civil and/or other enforcement action.
 - b. In determining the measures required and the time allowed for compliance, the office of the stormwater administrator shall take into consideration the economic feasibility, technology, the quantity of work required, and shall set reasonable and attainable time limits of compliance.
- (4) *Notice of compliance:* Once the violation has been cured, the development, redevelopment and land disturbing activity is in compliance and any penalties assessed have been paid in full or the penalty appeal has been filed within the given time frame; a notice of compliance shall be sent to the financially responsible party.

(i) *Enforcement.*

- (1) *Civil penalty for soil erosion and sedimentation violations:* Any person who violates any of the provisions of the soil erosion and sedimentation control requirements of this section and/or who initiates a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty and in some cases, as set forth in the table of penalties below, an immediate civil penalty. The maximum civil penalty for a violation is \$5,000.00. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.
- (2) *Civil penalty for stormwater control, illicit discharge and connection violations:* Any person who violates the stormwater control, illicit discharge and connection regulations of this section shall be subject to a civil penalty and in some cases, as set forth in the table of penalties below, an immediate civil penalty. The maximum civil penalty for a violation is \$25,000.00; however, for a continuing violation the maximum per day per violation penalty shall be \$10,000.00, unless a civil penalty has been imposed against the violator within the five years preceding the current violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.
- (3) *Civil penalty assessment:* Upon the failure to comply within the time frame set forth in the notice of violation, the stormwater administrator shall give notice of assessment of a civil penalty by providing notice of the civil penalty amount and the basis for assessment to the person assessed. Provided however, the assessment of an immediate civil penalty shall be deemed compliant with the requirement for prior service of a notice of violation if served simultaneously with the notice of violation. The assessment of a penalty and an immediate civil penalty shall be served personally or by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure and shall direct the violator to either pay the assessment or contest the assessment in writing, within 30 days after receipt of the notice of assessment. The office of the stormwater administrator shall initially assess the civil penalty. In determining the amount of the civil penalty to assess, personnel of the office of the stormwater administrator shall be guided strictly by the table of penalties as set forth herein.

Table of Penalties										
Erosion and Sediment Control										
	Grading without permit	Site/Plan not in accordance with approved plan	Failure to maintain erosion control measures	Offsite Sedimentation (includes deposition into a stream)	Buffer violation	Graded slopes or fills not in compliance	Lack of ground cover	Improper fill material	Failure to file/falsification of inspection report	Other violations of Erosion and Sediment Laws
Immediate Fine	\$100 per 2,000 SF disturbed	NOV Issued	NOV Issued	Slight - \$0 - \$500 Moderate	\$100 plus \$2 per square foot	NOV Issued	NOV Issued	NOV Issued	\$2000 for falsification of report	Possible \$0-\$5000

	max of \$5,000 NOV Issued			\$501—\$2,000 Severe \$2,001 —\$5,000 NOV Issued	disturbed, max of \$5,000, NOV Issued					
On-Going Violation (Failure to Comply with NOV)	Per day penalty equal to or greater than immediate penalty	\$500 per measure not installed correctly or \$1,000 per measure not installed, max of \$5,000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure)	\$500 per measure not maintained correctly, max of \$5,000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure) or \$500 plus \$500 times the disturbed drainage acreage to the failed measure; whichever is greater	Per day penalty equal to or greater than immediate penalty	Per day penalty equal to or greater than immediate penalty Failure to take immediate short-term measures and restore buffers to standards result in subsequent violations)	\$100 per 100 SF not compliant max of \$5,000	\$100 per 100 SF not compliant max of \$5,000	\$0—\$5,000 (To be based on amount of improper fill and possible hazard for failure or leeching of pollutants)	\$200 per reporting period for each report not filed	Possible \$0—\$5,000

a. *Guidelines for penalty assessment:* Upon appeal of the civil penalty assessment to the stormwater administrator, the stormwater administrator shall be guided by the following standards and guidelines in affirming in whole or in part, reversing in whole or in part or modifying the penalty imposed:

1. *Soil erosion and sedimentation penalty:*

- a) The severity of the violation: whether slight, moderate or severe;
- b) The degree and harm caused by the violation along with the type of violation;
- c) The duration, cause, extent of any off-site damage which may have resulted;
- d) The effectiveness of action taken by the violator and adherence to the approved plan;
- e) The cost of rectifying any damage, the amount of money the violator saved by noncompliance and the estimated cost of installing and/or maintaining corrective sediment control measures and staff investigative costs;
- f) Whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with referenced subsection.

2. *Stormwater control, illicit discharge and connection penalty:*

- a) The degree and extent of harm to the natural resources and/or public roadways of the city;
- b) The degree and extent of harm to the public health, or to private property resulting from the violation;
- c) The duration and gravity of the violation;
- d) The effect on ground or surface water quantity/quality or on air quality;
- e) The cost of rectifying the damage;
- f) The amount of money the violator saved by noncompliance;
- g) Whether the violation was committed willfully;
- h) The prior record of the violator in complying or failing to comply with referenced subsection.

- (4) *Criminal penalties:* A violation of this section subjects the offender to a civil penalty pursuant to the authority granted by NCGS 160A-175 and does not subject the offender to the criminal penalty provisions of NCGS 14-4 and Section 1-5 of Chapter 1 of the Code of Ordinances of the City of Asheville.
- (5) *Stop inspections order:* A stop inspection order may be issued for a site by the office of the stormwater administrator with all inspection approvals for and all other permitted activity suspended if the site is not brought into compliance within the time period for cure as set forth in the notice of violation issued under this section. A copy of the notice shall be sent to the office of the director of building safety and upon receipt, a stop inspection order shall be issued from said office. Once the violation has been brought into compliance, a notice shall be sent to the office of the director of building safety and the stop inspection order shall be removed.
- (6) *Suspension:* The stormwater administrator may suspend any grading and/or stormwater permit for any violation of the provisions of this section if the site is not brought into compliance within the time period for cure as set forth in the notice of violation. To suspend a grading and/or stormwater permit, the stormwater administrator shall serve a notice of continuing violation and permit suspension which shall comply with the notice of violation requirements of subsection 7-12-2(h)(3),

upon the financially responsible party. The notice may be served by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure. Once the violation has been cured and all penalties have been paid in full or penalty appeal has been filed within the given time frame, the suspension shall be lifted and notice of such shall be sent to the financially responsible party.

- (7) *Revocation*: The stormwater administrator may revoke any grading and/or stormwater permit if the site is not brought into compliance within the time period for cure as set forth in the notice of continuing violation and permit suspension. A notice of permit revocation shall comply with the notice of violation requirements of subsection 7-12-2(h)(3). The notice may be served by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure. A new permit application and approved plan including all permit fees must be submitted prior to reinstatement of the revoked permits. For permit reinstatement, the site must be deemed to be in compliance with the requirements of this section and all penalties have been paid in full or penalty appeal has been filed within the given time frame.
- (8) *Stop work order*: If, through inspection, it is determined that a land disturbing activity is being conducted in violation of this section or of any rule adopted or order issued pursuant to this section, and that the violation is knowing and willful, and that either: (a) off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent; or (b) off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent; or (c) the land disturbing activity is being conducted without an approved plan, the stormwater administrator, upon compliance with all of the procedural requirements of NCGS 113A-65.1, may issue a stop work order, the duration of which is not to exceed five days. The stop work order shall be served by the sheriff of Buncombe County or some other person duly authorized by law to serve process as provided by Rule 4 of the N.C. Rules of Civil Procedure.
- (9) *Summary abatement*: If through inspection, the stormwater administrator determines that a violation occurring under this section represents an imminent threat to life or property, the stormwater administrator shall take such action as may be necessary to protect the public and correct the violation.
- (10) *Abatement*: If an order directing the correction of a violation representing a threat to life or property is not complied with within the applicable period of time, the city may, after notice to the owner, enter the land and perform all necessary work to abate the threat to life or property. Notice shall be in writing and shall be delivered to the financially responsible party by hand delivery; by certified mail, return receipt requested; or by any other means allowed by Rule 4 of the N.C. Rules of Civil Procedure.
- (11) *Cost of abatement lien against property*: The city may assess the owner of the subject property with the cost of any work performed by the city pursuant to an abatement, which cost shall be a lien on such property and may be collected as provided in NCGS 160A-193. Notice shall be provided five days prior to entry and performance of necessary work by the city. For stormwater management facilities, the owners of all property served by the facility shall be jointly and severally responsible to the city for the maintenance of the facility and liable for any costs incurred by the city. All such properties are jointly and severally subject to the imposition of liens for said costs.
- (12) *Action for failure to comply and failure to pay civil penalty*: If violations are not cured or corrected within the time specified in the notice of violation and/or the violator fails to give timely notice of appeal or fails to pay the civil penalty assessed within the prescribed time period, then the matter may be referred to the city's debt set-off program and/or referred to the city attorney for institution of a civil action in the name of the city in a court of competent jurisdiction. In addition to, or in lieu of, the other remedies set forth in this section, the city attorney may institute an injunctive action, mandamus action, or other appropriate proceeding. Upon determining that an alleged violation is occurring or is threatened, a court hearing an appeal for relief shall enter such orders and/or judgments as are necessary to abate or prevent the violation. The institution of an action for injunctive or other relief under this section shall not relieve any party to such proceeding from any civil penalty prescribed by this section for violations of this section.
- (j) *Variances, exceptions and appeals*.
- (1) *Variances*: Any aggrieved person may petition for a variance to the board of adjustment to use one's land in a manner otherwise prohibited by this section. Variances may also be requested from the aquatic buffer requirements, deed restrictions and protective covenants required herein. Reasonable and appropriate conditions and safeguards may be imposed on any variance granted. Merely providing that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. All of the procedural requirements of the entity charged with granting a variance shall be met by the applicant. Provided however, only the NCDENR—Division of Land Resources may grant a variance or exception as herein below set forth, to aquatic buffers along designated trout streams. The stormwater administrator may support an applicant's appeal for a variance if the applicant's application satisfies all of the following criteria:
- Unnecessary hardships would result from strict application of this section.
 - The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - The hardships did not result from actions taken by the applicant.
 - The requested variance is consistent with the spirit, purpose, and intent of this section; will protect water quality; will secure public safety and welfare; and will preserve substantial justice.
- (2) *Exceptions*: The stormwater administrator may approve plans that do not comply with the mandatory standards of subsection 7-12-2(e)(2) of this section if the land disturbing activity is for the construction of facilities to be located on, over, or under a lake or natural water course or work done for the purposes of creating trails, walkways, river access areas, and similar facilities along the rivers, creeks or streams. Where one or more measures required under subsection 7-12-2(e)(2) are not practicable, the stormwater administrator may approve plans provided that additional measures are installed that provide the same level of treatment, discharge and velocity control.
- Required exceptions*: Notwithstanding the variance allowance herein, the stormwater administrator shall grant an exception from the aquatic buffer requirements, deed restrictions and protective covenants in any of the following instances:
 - When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide pollutant removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs.
 - When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located designed, constructed, and maintained to minimize disturbance, provide pollutant removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
 - Limitation of aquatic buffer with a granted exception*: Where a temporary and minimal disturbance has been permitted as an exception to the aquatic buffer, to the extent practicable, land disturbing activities in the aquatic buffer shall be limited to a maximum of ten percent of the total length of the aquatic buffer within the site to be disturbed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of aquatic buffer.
- (3)

Appeals: Any aggrieved party may file an appeal for or from the issuance of a variance, or from the denial/grant of an exception, penalty assessment, notice of violation, permit disapproval/modification, order, requirement, determination or interpretation rendered under the provisions of this section. The appeals process shall be as follows:

- a. *To the stormwater administrator:* With the exception of appealing for the issuance of a variance, all appeals must initially be heard by the stormwater administrator. The appeal must be submitted in writing within 30 days of receipt of an adverse action (for the disapproval or modification of a permit application for failing to meet the erosion prevention and sediment control provisions of this section, the appeal must be submitted within 15 days) and shall specify the specific grounds for relief and what relief is requested. The stormwater administrator shall render a decision no later than 30 days from receipt of the written appeal. Further appeal may be taken to the soil erosion/stormwater review committee as established herein, within 30 days from the date of receipt of the decision of the stormwater administrator.
 - b. *To the soil erosion/stormwater review committee:* A soil erosion/stormwater review committee (committee) is hereby created for the purpose of hearing appeals taken from the stormwater administrator. The committee shall be composed of five members as follows: two city department directors designated by the city manager, one member of the planning and zoning commission, and two members appointed by the Asheville City Council, one a resident of the City of Asheville and the other from either the City of Asheville or the extra-territorial jurisdiction (ETJ) of the city, at least one of whom shall have a professional accreditation in the practice of stormwater management, erosion and sediment control, or related areas of professional practice. A simple majority of the appointed members shall constitute a quorum. The committee shall hold an organizational meeting within a reasonable period of time after adoption of this section to appoint a chair and adopt rules of procedure to govern appeals as herein authorized. An appeal may be taken to the committee within 30 days of receipt of the written decision of the stormwater administrator. The appeal must be submitted in writing and shall specify why the stormwater administrator's decision is erroneous and what relief is requested. The committee shall take reasonable steps to ensure that written decisions are rendered within a reasonable period of time after the hearing.
 - c. *To the Asheville Board of Adjustment:* Further appeal may be taken to the Asheville Board of Adjustment in accordance with and pursuant to the written requirements of the board and section 7-6-2 of the UDO. Provided however, appeals regarding disapproval or modification of a permit application based upon failing to meet the erosion prevention and sediment control provision of this section, may not be taken to the Asheville Board of Adjustment and, if an appeal is desired, such appeal may be taken from inception, directly to the North Carolina Sedimentation Commission pursuant to NCGS 113A-61(c) and Title 15A, NCAC 4B.0118(d).
 - d. *To the Buncombe County Superior Court:* Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in the office of the board or after a written copy thereof is delivered to every person who has filed a written request for such copy with the board at the time of its hearing of the case, whichever is later. The appeal shall be limited to the record before the board.
- (k) *Prohibition, detection and elimination of illicit connections, illicit discharges and improper disposal to the stormwater system.*
- (1) *Connections:* It is unlawful for any person to connect any pipe, open channel, or any other conveyance system that discharges anything except stormwater or unpolluted water, into the city's MS4 or receiving waters. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic tanks.
 - (2) *Continuation of illicit connection:* It is unlawful for any person to continue the operation of any such illicit connection regardless of whether the connection was permissible when constructed. Improper connections in violation of this section must be disconnected and redirected.
 - (3) *Illicit discharge:* It is unlawful for any person to throw, drain, run or otherwise discharge to any component of the city's MS4 or to the waters of the State of North Carolina or to cause, permit or allow to suffer to be thrown, drained, run, or allowed to seep or otherwise discharge into such system or receiving water all matter of any nature excepting only such storm or surface water as herein authorized.
 - (4) *Exemptions:*
 - a. The following activities are hereby deemed not to be a significant source of pollution and are hereby exempted from the prohibition provision above:
 1. Discharges pursuant to an NPDES discharge permit (other than the NPDES permit for the City of Asheville MS4), provided that such discharges to the MS4 have been authorized by the stormwater administrator.
 2. Discharges or flows resulting from fire fighting activities;
 3. Water line flushing performed or required by a government agency;
 4. Diverted stream flows, rising groundwaters, unpolluted pumped ground waters and unpolluted ground water infiltration as defined at 40 CFR 35.2005(20);
 5. Discharges from potable water sources, foundation drains, air conditioning condensation, springs, water from crawl space pumps, footing drains, lawn watering, individual and charity car washing, dechlorinated swimming pool discharges, flows from riparian habitats and wetlands;
 6. Discharges of irrigation waters (does not include reclaimed water as described in 15A NCAC 2H. 0200); and/or
 7. Discharges from flushing and cleaning stormwater conveyances with dechlorinated, uncontaminated water.
 - b. Provided however, the stormwater administrator retains the right to determine in writing that any exempted discharge as set forth above from any property, is no longer exempt if there is evidence of significant pollution from such discharge.
 - (5) *Accidental discharge:* In the event of an accidental discharge or an unavoidable loss to the city MS4 of any pollutant, the person concerned shall inform the city as soon as possible, but not to exceed 24 hours, of the nature, quantity and time of occurrence of the discharge. The person concerned shall take immediate steps to contain the waste, treat the waste or other actions to minimize affects of the discharge on the MS4 and receiving waters. The person shall also take immediate steps to ensure no recurrence of the discharge.
 - (6) *Detection and elimination of illicit connections, illicit discharges and improper disposal to the stormwater system:*
 - a. The stormwater administrator shall take appropriate steps to detect and eliminate illicit connections to the City of Asheville MS4, including the adoption of a program to screen illicit discharges and identify their source or sources.
 - b. The stormwater administrator shall take appropriate steps to detect and eliminate improper discharges, including a program to screen for disposal and programs to provide for public education, public information, and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials and household hazardous waste.
 - c. Where such connections exist in violation of this section and said connections were made prior to adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this section. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
 - d. Where it is determined that said connection:
 1. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or

- 2. Was made in violation of any applicable regulation or ordinance, other than this section; the stormwater administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the stormwater administrator shall take into consideration: the quantity and complexity of the work; the consequence of delay; the potential harm to the environment, to the public health, and to public and private property; and the cost of remedying the damage.
- (7) *Spills*: Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their pre-existing condition.
- (8) *Notification of discharge*: Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the fire chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.
- (9) *Nuisance*: Illicit discharges and illicit connections which exist within the city's jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or safety and are found, deemed, and declared to be public nuisances and shall be abated.
- (10) *Monitoring and inspections related to illicit discharge program*:
 - a. *Water quality monitoring*: The stormwater administrator shall monitor the quantity of, and the concentration of pollutants in stormwater discharges from the areas and/or locations designated in the City of Asheville SWMP.
 - b. *General inspection requirements*: The stormwater administrator, bearing proper credentials and identification, may enter and inspect after duly notifying the owner of said property or the representative on site, all properties for regular inspections, periodic investigations, monitoring, observation measurement, enforcement, sampling and testing, to effectuate the provisions of this section at reasonable times. The stormwater administrator shall maintain inspection reports in a permanent file located in the office of the stormwater administrator.
 - c. *Administrative inspection warrant*: Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas concerning which no objection is raised. The inspector shall immediately report the refusal and the grounds to the stormwater administrator. The stormwater administrator shall promptly seek an administrative inspection warrant consistent with the laws of the State of North Carolina to complete the inspection.
 - d. *Emergency inspections*: In the event that the stormwater administrator reasonably believes that discharge from the property into the city's MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

(l) *Acronyms.*

(1)	BMP	Best management practice
(2)	CFR	Code of Federal Regulations
(3)	CWA	Clean Water Act
(4)	DLR	Division of Land Resources
(5)	DWQ	Division of Water Quality
(6)	MEP	Maximum extent practicable
(7)	MS4	Municipal separate storm sewer system
(8)	NCAC	North Carolina Administrative Code
(9)	NCDENR	North Carolina Department of Environment and Natural Resources
(10)	NCEMC	North Carolina Environmental Management Commission
(11)	NCEPA	North Carolina Environmental Policy Act
(12)	NCGS	North Carolina General Statutes
(13)	NPDES	National Pollutant Discharge Elimination System
(14)	SWMP	Stormwater Management Program
(15)	TMDL	Total Maximum Daily Load
(16)	USDA	United States Department of Agriculture
(17)	USGS	United States Geological Survey

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, §§ 16—18, 11-11-97; Ord. No. 2505, § 1, 8-11-98; Ord. No. 2663, § 1(k), 2-8-00; Ord. No. 3520, § 1, 8-21-07; Ord. No. 3875, § 1, 6-8-10) Sec. 7-12-3. - Protected mountain ridges.

- (a) *Purpose.* The purpose of this provision is to expand the coverage of the Mountain Ridge Protection Act of 1983 (as amended) in the City of Asheville and the extraterritorial planning jurisdiction of the City of Asheville to further regulate the construction of tall buildings or structures on mountain ridges. This expanded regulation will insure that supplying water to, and disposing of sewage from, buildings at high elevations does not infringe on the groundwater rights and endanger the health of those persons living at lower elevations; that adequate fire protection will be available; that such buildings or structures will not be a hazard to air navigation; and that such tall buildings will not detract from the natural beauty of the mountains.
- (b) *Authority.* This provision is adopted pursuant to the authority conferred by N.C. Gen. Stat. sec. 113A-208(a), as amended.
- (c) *Jurisdiction.* This provision shall apply to the construction of tall buildings or structures as defined in N.C. Gen. Stat. sec. 113A-206(3), on protected mountain ridges as defined hereinafter within the corporate limits of the City of Asheville, North Carolina, and within the extraterritorial planning jurisdiction of the City of Asheville in accordance with N.C. Gen. Stat. sec. 113A-208, as amended.
- (d) *Tall buildings or structures.* "Tall buildings or structures" include any building, structure, or unit within a multi-unit building with a vertical height of more than 40 feet measured from the top of the foundation of said building, structure, or unit and the uppermost point of said building, structure, or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge exceeds three feet, then such measurement in excess of three feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure, or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. For the purposes of this [section 7-12-3](#), "tall buildings or structures" do not include:
- Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both;
 - Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills; or
 - Buildings and structures designated as National Historic Sites on the National Archives Registry.
- (e) *Protected mountain ridges defined.* The City of Asheville, North Carolina, in accordance with N.C. Gen. Stat. sec. 113A-206(6) as amended, hereby eliminates the 3,000-foot elevation requirement in defining a protected mountain ridge for the purpose of applying the Mountain Ridge Protection Act in the City of Asheville and its extraterritorial planning jurisdiction. "Protected mountain ridges" are defined, therefore, in the City of Asheville and its extraterritorial planning jurisdiction, as all mountain ridges whose elevation is 500 or more feet above the elevation of an adjacent valley floor.
- (f) *Protected Mountain Ridge Act compliance.* The provisions of N.C. Gen. Stat. sec. 113A-209 shall be applicable to protected mountain ridges as defined hereinbefore.
- (g) *Filing of maps.* In accordance with N.C. Gen. Stat. sec. 113A-212, a map or maps tentatively identifying the protected mountain crests as defined by this section has been filed by the North Carolina Secretary of Natural Resources and Community Development with the Buncombe County Board of Commissioners and the Asheville City Council. A map or maps identifying the protected mountain ridges (and) crests in the City of Asheville, North Carolina, has been filed with the Buncombe County Register of Deeds.
- (Ord. No. 2369, § 1, 5-27-97)

Sec. 7-12-4. - Steep slope and ridgetop development.

- (a) *Purpose.* Asheville is in a unique geographic location where mountains, valleys, and hills constitute significant natural topographic features. The mountains and hillsides of Asheville are visible from many places in the city, adding to the quality of life for residents, and improving tourism opportunities for visitors. These areas are sensitive to development activities and measures must be taken to maintain slope stability and to control erosion and stormwater. In order to ensure the preservation of this character and the appropriate use of the hillsides, the regulations of this section are established to recognize that development of land in steep or mountainous areas involves special considerations and unique development standards.
- (b) *Goals and objectives.* This section is intended to achieve the following goals and objectives:
- (1) To promote public safety by ensuring that development on steep slope and ridgetop areas addresses slope stability issues in an effective manner;
 - (2) To provide greater design flexibility and efficiency in the location of development and infrastructure, including the opportunity to reduce length and width of roads, utility runs, and the amount of grading and paving;
 - (3) To reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep slopes and ridgetops;
 - (4) To provide for the conservation and maintenance of steep slope and ridgetop areas within city jurisdiction to achieve the above-mentioned goals;
 - (5) To provide opportunities for developers to minimize impacts on steep slope and ridgetop areas;
 - (6) To provide standards reflecting the varying circumstances and interests of individual landowners, and the individual characteristics of their properties;
 - (7) To preserve scenic views and vistas that are inherent to Asheville's character and to minimize perceived density by minimizing views of new development from within and outside of the development; and
 - (8) To provide mechanisms to effectively enforce the requirements of this section.
- (c) *Steep slopes and ridgetops designated.*
- (1) Steep slopes are designated as those areas at or above 2,220 feet in elevation above mean sea level and having an existing grade of 15 percent or more. For the purpose of applying specific development standards, steep slope areas have been separated into different zones:
 - Zone A - Areas between 2,220 and 2,349 feet in elevation and having an existing grade of 15 percent or more;
 - Zone B - Areas at or above 2,350 feet in elevation and having an existing grade of 15 percent or more;
 - (2) Ridgetops are designated on the official City of Asheville Ridgetops Map (which is hereby made a part of this section by reference). Designated ridgetops are:
 - Protected mountain ridges as defined in subsection [7-12-3\(e\)](#) of this Code regardless of whether such ridges have been otherwise designated on maps filed in accordance with subsection [7-12-3\(g\)](#) of this Code.
 - All land within 100 vertical feet of any ridgeline or ridgeline segment that is part of a designated watershed area containing a minimum of 100 acres and is located 500 or more feet above the adjacent valley floor. If any part of a ridgeline qualifies under this definition, any segments of the same ridgeline that are of higher elevation than the qualifying ridgeline shall also be considered ridgetops for the purposes of this section.
 - (3) For the purpose of applying the geotechnical analysis of this section, all areas having an existing grade of 36 percent or more, regardless of elevation, or are located in areas designated as High Hazard or Moderate Hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey are subject to the standards set forth in subsection [7-12-4\(l\)](#).
- (d) *Application.* The provisions of this section apply in the following circumstances. Any portion of a lot, parcel, or tract of land which has been approved for development or subdivision prior to the date of adoption of this section {July 10, 2007} shall not be required to comply with the provisions of this section if no further development or change to the approved subdivision or development plan is proposed within that portion of the lot, parcel, or tract of land. For the purpose of applying this provision,

approval of a subdivision plat shall not constitute approval of a development plan for the individual lots in the subdivision.

- (1) Where new development is proposed for a one or two family dwelling, or for a development requiring Level I, II or III site plan review pursuant to section 7-5-9 of this chapter or subdivision review pursuant to section 7-5-8 of this chapter.
- (2) Additions to structures greater than 1,000 square feet or new site disturbances encompassing more than 1,000 square feet of disturbed area. These additions and site disturbances shall include smaller additions or disturbances over a three-year period that accumulate to exceed the above limitations.
- (3) Substantive amendments to an approved subdivision or development plan shall require full compliance with the requirements of this section. For the purpose of this section, "substantive amendments" shall include increases in the number of lots or density or intensity of development by more than ten percent over that previously approved, location of a structure or structures in areas of steeper slopes than originally approved, and similar amendments that substantively increase the extent of development impact.
- (4) Regardless of the provisions of this section, lawfully-established lots in existence on {July 10, 2007} may be developed with a single-family home provided that the requirements of subsections (f), (g), (h) and (l) are met, except that subsection (f) shall not apply to such lots where extent of grading has been previously designated and approved on a preliminary plat or approved development plan.
- (5) For areas located in zone A, the development standards set forth in subsections (g), (h) and (k) shall not apply except that the front setback reduction specified in subsection (h) is available to properties located in zone A.

(e) *Definitions.* For the purposes of this section, the following terms shall have the meaning as ascribed to them below:

Artificial slope shall mean any land-disturbing activity that creates or changes any slope or attempts to do so.

Cut slope shall mean the exposed ground surface resulting from excavation of material.

Existing grade shall mean the vertical elevation of the land as it exists on {July 10, 2007}.

Fill slope shall mean the exposed ground surface resulting from deposition of material.

Slope shall mean the extent to which a land form deviates from the perfectly horizontal as expressed in percent, degree or ratio. To ensure consistent conversion between these separate methods of expressing the extent of slope, the following explanatory table is provided as part of this definition.



Trees and other specified vegetation shall mean all native trees of six or more inches in diameter at breast height (dbh) and any mature grouping of rhododendron or mountain laurel of 250 square feet or more in area. Invasive non-native species shall not be included in this definition.

(f) *Grading.* The following requirements regulate the extent and technique of grading in steep slope and ridgetop areas based on the existing grade. Existing grade is determined as follows.

Calculation of existing grade. The applicant may submit calculations of the existing grade; these calculations shall be sealed by a licensed surveyor, engineer, or landscape architect. If no calculations are provided, the City of Asheville will calculate the existing grade of any property using the following formula:

S	=	$\frac{.0023(L)}{A}$
		A

Where:

S = Existing grade of parcel in percent

I = Contour interval of map in feet, with said contour intervals to be five feet or less

L = Total length of the contour lines within the parcel in feet

A = Area of the parcel in acres

0.0023 = Product of two constants, one of which converts feet into acres and one of which converts a decimal fraction into a percentage

Once "S" is calculated, it shall be rounded to the nearest whole number.

If existing grade cannot be calculated using the above methods, it shall be estimated using best available resources by the planning and development director whose determination shall be final.

(1) *Grading extent.* The extent of grading on a property located in a steep slope or ridgetop area is governed by the following tables.

MAXIMUM PERCENTAGE OF SITE GRADING BY EXISTING GRADE

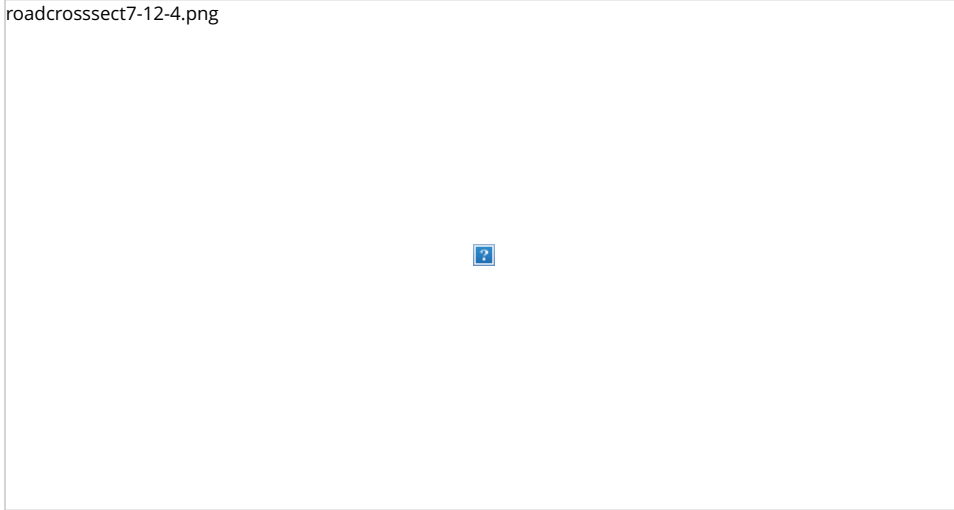
ZONE A FOR PROPERTIES AT ELEVATIONS 2220' - 2349'	
Existing Grade	Maximum Percent of Site Graded
15% - 19%	80%
20% - 24%	70%
25% - 29%	60%
30% - 34%	45%
35% - 39%	35%
40% +	20%

ZONE B FOR PROPERTIES AT ELEVATIONS 2350' and ABOVE	
Existing Grade	Maximum Percent of Site Graded
15% - 19%	45%
20% - 24%	40%
25% - 29%	35%
30% - 34%	30%
35% - 39%	25%
40% +	15%

Note: This table shall be interpreted in the following manner: "15%-19%" will include all slopes of 15 percent up to any slope less than 20 percent, etc.

(2) *Road construction.* Roads constructed on any lot, parcel, or tract of land designated as a steep slope or ridgetop area shall be contained within a corridor that shall not exceed 90 feet in width along 80 percent of its total length; up to 20 percent of the length of the road corridor may be graded to a maximum width of 135 feet to accommodate grading operations approved by the city engineer. Road rights-of-way shall be a minimum of 32 feet and a maximum of 40 feet and shall have a cross-section design as illustrated below. Cul-de-sac circles, T-turnarounds and other road terminus features approved by the city shall be exempt from these width requirements. Sidewalks are not required to be constructed in steep slope or ridgetop areas but shall be subject to fee-in-lieu requirements if not provided. Unless approved by the city engineer based on an assessment of best engineering practices for the specific site, retaining walls greater than four feet in height erected to comply with these corridor requirements shall be located at least 10 feet outside of public rights-of-way or edge of slope shoulder, whichever is greater, and shall be privately maintained.

roadcrosssect7-12-4.png



(3) *Artificial slopes.* Artificial slopes shall be designed and landscaped to create natural appearing slopes and hillsides. The replacement of trees and other significant vegetation is imperative for maintaining the natural appearance of artificial slopes. Artificial slopes shall not exceed the steepness and height parameters listed in the following table except in circumstances where stable exposed rock is the intended end result of the artificial slope, in which circumstance the cut and/or fill slopes may be increased at the discretion of the city engineer. Reforestation of artificial slopes ten feet or greater in height, other than stable exposed rock, shall consist of the placement of any of the tree or shrub species and size as specified in a list prepared and maintained by the tree commission provided not more than 20 percent of any one tree or shrub species is used except that reforestation using entirely mountain laurel or rhododendron is acceptable. The following table describes the planting design and amount of required plant material for reforestation. A maintenance plan shall be required for reforested areas and such plan shall include provisions for replacement of dead vegetation when greater than a 50 percent mortality rate occurs.

ARTIFICIAL SLOPES			
Slope Type	Maximum Slope	Maximum Height	Required Reforestation
Cut Slope	1.5:1	30 feet	Reforestation shall consist of rows of plantings spaced 10 feet apart (on center) in checkerboard pattern.
	2:1	40 feet	
	<2.5:1	30 feet	
Fill Slope	2:1	40 feet	
	<2.5:1	30 feet	

Note: The maximum height of a combined cut and fill slope shall not exceed 60 feet.

(g) *Structure height and depth.* The maximum height of principal structures in steep slope and ridgetop areas shall be limited to two stories (maximum 30 feet) on the uphill side of the structure and three stories (maximum 40 feet) on the downhill side of the structure, regardless of height allowances elsewhere in this Code. For ridgetop development where structures are not located so as to have a distinct uphill or a downhill side, the maximum height of principal structures shall be limited to two stories (maximum 30 feet). Accessory structures shall not exceed 20 feet in height on any side. For the purpose of this section, height shall be calculated as the vertical distance from existing grade to the midpoint of the peak and eave for structures with pitched roofs and from the top of the parapet or roof surface, whichever is greater, for flat-roofed structures. An additional 12 feet in height may be allowed on the uphill side and 20 feet in height on the downhill side of the principal structure if any downhill-facing facade and the entire roof structure are installed and maintained with materials or paint having an average light reflectivity value (LRV) of 25 or less and a 50-foot deep area measured from the rear property line is designated in a vegetation preservation easement and existing vegetation in this area is maintained. This provision is not available for ridgetop development. A LRV of 25 or less is strongly encouraged for all structures built on steep slope and ridgetop areas regardless of their height. The maximum depth through any one cross-section of a structure in steep slope and ridgetop areas having a slope of 40 percent or more shall be 50 feet in order to promote construction that is less intrusive on a slope (see illustration below).



(h) *Tree and other specified vegetation preservation.* All trees and other specified vegetation shall be preserved in steep slope and ridgetop areas except in areas approved for grading in subsection (f) above or within ten feet of building footprints. Non-native invasive species may be removed. For new development or additions, these preservation areas shall be designated on plans submitted for development approval. For existing development, aerial photographs or other methods of determining the extent of tree cover shall be utilized to enforce this requirement.

During construction, these preservation areas shall be clearly designated using tree protection fencing to protect them from disturbance.

Fines for removal of trees and other specified vegetation required to be preserved, unless such trees and vegetation are determined to be dead, dying or represent a threat to property by the city arborist or other person(s) designated to enforce these requirements and said removal is thereby authorized, shall be as established in article XVIII. In the event that a violator chooses to remedy the violation through the planting of replacement trees, such trees shall be selected from the city's list of large maturing trees and shall be of a minimum of two inches diameter at breast height.

The planning and development director may approve reductions of front setbacks from 35 feet to 20 feet in RS-2 zones and from 25 feet to 15 feet in RS-4 zones such that the setback reduction results in reducing site grading and enhances protection or existing trees and other vegetation.

(i) *Alternative landscape plan.* In the event a property owner desires to remove trees and other protected vegetation required to be preserved in subsection (h) above, he or she may submit an alternative landscape plan for consideration by the tree commission. This alternative landscape plan must contain: a tree survey of the property showing which trees and other protected vegetation will be removed and which will remain; the location of any structures, driveways and other impervious surfaces; and an explanation of the reason(s) for removal of required trees and other protected vegetation, including a statement of how the removal of the required trees and other protected vegetation supports the purposes of this section or how such removal can be mitigated consistent with the purposes of this section. The tree commission, in its sole discretion, may approve, approve with conditions, or deny the alternative landscape plan. If conditions are established, they shall be enforceable in accordance with the provisions of article XVIII. If the tree commission denies the alternative landscape plan, it shall set out its reasons in writing. Appeals of tree commission decisions shall follow the process for appeals of decisions by the planning director as established in [section 7-6-2](#)

(j) *Density.* Densities of residential development shall be reduced in steep slope and ridgetop areas to support the goals and objectives of this section.

(1) The allowable density shall be as follows for the listed underlying zoning districts. The fractional requirements provisions of subsection [7-2-3\(b\)](#) shall not apply for density calculations in the steep slope and ridgetop areas.

MAXIMUM NUMBER OF UNITS PER ACRE BY EXISTING GRADE

ZONE A FOR PROPERTIES AT ELEVATIONS 2220' - 2349'					
Existing Grade	RS-2	RS-4	RM-6	RS-8 RM-8	RM-16 & other districts allowing residential development
15%—19%	1.7	3.3	5.1	6.8	13.5
20%—24%	1.4	2.9	4.3	5.7	11.1
25%—29%	1.2	2.3	3.5	4.7	9.3
30%—34%	0.8	1.8	2.7	3.6	7.2

35%—39%	.6	1.7	1.9	2.5	5.0
40% or >	.3	0.6	1.0	1.3	2.6

ZONE B FOR PROPERTIES AT ELEVATIONS 2350' and ABOVE					
Existing Grade	RS-2	RS-4	RM-6	RS-8 RM-8	RM-16 & other districts allowing residential development
15%—19%	1.2	1.8	2.7	3.6	7.2
20%—24%	1.0	1.4	2.4	3.2	5.6
25%—29%	0.7	1.0	1.7	2.8	4.2
30%—34%	0.6	0.8	1.2	2.0	3.8
35%—39%	0.4	0.6	0.8	1.2	3.0
40% or >	0.1	0.2	0.3	0.4	0.8

** NOTE: The above table shall be interpreted in the following manner:

- "15%-19%" will include all slopes of 15 percent up to any slope less than 20 percent, etc.
- 0-0.99 = no unit, 1.0 - 1.99 = 1 unit, etc.

- (2) *Existing lots or parcels.* Construction of a single-family residence shall be permitted on any lawfully established lot or parcel existing as of the date of adoption of this ordinance, even if the parcel does not meet the maximum density requirements listed in the table above. In such cases, however, the requirements of subsections (f), (g), (h) and (i) shall still apply, except that subsection (f) shall not apply to such lots where extent of grading has been previously designated and approved on a preliminary plat or approved development plan.
- (3) *Density bonus.* For areas located in Zone B, a density bonus may be granted for each of the following items. A total density bonus of up to 60 percent of the allowable density may be achieved under this provision through accumulation. Bonus applications may result in administratively-approved reductions in minimum setback requirements and minimum lot size if necessary to achieve site preservation, screening or grading objectives. Such reductions shall be indicated on the development plans submitted to obtain the density bonus and the rationale behind the reductions shall be clearly demonstrated on the plans or other application materials.
 - a. Buildings, parking, and other improvements are clustered on less steep and sensitive areas of the site to reduce the amount of grading and the steeper, more sensitive areas are preserved through a conservation easement that safeguards the property from future development; bonus of up to 60 percent based on the following table. Less sensitive areas may not exceed a 40 percent average natural slope and may include previously cleared areas, such as logging roads and pastures, provided such clearing predates January 1, 2007. Clustering in single-family residential districts and the RM-6 district may include multi-family construction up to eight units per building if necessary to achieve site preservation objectives. Conservation areas may not be located on individually owned home lots and may remain as privately owned property.

PERCENT OF SITE PRESERVED	DENSITY BONUS
30—40%	30%
<40—50%	40%
<50—60%	50%
<60%	60%

- b. Grading is limited to ten percent or more under the maximum allowed under subsection (e) above; bonus of 20 percent.
- c. Buildings and parking areas are screened by vegetation to minimize the visual impact from key viewing areas, which include the downtown central business district, the Blue Ridge Parkway, public parkland and recreational areas, and major streets and highways; bonus of 20 percent.
- d. Grading of roads and access drives is located outside of slopes exceeding 20 percent and/or is predominately located on existing cleared roadbeds; bonus of 20 percent.
- e. Grading for the principal structure(s) is located completely outside of slopes exceeding 20 percent; bonus of 20 percent.

- f. The city engineer determines that substantial stormwater management best management practices are met in the proposed development; bonus of 20 percent.
- (k) *Nonresidential development intensity.* Intensity of nonresidential development shall be limited as follows in the Steep Slope Overlay District to support the goals and objectives of the district. For the purpose of this section, "floor area ratio" shall mean the total gross floor area of the building or buildings on a lot divided by the gross area of the lot or site.
 - (1) The allowable intensity shall be as follows for the listed below:

MAXIMUM FLOOR AREA RATIO BY EXISTING GRADE OR RIDGETOP	
Existing Grade	Maximum Allowable Floor Area Ratio, Not To Exceed Structure Size Limits of the Underlying Zoning District
15%—19%	0.20
20%—24%	0.15
25%—29%	0.10
30%—34%	0.05
35%—39%	0.025
40%	0.01
Ridgetop	0.10

** Note: The above table shall be interpreted in the following manner. "15%-19%" will include all slopes of 15 percent up to any slope less than 20 percent, etc.

- (2) *Intensity bonus.* An intensity bonus may be granted for each of the following items. A total intensity bonus of up to 60 percent of the allowable intensity may be achieved under this provision through accumulation. No intensity bonus shall allow a structure of greater size than allowed under the underlying zoning district.
 - a. Buildings, parking, and other improvements are clustered on less steep and sensitive areas of the site to reduce the amount of grading and the steeper, more sensitive areas are preserved through an easement; bonus of up to 60 percent based on the following table. Less sensitive areas may include previously cleared areas, such as logging roads and pasture, provided such clearing predates January 1, 2007. Clustering in single-family residential districts and the RM-6 district may include multi-family construction up to eight units per building if necessary to achieve site preservation objectives.

PERCENT OF SITE PRESERVED	INTENSITY BONUS
30—40%	30%
>40—50%	40%
>50—60%	50%
>60%	60%

- b. Grading is limited to ten percent or more under the maximum allowed under subsection (e) above; bonus of 20 percent.
 - c. Buildings and parking areas are screened by vegetation to minimize the visual impact from key viewing areas, which include the downtown central business district, the Blue Ridge Parkway, public parkland and recreational areas, and major streets and highways; bonus of 20 percent.
 - d. Grading of roads and access drives is located outside of slopes exceeding 20 percent and/or is predominately located on existing cleared roadbeds; bonus of 20 percent.
 - e. Grading for the principal structure(s) is located completely outside of slopes exceeding 20 percent; bonus of 20 percent.
 - f. The city engineer determines that substantial stormwater management best management practices are met in the proposed development; bonus of 20 percent.
 - (l) *Geotechnical analysis required.* Development in steep slope areas having an existing grade of 36 percent or greater or on properties located in areas designated as High Hazard or Moderate Hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey shall be required to undergo geotechnical analysis by a NC registered professional engineer to determine the stability of the underlying geology and soils to support the proposed development. The geotechnical analysis report shall be required to be submitted prior to the issuance of a building permit. If a geotechnical analysis has been performed for subdivision approval that includes building pad analysis for the individual lots, it is unnecessary to submit a new analysis for each lot, provided the location of structures on each lot does not change by more than 20 feet in any one direction.
 - (m) *Sewer and water service required.* Public sewer and water shall be required to serve new developments described in subsection (d)(1) above on steep slope and ridgetop areas.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2438, § 1, 11-25-97; Ord. No. 3117, § 1, 5-11-04; Ord. No. 3328, §§ 1(m)—(p), 1-24-06; Ord. No. 3490, § 1, 6-19-07; Ord. No. 3503, § 1, 7-10-07; Ord. No. 3772, §§ 1a, b, 8-11-09)

Sec. 7-12-5. - Reserved.

Editor's note— Ord. No. 3520, § 1, adopted Aug. 21, 2007, repealed § 7-12-5 in its entirety. Former § 7-12-5 pertained to stormwater management and derived from Ord. No. 2369, § 1, adopted May 29, 1997; and Ord. No. 3381, §§ 1(d) and (e), adopted July 25, 2006.

Sec. 7-12-6. - Stormwater services utility and enterprise fund.

(a) *Authority, purpose, jurisdiction, definitions.*

- (1) *Authority:* Pursuant to N.C.G.S. Article 16 of Chapter 160A, the City of Asheville is authorized to create a stormwater services utility and enterprise fund and in so doing establish a schedule of rents, rates, fees, charges, and penalties for the use of or the services furnished by such public enterprise.
- (2) *Purpose:* It is the purpose of this section to establish a stormwater services utility as an identified fiscal and accounting fund for the purpose of comprehensively addressing the stormwater management needs of the city through programs designed to protect and manage water quality and quantity by controlling the level of pollutants in, stormwater runoff, and the quantity and rate of stormwater received and conveyed by structural and natural stormwater and drainage systems of all types. It provides a schedule of rents, rates, fees, charges and penalties necessary to assure that all aspects of the stormwater program are managed in accordance with federal, state and local laws, rules and regulations.
- (3) *Jurisdiction:* The boundaries and jurisdiction of the stormwater services utility shall extend to the corporate limits of the city, including all areas hereafter annexed thereto.
- (4) *Definitions:* For the purposes of this section, the words, terms and phrases used herein shall have the meaning given to them in section 7-2-5 of chapter 7 of the UDO, except where the context clearly indicates a different meaning. The stormwater administrator is authorized to interpret and to apply these definitions. If a property could be interpreted to fall into more than one category, the stormwater administrator shall, consistent with the purpose and intent of this section, determine the applicable category.

(b) *Establishment of a stormwater services utility and enterprise fund.*

- (1) *Utility:* There is hereby established a stormwater services utility for the city. This utility shall provide for stormwater management programs including the protection, regulation, quantity, quality, control, use and enhancement of city owned and maintained stormwater and drainage systems.
- (2) *Enterprise fund:* There is hereby established a stormwater services enterprise fund. The enterprise fund is established for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater services utility including but not limited to, rents, rates, fees, charges and penalties as may be established, after notice and a public hearing by the city council and other funds that may be transferred or allocated to the stormwater services utility. All revenues and receipts of the stormwater services utility shall be placed in the stormwater services enterprise fund and all expenses of the utility shall be paid from the stormwater services enterprise fund, except that other revenues, receipts, and resources not accounted for in the stormwater services enterprise fund may be applied to stormwater management programs, and stormwater and drainage systems as deemed appropriate by city council.

(c) *Impervious coverage and rate unit.*

- (1) *Impervious surface area:* Impervious surface area is a developed area of land that prevents or significantly impedes the infiltration of stormwater into the soil. Typical impervious surface areas include, but are not limited to: roofs, sidewalks, walkways, patios, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces containing materials that prevent or significantly impede the natural infiltration of stormwater into the soil (provided however, swimming pools and wooden decks are not considered impervious surfaces for the purpose of this ordinance).
- (2) *Application of impervious surface area:* The amount of impervious surface area of real property is a key factor in the peak rate of stormwater runoff and the pollutant loadings of stormwater runoff discharged to the structural and natural drainage systems and facilities. Therefore, the amount of impervious surface area shall be the primary parameter for establishing the rate structure to distribute the cost of systems and facilities through a schedule or rates, fees, charges and penalties related to the use and operation of the stormwater services utility and public enterprise as established above.
- (3) *Establishment and application of the equivalent rate unit (ERU):* The ERU shall be based upon an analysis of impervious surface throughout the city. The ERU has been determined to be equivalent to 2,442 square feet of impervious surface based on a statistically significant sampling of detached single-family residential parcels in the City of Asheville.

(d) *Schedule of rents, rates, fees, charges and penalties.*

- (1) *Detached single-family residential:* Each developed detached single-family residential parcel shall pay a utility fee based on the amount of impervious surface area on their property.
- (2) *Tiering for detached single-family residential:* Single-family residential parcels will be charged a fee at the Tier I, Tier II and Tier III levels as set forth in the City of Asheville Fees and Charges Manual, based upon square footage of impervious area as more specifically set forth below:

Tier	Impervious Area (Square Footage)
I	225—2000
II	2001—4000
III	4001+

- (3) *Other properties:* All other developed properties having impervious surface area, including but not limited to multi-family residential properties with two or more living units, commercial properties, industrial properties, public, institutional and non-profit properties, church properties, public and private school properties, and publicly owned properties shall be billed for one ERU for each 2,442 square feet of impervious coverage on the subject property, with any fraction thereof rounded up to the next ERU.
- (4) *Common areas:* Townhouse and condominium developments and other similar properties containing impervious surface in common ownership shall be charged for the total impervious surface of all commonly owned property within the development.
- (5) *Fees and charges manual:* The schedule of rates, rents, charges, fees and penalties shall be set forth in the City of Asheville Fees and Charges Manual.

(e) *Exemptions and credits:*

- (1) *Credits:* Other properties as set forth above may apply for stormwater utility fee credits. Credits are reductions in stormwater utility fees applicable to the property in recognition of on-site or off-site systems, facilities, measures, and actions taken by customers that go above and beyond the minimum requirements of the prescribed ordinances. Credits shall be conditioned on the continuing performance of the systems, facilities, measures, or actions in reference to standards adopted by the utility

upon which the credits are granted, and may be revised or rescinded. Credits expire at the end of one year from the date of award and may be renewed by the submittal of a renewal application. In no case shall credits exceed 60 percent of the stormwater utility fee.

- (2) *Credit policy:* The city manager shall prepare a credit policy which shall set forth the appropriate process and documentation to obtain credits. The credit policy shall be incorporated as an appendix to the City of Asheville's Standards and Specifications Details Manual. The amount of credits will be set forth in the city's fees and charges manual.
 - (3) *Equality of services:* There shall be no exception, credit, offset, or other reduction in stormwater service charges granted based upon age, race, tax status, economic status, or religion of the customer, or other condition unrelated to the stormwater utility's cost of providing stormwater services and facilities.
- (f) *Billing.*
- (1) *Responsible party:* As authorized by N.C.G.S., sec. 160A-314, stormwater utility fees, charges and penalties shall remain the responsibility and obligation of the property owner.
 - (2) *Method of billing:* Bills for stormwater service shall be sent at regular, periodic intervals. Billing and collection of stormwater service fees, rents, rates, charges and penalties shall be administered by the city manager/designee, who is hereby authorized to develop policies and procedures to effectuate the purpose and intent of this section. Stormwater service charges may be billed on a combined utility bill that also contains charges for water and/or sewer service. Stormwater service charges that are shown on a combined utility bill may be for a different service period than that used for water and/or sewer service.
 - (3) *Billing options:* The city shall have the following billing options for stormwater service charges:
 - a. Stormwater service charges for a property that receives combined sewer and water service will be sent to the customer receiving such service. However, where multiple water and sewer accounts exist for a single parcel, the bill for stormwater service charges may for good cause shown at the discretion of the city be sent to the property owner. Additional policies concerning billing will be developed by the stormwater administrator.
 - b. Owners of property may, with the consent of the city, designate each occupant of the property as the party to receive the bill for stormwater management service charge by completing and properly executing a form provided by the city. Such designation shall fairly allocate the impervious surfaces actually used by the billed party, and it shall be binding for the period of time specified by the city. Such transfer does not relieve either the owner or occupant from liability for stormwater service charges if they are not paid by the party billed.
 - c. The residents of townhouse, cluster unit, and condominium developments and other similar properties containing impervious surface in common ownership with a master water meter, the stormwater service bill shall be sent to the homeowners' association.
 - d. The residents of townhouse, cluster unit, and condominium developments and other similar properties containing impervious surface in common ownership with unit level meters, upon official request of the homeowners' association reflecting a vote in accordance with the association's bylaws, the stormwater service bill may be divided in equal shares among each unit within the development and sent to the owner or occupant of each unit. A request for per unit billing must contain all information required by the city and shall be binding for the period of time specified by the city.
 - e. The residents of townhouse, cluster unit, and condominium developments and other similar properties containing impervious surface in common ownership where there is no active homeowners' association, the stormwater service charge will be equally divided among each property with no fee being less than one ERU unless the property owners provide the city with an agreed upon division, acceptable to the city.
 - (4) *No bill:* Failure to receive a stormwater bill is not a basis for nonpayment. The owner of each parcel of land containing impervious surface shall be obligated to pay such fee.
 - (5) *Minimum stormwater service charge:* In no event will any property owner owning developed property pay less than the rate equivalent of one ERU except for zoning lots or tracts with 225 square feet or less of impervious surface area.
- (g) *Delinquencies and charges.*
- (1) *Combined utility billing:* Where stormwater service charges appear on a combined utility bill, and a customer does not pay the service charges for all the utilities on the bill, the partial payment will be prorated and applied to the respective utilities in the following order: delinquent stormwater management service charges, delinquent recycling service charges, delinquent combined sewer and water charges, current stormwater charges, current recycling service charges and current combined sewer and water charges.
 - (2) *Non-combined and/or separate stormwater utility billing:* A stormwater utility fee, charge or other billing for rents, rates, fees, charges and penalties associated with the stormwater utility shall be declared delinquent and subject to the delinquent fees and charges as set forth in the city's fees and charges manual.
 - (3) *No criminal penalty:* A violation of this section subjects the offender to a civil penalty pursuant to the authority granted by N.C.G.S., sec. 160A-175 and does not subject the offender to the criminal penalty provisions of N.C.G.S., sec. 14-4 and section 1-5 of chapter 1 of the Code of Ordinances of the City of Asheville.
 - (4) *Back billing:* If property is incorrectly billed, or not billed, or a bill is sent to the wrong party, the city may back bill a property for up to a three-year period.
- (h) *Appeals.*
- (1) *Disputed bills:* If a property owner disputes the stormwater utility charges assessed to that owner's property, that owner must first attempt to resolve the dispute with the city engineer's office. Using the information provided, the appropriate staff of the city's engineer office shall conduct a technical review pursuant to good engineering practices. Following such review, the city's stormwater administrator may adjust the stormwater service charge so long as the adjustment is in conformance with the general purpose and intent of this section. At the conclusion of the review, the stormwater administrator shall issue a written determination stating whether an adjustment to the stormwater service charge is appropriate, and if so, the percentage of such adjustment. Any approved adjustments must be communicated in writing to the city's water resources department billing staff.
 - (2) *Filing of notice of appeal:* If the owner is not satisfied with the resolution of the dispute, the owner may file a notice of appeal to the city's soil erosion review committee (herein "committee"), on a form provided by the office of the stormwater administrator. The notice of appeal must be filed within 30 days of the date of the service of the written decision of the stormwater administrator upon the owner. The appeal shall include a written statement setting forth the grounds for the appeal. The appeal shall be filed in the office of the stormwater administrator. The stormwater administrator shall transmit the written appeal along with all other documents constituting the record upon which the stormwater administrator's decision was made to the committee.
 - (3) *Documents:* At the discretion of the stormwater administrator, the written appeal may be required to include a survey prepared by a registered land surveyor and such other information that show the total property area, the impervious surface area, and any other features or conditions which influence the hydrologic response of the property to the stormwater events.
 - (4) *Powers of the committee:* The sole role of the committee is to review the stormwater administrator's decision for clear error. In the absence of clear error, the committee shall have no power to adjust, modify amend or reverse the decision of the stormwater administrator.
 - (5) *Finality of committee's decision:* The decision of the committee shall be final. This shall not prevent the owner from pursuing all other remedies as by law provided, including appeal to the Asheville Board of Adjustment.
 - (6) *Service:* All decisions of the stormwater administrator and committee shall be served on the owner personally or by registered or certified mail.

- (7) *No suspension of due date:* No provision of this subsection allowing for an appeal shall be deemed to suspend the due date of the service charge with payment in full. Any adjustment in the service charge for the person pursuing an appeal shall be made by refund of the amount due.
- (i) *Disposition of service charges and fees.* Revenues generated from stormwater services utility fees, charges, rents, rates and penalties shall be assigned and dedicated solely to the stormwater services enterprise fund in the city's budget and accounting system, which shall be and remain separate from other funds, and shall be used only to fund stormwater management programs and structural and natural stormwater and drainage systems. The service charges and fees paid to and collected by virtue of the provision of this section shall not be used for general or other government or proprietary purposes of the city except to pay for costs incurred by the city in rendering services to the stormwater services utility.
- (j) *Limitations of responsibility.*
- (1) The city shall be responsible only for the portions of the drainage system which are in city maintained street rights-of-way and permanent storm drainage easements conveyed to and accepted by the city.
 - (2) The city's acquisition of storm drainage easements and/or the construction or repair by the city of drainage facilities does not constitute a warranty against stormwater hazards, including but not limited to flooding, erosion or standing water.
- (Ord. No. 3192, § 1, 12-14-04; Ord. No. 3946, § 1, 2-8-11; Ord. No. 4337, § 1, 8-26-14)

ARTICLE XIII. - SIGN REGULATIONS

Sec. 7-13-1. - Purpose and scope.

- (a) *Purpose of sign regulations.* The purpose of this article is to provide sign standards and restrictions which allow for the legitimate needs for identification of residential, office, commercial, industrial and other activities while at the same time promoting signs which do not unduly detract from the overall aesthetics of the community; which reduce intrusions and protect property values; which provide for improved public safety by minimizing undue distraction of the motoring public; which provide standards for the erection and maintenance of signs; which provide for the protection and enhancement of the tourist industry by promoting a more harmonious and pleasing community image; which provide equitably for the nature and scale of the activities to be identified; and which generally enhance and strengthen the economic stability of the City of Asheville.
- (b) *Scope.* The provisions of this article shall apply to the erection and maintenance of all signs and sign structures within the jurisdiction of the City of Asheville as set forth in subsection 7-1-3(a), and it shall be unlawful following the effective date of this article to erect, maintain, or alter any sign or sign structure except in conformance with provisions of this article.
- (Ord. No. 2369, § 1, 5-27-97)

Sec. 7-13-2. - General provisions.

- (a) *Administration.* The planning and development department of the City of Asheville shall be responsible for the administration and enforcement of this article. The director of planning and development shall appoint a sign administrator to administer and enforce the terms and conditions of this article and all other provisions of laws relating to signs. The duties of the sign administrator shall include not only the issuance of permits as required in subsection 7-13-2(b), but also enforcement of the provisions of this article.
- (b) *Permit requirements.*
- (1) *General requirements.* Except as otherwise provided in subsections 7-13-2(c) and 7-13-2(d) it shall be unlawful to erect or maintain any sign or sign structure without first obtaining a sign permit. Further, no permit for a new sign may be issued on a property until any residual sign structure from a previous sign no longer in use has been removed.
Application for the permit shall be made in writing on forms furnished by the sign administration and signed by the applicant or authorized agent. Furthermore, maintenance requirements covered under section 7-13-6 [hereinafter] shall also require a sign permit. The procedure to use to apply for a sign permit is found in section 7-5-16 of this chapter. Failure to secure a permit shall constitute a violation of this article.
 - (2) *Licenses.*
 - a. *Sign contractor's license.* No person shall engage in the business of erecting or maintaining signs in the City of Asheville unless said person has been issued a sign contractor's license which has not expired at the time said work is done. This requirement shall be interpreted to exclude those persons who construct and erect a principal use identification sign when that sign is used at that person's place of business, provided all construction and installation is properly permitted and inspected for compliance with the applicable building codes of the City of Asheville and other provisions of this chapter.
 - b. *Outdoor advertising license.* No person shall erect or maintain off-premises advertising structures in the City of Asheville unless said person has been issued an outdoor advertising license which has not expired at the time said work is done. In order to obtain an outdoor advertising license, the licensee must be a licensed sign contractor, as described in subsection 7-13-2(b)(2)a. above, and must submit annually upon renewal of this license a listing of all sign structures leased, owned or maintained by the licensee. Such list shall give the specific location of each sign by reference to lot number as indicated on the Buncombe County tax maps and by reference to the name of the property owner.
 - (c) *Signs exempt from regulation.* Unless otherwise prohibited hereinafter in subsection 7-13-3(a) or section 7-13-6, the following signs are exempt from regulation under this article:
 - (1) Signs which are not designed to be visible beyond the boundaries of the lot upon which they are located and/or from any public thoroughfare or right-of-way, except as such signs may be regulated hereinafter.
 - (2) Official governmental notices and notices posted by governmental officers in the performance of their duties; governmental signs; and signs installed under governmental authority which note the donation of buildings, structures or streetscape materials (such as, but not limited to, benches, trash cans, lampposts and park facilities).
 - (3) Flags, with insignia of any nation, organization of nations, state, county or city, any religious, civic or fraternal organization, or any educational or cultural facility and/or any one corporate flag per lot.
 - (3.1) American flags flown in accordance with federal guidelines set forth in Title 4, Chapter 1 of the United States Code.
 - (4) Temporary decorations or displays, when such are clearly incidental to and are customarily and commonly associated with any national, local or religious holiday/celebration.
 - (5) Temporary or permanent signs erected by public utility companies or construction companies to warn of danger or hazardous conditions, including signs indicating the presence of underground cables, gas lines and similar devices or signs providing directions around such conditions.
 - (6) Merchandise, pictures or models of products or services which are incorporated as an integral part of a window display.
 - (7)

Unless such signs are used in a manner prohibited under section 7-13-3 hereinafter, signs displayed on trucks, buses, trailers, or other vehicles which are being operated in the normal course of a business, such as signs indicating the name of the owner or business and which are affixed or painted onto moving vans, delivery trucks, contractors' vehicles and equipment and the like, are exempt from regulation, provided that, when not being so operated, such vehicles are parked or stored in areas appropriate to their use as vehicles and in such a manner and location on the lot so as to minimize their visibility from any street to the greatest extent feasible. All such vehicles must have current and valid registration and inspection.

- (8) Trademarks or product names which are displayed as part of vending machines, dispensing machines, machines and gasoline pumps.
 - (9) Signs required for or specifically authorized for a public purpose by any law, statute or ordinance. These signs may be of any type, number, area, height above grade, location or illumination authorized by law, statute or ordinance under which such signs are required or authorized.
 - (10) Signs that display information pertinent to the safety or legal responsibilities of the general public with regard to a particular piece of property shall be located on the premises to which the information pertains. No advertising may be affixed to such a sign.
 - (11) Signs attached to buildings existing as of August 28, 1990 which identify buildings and which are permanently integrated by etching, embossing and/or engraving or which are otherwise permanently made a part of building facades. These signs specifically include, but are not limited to, commemorative cornerstones.
 - (12) Signs designated to be historically significant and/or landmark signs by the city council provided the signs satisfy one or more of the following criteria:
 - a. The sign is significant to the history of the City of Asheville, including, but not limited to, the character of the city as a tourist attraction or cultural center.
 - b. The sign is unique, notably aesthetic, or creative so as to make a significant contribution as a work of art.
 - c. The sign merits recognition as an important example of technology, craftsmanship, materials or design of the period in which it was constructed and may no longer be economically feasible to produce or manufacture the sign today.
 - (13) Temporary signs providing directions or other information in conjunction with a community festival or event permitted under section 16-97 of the Code of Ordinances of the City of Asheville.
 - (14) Signs affixed to windows of vehicles displaying the terms of sale of said vehicles.
 - (15) Signs approved as part of the city's officially adopted Wayfinding program.
- (d) *Signs exempt from permit requirements.* The following signs are allowed in all zoning districts and shall not require a sign permit. However, such signs shall conform to the requirements set forth below as well as to other applicable requirements of this article.
- (1) *Real estate signs.* Temporary signs advertising the sale, rental or lease of the property on which said signs are located are allowed, provided such signs are nonilluminated and do not exceed two signs per lot, do not exceed four feet in height and do not exceed four square feet per face for property zoned residential or do not exceed eight feet in height and do not exceed 32 square feet per face for property zoned other than residential. All such signs shall be removed within seven days after the closing of the sale, rental, or lease of the property. A minimum setback of ten feet is required for any real estate sign greater than ten square feet per face. There is no minimum setback requirement for real estate signs containing ten square feet or less.
 - (2) *Commemorative signs.* Commemorative signs which do not exceed eight square feet per face in area and eight feet in height.
 - (3) *Directional signs.* Directional signs shall be located on the premises to which directions are indicated. Directional signs shall not exceed four square feet per face, two faces per sign, and shall not exceed three feet in height if freestanding. Directional signs shall not be located on the roof of any structure. The maximum number of directional signs allowed per lot shall be four. These signs may be internally or externally illuminated.
 - (4) *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 building (including the windows or doors). If advertising (name or logo) is used on these signs it shall be computed as part of the total allowable signage for a lot.
 - (5) *Copy changes and maintenance.* No permit shall be required for copy changes made to a changeable copy sign, menu board, marquee sign or off-premises sign; provided any such changes do not change the classification of the sign under this article.
 - (6) *Political signs.* Signs for candidates or election for issues on a ballot shall be allowed in any zoning district providing such signs do not exceed equity square feet in area per display face and two faces per sign. All such signs may not be erected prior to 30 days before the first official day of polling for the appropriate primary, or 45 days before the appropriate general or run-off referendum and must be removed within five days after the primary, general or run-off election or referendum. Provided, however, nothing herein shall prohibit the use of off-premises signs for such candidates or issues according to the restrictions for such signs in zoning districts where they are permitted. Such off-premises signs shall not be subject to the time limits for erection prior to removal following any election. In all cases, the property owner and the political candidate shall be equally responsible for the removal of the signs.
 - (7) *Construction signs.* Construction signs shall be allowed provided such signs do not exceed one sign per street frontage with a maximum of two signs per construction-site. Such signs shall not exceed four square feet in area per display face, two faces per sign for single-family or duplex residential construction or 32 square feet in area per display face for multi-family residential or nonresidential construction, and a maximum of ten feet in height. Construction signs shall not be erected prior to the issuance of a building permit and shall be removed within seven days of the issuance of a certificate of compliance. A minimum setback of ten feet is required.
 - (8) *Automatic teller machine signs.* Signs contained on automatic teller machines which do not exceed 15 square feet in area per machine.
 - (9) *Push cart signs.* Signs contained on vendor push carts which do not exceed 15 square feet in area per push cart.
 - (10) *Umbrella signs.* Umbrella signs are non-illuminated signs painted or printed on umbrellas. The umbrellas on which such signs are painted or printed shall be located only at lawfully permitted outdoor eating or drinking places. Umbrellas shall not be erected at an acute angle for the purpose of serving as signage. Umbrella signs shall be located on the umbrella itself and shall not be suspended from or otherwise hang from an umbrella. The signage contained on any one umbrella sign shall not exceed 25 percent of the surface area of the umbrella cloth.
 - (11) *Noncommercial messages.* 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, and spacing requirements of this article.
 - (12) *Business signs on vehicles.* Signs displaying a business name, trademark, or other identifier shall be allowed provided the vehicles are moved periodically during the normal course of business and maintain a current and valid registration and inspection. When not in use and parked on the business property, said vehicles are to be parked in properly striped parking spaces or loading zones and shall not obscure the visibility of any adjacent business sign(s). When parked off-site, said vehicles shall be parked in such a manner so as to minimize their visibility from the street and other public properties.
 - (13) *Advertisements on city buses.* Advertisements on city buses must be consistent with current city policy.
 - (14) *Signs for temporary uses.* Signs shall be allowed in conjunction with lawfully established temporary uses in all districts. Such signs must be located on the parcel on which the temporary use is occurring and may be attached or freestanding. Portable or moveable signs are not permitted. Temporary uses may be permitted up to two signs. These signs shall not exceed a cumulative total of 32 square feet in area in nonresidential districts or on property occupied by an institutional use in a

residential district. In residential districts, signs for temporary uses, other than those on properties occupied by an institutional use, shall not exceed a cumulative total of four square feet in area. Signs for temporary uses are allowed for the duration of the temporary use.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2377, § 1, 6-10-97; Ord. No. 2777, §§ 1(c)—1(e), 12-19-00; Ord. No. 3276, § 1(b), 8-9-05; Ord. No. 3571, § 1(b), 1-8-08; Ord. No. 3642, §§ 1c—f, 9-9-08; Ord. No. 3677, § 1b, 11-25-08; Ord. No. 3792, § 1c, 9-22-09; Ord. No. 4064, §§ 1a, b, 2-28-12; Ord. No. 4208, § 1b, 6-25-13)

Sec. 7-13-3. - Signs prohibited or requiring additional standards in all zoning districts.

The following signs and/or sign features shall not be erected or maintained in any zoning district within the planning and regulation jurisdiction of the City of Asheville. The board of adjustment shall not have the authority to grant variances so as to allow prohibited signs to be installed.

- (1) *Signs on roadside appurtenances.* On- or off-premises signs on roadside appurtenances, including, but not limited to roadside benches, bus stop shelters, planters, utility poles, trees, parking meter poles and refuse containers, with the exception of commemorative signs or governmental signs.
- (2) *Signs located in the city right-of-way.* Unless otherwise provided for in this article, all signs whether temporary or permanent, within any street right-of-way are prohibited; provided, further, projecting signs and community identification signs, which are permitted under subsection (b) hereafter, are not prohibited. In addition, signs providing directions to places of worship, public auditoriums, or to properties designated as local or national historic properties are not prohibited provided they meet the following standards: they may be double-faced and no larger than two square feet per face, two faces per sign, and limited to nine feet in height, with the maximum height to be determined by city staff based on such factors as, but not limited to, topography and sight distance at or near to the sign location, and shall be allowed only by permit issued by the city planning and development department in conjunction with approval from the city's traffic engineer, and shall be limited to two signs permitted per church, public auditorium, or historic property.

Additionally, written notification is required to the immediately adjacent property owner upon the city receiving an application for a sign in the right-of-way.

Furthermore, marquee signs used for the purpose of advertising current and scheduled events and information for a theater, auditorium, fairground, museum or combination of the same and located in the right-of-way in front of and within 100 feet of the entrance to the theater, auditorium, fairground, museum or combination of the same for which the sign(s) provide(s) such advertising and/or information are not hereby prohibited if located in the right-of-way of the abutting road within 100 feet of the Vance Monument in the central business district. Said marquee signs shall meet all dimensional requirements for marquee signs as set forth in subsection 7-13-4(b). The location of said marquee signs shall be approved by the department of public works.

Additionally, signs within any city street right-of-way which designate the right-of-way as being maintained by a certain person and/or in recognition of a certain person are not hereby prohibited and said signage shall be allowed only by permit issued by the city upon issuance of an encroachment agreement by the public works department, approval by the traffic engineer and the planning and development department. Said recognition signs shall not exceed six square feet per face, two faces per sign, nor be taller than four feet in height.

Signs located in NCDOT right-of-way. No traffic control device or its support shall bear any advertising or commercial signage or any message that is not essential to traffic control. Any unauthorized sign placed within NCDOT rights-of-way by a private organization or individual constitutes a public nuisance and is strictly prohibited as outlined in the North Carolina Administrative Code 19A NCAC 2E.0415 (Advertising signs within right-of-way). Enforcement of this provision is primarily the responsibility of the NCDOT; provided, however, nothing herein shall preempt any right the city may have to enforce this provision or preclude the city from enforcing this provision.

- (3) *Signs or advertisements on vehicles.* Signs or advertisements placed on vehicles or trailers that are parked or located for the primary purpose of displaying said sign are prohibited.
- (4) *Roof signs.* Roof signs are prohibited; provided, however, signs on the surfaces of a mansard roof and on parapets shall not be hereby prohibited provided the signs do not extend higher than the height restriction for on-premises freestanding signs in the zoning district in which the sign is located and provided that the signs do not extend above the mansard roof or parapet to which they are attached. The triangular portion of the wall enclosed by the sloping ends of a gable roof will be considered to be a part of the building wall.
- (5) *Wind signs.* Wind signs as defined under section 7-2-5 of this chapter shall be prohibited except as allowed in subsections 7-13-4(a)(8) and (13) of this article.
- (6) *Off-premises signs—Some districts.* Off-premises signs in all single-family residential zoning districts and in the Office, Office Business, Community Business I, Neighborhood Business, and Central Business Districts.
- (7) *Off-premises signs—Historic districts/properties.* Off-premises signs in national and local historic districts or on national or local historic properties.
- (8) *Off-premises signs along scenic drives.* Off-premises signs designed to be visible from streets designated by the Asheville City Council as "scenic drives" and/or "parkways."
- (9) *Off-premises signs along federal aid primary and interstate system.* Off-premises signs which are within 660 feet of the nearest edge of the right-of-way and visible from the maintained traveled way of the federal aid primary and interstate system, all as described in the Federal Highway Beautification Assistance Act of 1979, as amended, and which are constructed or erected on or after the effective date of this chapter. Provided, further, off-premises signs located specifically as described hereinbefore which were erected prior to the effective date of this chapter are not prohibited from continuing, notwithstanding their nonconformance with regulations of this chapter, other than conformance with the maintenance provisions set forth in section 7-13-6 hereinafter.
- (10) *Signs of illusion.* Signs with optical illusion of movement by means of a design which presents a pattern capable of reversible perspective, giving the illusion of motion.
- (11) *Signs resembling traffic signals.* Signs displaying intermittent light resembling the flashing light customarily used in traffic signals, or used by police, fire ambulance, or other emergency vehicles, nor shall any sign use the word "stop," "danger," or any other words, phrase, symbol, or character in a manner that might be misconstrued as a public safety warning or traffic sign.
- (12) *Animated signs and flashing signs.*
- (13) *Abandoned signs or sign structures.*
- (14) *Signs obstructing access.* Signs which obstruct free ingress to or egress from a driveway or a required door, window, fire escape or other required exitway.
- (15) *Sandwich board signs.* Except in the Central Business District as permitted under the standards for A-frame signs found in subsection 7-13-4(a)(8) of this chapter.
- (16) *Portable or moveable display signs.*
- (17) *Flags, decorative or otherwise,* may not be used in conjunction with a commercial promotion or as an advertising device, or as an integral part of a sign regulated under this article. Flags that comply with the provisions as set forth in section 7-13-2(c)(3) of this chapter are not subject to this subsection.
- (18) *Snipe signs.* See section 10-101 of the City of Asheville Code of Ordinances.
- (19) *Non-conforming, off-premises signs - Digital.* Digital, non-conforming, off-premises signs are prohibited within the City of Asheville's jurisdiction. Any existing digital, non-conforming, off-premises sign that was properly permitted may be maintained as a non-conforming sign but may not be replaced or relocated.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2377, § 2, 6-10-97; Ord. No. 2407, § 3, 9-23-97; Ord. No. 2426, § 1, 11-11-97; Ord. No. 2617, § 1, 9-28-99; Ord. No. 2742, § 1(a), 9-12-00; Ord. No. 2777, §§ 1(f), 1(g), 12-19-00; Ord. No. 3043, § 1(a), 7-22-03; Ord. No. 3157, § 1(a)(9), 8-24-04; Ord. No. 3642, §§ 1g, h, 9-9-08; Ord. No. 3677, § 1c, 11-25-08; Ord. No. 4064, § 1d, 2-28-12; Ord. No. 4085, § 1a, 5-22-12; Ord. No. 4228, §§ 1a, b, 8-27-13)

Editor's note— Ord. No. 4228, § 1a, adopted Aug. 27, 2013, changed the title of § 7-13-3 from "Signs prohibited in all zoning districts" to "Signs prohibited or requiring additional standards in all zoning districts."

Sec. 7-13-4. - On-premises signs.

- (a) *General provisions for on-premises signs.* Following the effective date of this chapter, on-premises signs shall not be erected or maintained in any zoning district except in compliance with the provisions set forth in this chapter.
- (1) *Computation of sign area.*
 - a. The area of a sign shall be considered to be that of the smallest figure consisting of no more than eight contiguous rectilinear lines which encompass all lettering, wording design or symbols, together with any background on which the sign is located and any illuminated part of the sign, if such background or such illuminated part of the sign is designed as an integral part of and related to the sign. Any cutouts or extensions shall be included in the area of the sign, but supports and bracing which are not intended as part of the sign shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction.
 - b. The space between one identification sign and one changeable copy sign on a signpost or structure or attached to a building shall not be included in the total square footage if both signs serve a single business located on the lot. The space between two or more changeable copy components of a sign or between two or more permanent copy components of a sign shall be included, however, in the total square footage of sign area allowed.
 - c. Where three-dimensional figures are used as signs, the area shall be the total of all sides made an integral part of the projected figure used in conveying the intended message.
 - (2) Reserved.
 - (3) *Encroachment into right-of-way.* No part of any sign shall be located on or extended into a public right-of-way except as projecting signs are allowed by this article.
 - (4) *Certificate of appropriateness.* A certificate of appropriateness from the historic resources commission shall be required prior to the issuance of a sign permit for all signs located in local historic districts and on historic landmark properties.
 - (5) *Time/date/temperature signs.* Time, date and temperature signs which do not exceed ten square feet per face shall not be included in the allowable sign area, provided, however, if an existing freestanding sign is located on the lot, then the time, date and temperature sign must be incorporated into the existing freestanding sign. It shall be the responsibility of the owner of such signs to maintain such signs and insure that they are kept accurate. If these conditions are not met, the sign shall be repaired or removed.
 - (6) *Signs for nonconforming uses.* Signs for nonconforming uses, where such uses may be continued, shall be allowed, but shall comply with all regulations for signs in the zoning district where such signs are located.
 - (7) *Illumination.* Illuminated signs shall be subject to the following conditions:
 - a. Any light used for illumination shall be shielded so that the beams or rays of light will not shine into surrounding areas or on the public roadway.
 - b. Neither direct nor reflected light from any light source shall create a traffic hazard or distraction to operators of motor vehicles on public thoroughfares.
 - (8) *Temporary signs.* Temporary signs shall be allowed in all nonresidential zoning districts as follows:
 - a. Temporary signs which are affixed to the inside of a window and which do not exceed a cumulative total for all such signs of 16 square feet in area are allowed, without a permit, for each business.
 - b. Temporary signs affixed to the inside of windows and which exceed a cumulative total for all such signs of 16 square feet in area or, temporary signs which are freestanding or attached to a structure, other than at the inside of a window, shall be allowed twice a year per business shall be allowed for up to 60 days or may be divided into to a maximum of six separate ten-day occurrences, not to exceed 60 days in total. These signs shall not exceed 32 square feet in area and shall require a sign permit and shall be allowed for a time period of 30 days for each sign permitted. No time extensions shall be granted.
 - c. A-frame signs shall be permitted as temporary signs in the central business, neighborhood corridor, urban village, urban place, and urban residential zoning districts and the Biltmore Village Historic District provided that they comply with the following standards:
 1. A-frame signs shall be a minimum of 28 inches tall and shall not exceed 48 inches in height. A-frame signs shall not exceed 24 inches in width. The A-frame structure shall be a minimum of 18 inches in width.
 2. Businesses are permitted one A-frame sign per operable public entrance located on separate road frontages, in addition to all other signage permitted by this chapter provided all requirements for A-frame signs set forth in this section are met.
 3. A-frame signs shall contain information and advertising for the business placing the sign only and shall not contain any endorsement or logos for any other business.
 4. A-frame signs shall not block building entrances or exits and shall meet wind and safety standards.
 5. A-frame signs shall have a locking arm or other device to stabilize the structure.
 6. A-frame signs shall comply with requirements of Chapter 10 of the North Carolina Accessibility Code.
 7. A-frame signs shall be displayed only during the hours of operation of the business being advertised.
 8. A-frame signs shall be located abutting the building or the curb of the street.
 9. A-frame signs shall not block access to parking spaces or block traffic lanes.
 10. Prior to the placement of an A-frame sign, the business placing the sign shall provide verification of an insurance rider with the City of Asheville in the amount of \$1,000,000.00.
 11. A minimum sidewalk clearance of six feet in width must be maintained.
 12. A-frame signs shall comply with the sight visibility triangle requirements set forth in section 7-11-3 of this chapter.
 13. A temporary sign permit shall be required for A-frame signs in accordance with subsection 7-13-2(b) of this chapter. The temporary sign permit for A-frame signs shall be valid from time of issuance until the annual renewal of A-frame sign permits which occurs on July 1st of each year.
 14. Businesses with street level public access shall place their A-frame sign(s) within the tenant frontage of the business.
 15. Multi-tenant developments shall be permitted one A-frame sign per each common exterior public business entrance.
 16. A-frame signs shall not be internally illuminated.

17. A-frame signs shall be spaced a minimum of 15 linear feet from all other permitted A-frame signs.
18. The City of Asheville may require the temporary removal of A-frame signs for special events.
- d. Signs made of a temporary material may be permitted as a permanent sign for a period of up to six months, with a possible extension of up to an additional six months as approved by the planning director, provided all other applicable standards are met.
- (9) *Inflatable balloon sign.* One inflatable balloon sign shall be allowed per commercial or industrial zoning district, limited to once a year per business. This limitation shall not apply, however, to community festivals or events permitted by the City of Asheville pursuant to section 16-97 of the Code of Ordinances of the City of Asheville. Further, inflatable balloon signs shall not be internally illuminated; shall not be higher than 25 feet above grade; and shall not be erected or maintained on a building parapet or roof. The time allowed for these signs shall not exceed ten days. These signs shall be located on either an attached, tethered or freestanding structure. The sign and its structure shall not block or inhibit the visibility of vehicular traffic or in any way pose a danger to pedestrians or vehicular traffic or property. The sign may advertise a product, service, or sponsor affiliated with the event or the event itself.
- (10) *Visibility.* No sign or structure shall be erected or maintained to impede safe and adequate visibility from vehicles or for pedestrians.
- (11) *Signs for tall buildings.* Buildings which are seven stories or greater in height shall be allowed one wall sign per side, not to exceed four sides, which signs shall be located at the seventh story or above and shall not exceed 125 square feet per sign. These signs shall be in lieu of and not in addition to the attached signs permitted for the zoning district wherein the building is located; provided, however, individual tenants with building frontage at the first floor (or street level) only shall be allowed tenant identification signs as set forth in subsection 7-13-4(c) hereinafter.
- (12) *Additional freestanding sign.* Any business which has street frontage of less than 50 feet along a street shall be allowed one additional freestanding sign on its lot provided that the additional freestanding sign was erected under a valid permit prior to August 28, 1990 and, provided further, that one of the freestanding signs is located more than 200 feet from the street and that both freestanding signs conform with the provisions of this article.
- (13) *Wind signs.* Wind signs shall be permitted in the central business district, in local historic districts, and in Level II and Level III projects developments which are retail shopping centers subject to the following regulations:
- Wind signs shall be limited to one sign per pole, mastarm or other device and maintained in good condition without fraying, tearing or fading.
 - Wind signs shall be constructed of nylon, canvas or plastic material.
 - Each wind sign must be at least eight square feet in area and less than 24 square feet in area and all banners on the same lot must be consistent in colors and materials.
 - No wind sign may contain a commercial advertising message, name, or logo.
 - Clearance over sidewalks shall be a minimum of nine feet and clearance over streets, alleys or driveways shall be a minimum of 14 feet.
- (14) *Light emitting diode (LED) signs.* LED signs shall be permitted for all changeable copy, time and temperature, and marquee signs as defined in 7-2-5 of this chapter and are subject to the following regulations:
- All digital LED signs must comply with all other applicable standards set forth in this article.
 - No sign may be placed within 100 feet of a residential zoning district.
 - The images and messages displayed must be complete in themselves, without continuation in content to the next image or message or to any other sign. The image shall be static with all animation, streaming video, flashing, scrolling, fading, and other illusions of motion otherwise prohibited.
 - No sign shall be brighter than is necessary for clear and adequate visibility and shall not exceed a maximum of 5,000 nits during the day and 500 nits during nighttime hours.
 - No sign may display light of such intensity or brilliance to cause glare or otherwise impair the vision of the driver or result in a nuisance to a driver.
 - No sign may be of such intensity or brilliance that it interferes with the effectiveness of an official traffic sign, device, or signal.
 - All signs must be equipped with both a dimmer control and a photocell that automatically adjusts the display's intensity according to natural ambient light conditions.
 - Prior to issuance of a sign permit, the applicant shall provide written certification from the sign manufacturer that the light intensity has been factory pre-set not to exceed 5,000 nits and that the intensity level is protected from end-user manipulation by password-protected software or other method determined appropriate by the planning director.
 - No more than fifty percent of the allowable detached sign face may be devoted to a digital changeable copy sign. Theaters and other public event facilities may exceed this standard so that eighty percent of the sign may be devoted to the digital marquee sign.
 - All digital marquee signs located in the Central Business District (CBD) must be reviewed by the downtown commission for conformance with all applicable design guidelines prior to the issuance of a new sign permit.
 - The images and messages displayed on a digital marquee sign in the CB shall remain static for a minimum of six seconds.
 - Digital or LED changeable copy messages shall remain static for a minimum of four hours.
 - Any sign found to be out of compliance with any standard of this section must be stopped immediately. Failure to comply would constitute non-compliance and would be subject to enforcement action set forth in subsection 7-18-2(b)(1).
- (15) *Real estate signs on multi-story buildings.* Any building with three or more stories may be permitted one real estate banner provided that they comply with the following standards:
- Must be made of a lightweight, flexible, all-weather material.
 - Signs shall be displayed for a period of time no greater than 120 days.
 - The square footage of the sign shall be a maximum of ten percent of the square footage of the wall face from which it hangs. Wall face measurements shall exclude elevator and stairwell towers, maintenance rooms and structured parking.
 - Regardless of wall face measurements, no sign may exceed 400 square feet.
 - Sign shall not hang lower than twenty feet above grade.
 - Sign shall be attached to the building for which it is advertising available space.
 - Signs shall not block or cover windows, mechanical openings, or interfere with equipment.
 - Sign should reflect the proportions of the wall on which it is attached. For example, a wall that is taller than wide shall dictate a sign that is the same.
 - No more than 20 percent of the sign face may be used to advertise a real estate office or logo, excluding phone numbers.
 - Large banner signs will be reviewed and permitted as permanent signs and shall meet all applicable standards of the NC Building Code & Fire Code.
- (16)

Special event signage. Members of a business association or civic group may place a single temporary sign for a special event on their property subject to the following requirements:

- a. The duration of the event shall not exceed three days.
 - b. The sign is located on-premises.
 - c. The sign may be an attached sign or a wind sign.
 - d. The size of the sign or wind sign is limited to 12 square feet per face with two faces permitted.
 - e. The permit may cover a single event or a recurring series of events for a period not to exceed 30 days on a yearly basis.
 - f. Wind signs placed over sidewalks shall be at a minimum of nine feet and clearance over driveway areas shall be a minimum of 14 feet.
- (b) *On-premises signs: Single tenant development.* The following sign regulations shall be applicable within the zoning districts indicated for single tenant development. Any sign not specifically allowed shall be deemed as prohibited.
- (1) *Signage for all residential zoning districts (RS-2, RS-4, RS-8, RM-6, RM-8, RM-16).*
- a. Signs allowed for nonresidential uses (excluding home occupations) within these zoning districts may be either:

Freestanding:	
	Pole
	Ground
	Changeable copy
Attached:	
	Projecting
	Window
	Wall
	Suspended or transom
	Awning/canopy
	Changeable copy

- b. One business or product identification sign is allowed per lot for nonresidential uses. For freestanding or attached signs, the total allowable area per face of selected signs (excluding home occupation signs) shall not exceed 15 square feet per face, with two faces per sign allowed. Signs may be either internally or externally illuminated. Additionally, the following requirements must be met based on the type of sign selected.
 - 1. *If freestanding pole or ground:* The sign shall be a maximum of six feet in height with a minimum setback of ten feet. Signs shall not be located within any public right-of-way and shall not be located within a sight visibility triangle.
 - 2. *If projecting:* Sign (excluding awning/canopy signs) shall not project more than three feet from the facade of the building. Clearance over sidewalks shall be at a minimum of nine feet and clearance over streets, alleys, or driveways shall be at a minimum of 14 feet. Signs shall not project above the third story of the building or above the building soffit, eave line, or building parapet.
 - 3. *If window:* Only permanent identification signs are allowed as window signs; provided, however, temporary signs which are placed in or on windows shall be allowed when complying with [section 7-13-4\(a\)8](#) hereinbefore. Window signs are not allowed above the third story of a building.
 - 4. *If wall:* Maximum projection from a wall shall be 12 inches.
 - 5. *If suspended or transom:* Clearance over sidewalks shall be a minimum of nine feet.
- c. Subdivision and multi-family development identification signs may contain the name of the development only and must either be freestanding ground signs or attached wall signs. If the signs are freestanding ground signs, the height shall be limited to six feet from grade and the minimum setback shall be ten feet. Only two entrances to the development may have a sign. The main entrance sign shall have no more than 16 square feet per face, two faces per sign. The secondary entrance sign shall have no more than eight square feet per face, two faces per sign. Only two sign faces shall be allowed at each entrance, however, said sign faces may be on two individual sign structures.
- d. Places of worship, schools and institutions located in residential zoning districts are allowed a total of 60 square feet of signage to be located on a maximum of two signs, only one of which may be freestanding. One of the allowed signs may contain a changeable copy panel. No signs may contain more than 30 square feet per face with two faces per sign and a maximum of six feet in height and a minimum setback of ten feet.
- e. Attached home occupation signs shall not exceed one square foot per face, with no more than two faces per sign, and shall not be illuminated.
- f. Community identification signs are allowed provided they contain the name of the community and must be either a freestanding pole or a ground sign. The height of the sign shall be limited to nine feet, measured from grade to the top of the sign, with the maximum height to be determined by city staff based on such factors as, but not limited to, topography and sight distance at or near the sign location. The minimum setback shall be ten feet from the leading face of the curb or edge of the pavement of the street to the closest portion of the sign. These signs shall be allowed within a city street right-of-way upon issuance of a sign permit by the city planning and development department and with the approval of the city's traffic engineer. Additionally, the sign owner shall provide written notification to the immediately adjacent property owner at the same time an application is submitted to the city for such sign in the right-of-way.

Each community shall be permitted one identification sign which shall have no more than 24 square feet per face, two faces per sign. Each sign face may also contain community facility identification panels on the sign which shall be included within the 24 square foot maximum and provided that the sign face that identifies the community may be no larger than 16 square feet. These additional panels shall only identify specific community facilities located within that community.

(2) *Signage for all nonresidential zoning districts.*

a. Signs allowed in nonresidential zoning districts may be either:

Freestanding:	
	Pole (except in Urban Residential District)
	Ground
	Changeable copy (except in Central Business District and Urban Residential District)
	Marquee (only in Central Business District as permitted)
	Menu board
Attached:	
	Projecting
	Window
	Wall
	Awning/canopy
	Suspended or transom
	Changeable copy (except in Central Business District and Urban Residential District)
	Marquee (only in Central Business District as permitted)
	Menu board

b. The sign(s) shall meet the following requirements based on the zoning district in which it is located.

Zoning District	Max. Hgt. Allowed	Max. Sq. Footage per face
Office I & II, Office Business, Institutional, Resort	8 ft.	60 sq. ft.
CB-II, HB, RB, River CI, Industrial	25 ft.	125 sq. ft.
NBD, CBI, NCD, Urban Residential	12 ft.	40 sq. ft.
CBD, Urban Village	20 ft.	50 sq. ft.

- c. Two business or product identification signs are allowed per lot, only one of which shall be a freestanding pole or ground sign, however, the allowed square footage of an attached sign may be divided into a maximum of two signs. Corner lots are allowed one additional attached sign on separate street frontage. Signs may be internally or externally illuminated. Freestanding signs may have a maximum of two faces per sign.
- d. Reserved.
- e. Setbacks for freestanding pole or ground signs shall be a minimum of ten feet. However, in the event that the board of adjustment grants a variance for a sign to be larger than 125 square feet, the minimum setback requirement would be 15 feet. There shall be no minimum setback requirement for freestanding signs in the central business district. Signs shall not be located in any public right-of-way and shall not be located within a sight visibility triangle.
- f. If projecting: Signs excluding awning/canopy signs) shall not project more than three feet from the facade of the building. Clearance over sidewalks shall be at a minimum of nine feet and clearance over streets, alleys, or driveways shall be at a minimum of 14 feet. Signs shall not project above the third story of the building or above the building soffit, eave line, or building parapet.
- g. If suspended or transom: Clearance over sidewalks shall be a minimum of nine feet.
- h.

If window: Only permanent identification signs are allowed as window signs; provided, however, temporary signs which are placed in or on windows shall be allowed when complying with subsection 7-13-4(a)(8) hereinbefore. Window signs are not allowed above the third story of building.

- i. If wall: Maximum projection from a wall shall be 12 inches.
 - j. If menu board: One external menu boards with one face is allowed per drive lane with a maximum of two per restaurant (in addition to its allowed signage as previously described). The total sign area for a menu board shall not exceed 32 square feet. These signs shall not be located so that the copy is designed to be visible to vehicular traffic from the roadway. The minimum setback shall be ten feet.
 - k. For any lot which has no street frontage along, but which is within 400 feet of the edge of the paved portion of Tunnel Road, Patton Avenue, or Hendersonville Road, the permitted size and height of a freestanding sign on that property shall be allowed to be increased by 20 percent of the allowed square footage and height for that zoning district. Provided, however, that any sign so constructed shall be at least 100 feet from the nearest edge of the paved portion of the roads listed hereinbefore.
 - l. In the central business district (CBD), marquee signs shall be allowed as an exception to the square footage allowed above. Marquee signs shall be allowed a maximum of 95 square feet per face, two faces per sign, for the allowed freestanding or attached sign. Marquee signs must meet the criteria as set forth by the definition of marquee sign in section 7-2-5 of this chapter and height and placement standards outlined in section 7-13-3(2).
- (3) *Commercial subdivision signs.* In all non-residential zoning districts, major commercial subdivisions that have been approved by the planning and development director (or his designee) will be allowed one freestanding sign that advertises the name of the subdivision. Such sign shall not exceed 60 square feet in area per face, with a maximum of two faces per sign, and is limited to eight feet in height, with a ten-foot minimum setback requirement. Commercial subdivision signs must advertise the name of the subdivision. However, tenants within the subdivision may also advertise on the sign, provided that said tenants utilize 50 percent of the allowed square footage or less. At least 50 percent of the allowed square footage must be used to advertise the name of the subdivision. Such a sign must be located on a parcel that is associated with the approved subdivision. This sign shall be allowed in addition to the signage allowed hereinbefore.
- (c) *On-premises signs: multiple tenant development:* The following sign regulations shall be applicable within the zoning districts indicated for multiple tenant development. Any sign not specifically allowed is prohibited.
- (a) Multiple tenant development may erect either a development identification or joint identification sign. In addition, tenant identification sign for individual tenants within a development are allowed.
 - (b) For a multiple tenant development, the development itself is allowed one identification sign, either freestanding (maximum of two faces per sign), or attached for each property boundary with street frontage with a maximum of two identification signs allowed per development. All other permitted tenant identification signs as allowed in subsection 7-13-4(c)(b)2. must be attached to the building(s).
 - 1. *Development and joint identification signs.*
 - a. Where a development or joint identification sign is selected, such as sign may be of the following types.
 - Freestanding: Pole (except in Urban Residential District), Ground, Changeable copy (except in Central Business District and Urban Residential District)
 - Attached: Wall, Projecting, Window, Awning/canopy, Suspended or transom
 - b. The sign(s) shall meet the following requirement based on the zoning district in which it is located.

Zoning District	Maximum Height Allowed	Maximum Size Per Face	Maximum Height Secondary Freestanding Identification Sign
Residential (all districts)	6 ft.	25 sq. ft.	3 feet or ground sign
Office I & II, Office Business INST, Resort	8 ft.	90 sq. ft.	4 feet or ground sign
CB II, HB, RB, River, CI, IND, Light IND, Airport	25 ft.	200 sq. ft.	12.5 feet or ground sign
CBD, Urban Village	20 ft.	75 sq. ft.	10 feet or ground sign
NBD, CBI, NCD, URD, UP	12 ft.	60 sq. ft.	6 feet or ground sign

- c. Setbacks for freestanding development or joint identification signs in all zoning districts (except the Central Business District) shall be determined using the following requirements.
 - 1. Signs that are 125 square feet in area or less will be required a ten-foot minimum setback.
 - 2. Signs that are greater than 125 square feet in area will be required a fifteen foot minimum setback.
 - 3. There shall be no minimum setback requirement for freestanding identification signs in the Central Business District (CBD).
 - 4. Signs shall not be located within any public right-of-way and shall not be located within a sight visibility triangle.
- 2. *Tenant identification signs.*
 - a. Tenants in a multi-tenant development shall not be permitted to have their own freestanding sign. Tenant identification signs shall be of the following types of attached signs:
 - Wall
 - Awning
 - Projecting

Window

Suspended or transom

Changeable copy (except in Central Business District and Urban Residential District)

- b. One attached sign is allowed for each exterior public business entrance which must be located on the facade with the public entrance for that business. The total allowable sign area for the building frontage having the primary business entrance shall be 25 square feet or one square foot per one linear foot of said building frontage, whichever is greater, but in no event shall the area be greater than the maximum square footage per face allowed for a development or joint identification sign in the zoning district where the business is located. Each secondary business entrance shall be allowed a total sign area of one square foot per three linear feet of building frontage where the secondary business entrance is located. A maximum of two secondary business signs is allowed. Signs may be illuminated internally or externally.

A building meeting the definition of pedestrian-oriented design, as set forth in article II, will be permitted to divide the primary sign square footage into two separate attached sign faces.

- c. Where two tenants share a common entrance, each tenant will be allowed one attached sign, not to exceed 25 square feet, on the portion of the building that the tenant occupies. Where more than two tenants share a common entrance, each tenant will be allowed one window sign, not to exceed 25 square feet.
- d. If a tenant in a multi-tenant development subleases a space within the operational area of the unit to a sub-tenant, and the sub-tenant occupies less than 25 percent of the gross floor area of that unit, then the larger tenant will maintain its allowance for a tenant sign as provided in subsection (b). The subtenant will be allowed a tenant sign not to exceed 25 square feet. In the event that more than one sub-tenant exists, then all tenants will be limited to a 25 square foot window sign as described in the preceding subsection (c) regarding shared entrances.
- e. If wall: Maximum projection from a wall shall be 12 inches.
- f. If projecting: Signs (excluding awning/canopy and marquee signs) shall not project more than three feet from the facade of the building. Clearance over sidewalks shall be a minimum of nine feet and clearance over streets, alleys, or driveways shall be a minimum of 14 feet. Signs shall not project above the third story of the building or above the building soffit, eave line or building parapet.
- g. If window: Only permanent identification signs are allowed as window signs; provided, however, temporary signs which are placed in or on windows shall be allowed when complying with subsection 7-13-4(a)(8) hereinbefore. Window signs are not allowed above the third story of the building.
- h. If suspended or transom: Clearance over sidewalks shall be a minimum of nine feet.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2407, § 4, 9-23-97; Ord. No. 2426, § 2, 11-11-97; Ord. No. 2616, § 1, 9-28-99; Ord. No. 2742, § 1(b), 9-12-00; Ord. No. 2777, §§ 1(a), 1(b), 1(h), 12-19-00; Ord. No. 3043, §§ 1(b)—(g), 7-22-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(10), 8-24-04; Ord. No. 3328, § 1(q), 1-24-06; Ord. No. 3572, § 1(o), 1-8-08; Ord. No. 3642, § 1i—o, 9-9-08; Ord. No. 3677, § 1d, 11-25-08; Ord. No. 3714, § 1, 3-10-09; Ord. No. 3715, § 1, 3-10-09; Ord. No. 3742, § 1, 6-9-09; Ord. No. 3773, §§ 1a, b, 8-11-09; Ord. No. 3774, § 1c, 8-11-09; Ord. No. 4064, §§ 1c, h—j, 2-28-12; Ord. No. 4208, § 1c, 6-25-13; Ord. No. 4228, § 1c, 8-27-13)

Sec. 7-13-5. - Off-premises signs.

- (a) *General provisions for off-premises signs.* Following August 28, 1990, off-premises signs shall not be erected, or maintained in any zoning district except in compliance with the provisions set forth in this article.

(1) *Computation of sign area.*

- a. The area of a sign shall be considered to be that of the smallest rectangular figure which encompasses all lettering, wording, frame, design or symbols, together with any background on which the sign is located and any illuminated part of the sign, if such background or such illuminated part of the sign is designed as an integral part of and related to the sign. Any cutouts 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 multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction.
- b. Where three-dimensional figures are used as or on signs, the area shall be the total of all sides made an integral part of the projected figure used in conveying the intended message.

(2) *Encroachment into the right-of-way.* No part of any sign shall be located on, or extended into, a public right-of-way unless it can meet the following criteria:

- a. The property is located along a city right-of-way with a width greater than 75 feet.
- b. No part of the sign footer or structure is located closer than 25 feet from the edge of pavement.
- c. The city's traffic engineer has determined that the sign would not create any traffic hazard.
- d. The sign does not conflict with any utility or traffic control device.
- e. The sign complies with all height and square footage allowances.

(3) *Illumination.* Illuminated signs shall be subject to the following conditions:

- a. Any light used for the illumination shall be shielded so that the beams or rays of light will not shine directly into surrounding areas or on the public roadway.
- b. Neither direct nor reflected light from any light source shall create a traffic hazard or distraction to operators of motor vehicles on public thoroughfares.

(4) *Visibility.* No sign or structure shall be erected or maintained to impede safe and adequate visibility from vehicles or for pedestrians.

(5) *Extensions.* No extension(s) shall be allowed beyond those dimensions for the sign area as initially permitted.

- (b) *Off-premises signs by zoning districts.* The following sign regulations shall be applicable within the zoning districts wherein off-premises signs are allowed. Any sign not specifically allowed is prohibited.

In the Community Business II, Highway Business, Regional Business, River, Commercial Industrial, and Industrial District off-premises signs are allowed subject to the restrictions set forth herein.

- (1) *Size.* No off-premises sign shall exceed six square feet per directional flow of traffic 12 square feet total per sign structure). In no event shall the board of adjustment grant a variance to allow a larger off-premises sign.
- (2) *Height.* No off-premises sign shall exceed six feet in height.
- (3) *Spacing.*
- a. The minimum distance between any two sign structures shall be 1,000 linear feet on either side of the same street.
- b. No off-premises sign shall be located within a 200-foot radius of a school, place of worship, public park, national park and/or forest land(s) or bridge.
- c. No off-premises sign shall be located within nor cause obstruction to the sight visibility triangles of street intersections as described in subsection 7-11-3(g) of this chapter.

- d. No off-premises sign shall be located within a 100-foot radius of a property zoned single-family residential or property in a multi-family zone that is in single-family residential use.
- e. No off-premises sign shall be located within 50 feet of any building or on-premises sign.

(4) *Setback.* Minimum setback shall be ten feet.

(5) *Reserved.*

- (c) *Second tier development signage.* Properties located one lot back from a thoroughfare with no direct frontage and having shared access with adjacent or adjoining parcels may share space on an adjacent property's freestanding sign in lieu of the second tier property's freestanding sign allowance, or may erect a sign on that property (meeting second tier sign standards) with the permission of the property owner if no other sign is used on that property. This option limits allowances to those normally provided for under the applicable zoning district in which the sign is located and does not increase square footage allowances or render a single tenant property multi-tenant.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2426, § 3, 11-11-97; Ord. No. 2565, § 2, 4-27-99; Ord. No. 2777, § 1(i), 12-19-00; Ord. No. 4064, §§ 1e, g, 2-28-12; Ord. No. 4208, § 1d, 6-25-13; Ord. No. 4228, § 1d, 8-27-13)

Sec. 7-13-6. - Maintenance.

- (a) *General.* To insure that signs are erected and maintained in a safe and aesthetic manner, it shall be unlawful for any sign designed to be visible from any public street or highway within the jurisdiction of the City of Asheville to be erected or maintained by any person, other than by a sign contractor properly licensed under subsection 7-13-2(b)(2) or by a designated representative of such licensed contractor, except that this requirement shall be interpreted to exclude those persons who construct and erect a principal use identification sign when said sign is used at said person's place of business and to exclude licensed general contractors erecting signs as part of a permitted construction or renovation project; provided, however, in all cases, all erection must be properly permitted and inspected for compliance with the applicable codes of the State of North Carolina and the City of Asheville and with other sections of this article.
- (b) *Maintenance requirements.* The following maintenance requirements must be observed for all signs visible from any public street or highway within the jurisdiction of this article.
- (1) No sign shall have more than 20 percent of its surface area covered with disfigured, cracked, ripped or peeling paint or poster paper for a period of more than 30 successive days.
 - (2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts or be allowed to stand more than 15 degrees away from the perpendicular for a period of more than 30 successive days.
 - (3) No sign shall be allowed to have weeds, vines, landscaping or other vegetation growing upon it and obscuring its view from the street or highway from which it is to be viewed for a period of more than 30 successive days.
 - (4) No neon or internally illuminated sign may be allowed to stand with only partial illumination for a period of more than 30 successive days.
 - (5) If a sign or sign structure is damaged due to factors other than vandalism or other criminal or tortuous acts such that more than 50 percent of the value is lost, with such determination made by the sign administrator, any repair or replacement must be done in conformance with this article. If a sign or sign structure is damaged due to vandalism or other criminal or tortuous acts, it may be repaired or replaced, regardless of cost, but must be repaired or replaced as previously permitted or if no permit exists, it must be repaired or replaced to the same specifications to which and with the same materials of which the sign was constructed immediately prior to the act which caused the damage.
- (c) *Inspection.* The sign administrator may inspect all signs for compliance with these maintenance requirements.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-13-7. - Structural and construction requirements.

All on-premises and off-premises signs allowed by this article shall be constructed in accordance with the requirements of the North Carolina State Building Code.

(Ord. No. 2369, § 1, 5-27-97)

Sec. 7-13-8. - Nonconforming signs.

- (a) *General.* After the effective date of this chapter, it shall be unlawful for any person to erect any sign which does not conform to the requirements set forth in this article. This requirement shall not be construed so as to prohibit the painting, repainting or changing of the face of a sign, including changing the message, where the resulting sign is the same size, shape and height as the preceding sign and no other alteration and no expansion is made to the sign or sign structure.
- (b) *Nonconforming signs - requirements for on-premises signs to come into compliance.*
- (1) All nonconforming on-premises signs (and their sign structures) erected and located in the city's jurisdiction prior to August 28, 1990, which did not conform as of August 28, 1990, with the requirements of the sign regulations adopted in article 9 of Chapter 30 of the Code of Ordinances of the City of Asheville on October 21, 1977, shall remain subject to the nonconforming sign provisions set forth in article 9 of Appendix A - Zoning of the Code of Ordinances of the City of Asheville.
 - (2) All nonconforming on-premises signs (and their sign structures) erected and located in the city's jurisdiction prior to August 28, 1990, and which did conform prior to August 28, 1990, with the requirements adopted in article 9 of Chapter 30 of the Code of Ordinances of the City of Asheville on October 21, 1977, or with the requirements adopted in article 9 of Chapter 30 of the Code of Ordinances of the City of Asheville on August 28, 1990, shall be allowed to remain in accordance with the provisions set forth herein.
 - (3) Nonconforming signs and signs deemed conforming which were allowed to remain by the sign regulations adopted as part of the readoption of Ordinance No. 322, effective October 21, 1977, shall not be allowed to remain, in accordance with the provisions set forth herein, and shall be made conforming or removed no later than August 28, 1995.
 - (4) All on-premises signs (and their sign structures) which are made nonconforming by a subsequent amendment to this article, or by amendment to the official zoning maps or by extension of the city's territorial jurisdiction (annexation), and which do not conform with the requirements of the sign regulations adopted in Article 9 of Appendix - A Zoning Code of the Code of Ordinances of the City of Asheville on October 21, 1977, shall be made conforming or removed according to the following schedule:
 - Signs (and sign structures) erected within three years before the annexation, shall be made conforming or removed within ten years after the effective date of the annexation.
 - All other signs (and sign structures) shall be made conformed or removed within seven years after the effective date of the annexation.
 - (5) All on-premises (and their sign structures) which did not conform with the requirements of the sign regulations adopted in article 9 of Appendix A - Zoning of the Code of Ordinances of the City of Asheville on October 21, 1977, but which have been granted a permit prior to the effective date of this chapter as a result of a variance granted by the board of adjustment shall be allowed to remain in accordance with the terms of the variance granted.

- (c) *Nonconforming signs - requirements for portable and moveable display signs and temporary signs.*
- (1) All portable and moveable display signs (and their sign structures) which are made nonconforming by a subsequent amendment to this chapter or to the official zoning maps or by extension of the city's territorial or extraterritorial jurisdiction, shall be removed within 90 days of the effective date of said amendments or extensions.
 - (2) All temporary signs (and their sign structures) which are made nonconforming by subsequent amendments to this article or to the official zoning map, or by extension of the city's territorial or extraterritorial jurisdiction, shall be removed within 90 days of the effective date of said amendments or extensions.
- (d) *Nonconforming signs—requirements for off-premises signs.*
- (1) All off-premises signs (and their sign structures) erected and located in the city's zoning jurisdiction prior to August 28, 1990, and which did not conform as of August 28, 1990, with the requirements of the sign regulations adopted in article IX of chapter 30 (Appendix A—Zoning) of the Code of Ordinances of the City of Asheville on October 21, 1977, shall remain subject to the nonconforming sign provisions set forth in article 9 of Chapter 30 (Appendix A—Zoning) of the Code of Ordinances of the City of Asheville; provided, that such sign may be included in a removal/relocation/reconstruction agreement pursuant to paragraph (g) below.
 - (2) All other off-premises signs (and their sign structures) which do not conform with the sign regulations adopted on November 25, 1997 (Ordinance No. 2426), and which were erected prior to November 25, 1997, shall be deemed nonconforming and may not be altered or relocated except in a manner that conforms with the sign regulations adopted on November 25, 1997 (Ordinance No. 2426); provided, that such sign may be included in a removal/relocation/reconstruction agreement pursuant to paragraph (g), below.
 - (3) All off-premises signs (and their sign structures) that are (i) made nonconforming by a subsequent amendment to the city's sign regulations; (ii) become nonconforming by an amendment to the city's zoning map; or (iii) become nonconforming by inclusion within the city's zoning jurisdiction, shall be deemed nonconforming and may not be altered, relocated or reconstructed except in a manner that conforms with the sign regulations adopted on November 25, 1997 (Ordinance No. 2426); provided, that such sign may be included in a removal/relocation/reconstruction agreement pursuant to paragraph (g), below.
 - (4) In the event that a nonconforming off-premises sign has been made nonconforming by an extension of the sign area initially permitted for that sign, the extension shall not be allowed to continue after the copy which includes that extension has been changed.
- (e) *Nonconforming signs — spacing as only nonconformity.* All off-premises signs which conform within five years of the effective date of this chapter with all the requirements of this article, except with the spacing requirement set forth in subsection 7-13-5(b)(3)a., shall be considered as conforming to the terms of this article, and not subject to the foregoing removal requirements.
- (f) *Nonconforming signs-prohibited actions.* During the time periods set forth above for removal or conformance of nonconforming signs, sign structures, or uses, and unless otherwise provided in a removal/relocation/reconstruction agreement, such nonconforming signs, sign structures, or uses as described above shall be maintained as provided in section 7-13-6 but may not be:
- (1) Changed to or replaced by another nonconforming sign or sign structure;
 - (2) Structurally altered (except to meet safety requirements).
 - (3) Altered so as to increase the degree of nonconformity of the sign or sign structure;
 - (4) Expanded;
 - (5) Reestablished after its discontinuance for 60 days;
 - (6) Continued in use after cessation of business; or
 - (7) Reestablished after damage or destruction due to factors other than vandalism or other criminal or tortious acts if the estimated cost of reconstruction exceeds 50 percent of the appraised value, as determined by the sign administrator.

None of the foregoing prohibitions shall be construed to prohibit the painting, repainting, or changing of the face of a sign, including changing the message where the resulting sign is the same size, shape and height as the preceding sign and no expansion is made to the sign structure.

- (g) *Removal/relocation/reconstruction of nonconforming off-premises signs.*
- (1) *Agreements authorized.* For any sign that is registered as a qualified sign pursuant to subsection (2)(b), below, including any sign with respect to which enforcement proceedings had been instituted prior to the effective date of this ordinance on the grounds that said sign was a nonconforming off-premises sign under applicable city sign regulations, the city and sign owner may enter into an agreement providing for the removal, relocation, or reconstruction of said signs, or for the maintenance of said signs in their current locations, subject to the limitations set out below. In addition, the city and the sign owner may enter into an agreement providing for the removal, relocation, or reconstruction of qualified signs on or within the property where such sign is located, subject to the limitations set out below.
 - (2) *Qualified signs; replacement, relocation or reconstruction—Non-digital.*
 - a. *Notice to sign owners.* The planning and development director shall cause notice of the adoption of this section, describing its substance or enclosing a copy of the ordinance, to be provided by certified mail, return receipt requested, to the owners of nonconforming off-premises signs within the city's zoning jurisdiction. Said notice need not specifically identify affected signs. If the sign owner cannot be located, said notice may be sent to the owner of the property whereon such sign is located, or affixed to the sign or sign structure itself. When additional area is included within the city's zoning jurisdiction, additional notices shall be sent.
 - b. *Registration.* Within 180 days of receipt of the notice provided for above, owners of nonconforming off-premises signs located within the city's zoning jurisdiction shall register any such sign owned by them with the city's planning and development office. Any nonconforming off-premises sign that has been properly registered will be considered a "qualified sign" for purposes of this section and eligible for the removal/relocation provisions set out below; provided, that no sign that was not permitted under applicable codes when erected may be a qualified sign. Any nonconforming off-premises sign that has not been properly registered will not be eligible.
 - c. *Removal/relocation/reconstruction.*
 1. *Internal relocation.* Any qualified sign may be relocated or reconstructed on the lot on which it is currently erected so long as there is no increase in nonconformity with respect to height, setback or size. The spacing requirements in subparagraph (2)(d) below shall not apply to a qualified sign relocated on the same lot, so long as the relocation is the minimum possible distance to reasonably accommodate the needs of the sign owner and property owner. No zoning permit is required for such internal lot relocation.
 2. *Relocation within overlay.* Any qualified sign may be relocated or reconstructed anywhere within the qualified sign overlay as defined in subsection (3) below, subject to the following limitations:
 - (i) Except as provided in this section, the relocated qualified sign may have no more square footage than the one being replaced and in no case may the relocated qualified sign have a size greater than 380 square feet per side;
 - (ii) The height of the relocated qualified sign may not exceed 40 feet (with no allowance), measured as provided in section 7-2-5 ("height"). This restriction may be varied as provided in section 7-13-9
 - (iii) No relocated qualified sign may be attached to any building;

- (iv) The relocated qualified sign shall be separated by a minimum of 500 feet from any other qualified sign on the opposite side of the same road and 1,000 feet on the same side of the road; provided, that if any other off-premises signs are located within the separation distance, the planning director shall be advised as to the location of such other sign prior to the relocation; and
- (v) The relocated qualified sign may have no more faces than the one being replaced; and
- (vi) The area of two or more qualified signs may be combined into one relocated qualified sign as long as the area of the relocated qualified sign does not exceed the combined area of the signs being replaced, or 380 square feet, whichever is less.

3. *Qualified sign overlay mapping.* For purposes of this article, the Qualified Sign Overlay Zone shall include the following areas:

- i. Patton Avenue from the French Broad River to the outer limit of the ETJ jurisdiction in Enka;
- ii. Merrimon Avenue from Chestnut Street North to Woodfin;
- iii. Sweeten Creek Road from Fairview Road to the outer limit of the ETJ;
- iv. Hendersonville Road from I-40 Interchange to the outer limit of the ETJ;
- v. Tunnel Road from the tunnel to the outer limit of the ETJ past Oteen;
- vi. Leicester Highway from Patton Avenue to the outer limit of the ETJ; and
- vii. Brevard Road from I-240 Interchange to the outer limit of the ETJ.
- viii. Airport Road from Hendersonville Road to the boundary between Buncombe County and Henderson County; and
- ix. Long Shoals Road from Hendersonville Road to the outer limit of the ETJ.

Notwithstanding the above, no Qualified Sign Overlay District shall be permitted for an area that is subject to the Blue Ridge Parkway Overlay District, nor for any area that is zoned to a residential zoning classification, as of the effective date of this section.

- 4. This section shall not apply to qualified signs located on Federal Aid Primary Highways.
- 5. Notwithstanding the requirements or prohibitions of any underlying zoning district on a lot where a qualified sign is located, these provisions related to relocating qualified signs shall control in cases of any conflict.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2427, § 1, 11-25-97; Ord. No. 3168, § 1, 9-28-04; Ord. No. 3446, § 1, 2-27-07; Ord. No. 3572, § 1(o), 1-8-08; Ord. No. 3619, §§ 1(b)—(d), 5-13-08; Ord. No. 3701, § 1, 2-10-09; Ord. No. 4071, § 1a, 3-27-12; Ord. No. 4085, § 1b, 5-22-12; Ord. No. 4208, § 1e, 6-25-13)

Sec. 7-13-9. - Variances.

(a) *Variances.* In accordance with the procedures and standards set forth in article VI of this chapter, when unnecessary hardships would result from carrying out the strict letter of this ordinance, the board of adjustment shall vary the provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (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 variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justices is achieved.

No change in permitted uses may be authorized by the variance. Appropriate conditions may be imposed on any variance provided that the conditions are reasonably related to the variance.

(b) *Variances - granting.* In granting a variance, the board of adjustment shall make written findings that all of the above listed requirements have been met. If a variance is granted it shall be the least possible deviation from the requirements of this article. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this article. Violations of the provisions of the variance granted, including any conditions or safeguards, which are a part of the grant of the variance, shall be deemed a violation of this chapter.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3943, § 1b, 1-25-11; Ord. No. 4274, § 1e, 1-28-14)

Sec. 7-13-10. - Signage plan.

Notwithstanding the other provisions of this article, the city council may, at its sole discretion, approve a signage plan for certain development projects listed in this section. The approved signage plan may include signs of different sizes, types, locations, placement and height from those otherwise enumerated in this article.

- (1) *Purpose.* The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.
- (2) *Application.* Signage plans may be submitted for the following types of development:
 - a. Urban village projects.
 - b. Level III projects.
 - c. Commercial, industrial, or mixed use developments containing five or more acres in area.
- (3) *Submittal process.* Signage plan applications may be submitted for city council consideration at the time of original consideration of the proposed development or separately from the original development proposal. The following information or material shall be required for a signage plan application.
 - a. Owner and contact name, address, telephone number and signature(s), as applicable.
 - b. A signage plan proposal illustrating the proposed signs, their proposed location, their proposed purpose, along with a statement as to why the existing sign code cannot or should not be followed in the subject case.
 - c. An analysis showing how the proposed signage plan differs from what could be provided under the existing city sign regulations set forth in this article.
 - d. Other similar information determined by the planning and development director to be necessary for understanding the purpose and intent of the proposed signage plan application.
- (4) *Review procedure.* The planning and development director shall schedule the signage plan for city council consideration in accordance with the notice and public hearing procedures set forth in [section 7-5-20](#). In reviewing the proposed signage plan, the city council shall take the following matters into consideration.
 - a. The extent to which the proposed signage plan deviates from the sign allowances otherwise applicable in this article.

- b. The rationale provided by the applicant for the deviations.
 - c. The extent to which the signage plan promotes city goals for way-finding, pedestrian-orientation, and business identification.
 - d. The degree to which the signage plan creatively and effectively addresses the issues and constraints unique to the site with regard to signage.
- (5) City council may deny or approve the proposed signage plan in part or in total and may establish conditions regarding approval. In the event that the signage plan is denied, the applicant must wait at least 365 days before reapplying for a new signage plan substantially similar to the proposed signage plan.

(Ord. No. 3427, § 1, 12-12-06)

ARTICLE XIV. - ACCESSORY AND TEMPORARY USES AND STRUCTURES

Sec. 7-14-1. - Accessory uses and structures.

- (a) *General standards and limitations.* All accessory uses and accessory structures shall conform to the applicable requirements of this chapter. The provisions of this section establish additional requirements and restrictions for these uses and structures. Except as otherwise provided in this chapter, any accessory uses or accessory structures shall be treated as a permitted use in the zoning district in which it is located in connection with any lawfully established principal use or structure. Any accessory use or structure may be approved in conjunction with approval of the principal use or structure.
- (1) *Setback and yard requirements.* Except as otherwise provided in this chapter, an accessory uses and structures shall not be located within a required front setback area. Accessory uses and structures may encroach into a required side or rear setback area, but may not be located closer than six feet to the side or rear property line.
 - (2) *Detached canopies.* Notwithstanding subsection 7-14-1(a)(1) above, a detached canopy, located in a nonresidential district, which is subordinate to the principal structure, and situated on the same lot, and is used for purposes that are integral to the use of the principal structure shall be subject to the same minimum setback requirements as buildings in the same zoning district.
 - (3) *Temporary accessory uses and structures.* Temporary accessory uses and structures shall be governed by the standards for temporary uses set forth in section 7-14-2
- (b) *Permitted accessory uses and structures.*
- (1) *Swimming pools.*
 - a. *Fence required.* All permanent outdoor swimming pools having a depth of 18 inches or greater at the deepest point, except for commercial pools and pools operated by hotels or motels under constant surveillance, shall be completely surrounded by a fence, barrier or a wall with a height of no less than four feet. The fence or wall may be made of any suitable and durable materials. Other design requirements may apply: See section 7-9-2 if the property is located in a Historic Preservation Overlay District or section 7-9-3 if the property is located in the Downtown Design Review Overlay Area, or section 7-8-17 if in the River District Design Area. A principal or accessory building may be used as part of such enclosure.
 - b. *Operation as business.* No private residential swimming pool which is located in a residential district shall be operated as, or in conjunction with, a business, day care operation, bed and breakfast homestay or inn, or home occupation, except for those which are approved adult and child day care homes.
 - (2) *Devices for the generation of energy or conservation.*
 - a. *Solar energy systems.* Private, noncommercial solar energy systems shall comply with the minimum setback requirements. The City of Asheville Board of Adjustment may grant a variance to the required setbacks and allow such structures to be located in the front yard in order to allow for optimal placement provided that no portion of the structure or architectural features project over the property lines, that the structure will not adversely impact adjacent properties and will be compatible with the character of the neighborhood, and that it can be demonstrated that no other design can produce the same outcome.
 - b. *Wind energy systems.* Private, noncommercial wind energy conversion systems shall be setback from all property lines a minimum distance equal to the height of the system and shall not exceed 80 feet. Noise generated by the system shall not exceed 60 decibels (dBA), as measured at the property line, except during short term events such as utility outages and severe wind storms.
 - c. *Water conservation/holding tanks.* Private, noncommercial water conservation/holding tanks, 12 feet or less in height, shall comply with the minimum setback requirements. Cisterns must cover their openings to prevent contamination and entrapment.
 - 1. Storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed nor operational.
 - 2. Parking outside of a substantially enclosed structure of more than four motor vehicles between the front building line of the principal building and the street on any lot used for single-family, duplex, or family care home purposes.
 - 3. *Accessory structures and accessory apartments.* Permitted in all residential districts as a use by right, subject to special requirements as set forth in section 7-16-1
 - 4. *Uses not regarded as accessory.* The following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3480, § 1(a), 6-12-07; Ord. No. 3700, § 11, 2-10-09)

Sec. 7-14-2. - Temporary uses and structures.

- (a) *Purpose.* The following provisions are provided in recognition of the need for special allowances to be granted for temporary uses so that they may be permitted within the City of Asheville. These provisions, authorizing and regulating uses which are truly temporary in nature, are intended to permit such uses (and structures in which they are housed) when consistent with city regulations and policies and when safe and compatible with the area in which they are located.
- (b) *General provisions.* Compliance with the following general provisions is required for all temporary uses unless otherwise specified.
- (1) *Parking and access.* Each site occupied by a temporary use must provide or have available sufficient parking and vehicular maneuvering area for customers. Parking must be adequate to accommodate the proposed temporary use in addition to required parking for any permanent use or uses located on the site. The temporary use shall not create hazardous vehicular or pedestrian traffic conditions as determined by the city's traffic engineer and fire marshal. Temporary traffic control devices including signage to minimize traffic congestion may be required by the city. The design and installation of any such devices must be approved by the city's traffic engineer.
 - (2) *Temporary nature.* Substantial permanent changes to the development site to specifically accommodate the temporary activity are prohibited.
 - (3) *Signs.* Signs for temporary uses are regulated in article 13 of this chapter.
 - (4) *Lighting.* Lighting must be compliant with the City of Asheville's lighting standards.
 - (5) *Adequate facilities.* Adequate sanitary facilities, utilities, drainage, refuse management and similar necessary facilities and services must be available to serve employees, patrons or participants.
 - (6) *Setbacks.* Temporary uses are allowed to encroach within required building setbacks, but cannot be located within required buffers, street tree planting strips, or other landscaped areas required under this chapter. Temporary structures must comply with the minimum setback requirements of the zoning district in which they are located.
 - (7)

Presence of another use. A temporary use may be located on a property housing another permanent use or may be located on a vacant lot. The location of the temporary use shall not violate any requirements placed on any permanent use.

- (8) *Other permits, licenses, inspections.* These regulations do not exempt the operator from any other required permits or inspections such as, but not limited to, those that might be required by the building safety department, the fire marshal, the finance department (privilege licenses), the State of North Carolina, or the Buncombe County Health Department.
- (9) *Discontinuation of use.* All materials, structures, and products related to the temporary use must be removed from the premises between days of operation on the site, provided that materials, structures and products related to the temporary use may be left on-site overnight between consecutive days of operation. Each site occupied by a temporary use shall be left free of debris, litter, or other evidence of the temporary use upon completion or removal of the use.
- (c) *Temporary uses/structures exempt from permit requirements.* The following uses/structures are allowed in all zoning districts, unless otherwise stipulated in this article, and shall not require a zoning permit. Such uses shall conform to the requirements set forth in (b) above, the requirements set forth below, as well as to all other applicable requirements of the City of Asheville.
- (1) City (co)sponsored events or authorized events on city-owned property must be reviewed and approved through a separate process.
- (2) Collection and recycling centers for non-profit organizations are allowed in nonresidential districts. Containers and structures shall be located on private property and not on public rights-of-way. Structures shall not interfere with traffic circulation or visibility at intersections. Structures may not eliminate required parking spaces for other uses on the same parcel.
- (3) *Construction containers.* Construction containers require a building permit and may be utilized for the duration of the building permit.
- (4) Fundraising (non-commercial) events are only allowed in nonresidential districts and on property occupied by an institutional use in residential districts. If a fundraising event is specifically listed in subsection (d), below, then the provisions in subsection (d) shall apply. Except as specifically permitted as follows, a fundraising event shall be permitted for no more than three days. Seasonal sales, such as the sale of pumpkins or Christmas trees as fundraisers, may be permitted for up to 30 days.
- (5) *Outdoor sidewalk and retail sales, small scale.* Outdoor sidewalk and retail sales, where no structure is erected in conjunction with the sale, are permitted in all nonresidential districts. Such sales must be operated by a business located on the same or adjoining property or by a non-profit organization. If the sale will take place on city rights-of-way, additional permits must be obtained.
- (6) Private, non-commercial events on private property and evangelistic, religious events and services.
- (7) *Push cart vendors.* Push cart vendors are regulated under section 16-144 of the Code of Ordinances of the City of Asheville.
- (8) *Short term commercial, promotional events.* Short-term commercial, promotional events are permitted in all nonresidential districts. Such events are limited to eight hours in duration, up to four times per calendar year.
- (9) *Storage containers, portable on demand.* Portable, on demand storage containers are allowed in all districts. Containers located in residential districts, may be permitted for a period of 14 consecutive days, up to two times per calendar year. In nonresidential districts, such containers may be located for a period of 60 consecutive days, up to two times per calendar year. The time, in all instances, shall run from the time of delivery of the container to the time of removal. Containers in any district, may be utilized for the duration of any building permit on the same parcel. Such containers shall not be permitted on any lot that does not contain a principal building.
- (10) *Yard/garage sales.* Yard/garage sales are permitted in all districts but must be located on a parcel containing a dwelling unit or dwelling units. Sales are permitted on any one parcel three times a calendar year. The maximum duration for each occurrence is three days.
- (d) *Short term temporary uses/structures.* A short term temporary use/structure is a use (and structure containing a use) which is located on a property no more than 180 days within any calendar year. Such uses are subject to the standards found in this section and in subsection 7-14-2(b) above and, unless otherwise specified, are only permitted in nonresidential districts.
- (1) *Permit required.* All short-term temporary uses/structures must obtain a temporary use permit as set forth in section 7-5-3 of this chapter. The permit must be displayed at all times on the premises where the temporary use/structure is in operation.
- (2) *Duration.* Except as specifically provided for elsewhere in this section, a short-term temporary use or structure shall be permitted for a period not to exceed 180 days in any calendar year. The days of operation must be listed on the permit and may be consecutive or intermittent throughout the calendar year. A day of operation shall mean any or part of any day on which the use is conducted.
- (3) *Additional standards.* In addition to the general requirements for temporary uses/structures set forth in subsection 7-14-2(b) above, all such uses/structures shall comply with the following:
- a. *Permitted uses.* Except as provided below in this section, the temporary use must be permitted (either by right or with special requirements) in the zoning district in which it is being located.
- b. *Limitation on permits.* Only one temporary use permit shall be active on any lot or parcel at any time. However, more than one permit may be issued on any lot or parcel during a calendar year so long as the allowed period of duration is not exceeded.
- c. *Dwelling units.* Dwellings are not allowed as temporary uses except as permitted by the building safety department in conjunction with a home that has been damaged by fire, wind, etc. that is under repair.
- d. *Circuses, carnivals, fairs, etc.* Commercial circuses, carnivals, fairs, haunted houses and similar events may be held at a site up to three times per year with a maximum duration of 14 days per event. Such events may occur only in non-residential districts.
- e. *Temporary mobile food sales.* Temporary mobile food vendors, pushcarts or stands may be allowed in all non-residential districts except for: the downtown area Central Business District corresponding to the Downtown Design Review Overlay District and the Biltmore Village Historic District; provided that uses/structures for mobile food sales are compliant with the following standards.
1. *Hours of operation.* Temporary food vendors and stands shall be allowed from 6:00 a.m. to 3:00 a.m. with specific hours of operation indicated on the temporary use permit. Locations within 200 feet of a residential use will have reduced hours of 6:00 a.m. until midnight.
 2. *Proximity to public right-of-way.* All sales shall be conducted at least ten feet from all public rights-of-way.
 3. *Health department approval.* Any food service operation that sells, prepares or serves food must obtain an approved mobile food service permit from the Buncombe County Health Department and is subject to inspection.
 4. *Display of permit.* A copy of the valid, approved permit from the Buncombe County Health Department and the City of Asheville shall be visually displayed on the mobile kitchen in clear view of all patrons.
 5. *Duration on site.* All mobile food sale vehicles must leave the site every night or be parked so that the vehicle is not visible from public rights-of-way.
- f.

Events of public interest. An event of public interest is a temporary use involving the expected congregation of 100 or more persons at any one time. An event of public interest includes, but is not limited to: dances, fund raisers, picnics, haunted houses, outdoor concerts, tent meetings, races for motorized vehicles, and supervised public displays of fireworks. An event of public interest shall be subject to the following standards.

1. *Public safety plan.* A public safety plan which identifies the means by which public safety will be ensured during the conduct of the temporary use must be approved by the City of Asheville.
 2. *Dates and hours of operation.* All activities and uses shall be limited to the dates and hours of operation specified in the permit and shall be limited to a maximum duration of three days (per site).
 3. *Traffic control.* Traffic control shall be arranged by the operators of the event in accordance with the City of Asheville and/or Buncombe County Sheriff's Office.
 4. *Parking.* Public parking for the exclusive use of the facility/event shall be provided and a stabilized drive to the parking area shall be maintained. It is the responsibility of the operators to guide traffic to these areas. No parking shall be permitted on any road or public right-of-way.
 5. *Noise.* Noise levels associated with events of public interest, except for supervised displays of fireworks, shall adhere to the City of Asheville Noise Ordinance.
 6. *Maintenance of site.* It shall be the responsibility of the applicant to see that the area used for the event is maintained in a condition that provides for the public health, safety, and welfare for event attendees and neighbors alike. In the event that authorized personnel from the City of Asheville and/or Buncombe County Sheriff's Office determine that the activity is a threat to the public health, safety and welfare, the City of Asheville and/or Buncombe County Sheriff's Office shall have the right to close the event.
 7. *Discontinuation of use.* All materials, structures, and products related to the event of public interest must be removed from the premises between days of operation on the site, provided that materials, structures and products related to the temporary use may be left on-site overnight between consecutive days of operation. Each site occupied by an event of public interest shall be left free of debris, litter, or other evidence of the temporary use upon completion or removal of the use.
 8. *Signage.* Events with an anticipated attendance of over 100 people at any one time may utilize up to 64 square feet of temporary signage. All signage must be properly secured and located on private property and not within a public right-of-way. Events with an anticipated attendance of over 1,000 people per day are not limited in their signage but must submit a signage plan along with a separate sign permit for review and approval at the discretion of the planning director, with input from appointed officials. This plan must include detailed descriptions of the signs including purpose, type, message, location, size, height, and fasteners. Only those signs that would not otherwise be prohibited may be considered and all other applicable standards shall apply.
- g. *Storage containers, portable on demand.* Portable on demand storage containers located in non-residential districts and visible from public areas must first obtain a permit. All permits must be posted on the exterior of the container and visible to inspectors. All such containers when located in front of the principal structure must be located at a minimum of 15 feet back from the street edge and not include signage.
- h. *Fruit and vegetable markets.* Fruit and vegetable markets may be permitted in non-residential districts and in residential districts when located on conforming institutional properties. Markets shall not overlap regular business hours for the primary use and shall operate between the hours of 8:00 a.m. to 8:00 p.m.
- (e) *Interim temporary uses/structures.* An interim temporary use/structure is a use (and structure containing a use) which is located on a property often for periods exceeding 180 days due to the nature of the use. Such uses are subject to the standards found in this section and in subsection 7-14-2(b) above and, are only permitted in nonresidential districts.
- (1) *Factory fabricated buildings for places of worship and schools.* Schools and places of worship may place factory fabricated transportable buildings on-site subject to the following conditions.
- a. *Duration.* The time period shall not exceed five years. Time periods may not be extended by the board of adjustment.
 - b. *Property line buffers.* Property line buffers, if required, shall be installed according to the requirements set forth in section 7-11-3 of this chapter.
- (2) *Interim parking and construction staging.* Requirements for interim parking and construction staging uses are found in subsection 7-16-1(c)(39.1).
- (3) *Real estate sales and/or model home offices.* Real estate sales and/or model home offices shall be allowed within a new residential development, subject to the following conditions.
- a. *Location.* The model home/temporary real estate sales office must be located on a lot that was approved by the planning and development director as part of the subdivision or development.
 - b. *Number.* There can be only one temporary real estate sales office in any development.
 - c. *Duration.* A real estate sales office may be approved for a period of up to three years. This period may be renewed for additional six-month periods, for good cause shown, upon approval of a written request for such an extension by the planning and development director. The request shall be submitted to the planning and development director at least 30 days prior to the expiration of the permit.
- (4) *Temporary offices.* Temporary offices for construction and security personnel are permitted during the construction of a development for which the city has issued a permit. Temporary offices are also permitted for a nonresidential use when the permanent building for such use has been destroyed by a fire or natural catastrophe.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2535, § 5, 1-12-99; Ord. No. 2684, § 1, 4-11-00; Ord. No. 3480, § 1(b), 6-12-07; Ord. No. 3700, § 1m, 2-10-09; Ord. No. 3757, § 1g, 7-14-09; Ord. No. 3792, § 1c, 9-22-09; Ord. No. 4007, § 1c, 9-13-11; Ord. No. 4043, §§ a—e, 1-10-12; Ord. No. 4152, § 1b, 1-8-13)

ARTICLE XV. - SUBDIVISION REGULATIONS

Sec. 7-15-1. - Subdivisions.

- (a) *Purpose.* The regulations for the subdivision of land set forth below are established to promote orderly growth and development; provide for suitable residential and nonresidential subdivisions with adequate streets and utilities and appropriate building sites, provide for the coordination of streets within subdivisions with existing or planned streets and with other public facilities; provide for the dedication or reservation of rights-of-way or easements for streets and utility purposes; and provide proper land records for the convenience of the public and for better identification and permanent location of real property boundaries.
- (b) *Exempt land divisions.*
- (1) *Divisions of land exempt.* In accordance with N.C. Gen. Stat. sec. 160A-376, the following divisions of land are not included within the definition of "subdivision", and are not subject to the city's subdivision regulations.
 - a. 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 city as shown in the city's subdivision regulations;
 - b. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
 - c. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors; and
 - d.

The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the city as shown in the city's subdivision regulations.

- e. The subdivision or recombination of land by public utilities. In case of a conflict between this description of exempt subdivisions and state law (N.C. Gen. Stat. sec. 160A-376, or any successor statute), state law shall control.
- (2) *Limits on exempt divisions of land.* With respect to any single tract or parcel of land existing as a matter of record in the register of deeds as of the effective date of this chapter (March 8, 2005), no more than one division exempted pursuant to subsection (1)d., above, shall be allowed within any five-year period. The purpose of this limitation is to prevent the unregulated subdivision of a tract of land through a series of exempt divisions; nothing herein shall prohibit the subdivision of land where the resultant lots conform with the city's subdivision regulations.
- (3) *Determination and certification of exemption.* The determination of whether a division of land is exempt from the definition of subdivision shall be made by the planning and development director or designee, upon application of the property owner or agent, with supporting documentation (maps, plats, etc.), as needed. Upon a determination by the planning and development director that the proposed subdivision is exempt, a certificate of exemption shall be issued, and the subdivision shall not be subject to the city's subdivision regulations.
- (4) *Effect of certification of exemption.* Divisions of land found to be exempt from the definition of subdivision are not required to meet the city's subdivision regulations. However, a building or zoning permit may only be issued with respect to a lot that has been created by an exempt division if said lot meets the standards for development set forth elsewhere in this chapter. Where a regulation is contained both in this article and elsewhere in this chapter, although the regulation need not be met prior to property division and recordation, the lot in question must comply with said regulation before a building or zoning permit may be issued for the property.
- (c) *Planned communities.* In accordance with the North Carolina Planned Community Act (Chapter 47F of N.C. Gen. Stat.), Planned communities are not included in the definition of "subdivision" and are not reviewed or recorded as such. Those developments meeting the criteria established by the Act will undergo a site plan review as described in article V of this chapter. Planned communities shall be reviewed against and held to those standards established for substantially similar developments and shall comply with the following standards established by the Act:
 - (1) Consist of more than 20 dwelling units or provides a declaration that the development is a planned community.
 - (2) Be exclusively residential.
 - (3) Establish a homeowners association.
 - (4) The developer shall demonstrate adequate provision for perpetual maintenance of the private infrastructure and common areas associated with the development by the homeowners' association.
- (d) *Coordination with other requirements.* When applications for other approvals are required for the subdivision, applications for these approvals may be submitted simultaneously with the initiation of the subdivision approval process to reduce the time required to secure all necessary approvals. Application forms as required for other approvals may be obtained from the development and permitting center.
- (e) *Plan submittal.* Applications for subdivision approval shall be submitted to the City of Asheville and must include plats with all information as required by the planning and development department. Application for subdivision shall be filed in accordance with [section 7-5-8](#) of this chapter.
- (f) *Approval required.*
 - (1) *Date of compliance.* After the effective date of this chapter, no plat for the subdivision of land within the planning and regulation jurisdiction of the City of Asheville shall be filed, accepted for recording, or recorded, nor shall the clerk of superior court order the recording of a plat until it has been submitted to the planning and development director and approved as set forth herein. The signature of the planning and development director on the plat shall signify conformance with the requirements set forth in this chapter.
 - (2) *No conveyance without approval.* No real property lying within the planning and regulation jurisdiction of the City of Asheville shall be subdivided until it conforms with all applicable sections of this chapter. Violations of this article shall be subject to the penalties set forth in [section 7-18-2](#). Any sale or transfer of land in a subdivision subject to these regulations by reference to an unapproved plat or the use of a metes and bounds description shall be considered a violation of this chapter.
 - (3) *Designation of approval agency.* The City of Asheville Planning and Development Department is designated as a planning agency for the purposes of N.C. Gen. Stat. sec. 160A-373. The planning and development director or his/her designee shall be authorized to sign the plat signifying final approval of subdivisions.
 - (4) *Dedication and acceptance of public areas.*
 - a. *Rights-of-way and easements.* The approval of a final plat does not constitute acceptance by the city of the dedication of any street or other ground, public utility line or other public facility shown on the plat. When located within the corporate limits of the City of Asheville, such dedications may be accepted only by resolution of the Asheville City Council following inspection and approval or by the city actually exercising control over and maintaining such dedicated areas. Until the offer of dedication is accepted by the city in either of these manners, the developer shall be responsible for maintenance of those areas.
 - b. *Open space.* Land designated as public open space or a park on a plat shall be considered to be offered for dedication, but not accepted until the Asheville City Council has by express action done so. Until such dedication has been accepted, such areas may be used for open space purposes by its owner or by an association representing owners of lots within the subdivision. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use without the approval of the Asheville City Council.
- (g) *Street and utility construction.*
 - (1) *Plans.* Construction plans for all street, water, sanitary sewer, and stormwater facilities shall be submitted to the City of Asheville concurrent with preliminary plat approval. The street and utility construction plans for each subdivision, or portion thereof, shall include all improvements lying within or adjacent to the subdivision as well as improvements to all streets and water and sanitary sewer lines lying outside the subdivision which provide service to the subdivision. No final plat shall be approved until all improvements have been installed and approved or a guarantee accepted.
 - (2) *No construction without plan approval.* No improvement to or new construction of street, water, sanitary sewer, and stormwater facilities shall be permitted until the street and utility construction plans for such improvements/construction have been reviewed and approved by the City of Asheville and appropriate governmental agencies. These agencies may include, but shall not be limited to, the Metropolitan Sewerage District, the local water authority, the North Carolina Department of Transportation, and the Division of Environmental Management of the North Carolina Department of Environment, Health and Natural Resources, or their successors.
 - (3) *Inspection of construction.* All construction undertaken pursuant to approved street and utility construction plans shall be inspected and approved by the City of Asheville and/or the appropriate governmental agencies.
 - (4) *Guarantee in lieu of construction of improvements.* In lieu of completion of construction of the required improvements and utilities prior to final plat approval, the property owner may submit to the city a performance bond from a corporate surety, licensed in North Carolina to execute such bonds, or an irrevocable letter of credit payable to the City of Asheville, either of which shall be in an amount equal to 150 percent of the estimated cost of the installation of the required improvements, as determined by the city. The performance bond or the irrevocable letter of credit shall secure the completion of construction of the improvements shown on the

approved preliminary plat. The letter of credit or bond shall remain in full force and effect until such time as the construction of improvements and installation of utilities are completed and accepted by the City of Asheville. Failure to maintain the required bond or irrevocable letter of credit shall result in the revocation of the approval of the preliminary plat and any permits issued as a result of the preliminary plat approval.

Failure to initiate construction of the improvements within one year of the date the bond or letter of credit was accepted by the city shall result in the city constructing the improvements, with the cost to be paid from the letter of credit or bond. In the event that the amount of the letter of credit on hand is insufficient to pay for the completion of the improvements, the property owner shall pay to the city the total amount of the insufficiency and if the city is not paid, the amount of the insufficiency shall constitute a lien on the property in favor of the city.

If a developer provides satisfactory evidence that a bond or surety as required by this paragraph has been requested and that the developer and project otherwise qualify for said bond or surety, and that said request has been turned down by two or more financial institutions for reasons unrelated to the qualifications of the developer or project, the planning director may enter into an agreement with the developer for the delayed completion of the required work; provided, that said agreement may not apply to improvements or features that are required for safety purposes, or are prescribed by statute or state codes or regulations. By way of illustration and not limitation, said agreement (1) shall establish a schedule for the completion of improvements, (2) shall contain provisions relating to enforcement of its terms, and (3) shall specify penalties for breach, (4) shall be subject to approval of the city attorney, and (5) may be recorded in the office of the register of deeds wherein the property is located.

- (h) *Maintenance of common areas.* Where subdivisions have common areas or facilities serving more than one dwelling unit, the developer shall be responsible for the maintenance of these common areas and facilities. This responsibility may be transferred to another entity, provided the developer prepares a document for recordation showing the transfer of the property and the maintenance responsibilities to a successor. A copy of the recorded document must be provided to the planning and development department. In such case, the successor shall be responsible for the maintenance of the common access and facilities.
- (i) *Recordation of final plat.* A final plat must be recorded in the office of the register of deeds for Buncombe County in accordance with the process outlined in [section 7-5-8](#) of this chapter.
- (j) *Modifications.* The technical review committee of the City of Asheville may approve modifications to the standards found in subsection [7-15-1\(k\)](#) and [7-11-1\(j\)](#).
- (k) *Subdivision standards.*
 - (1) *General.* All proposed subdivisions.
 - (2) *Lot dimensions and standards.* The size, shape, and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated and shall conform to the following:
 - a. *Conformance to other regulations.* Every lot shall have sufficient area, dimensions, and street access to permit a principal building to be erected thereon in compliance with all city ordinances.
 - b. *Lot lines and drainage.* Lot boundaries shall be made to coincide with natural and pre-existing manmade drainage ways to the extent practicable to avoid the creation of lots that can be built upon only by altering such drainage ways.
 - c. *Buildable area.* Lots or parcels shall not be unreasonably shaped and shall be made to contribute to the buildable area of a lot. Portions of a lot less than 15 feet wide shall be excluded from the minimum lot area. Additionally, portions of a lot that are less than 26 feet wide and longer than 25 feet will be excluded from the minimum lot area.
 - d. *Lots on thoroughfares.* Residential lots in subdivisions shall not be entered from major thoroughfare streets.
 - e. *Access requirements for all lots.* Each lot in a subdivision shall meet the access requirements set forth in [section 7-11-1](#)
 - f. Lot boundaries must be contiguous with street right-of-way boundaries and shall not extend to the center of public streets. However, land to be subdivided which has existing property lines extending into street rights-of-way or into streets may continue to show the existing property lines extending into street rights-of-way or into streets.
 - g. Areas in the public right-of-way shall not be used to calculate compliance with minimum lot size requirements.
 - (3) *Phased development.* Subdivisions may be designed to be platted and constructed in phases. A plan for phased development must be approved by the planning and development director which provides for the provision of adequate public facilities to support each and any phase independent of the overall subdivision plan and provided that access and water supply for fire protection is present to the extent required by the Asheville Fire Prevention Code. In approving the phases, the planning and development director may require that additional streets, water and sewer facilities, or other required public facilities be constructed as part of the phase or phases to ensure that sufficient public facilities will be in place to support each phase or phases independent of any future subdivision development.
 - (4) *Landscaping and buffering.* Landscaping shall be provided in the proposed subdivision as required by [section 7-11-2](#) of this chapter. Preservation of existing trees is encouraged.
 - (5) *Open space.* Open space as required by [section 7-11-3](#) of this chapter and other applicable ordinances and regulations of the City of Asheville shall be provided in the proposed subdivision.
 - (6) *Naming of streets and subdivisions.* New streets shall be named in accordance with the standards outlined in [Chapter 16](#), article VI of the Code of Ordinances of the City of Asheville. In addition, subdivision names or identification shall not duplicate or closely approximate phonetically the names of existing streets and subdivisions in the City of Asheville or its area of jurisdiction and must be approved by the emergency address coordinator.
 - (7) *Street and utilities.* All streets and utilities must comply with the requirements of all other applicable city adopted plans and manuals including, but not limited to, the City of Asheville Design and Construction Standards and the Asheville Thoroughfare Plan.
 - a. *Utility easements.*
 - 1. *Major subdivisions.* An appropriate easement, of the width required by the utility company/agency, shall be provided for utilities including, but not limited to, electric service, telephone service, cable television service, sewer lines, and waterlines within the subdivision. The location of the easements and the physical relation of all utilities within the easement shall be approved by the City of Asheville, in consultation with the utility providers, prior to final plat approval. Placement of all utilities in a common easement is encouraged when such placement does not conflict with these requirements or others.
 - 2. *Minor subdivisions.* Utility easements shall be provided as required by the approving agency.
 - b. *Water supply for fire protection.*
 - 1. Water supply for fire protection shall be provided as required by the Asheville Fire Prevention Code.
 - 2. Size, type, and installation of hydrants shall conform to the specifications set forth in the manual.
 - (8) *Stormwater management.*
 - a. Design of the stormwater management system shall be consistent with the City of Asheville's stormwater regulations, as set forth in [section 7-12-5](#) of this chapter.

b. The stormwater management system design shall comply with the specifications set forth in the stormwater section of the manual.

(9) *Flood standards.*

- a. All subdivision proposals within the City of Asheville corporate limits and extraterritorial jurisdiction shall be consistent with the requirements of the city's flood protection regulations set forth in section 7-12-1 of this chapter and with the need to minimize flood damage.
- b. All subdivision proposals shall have the public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- c. Adequate drainage shall be provided to reduce exposure to flood hazards.
- d. Base flood elevation data shall be provided for subdivision proposals whenever any portion of the project site is located within a designated flood hazard area.
- e. Preliminary and final plats shall note the location of floodplain and floodway boundaries and the 100-year flood elevation.

(10) *Hillside development standards.* All subdivision proposals within the City of Asheville corporate limits and extraterritorial jurisdiction shall be consistent with the requirements of the city's hillside development regulations set forth in section 7-12-2 of this chapter and with the need to minimize impact to sensitive areas.

(11) *Electrical utilities.* Electrical lines shall be installed underground unless inconsistent with flood protection requirements.

(12) *Placement of monuments.* The Standards of Practice for Land Surveying in North Carolina, as adopted by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, shall apply when conducting surveys.

Gated community means a subdivision, neighborhood, or residential community to which entry is restricted to residents and their guests. Often includes barriers such as gates, security personnel, fences and/or walls.

Planned community means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a planned community. "Ownership of a lot" does not include holding a leasehold interest of less than 20 years in a lot, including renewal options.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, §§ 19, 20, 11-11-97; Ord. No. 2664, § 1(v), 2-8-00; Ord. No. 2904, § 1(v), 3-12-02; Ord. No. 3031, § 1(g)—(i), 6-10-03; Ord. No. 3032, § 1(j), 6-10-03; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3261, §§ 1(b)—(d), 7-12-05; Ord. No. 3328, § 1(r), 1-24-06; Ord. No. 3466, § 1(b), 4-24-07; Ord. No. 3708, § 1, 3-10-09)

ARTICLE XVI. - USES BY RIGHT, SUBJECT TO SPECIAL REQUIREMENTS AND CONDITIONAL USES

Sec. 7-16-1. - Uses by right, subject to special requirements.

(a) *Purpose.* Uses by right, subject to special requirements are uses permitted by right, provided that the specific standards set forth in this section are met. The specified standards are intended to insure these uses fit the intent of the districts within which they are permitted, and that these uses are compatible with other development permitted within the districts. All uses by right, subject to special requirements shall comply with the following:

- (1) Unless otherwise indicated in this chapter, properties and structures containing uses by right, subject to special requirements shall be conforming to all applicable development standards and nonconforming lots or structures shall not be used for uses by right subject to special requirements. Wireless telecommunication facilities may be co-located on existing nonconforming structures if doing so would reduce visual impacts, or would be a preferable aesthetic alternative to location of a new telecommunication tower.
- (2) Uses by right, subject to special requirements shall comply with all applicable local, state, and federal regulations and standards and shall be properly licensed and permitted.

Approval procedures for uses by right, subject to special requirements are set forth in section 7-5-4.

(b) *Uses by right, subject to special requirements listed (by zoning district).*

- (1) *Accessory apartments.* All residential except Urban Residential.
- (2) *Accessory structures.* All residential including Urban Residential.
- (3) *Adult day care centers.* RM-16, Urban Village, Neighborhood Corridor, Office, Office II, Urban Residential
- (4) *Adult day care homes.* All Residential Districts including Urban Residential, Urban Village.
- (4.1) *Agriculture.* All Residential districts including Urban Residential and Urban Village.
- (5) *Antennas.* All zoning districts.
- (6) *Assisted living facilities.* RM-16, Urban Village, Neighborhood Corridor, Urban Residential.
- (7) *Bakeries.* Head of Montford Transition Overlay District.
- (8) *Barber shops and salons.* Head of Montford Transition Overlay District, Resort.
- (9) *Homestays.* RS-2, RS-4, RS-8, RM-6, RM-8, RM-16.
- (10) *Bed and breakfast inns.* RM-6, RM-8, RM-16.
- (11) *Boardinghouse.* RM-16.
- (12) *Call centers.* Industrial.
- (13) *Car washes.* Urban Village District, Neighborhood Corridor.
- (14) *Cemeteries, animal.* Community Business I, Community Business II, Institutional, Highway Business, Regional Business, Central Business, River, Commercial Industrial, Industrial, Light Industrial.
- (15) *Child day care centers.* RM-16, Office, Neighborhood Corridor, Office II, Urban Village, Urban Residential.
- (16) *Child day care homes.* All residential districts; Urban Residential.
- (17) *Civic, social service, and fraternal organizations when operating as a fraternity or sorority house.* RM-16, Institutional.
- (18) *Clinics, medical, dental, psychiatric, optical.* Urban Residential.
- (19) *Commercial uses accessory to residential uses.* RM-8, RM-16, Neighborhood Business, Office, Office II, Institutional, Urban Place, Urban Residential, Urban Village.
- (20) *Cottage developments.* RS-8, RM-6, RM-8, RM-16.
- (21) *Crematories, human.* Institutional, Highway Business, Regional Business, Commercial Industrial, Industrial, River, Office, Office II, Community Business I, Community Business II.
- (22) *Crematories, animal.* Institutional, Highway Business, Regional Business, River, Commercial Industrial, Industrial, Light Industrial.

- (23) *Drive through facilities.* Urban Village District.
- (24) *Dormitories.* Industrial.
- (25) *Dwelling, duplex.* RS-2, RS-4, and RS-8.
- (26) *Dwellings, multifamily.* Neighborhood Business.
- (27) *Dwellings, single-family detached.* Urban Place, Urban Residential.
- (28) *Dwellings, townhouse.* RM-6, RM-8, RM-16, Office, Office II, Office Business, Community Business I, Community Business II, Resort, Highway Business, Central Business, Regional Business, Commercial Industrial, River, Neighborhood Corridor, Urban Residential, Urban Place, Institutional.
- (29) *Eating and drinking establishments.* Head of Montford Transition Overlay District; Office, Office II, Office/Business, Institutional, Central Business District, Neighborhood Business, River.
- (30) *Equipment Rental business.* Community Business I, Community Business II, Resort, Highway Business, Regional Business, Commercial Industrial, Neighborhood Corridor District.
- (31) *Family care homes.* All residential districts including Urban Residential.
- (32) *Fire/police stations.* Neighborhood Corridor, Urban Residential, Urban Place Districts.
- (33) *Funeral establishments.* Urban Village District.
- (34) *Gasoline sales.* Neighborhood Corridor, Central Business Districts, Urban Village.
- (35) *Government buildings and uses.* Office, Office II, Office Business, Institutional, Community Business I, Community Business II, Urban Residential.
- (36) *Grocery stores.* Head of Montford Transition Overlay District.
- (37) *Group homes.* RM-16, Urban Residential District, Urban Village District.
- (38) *Home occupation.* All residential districts including Urban Residential.
- (39) *Industrial equipment sales.* Light Industrial.
- (40) *Industrial uses, light.* Community Business I, Community Business II and Regional Business.
- (41) *Interim uses on vacant lots.* All districts except RS-2, RS-4, RS-8, RM-6, RM-8, RM-16, Neighborhood Business and Urban Residential.
- (42) *Lodging facilities.* Urban Village District, Neighborhood Corridor.
- (43) *Microbrewery.* Office, Office II, Office/Business, Central Business, Institutional, Resort.
- (44) *Mobile food vending.* Office, Office II, Office Business, Community Business I, Community Business II, Institutional, Highway Business, Regional Business, Central Business, River, Commercial Industrial, Light Industrial, Industrial, Urban Village, Neighborhood Corridor, Urban Place.
- (45) *Movie theaters.* Community Business I, Community Business II, Institutional, Neighborhood Corridor.
- (46) *Motor vehicle and boat service and repair.* River, Industrial, Central Business, Urban Village, Community Business I, Community Business II, Neighborhood Corridor.
- (47) *Motor vehicle service facility (gasoline sales, car washes, and outdoor storage permitted separately).* Urban Village, Neighborhood Corridor.
- (48) *Nightclubs.* Resort.
- (49) *Office.* Light industrial, Industrial.
- (50) *Orphanages.* Urban Village District.
- (51) *Outdoor storage.* River District, Industrial, Community Business II, Neighborhood Corridor, Light Industrial.
- (52) *Parking decks, garages, facilities.* Institutional, Urban Village.
- (53) *Pharmacies.* Head of Montford Transition Overlay District.
- (54) *Pharmacies.* Office.
- (55) *Places of worship.* All residential except Urban Residential.
- (56) *Places of worship.* Neighborhood Corridor District, Urban Residential District.
- (57) *Public utilities and related facilities.* All residential including Urban Residential.
- (58) *Recreational uses, restricted to membership, non-profit.* All residential including Urban Residential.
- (59) *Recycling operation.* River District, Commercial Industrial, Industrial, Light Industrial.
- (60) *Recycling collection center.* River, Community Business I, Community Business II, Resort, Highway Business, Regional Business, Commercial Industrial, Urban Village and Neighborhood Corridor, Institutional.
- (61) *Retail sales.* Institutional, Resort, Light industrial, Industrial, Head of Montford Transition Overlay District, Urban Village, Neighborhood Business.
- (62) *Schools.* Urban Village, Urban Residential.
- (63) *Schools.* All residential except Urban Residential.
- (64) *Shelters.* Urban Village District.
- (65) *Small engine repair and service business.* Community Business I, Community Business II, Highway Business, Regional Business, Central Business.
- (66) *Stables.* Central Business, Resort.
- (67) *Stadiums and arenas.* Institutional.
- (68) *Studios, galleries and workshops for artists, artisans, and craftspeople - high impact.* Central Business.
- (69) *Sustainable development projects.* RM-6, RM-8, RM-16, Office, Office II, Office-Business, Community Business I, Community Business II, Institutional, Highway Business, Regional Business, River, Commercial Industrial.
- (70) *Tailors/dressmaker shops.* Head of Montford Transition Overlay District.
- (71) *Vacation resort housing.* RS-2, RS-4, RS-8, RM-6, RM-8, RM-16.
- (72) *Video rental stores.* Head of Montford Transition Overlay District.
- (73) *Vocational and technical school.* Urban Village, Neighborhood Corridor, Light Industrial, Industrial.
- (74) *Warehousing and storage.* Regional Business.
- (75) *Wireless telecommunication facilities, microcell.* All zoning districts.
- (76) *Wireless telecommunication facilities.* All zoning districts except RS-2, RS-4, RS-8.
- (77) *Wireless telecommunication facility, collocation.* All zoning districts.

- (78) *Electrified security fences.* Industrial, Light Industrial.
- (c) *Uses by right, subject to special requirements standards.*

(1) *Accessory apartments.*

- a. Use districts: All residential except Urban Residential.
- b. Accessory apartments shall be located only on lots containing one single-family detached structure and conforming accessory structures.
- c. Only one accessory apartment shall be permitted per single-family detached dwelling.
- d. Accessory apartments shall not be considered as additional dwelling units for the purpose of determining minimum lot size or maximum density.
- e. The gross floor area of the accessory apartment shall not exceed 500 square feet or contain no more than one-fourth of the gross floor area of the principal single-family dwelling, whichever is greater. In no case shall the size of the accessory apartment exceed 50 percent of the gross floor area of the principal dwelling unit on the property (for example, establishment of a 500 square foot accessory apartment would require the principal dwelling unit to be at least 1,000 square feet in size).

(2) *Accessory structures.*

- a. Use districts: All residential including Urban Residential.
- b. The footprint of accessory structures located on a lot shall not exceed the following maximum footprint(s):

Lot Size	One Structure	All Structures
Less than 1 acre	770 square feet	1,000 square feet
1 to 3 acres	1,200 square feet	1,600 square feet
More than 3 acres	No limit	No limit

The footprint of the portion of accessory structures used as accessory apartments shall not be included in this calculation of footprint for accessory structures. Accessory apartments shall meet the requirements established by [section 7-16-1](#) of this chapter.

The footprint of any accessory structures used for agricultural purposes shall not be included in this calculation of footprint for accessory structures. Such structures must meet the requirements established for agricultural uses established in [section 7-16-1](#) of this chapter.

- c. Accessory structures shall not exceed 20 feet in height except that height may be increased one foot for every one foot of additional side and rear setback, up to a maximum of 40 feet.
- d. Accessory structures, except for detached garages, shall be located only in side or rear yards for non-corner lots and not in front of the principal structure. On lots of more than three acres, accessory structures may be located in the front of the principal structure, but not in the required front yard. Accessory structures, including detached garages, located in side yards of corner lots whose rear or side yards are adjacent to a front yard of the adjacent lot shall maintain a setback equivalent to the front yard setback of the adjacent lot. Detached garages may be located in front of the principal structure if it is determined by the planning and development director that practical difficulties exist for garage location in side or rear yards due to topography, lot width or other physical factors. Upon this determination, detached garages may be located in front of the principal structure provided that: 1) the garage is not located in the front setback, and 2) the garage is located and/or designed so that it is clearly subordinate to the principal structure in terms of scale.
- e. Reserved.
- f. Accessory structures providing common facilities for residential developments (clubhouse, pool house, etc.) shall not be subject to the gross floor area limits set forth in subsection [7-16-1\(c\)\(2\)\(b\)](#) above, or the location requirements set forth in subsection [7-16-1\(c\)\(2\)\(d\)](#) above.
- g. Accessory structures may be located or expanded on lawfully existing nonconforming lots or lots (conforming or nonconforming) containing nonconforming structures, provided that all other requirements of this chapter and other applicable local, state, and federal regulations are met. Such accessory structures shall be no greater than 350 square feet in size. Only one such structure shall be allowed in these situations.

(3) *Adult day care centers.*

- a. Use districts: RM-16, Urban Village, Neighborhood Corridor, Office, Office II, Urban Residential.
- b. Courtyard space required facing the street.
- c. Maximum building size 20,000 square feet in RM-16.
- d. Maximum building size 12,000 square feet in Urban Village, Neighborhood Corridor, Office, Office II.
- e. In Urban Residential gross square footage may occupy up to 100 percent of the ground floor square footage but is not to exceed 8,000 square feet total.

(4) *Adult day care homes.*

- a. Use districts: All Residential Districts including Urban Residential, Urban Village.
- b. Maximum building or facility size: 2,000 square feet.
- c. Client drop-off and pick-up may not obstruct traffic flow on adjacent public streets.
- d. Parking may not be located in a front yard.

(4.1) *Agriculture.*

- a. Use districts: All residential districts including Urban Residential and Urban Village.
- b. A site and operations plan must be submitted that includes a description of the proposed operation indicating:
 1. Type of farming and (if applicable) list of products that will be sold on site,
 2. Location and size of structures to be built to accommodate the use,
 3. Permits for any animals regulated in [Chapter 3](#) proposed as a part of the use,
 4. Marketing plans (including on-site sales) if applicable, including proposed times and frequency of market operation or on-site sales,
 5. Location of the intended public parking area (if applicable), and
 6. Anticipated level of agriculturally related vehicle traffic.

- c. If a market stand is proposed it must be a seasonal use to sell products grown on the property or created from products grown on the property. Market stands must provide off-street parking and may be open up to seven days a week. The proposal must include the proposed times and frequency of operation, location of intended public parking area, and products that will be sold on site. The public parking area may not exceed five spaces.
- d. Standards for structures:
 - 1. If the agricultural operation is on a lot that contains a dwelling unit or other primary structure, accessory structures not used for agricultural purposes are also allowed meeting the standards for accessory structures in section 7-16-1(c) of this chapter but may not exceed the cumulative limit for all structures established below.
 - 2. Storage and production structures for community gardens are allowed by right meeting the standards below for a lot without a primary structure.
 - 3. If the agricultural operation is on a lot that does not contain a dwelling or other primary structure, small storage or production structures (no larger than 12 x 12 and ten feet tall and not within the public right-of-way) are allowed by right.
Larger storage or production structures may be built when there is no primary structure (home or other allowed use) on the property meeting the standards below but the applicant must submit a notarized affidavit stating and confirming that the structure will be used only for agricultural storage or production uses.

(a) The footprint of the proposed structure located on a lot without a primary structure may not exceed the following maximum footprint:

Lot Size	One Structure	All Structures
Less than 1 acre	770 square feet	1,000 square feet
1 to 3 acres	1,200 square feet	1,600 square feet
More than 3 acres	2,500 square feet	3,000 square feet

- (b) Structures must meet required setbacks for the zone and may not exceed 20 feet in height except that height may be increased one foot for every one foot of additional side and rear setback, up to a maximum of 40 feet.
- (c) On lots of more than three acres, structures may not be located in the required front yard. Structures located in side yards of corner lots whose rear or side yards are adjacent to a front yard of the adjacent lot, must maintain a setback equivalent to the front yard setback of the adjacent lot.

(5) *Antennas.*

- a. Use districts: All.
- b. This section covers antennas other than those associated with wireless telecommunication facilities and television and radio broadcast facilities. Antennas allowed as uses by right subject to special requirements by this section include:
 - 1. Amateur radio facilities mounted on supporting structures less than 100 feet in height.
 - 2. Residential antennas for receiving television, AM or FM radio broadcast signals.
 - 3. Residential or business customer premise antennas for receiving microwave or satellite signals, provided such antennas are less than one meter (39.4 inches) in height or diameter and are mounted on a support structure less than 12 feet in height.
- c. No antenna shall interfere with usual and customary radio and television reception except for broadcast facilities as provided for in the rules and regulations of the FCC.
- d. All antennas must comply with FCC and FAA rules and regulations.
- e. Antennas covered by this section which are to be located or constructed in local historic districts or on a local historic landmark shall require a certificate of appropriateness from the historic resources commission.

(6) *Assisted living facilities.*

- a. Use districts: RM-16, Urban Village, Neighborhood Corridor, Urban Residential.
- b. Courtyard required facing the street.

(7) *Bakeries.*

- a. Use districts: Head of Montford Transition Overlay District.
- b. Shall be located on the first floor with office and/or residential uses above.
- c. Shall provide an operable storefront entrance on Montford Avenue (or on Hill Street if the entrance is within 50 feet from the Montford Avenue side of the building).
- d. Individual tenants or businesses shall not exceed a total floor area of 5,000 square feet.

(8) *Barber shops and salons.*

- a. Use districts: Head of Montford Transition Overlay District.
 - 1. Shall be located on the first floor with office and/or residential uses above.
 - 2. Shall provide an operable storefront entrance on Montford Avenue (or on Hill Street if the entrance is within 50 feet from the Montford Avenue side of the building).
 - 3. Individual tenants or businesses shall not exceed a total floor area of 5,000 square feet.
- b. Use districts: Resort
 - 1. Only allowed as accessory to a permitted use.

(9) *Homestays.*

- a. Use districts: RS-2, RS-4, RS-8, RM-6, RM-8, RM-16.
- b. No displays of goods, products, services, or other advertising shall be visible from outside the building.
- c. Shall be carried on by a resident of the property.
- d. A maximum of one full-time equivalent (one FTE) nonresident of the dwelling may be employed.
- e. On-premises retail sales shall not be a component of the homestay use.

- f. A maximum of 25 percent of the gross floor area of the dwelling unit may be used for the homestay. For the purpose of calculating the area of the structure devoted to the homestay use, only the floor areas of the bedroom and bathroom areas used by the homestay guests shall be considered in such calculations.
 - g. No activities other than lodging, a morning meal, and an evening and/or afternoon refreshment shall be provided.
 - h. Activities shall be provided for overnight guests only.
 - i. Off-street parking shall be provided as required by subsection 7-11-2(c) of this chapter. Parking shall be located on the same lot on which the homestay is located, at the rear of the lot and screened with vegetation from adjacent properties and from the street.
 - j. No accessory structures shall be used to accommodate guests.
 - k. The owner shall reside in the principal structure.
 - l. The length of stay of guests shall not exceed 30 days.
 - m. No home of less than 2,500 heated square feet shall be used for a homestay use.
 - n. In multifamily residential zoning districts, signage shall be limited to a single sign, not to exceed four square feet, attached to the home. No signage shall be allowed for homestay uses in single-family residential zoning districts.
 - o. Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
 - p. Homestays shall be located a minimum of 500 feet from other homestays and bed and breakfast inns. In calculating the 500-foot distance between such establishments, measurements shall be taken from the closest property line of the lot of the existing homestay or bed and breakfast inn establishment to the closest property line of the lot of the proposed homestay. Existing, legally established homestays that do not meet this separation requirement of 500 feet are permitted to expand to the maximum limits allowed under this chapter, as long as all applicable development standards are met.
- (10) *Bed and breakfast inns.*
- a. Use districts: RM-6, RM-8, RM-16.
 - b. Bed and breakfast inns shall be located a minimum of 500 feet from other bed and breakfast inns, bed and breakfast homestays, and boardinghouses. In calculating the 500-foot distance between bed and breakfast inns or homestays, measurements shall be taken from the closest property line of the existing bed and breakfast inn or homestay lot or boardinghouse lot to the closest property line of the lot of the proposed bed and breakfast inn. Existing, legally established bed and breakfast inns that do not meet this separation requirement of 500 feet are permitted to expand within the subject property to the maximum limits allowed under this chapter, as long as all applicable development standards are met.
 - c. The owner/manager shall reside on the property.
 - d. The minimum lot area for a bed and breakfast inn shall be 20,000 square feet.
 - e. The maximum number of guest rooms provided by the bed and breakfast inn in a residential district shall be eight.
 - f. Accessory structures and outdoor activities. Accessory structures may be utilized for guest accommodation purposes as part of a bed and breakfast inn use. The number of guest bedrooms in the accessory structure (s) cannot exceed the number of guest bedrooms in the principal structure. Such accessory structures shall have or shall be constructed to have architectural compatibility with the principal structure. Accessory structures used to accommodate the guests of bed and breakfast inn uses are not subject to the floor area limitations for accessory structures but shall not exceed 35 percent of the gross floor area of the principal structure and shall comply with the setback requirements for accessory structures unless such setback requirements are modified through the application of the flexible development standards provisions of this Code. Passive recreation-related outdoor activities such as tea-time are allowed outside the principal structure or any accessory structure(s), but all other activities and functions designed to serve and entertain guests shall take place only within the principal structure.
 - g. The length of stay of guests shall not exceed 14 days.
 - h. No home of less than 3,500 heated square feet shall be used for a bed and breakfast inn.
 - i. Off-street parking shall be provided as required by subsection 7-11-2(c) of this chapter. Parking shall be located on the same lot on which the bed and breakfast inn is located, at the rear of the lot and screened with vegetation from adjacent properties and from the street.
 - j. Signage shall be limited to a single sign, not to exceed eight square feet, with a maximum height of four feet. The sign may be located in the front yard and indirectly lighted.
 - k. Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
 - l. Activities and functions at the bed and breakfast inn shall be provided for overnight guests only and shall be limited to breakfast and an afternoon and/or evening refreshment. In addition to the functions for overnight guests, the bed and breakfast inn may have four social gatherings per year. No commercial activities other than providing lodging for registered guests shall be permitted.
 - m. No structure less than 30 years old shall be converted to a bed and breakfast inn.
 - n. Comply with N.C. State Building Code requirements.
- (11) *Boardinghouse.*
- a. Use districts: RM-16.
 - b. Minimum lot size: 20,000 square feet.
 - c. Minimum lot width: 100 feet.
 - d. Spacing: boardinghouses shall be located a minimum of 500 feet from other boardinghouses and bed and breakfast establishments.
 - e. Maximum number of rooms: equal to one room per one-half of the lot area required for each residential unit in the respective district.
 - f. The owner or manager of the boardinghouse shall reside on premises.
 - g. Parking shall be provided as required by subsection 7-11-2(c) of this chapter. Parking shall be located on the same lot on which the boardinghouse is located at the rear of the lot and screened with vegetation from adjacent properties and from the street.
- (12) *Call centers.*
- a. Use districts: Industrial.
 - b. Shall not constitute more than 50 percent of the total building square footage.
- (13) *Car washes.*
- a. Use districts: Urban Village District.
 - 1. No washing facilities are to be located in front of the building.
 - 2. All wastewater shall be collected on-site and piped to sanitary sewer system or recycled on site.

- b. Use districts: Neighborhood Corridor.
 - 1. Must be ancillary use located behind principal structure

(14) *Cemeteries, animal.*

- a. Use districts: Community Business I, Community Business II, Institutional, Highway Business, Regional Business, Central Business, River, Commercial Industrial, Industrial, Light Industrial.
- b. Shall be operated by a business entity or non-profit group.
- c. The operator of an animal cemetery must provide evidence of ownership of the property on which the cemetery is to be located, and copies of contracts or other instruments providing for perpetual maintenance and closure procedures.
- d. Minimum setback from any property line: Same as that required in the respective district, but no less than ten feet.

(15) *Child day care centers.*

- a. Use districts: RM-16.
 - 1. Maximum enrollment: 79 children.
 - 2. Minimum lot size: 20,000 square feet.
 - 3. Minimum lot width: 100 feet.
 - 4. Minimum yard widths.
 - Front: Same as that for permitted uses in the respective districts but no less than the lesser setback of existing homes on adjacent lots.
 - Side and rear: 25 feet.
 - 5. Any outdoor play area shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land otherwise unsuited for children's play space and shall not be located in the required setbacks or buffer yards.
 - 6. Child drop-off and pick-up shall be located on the site so as not to obstruct traffic flow on adjacent public streets.
 - 7. Parking shall not be located in the front yard.
- b. Use districts: Office, Neighborhood Corridor.
 - 1. Maximum enrollment: 50 children.
 - 2. Any outdoor play area shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land otherwise unsuited for children's play space and shall not be located in the required setbacks or buffer yards.
 - 3. Child drop-off and pick-up shall be located on the site so as not to obstruct traffic flow on adjacent public streets.
 - 4. Parking shall not be located in the front yard.
- c. Use districts: Office II.
 - 1. Maximum enrollment: 125 children.
 - 2. Minimum lot size: 20,000 square feet.
 - 3. Minimum lot width: 100 feet.
 - 4. Minimum yard widths:
 - Front: Same as that for permitted uses in the Office II District.
 - Side and rear: 25 feet.
 - 5. Any outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land otherwise unsuited for children's play space and may not be located in the required setbacks or bufferyards.
 - 6. Client drop-off and pick-up shall not obstruct traffic flow on adjacent public streets.
 - 7. Parking shall not be located in the front yard.
- d. Use districts: Urban Village.
 - 1. Play space required for day care centers does not count towards open space requirements for the Urban Village.
- e. Use districts: Urban Residential.
 - 1. Maximum enrollment: 30 children.
 - 2. Any outdoor play area shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land otherwise unsuited for children's play space and shall not be located in the required setbacks or buffer yards.
 - 3. Child drop-off and pick-up shall be located on the site so as not to obstruct traffic flow on adjacent public streets.
 - 4. Parking may not be located in a front yard.
 - 5. Gross square footage may occupy up to 100 percent of the ground floor square footage but is not to exceed 6,000 square feet total.

(16) *Child day care homes.*

- a. Use districts: All residential districts; Urban Residential.
- b. Maximum enrollment: Eight children.
- c. Any outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land otherwise unsuited for children's play space and may not be located in the required setbacks or bufferyards.
- d. Client drop-off and pick-up shall not obstruct traffic flow on adjacent public streets.
- e. Parking shall not be located in the front yard.

(17) *Civic, social service, and fraternal organizations when operating as a fraternity or sorority house.*

- a. Use districts: RM-16.
 - 1. Minimum lot size: 20,000 square feet.
 - 2. Minimum lot width: 100 feet.
 - 3. Minimum yard widths:

Front: Same as that for permitted uses in the respective districts; but no less than the lesser setback of existing homes on adjacent lots.

Side and rear: 25 feet.

4. Shall be associated with an educational facility.
 5. Maximum number of bedrooms: Shall equal one room per one-third of the lot area required for each residential unit in the same district.
 6. Shall be located within one-half-mile of the institutional use it is intended to serve.
 7. Parking shall not be located in the front yard.
- b. Use districts: Institutional.
1. Shall be associated with an educational facility.
 2. Shall be located within one-half-mile of the educational facility served.
- (18) *Clinics, medical, dental, psychiatric, optical.*
- a. Use districts: Urban Residential.
 - b. Gross square footage may occupy up to 100 percent of the ground floor square footage but is not to exceed 5,000 square feet total.
- (19) *Commercial uses accessory to residential uses.*
- a. Use districts: RM-8, RM-16, Neighborhood Business, Office, Office II, Institutional, Urban Place, Urban Residential, Urban Village.
 - b. Permitted only when accessory to multi-family residential.
 - c. Services limited to: dining halls, barber and beauty shops, laundry facilities, food stores, banks, newsstands, drugstores, flower shops, gift shops.
 - d. No signs or merchandise visible from off premises.
 - e. May occupy no more than 25 square feet per dwelling unit within the residential development.
- (20) *Cottage developments.*
- a. Use districts: RS-8, RM-6, RM-8, RM-16.
 - b. Purpose: The purpose of this use is to allow small infill development of small single-family homes as a means to increase the stock of housing affordable at the "workforce" and "affordable" housing levels. It is intended that the allowed greater density will be offset by the smaller size of the homes, and the design of the development - its layout and landscaping are of particular importance to ensure that it complements the surrounding existing neighborhood. Further it is important that any proposal be designed to fit into the context of the surrounding existing neighborhood, so the relationship of the design to existing setbacks and prevailing lot sizes and housing orientation must be taken into account in evaluating whether the proposed development meets this intent. Determination of intent will be made by the director.
 - c. The minimum development area shall be 30,000 square feet for cottage developments. Other than this restriction, cottage developments shall not be subject to the lot size, width or frontage limitations of the underlying zoning district, provided there is at least a 25-foot wide frontage for the development lot.
 - d. The minimum and maximum number of cottage homes in a cottage development shall be five and 12, respectively. Cottage developments shall not be subject to the density limitations of the underlying zoning district.
 - e. Cottage developments shall not be developed on sites subject to steep slopes and ridgetop requirements or on sites or portions of sites having a finished grade of greater than 15 percent.
 - f. Cottage developments shall be located a minimum of 1,000 feet from other cottage developments. In calculating the 1,000-foot distance between such uses, measurements shall be taken from the closest property line of the lot of the closest existing cottage development to the closest property line of the lot of the proposed cottage development.
 - g. The minimum setback requirements for principal and accessory structures in cottage developments shall be as follows:
 - All structures shall be setback at least 15 feet from any adjoining street right-of-way or property line.
 - There shall be at least six feet separating cottage homes from each other on all sides.
 - Accessory structures shall be located at least six feet from other structures.
 - h. The maximum height for cottage homes shall be 28 feet. Accessory structures shall not exceed 20 feet in height. For the purpose of this subsection, height shall be calculated as the vertical distance from grade to the midpoint of the peak and eave.
 - i. The maximum gross floor area for individual cottage homes shall be 1,400 square feet, with a maximum gross floor area on the ground floor of 1,200 square feet. For the purpose of this subsection, gross floor area shall include the floor area of any attached garages and shall not include the floor area of any roofed porches, provided such porches are not enclosed.
 Accessory structures shall be limited to detached garages and community buildings and such uses shall not contain more than 800 square feet of gross floor area. The maximum number of such accessory structures shall not exceed 60 percent of the total number of cottage homes in a cottage development.
 - j. Parking requirements for cottage developments shall be as follows:
 - The minimum and maximum parking requirement for cottage developments shall be one space per each cottage home and two spaces per each cottage home, respectively.
 - Parking shall not be provided within 25 feet of an adjoining street right-of-way or property line unless screened from such right-of-way by a Type A buffer.
 - Parking for cottage developments should generally be dispersed across the site in groupings of six or fewer spaces unless precluded by access or other site design constraints. No more than 12 spaces shall be grouped together.
 - k. Cottage developments shall not contain accessory dwellings, except that an accessory dwelling of not more than 400 square feet may be provided above a detached garage. The number of such accessory dwellings shall not exceed 50 percent of the total number of cottage homes in a cottage development. One additional parking space shall be required for each such accessory dwelling.
 - l. Open space requirements for cottage developments shall be of two types, as specified below:

- Common open space - A minimum of 500 square feet shall be provided for each cottage home and a minimum of 300 square feet shall be provided for any accessory dwelling. Common open space shall be arranged so that at least 75 percent of the cottage homes have direct front door access to the open space so that

7-16-11.png

it forms a central common green. See the illustration below.



open space

- Private open space - A minimum of 300 square feet shall be provided for each cottage home. Private open space shall be designated by fencing, landscaping, hardscaping or other means to create a separate private area for the exclusive use of the person(s) residing in each individual cottage home. If the required private open space is provided in more than one location (such as a flower bed in the front and a fenced yard or patio in the rear), no one area shall contain less than 100 square feet.

m. Cottage homes and accessory structures shall comply with the following design standards:

- Each cottage home shall be provided with an unenclosed, roofed porch off the front entrance. This porch shall contain a minimum floor area of 80 square feet and shall have a minimum dimension of eight feet along any one side. Such porches may be screened but shall not be enclosed.
- Cottage homes and accessory structures shall have a gable or hip roof with a pitch of 4:12 or greater. Roofed porches, decks or stoops may be covered with a shed roof. Dormers that do not exceed the peak of the main roof structure are allowed.
- The rear side of any cottage home or accessory structure within 25 feet of an adjoining street right-of-way shall not face the street right-of-way.
- Exterior siding materials for cottage homes and accessory structures shall be clapboard (wood, vinyl, or fiber-cement), stucco, stone, or brick or a combination thereof.

(21) *Crematories, human.*

- Use districts: Institutional, Highway Business, Regional Business, Commercial Industrial, Industrial, River, Office, Office II, Community Business I, Community Business II.
- Shall obtain and annually renew a permit from the Western North Carolina Regional Air Quality Agency.
- Shall comply with all standards set by the North Carolina Crematory Authority and North Carolina Board of Funeral Services.
- In the Office Business, Community Business I, Community Business II, permitted only as an accessory use to a funeral establishment.

(22) *Crematories, animal.*

- Use districts: Institutional, Highway Business, Regional Business, River, Commercial Industrial, Industrial, Light Industrial.
- Shall comply with all applicable public health and environmental laws and rules and shall obtain and maintain all applicable licenses and permits.
- Prior to the issuance of any permit, the applicant shall provide a certification by the North Carolina Division of Air Quality of the Department of Environment and Natural Resources that either all air quality regulations have been complied with or that no permits are required.
- In the Institutional, Highway Business, Regional Business, and River districts:
 - Shall have a buffer or privacy fence to visually screen material, buildings, and equipment storage areas from adjoining residentially zoned or used property.
 - No noise, vibration, smoke, dust, odors, heat, or glare shall be noticeable beyond any property line.
 - Permitted only as an accessory use to animal cemeteries, veterinary clinics, or animal shelters.

(23) *Drive through facilities.*

- Use districts: Urban Village District (note: additional standards regarding drive-through facilities for specific uses in other districts can be found elsewhere in this section of the ordinance).
- To be located only behind or to the side of the main structure.
- Drive through facilities not allowed for convenience stores.

(24) *Dormitories.*

- Use districts: Industrial.
- Permitted only as an accessory use.
- To be occupied only by employees of the principal use.

(25) *Dwelling, duplex.*

- a. Use districts: RS-2, RS-4, and RS-8.
- b. Duplex structures shall be located a minimum of 150 feet from all other duplex, triplex, and quadraplex structures (excluding single-family dwellings with accessory apartments) in the RS-4 and RS-8 Single-Family Districts and 300 feet from all other duplex, triplex, and quadraplex structures (excluding single-family dwellings with accessory apartments) in the RS-2 Single-Family District. The separation distance shall be measured along the blockface proposed for the duplex; however, regardless of these separation requirements, if the block contains a minimum of 60,000 square feet, a minimum of two such structures may be permitted, and, on blocks of less than 60,000 square feet, at least one such structure may be permitted. In the event of irregular or indeterminate block size, the planning and development director shall use existing lot patterns and other information in applying this code provision.
- c. The minimum lot size for duplex structures shall be the greater of either the minimum lot size for the district in which the structure is proposed or not less than 90 percent of the average lot size for the block in which the structure is proposed. If the lot is an existing platted lot prior to May 27, 1997, or the date the city's jurisdiction was extended to the property, as applicable and does not meet the minimum lot size for the applicable zoning district, a duplex may be constructed on the lot if it is not less than 90 percent of the average lot size for the block in which the structure is proposed.
- d. Parking shall be located in the rear and shall be screened with vegetation from adjacent single-family uses. The vegetative screening shall consist of the planting required for a Type A buffer or its equivalent as determined through the alternative landscape compliance process. On-street parking or parking in the front or side of the lot may be approved by the planning and development director provided that any off-street parking area can be adequately screened from adjacent residential uses and:
 - The topography of the site makes it difficult to access the rear of the property; or
 - The property on the opposite side of the street is developed with non-residential uses; or
 - The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed are served primarily by on-street parking in which case the duplex use may be likewise served by such parking; or
 - The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed have parking located in the front or side; no more than three parking spaces shall be provided in front using this option.
- e. It is the intent of these standards to ensure that duplex structures resemble single-family homes in the neighborhoods where they are to be located. Pursuant to this intent, a duplex structure shall be architecturally compatible with single-family residential structures in the area in which it is to be constructed. Architectural compatibility shall be determined based upon compliance with the following standards:
 - The structure shall be oriented on the lot in a manner similar to the residential structures on both sides of the street on the block on which it is to be constructed.
 - The structure shall have a single front entrance and any other entrances as required under various codes shall be located on the side(s) or rear of the structure. A corner side of the structure may have a single entrance provided the intent of this section is met.
 - The height of the structure shall be no more than four feet taller than the height of the tallest single-family residential structure located on the side of the street on the block on which the proposed use is to be constructed.
 - The roof design, pitch and materials proposed for the structure shall be similar to the roof design, pitch and materials of the residential structures on both sides of the street on the block on which it is to be constructed.
 - The siding proposed for the structure shall be similar to the siding on the residential structures on both sides of the street on the block on which it is to be constructed.
 - A front porch shall be provided on the proposed structure if a majority of the residential structures on both sides of the street on the block on which the new structure is proposed have front porches.
 - The front yard depth for the proposed structure shall be not less than the average front yard depth for the residential structures on the same side of the street on the block on which the new construction is proposed.
 - Window and door placement and styles shall be similar to that of the residential structures on both sides of the street on the block on which the new structure is proposed.
 - The floor area of the new structure shall not be more than 150 percent larger than the average floor area of single-family residential structures in the same block of the new structure unless this floor area is provided below the grade of the principal facade of the new structure or is otherwise designed to minimize its difference in size with said residences.
- f. It is the intent of this section that duplex uses shall not overburden the infrastructure of the single-family neighborhood in which they are located. Pursuant to this, the planning and development director shall determine that infrastructure is adequate for these uses by consulting the city engineer and water and sewer utility providers as to adequacy of infrastructure for vehicular traffic, water services and sewer services prior to issuing a zoning permit for any duplex use in a single-family district.
- g. The duplex structure and the sites on which it is located shall be maintained in accordance with standards established by applicable local and state regulations, including, but not limited to, the City of Asheville Minimum Housing Code. The planning and development director may require the submittal and implementation of a specific maintenance plan in order to ensure proper maintenance of the property in accordance with this provision.

(26) *Dwellings, multifamily.*

- a. Use districts: Neighborhood Business.
- b. May not be located at the first floor or street level

(27) *Dwellings, single-family detached.*

- a. Use districts: Urban Place, Urban Residential.
- b. Not more than 25 percent of the total number of dwellings in any development shall be detached single-family dwellings.

(28) *Dwellings, townhouse.*

- a. Use districts: RM-6, RM-8, RM-16, Office, Office II, Office Business, Community Business I, Community Business II, Resort, Highway Business, Central Business, Regional Business, Commercial Industrial, River, Neighborhood Corridor, Urban Residential, Urban Place, Institutional.

- b. Minimum lot size, width and side yards (except for street sides of corner lots and end units in townhouse clusters) are waived for lots containing townhouse units; provided that the residential density for each phase of a project does not exceed the maximum permissible residential density for the respective use district. A common area that supports the townhouse development may be used to reduce the residential density to the required maximum provided that this area is commonly owned (or owned by the related community association) and is adjacent to one or more of the lots containing townhouse units within each phase of the development. This common area must be accessible to all residents of the townhouse development.
 - c. Within RM-6 districts, townhouse developments where the total area within lots containing townhouse units exceeds the maximum residential density permitted within the zoning district, an area of undeveloped, vegetated land sufficient to reduce the residential density to the required maximum shall be designated as permanent open space and shall be dedicated for use by the residents of the townhouse units. This open space area shall be adjacent to one or more of the lots containing townhouse units within each phase of the development, and accessible to all residents of the townhouse development.
 - d. Within RM-6 districts townhouse projects shall be limited to no more than four townhouses in one attached cluster.
 - e. All parking shall be located to the rear of the structure(s) unless garages are provided for each new unit and the majority of the homes on both sides of the block have parking located in the front of the structure(s).
 - f. All townhouse developments shall comply with all other applicable development and subdivision standards.
- (29) *Eating and drinking establishments.*
- a. Use districts: Head of Montford Transition Overlay District.
 - 1. Shall be located on the first floor with office and/or residential uses above.
 - 2. Shall provide an operable storefront entrance on Montford Avenue (or on Hill Street if the entrance is within 50 feet from the Montford Avenue side of the building).
 - 3. Individual tenants or businesses shall not exceed a total floor area of 5,000 square feet.
 - b. Use districts: Office, Office II, Office/Business, Institutional, Central Business District, Neighborhood Business, River
 - 1. No drive-through facilities shall be permitted.
 - 2. No outdoor speakers systems (except for the Central Business District and River), shall be permitted.
 - 3. Maximum of 4,000 square feet for size of restaurants in Office II.
- (30) *Equipment rental business.*
- a. Use districts: Community Business I, Community Business II, Resort, Highway Business, Regional Business, Commercial Industrial, Neighborhood Corridor District.
 - b. Only items allowed to be sold as a permitted use within the district shall be rented.
 - c. No outdoor storage of rental items shall be permitted.
- (31) *Family care homes.*
- a. Use districts: All residential districts including Urban Residential.
 - b. Parking shall not be located in any required setback other than that which would occur on a driveway.
 - c. Family care homes shall be spaced a minimum of 600 feet from all other family care homes as measured from the closest property line of each property containing a family care home.
 - d. The board of adjustment may grant variances to the residential development standards set forth in article VIII and XI that could otherwise be considered for any residential structure. Variances to the separation requirement may be considered only when major geological landforms or features separate the uses.
- (32) *Fire/police stations.*
- a. Use districts: Neighborhood Corridor, Urban Residential, Urban Place Districts.
 - b. Excludes protective services.
- (33) *Funeral establishments.*
- a. Use districts: Urban Village District.
 - b. No crematorium services on premises.
 - c. Rear access required for delivery and pick up.
- (34) *Gasoline sales.*
- a. Use districts: Neighborhood Corridor, Central Business Districts.
 - 1. Gas canopy to be located behind the principle structure.
 - 2. A maximum of three fueling pumps (or six distribution points).
 - b. Use districts: Urban Village.
 - 1. Pumps or gas/fueling islands are to be located behind main structure.
 - 2. Main building must be built to corner on corner lots.
 - 3. No gasoline sales allowed at convenience stores.
- (35) *Government buildings and uses.*
- a. Use districts: Office, Office II, Office Business, Institutional, Community Business I, Community Business II, Urban Residential.
 - b. Shall not contain protective function, jails/detention facilities, or related facilities.
 - c. In the Urban Residential District, gross floor area shall be limited to 5,000 square feet.
- (36) *Grocery stores.*
- a. Use districts: Head of Montford Transition Overlay District.
 - b. Shall be located on the first floor with office and/or residential uses above.
 - c. Shall provide an operable storefront entrance on Montford Avenue (or on Hill Street if the entrance is within 50 feet from the Montford Avenue side of the building).
 - d. Individual tenants or businesses shall not exceed a total floor area of 5,000 square feet.
- (37) *Group homes.*
- a. Use districts: RM-16, Urban Residential District, Urban Village District.
 - b. Private yard or garden space required; minimum size 500 square feet (minimum dimension 15 feet).

- c. Client drop off at the rear or side of the main building.
- d. Group homes shall be spaced a minimum of 600 feet from all other family care homes and group homes as measured from the closest property line of each property containing a family care home or group home.

(38) *Home occupation.*

- a. Use districts: all residential districts including Urban Residential.
- b. No display of goods, products, services, or other advertising shall be visible from outside of the dwelling, except that home occupations shall be allowed one attached sign which shall not exceed one square foot per face, with no more than two faces per sign, and such sign shall not be illuminated.
- c. Home occupations shall be operated by a resident of the dwelling. However, a maximum of one full-time equivalent non-resident of the dwelling may be employed as part of the home occupation.
- d. On-premises retail sales shall not be a component of the home occupation.
- e. A maximum of 25 percent of the gross floor area of the dwelling unit may be used for the home occupation. If the home occupation is housed in an accessory structure, the square footage of the accessory structure shall not exceed 25 percent of the square footage of the principal structure (home). Provided, however, that artist's studios and workshops that are separate structures shall adhere to the following size standards:
 - Lot size less than 1 acre—structure maximum footprint 770 square feet
 - Lot size 1 to 3 acres—structure maximum footprint 1,200 square feet
 - Lot size more than 3 acres—no limit on structure size.
 - Maximum height—20 feet.
- f. Only one vehicle principally used in connection with the home occupation shall be parked or stored on premises; provided, however, that the vehicle shall be parked in an enclosed garage.
- g. No equipment or process shall be used in connection with the home occupation that creates noise, vibrations, glare, fumes, odors, or electrical interference off-premises.
- h. In addition to required parking as stipulated in section 7-11-2, one additional off-street parking space shall be provided for use in conjunction with the home occupation.
- i. The home occupation shall not materially increase the traffic that is found in its vicinity when the use is not in operation. Pursuant to this, a maximum of six individuals per day may visit the home occupation.
- j. Artist's studios and workshops developed as home occupations and located in an accessory structure shall meet the following setbacks:
 - Front—setback for residential structures in the zoning district.
 - Side and rear setback.
 - Structure footprint less than 770 square feet—12-foot setback.
 - Structure footprint 770 square feet to 1,200 square feet—20-foot setback.
 - Structure footprint more than 1,200 square feet—25-foot setback.

(39) *Industrial equipment sales.*

- a. Use districts: Light Industrial.
- b. Sales must be inside only.

(40) *Industrial uses, light.*

- a. Use districts: Community Business I, Community Business II and Regional Business.
- b. All activities associated with the use must be conducted wholly within an enclosed building.
- c. The use must be operated in a manner that prevents external effects of the activity such as but not limited to smoke, soot, dirt, vibration and odor from being detectable at any property line.

(41) *Interim uses on vacant lots.*

- a. Use districts: All districts except RS-2, RS-4, RS-8, RM-6, RM-8, RM-16, Neighborhood Business and Urban Residential.
- b. Vacant parcels may be used on an interim basis temporary uses such as, but not limited to construction staging or parking needs related to construction, or temporary uses on a property that has been approved for development but delayed in starting construction. Permitted uses may include uses such as parking for construction staff, construction staging and equipment storage areas, and employee or business parking where existing parking is displaced due to construction activity, or other uses authorized on a temporary basis by the planning and development director.
- c. Although a zoning permit will be issued for the interim use, site improvements related to landscaping and paving shall not be required as the lot is being used on an interim basis. All other local, state and federal regulations shall be complied with including driveway, grading, stormwater, handicapped accessibility, and sign regulations. The city engineer will determine if sidewalks will be required during the term of the interim use.
- d. The zoning permit for any such interim use will be valid for a period of two years but may be extended by the planning and development director for additional two-year periods in reference to and in conjunction with a valid, open building permit on the lot or the location of construction or a valid development approval for the lot.
- e. The interim use shall not be located within 500 feet of a residential use in a residentially zoned district.
- f. The lot may be used in succession with subsequent building permits on other parcels but must be reestablished through the process noted above.

(42) *Lodging facilities.*

- a. Use districts: Urban Village District.
 - 1. Courtyard space that may include a valet or drop-off function shall be required adjacent to access street.
 - 2. No HVAC units are to be visible from streets or adjacent uses.
- b. Use districts: Neighborhood Corridor.
 - 1. Facility may contain no more than 20 guest rooms.

(43) *Microbrewery.*

- a. Use districts: Office, Office II, Office/Business, Central Business, Institutional, Resort.
 1. No drive through facilities permitted.
 2. No outdoor speaker systems (except for the Central Business District) shall be permitted.
 3. Maximum of 4,000 square feet in Office and Office II.
 4. Must have an off-street or alley loading dock.

(44) *Mobile food vending.*

- a. Use Districts: Office, Office II, Office Business, Community Business I, Community Business II, Institutional, Highway Business, Regional Business, Central Business, River, Commercial Industrial, Light Industrial, Industrial, Urban Village, Neighborhood Corridor, Urban Place.
- b. Permitting: Permitting to establish mobile food vending as a permanent use will incorporate the following permits:
 1. Permitting the mobile food site: Mobile food vending will only be allowed on parcels with an approved development permit and the actual number of vendors permitted will be dependent on site conditions and the ability to comply with spacing requirements outlined in subsection c. below.
 2. Permitting the mobile food vendor: A mobile food vendor is required to obtain a permit for each separately approved mobile food site where vending will occur, according to the following regulations:
 - a. A mobile food vendor is permitted to vend at more than a single site but each location must be approved by individual permit.
 - b. The mobile food vendor permits will be renewed annually along with requirements for the Buncombe County Health Department.
 - c. The number of permits issued for individual mobile kitchens will be limited to two in the Biltmore Village Historic District. In Biltmore Village and the downtown national register district (corresponding to the adopted map 'Traditional Downtown Core' located in 7-8-18 of the UDO) an individual person or other entity may secure no more than one permit for a single mobile kitchen, but they may operate from multiple locations within these areas subject to the ability to meet other permitting requirements. Because the number of permits is limited in Biltmore Village, a vendor who secures a mobile food vending permit and fails to operate within 30 days of issuance of the permit shall have their permit revoked.
 - d. Mobile food vendor permits will run with the calendar year and existing vendors will have the option to renew.
 - e. A copy of the valid, approved permit and health inspection grade card from the Buncombe County Health Department and the City of Asheville shall be visually displayed on the mobile kitchen in clear view of all patrons.
 - f. Copies of other required permits will be submitted with the mobile food vendor permit application.
 - g. Operating without a valid permit will be considered a criminal Class III misdemeanor and enforceable as such. Violations of the approved permit by the mobile food vendor shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.
- c. Site improvements: The permit to establish a mobile food site will require approval of a site plan illustrating the proposed placement of the mobile food vendor(s) and the following items:
 1. Access into the site and parking for vendor patrons at the rate of one parking space per mobile food vendor (applicable only if off-street parking is required in the zoning district).
 2. Landscaping—The site will be improved to meet the standard for street trees. In addition the affected area of the site will provide a minimum eight-foot-wide property line buffer when directly adjacent to residentially zoned and used parcels. This buffer should be planted to include a mix of evergreen and deciduous trees and shrubs to result in a vegetative screen that is 75 percent opaque year-round. As an alternative, the buffer may be reduced by 50 percent with the installation of an opaque fence. Existing buildings that screen the impacts of the mobile food vendor(s) will be considered a substitute for the property line buffer or portions thereof.
 3. Sidewalks: Sidewalks will be required along the frontage lines of the parcel if the road is designated on the city's needed linkages sidewalk list.
 4. Site maneuvering: Each mobile food vendor will need sufficient space for maneuvering onto the lot, for safe access by pedestrians, and for emergency response.
 5. Setbacks: Setbacks for individual mobile food vendors will be ten feet from side and rear property lines and other parked vehicles (if any). There is not a required setback from the frontage line except that no portion of the mobile kitchen will be permitted to encroach into the right-of-way.
 6. Other site features: Permitting for the mobile food site will take into consideration the ability for the primary site user to maintain compliance with minimum parking standards (if there is one) referencing the specific zoning district standards as described in the UDO.
 7. Permanent electric power infrastructure is the preferred method for supplying power at the mobile food site. If this is pursued, then the applicable permits must be obtained.
 8. Proposed dining areas and related furniture if any (approved subject to evaluation for compliance with the NC State Building Code).
- d. Other requirements for mobile food vendors:
 1. No mobile food vendors will be permitted to vend in a public street, sidewalk or right-of-way.
 2. All mobile food vendors are required to maintain permits issued by the Buncombe County Health Department and the City of Asheville will defer to Buncombe County for health and food safety regulations.
 3. All mobile food vendors shall leave the mobile food site when they are not in operation.
 4. Aside from festivals or special events that are administered under separate permits, the mobile food vendor will be required to maintain a list of times and locations (if more than one) for operating the mobile kitchen. Changes to scheduled times must be updated in a manner mutually agreeable to the City of Asheville.
 5. Mobile food vendors will be limited to the sale of food and non-alcoholic drinks. The sale of other merchandise or services will not be permitted.
 6. Mobile food vendors are encouraged to use recyclable and/or compostable containers, cups and utensils.
 7. Hours of operation:
 - (a) Mobile food vendors located in the downtown Central Business District may operate from 6:00 a.m. to 2:00 a.m.
 - (b) In areas outside of the downtown Central Business District mobile food vendors may operate from 6:00 a.m. to 3:00 a.m. unless located within 200 feet of a residential use. When located within 200 feet of a residential use mobile food vendors are limited to the hours of 6:00 a.m. and 12:00 a.m. (midnight).
 8. The mobile food vendor(s) will be required to remove trash and litter from the mobile food site each day and to maintain the cleanliness of the site during hours of operation. The vendor must provide a minimum of one receptacle for use by patrons.
 9. The mobile food site will be subject to the outdoor lighting and noise ordinance standards established by the City of Asheville.

10. (a) In the downtown Central Business District and the Biltmore Village Historic District, mobile food vendors will be required to use electric power from the site to supply outside power needs to the truck.
 - (b) In other areas of the city outside of the downtown Central Business District and the Biltmore Village Historic District, electric power from the site is also the preferred outside power source but generator(s) may be used if they operate at 65 decibels or less and if they are properly attached per manufacturer's standards to the mobile food vehicle.
 11. Vendors may not bring temporary facilities such as tents, shade cloths, or temporary restrooms to the mobile food site. In any event a single chair may be brought by the vendor for use by staff.
 12. Mobile food vendors shall maintain 20 feet between other mobile food vendors based on fire code separation.
 13. Vendors will be subject to random inspections to ensure compliance with all applicable requirements.
 14. Signage: Mobile food vendors may have signage on their mobile kitchen, not to exceed 45 square feet total per vehicle including letters and/or logo advertising the business. No roof signs will be allowed.
- (45) *Movie theaters.*
- a. Use districts: Community Business I, Community Business II, Institutional, Neighborhood Corridor.
 - b. Shall have a maximum seating capacity of 250 persons.
- (46) *Motor vehicle and boat service and repair.*
- a. Use districts: River, Industrial, Central Business, Urban Village, Community Business I, Community Business II, Neighborhood Corridor.
 - b. Use must be conducted entirely within an enclosed building in all listed districts.
 - c. New uses and expansions if located in the regulated flood hazard area must comply with the City of Asheville Environmental Protection Standards in article 12.
 - d. No storage of abandoned or inoperable vehicles.
 - e. If located adjacent to a residential use, must provide a screened buffer meeting Type A standards.
- (47) *Motor vehicle service facility (gasoline sales, car washes, and outdoor storage permitted separately).*
- a. Use districts: Urban Village.
 1. No automobile work areas are to be located in front of building.
 2. All auto work areas shall be screened from adjacent uses.
 3. Gas sales permitted separately with standards.
 4. On corner lots main building shall be built to the corner.
 - b. Use districts: Neighborhood Corridor.
 1. Height standards: one story structure allowed.
 2. Gas sales permitted separately with standards.
 3. Car wash facilities permitted separately with standards.
 4. Repair bays to be located behind principle structures.
 5. Vehicles must be stored covered or fenced off with opaque fencing and not visible from ROW areas.
- (48) *Nightclubs.*
- a. Use districts: Resort.
 1. Must be an accessory use located within the main building of the permitted use.
- (49) *Office.*
- a. Use districts: Light industrial, Industrial.
 - b. Shall not constitute more than 50 percent of the total building square footage in a light industrial district and no more than 20 percent of the total building square footage in an industrial district unless they primarily serve employees on site.
- (50) *Orphanages.*
- a. Use districts: Urban Village District.
 - b. Private fenced yard/garden play space required; minimum size required 500 square feet (minimum dimension 15 feet).
- (51) *Outdoor storage.*
- a. Use districts: River District, Industrial.
 1. New uses and expansions of this type, if located in the regulated flood hazard area must be elevated to meet FEMA regulations; except stone, gravel and mulch storage exempted.
 - b. Use districts: Community Business II, Neighborhood Corridor, Light Industrial.
 1. Only allowed as accessory to other uses in these districts.
 2. If located adjacent to a residential use, must provide a screened buffer meeting Type A standards.
 - c. Use districts: additional standards regarding drive-through facilities for specific uses in other districts can be found elsewhere in this section of the ordinance).
- (52) *Parking decks, garages, facilities.*
- a. Use districts: Institutional, Urban Village.
 - b. Shall be an accessory use to the primary uses allowed in the zoning district in which the parking deck is proposed.
 - c. Within the Institutional District, a parking deck shall be located a minimum of 50 feet from any property located in a residential zoning district or used for residential purposes.
- (53) *Pharmacies.*
- a. Use districts: Head of Montford Transition Overlay District.
 - b. Shall be located on the first floor with office and/or residential uses above.
 - c. Shall provide an operable storefront entrance on Montford Avenue (or on Hill Street if the entrance is within 50 feet from the Montford Avenue side of the building).
 - d. Individual tenants or businesses shall not exceed a total floor area of 5,000 square feet.
- (54) *Pharmacies.*

- a. Use district: Office.
- b. Items sold shall be limited to prescription and non-prescription drugs and related medical and health supplies.
- c. Shall not operate between the hours of 9:00 p.m. and 7:00 a.m.

(55) *Places of worship.*

- a. Use district: All residential except Urban Residential.
- b. For the purposes of these development standards, places of worship shall be placed in the following categories based upon the number of seats in the sanctuary(ies):
 1. Small place of worship—Not more than 300 seats in the sanctuary(ies).
 2. Medium place of worship—301 to 800 seats in the sanctuary(ies).
 3. Large place of worship—More than 800 seats in the sanctuary(ies).
- c. Minimum lot size: The minimum lot size for places of worship shall be as follows:
 1. Small place of worship—Minimum lot size for the zoning district in which the place of worship is located.
 2. Medium place of worship—Two acres.
 3. Large place of worship—Three acres.
- d. Lot location: Places of worship shall be located as follows:
 1. Small places of worship may be located on any street.
 2. Medium places of worship shall be located on property which abuts a major or minor thoroughfare, as identified in the City of Asheville's Thoroughfare Plan, or on a residential collector street provided that the property (if located on a residential collector street) is located within:
 - 500 feet of a major or minor thoroughfare if that portion of the collector street which serves as the connecting street passes through an area with residential uses; or
 - 1,000 feet of a major or minor thoroughfare if that part of the collector street which serves as the connecting street passes through an area with only non-residential uses.
 3. Large places of worship shall be located on property which abuts a major thoroughfare, as identified in the City of Asheville's Thoroughfare Plan. Places of worship wishing to expand and which owned the property on which they wish to expand prior to February 8, 2000, or prior to the extension of the city's jurisdiction to the property shall not be required to meet the lot location standards.
- e. Setbacks: Setbacks for places of worship shall be as follows:
 1. Small and medium place of worship:
 - Front: Same as residential uses in the zoning district.
 - Side: 25 feet.
 - Rear: 25 feet.
 - No parking or other activities shall be located in any of the required setbacks. In addition, parking shall not be located in front of the principal structure(s).
 2. Large place of worship:
 - Front: 50 feet, except that buildings, or portions of buildings, with a width not exceeding 50 feet, may be set back a distance equivalent to the front setback for residential uses in the zoning district in which the place of worship is located.
 - Side: 25 feet.
 - Rear: 25 feet.
 - No parking or other activities shall be located in any of the required setbacks. In addition, parking shall not be located in front of the principal structure(s).
- f. Access points: Access onto place of worship property from local residential streets shall be limited to a total of two driveway access points onto all surrounding local residential streets.
- g. Parking. Off street parking shall be provided at the following ratio:
 1. Minimum: One space per eight seats in the sanctuary(ies).
 2. Maximum: One space per three seats in the sanctuary(ies). Parking exceeding the maximum number of spaces shall meet the requirements set forth in subsection 7-11-2(c)(2).
 3. On-street parking may be used to provide up to 50 percent of the required off street parking provided that:
 - On-street parking is permitted on the street where the parking is proposed to be located;
 - The on-street parking is located within 1,000 feet of the place of worship;
 - The city traffic engineer has approved the on-street parking proposal; and
 - Area residents have been notified of the proposed parking arrangement.
 4. The use of pervious materials for parking is encouraged.
- h. Landscaping. Landscaping shall be provided as required by section 7-11-3 of this chapter, except as required by the following standards:
 1. Parking and outdoor activity areas shall be buffered from adjacent residential uses with an "A" buffer as described in section 7-11-3 of the UDO. The buffer shall incorporate a wall, berm, and/or shrubs with a minimum height of three feet. Walls shall have a maximum height of six feet. If a landscaped berm is used, the berm shall be completely covered with landscaping within 24 months of the issuance of the certificate of compliance. If shrubs are used, they must have a minimum height of 30 inches at the time of planting. The purpose of the landscape buffer is to visually separate the parking and outdoor activity area(s) from adjacent residential uses. Where grade changes or other features of the site make it difficult for a standard buffer to visually separate the parking and outdoor activity area(s) from adjacent residential uses, the buffer shall be developed and/or located as required to create an effective visual separation.
 - 2.

Parking and outdoor activity areas shall be buffered from the street with a planting strip with a minimum width of ten feet which incorporates one large deciduous tree for each 30 feet of street frontage or one small deciduous tree for each 20 feet of street frontage. Buffers around parking areas shall incorporate a wall, berm, and/or shrubs with a minimum height of three feet. Walls and/or fences serving as buffers around parking areas shall have a maximum height of six feet.

- i. Impervious surface standards. Impervious surfaces shall not exceed:
 - 1. Small and medium place of worship—60 percent impervious.
 - 2. Large place of worship—70 percent impervious.
 - j. Lighting. Lighting shall comply with the following standards:
 - 1. The height of lighting fixtures for exterior illumination shall not exceed 16 feet in parking and vehicular access areas and 12 feet in pedestrian areas. Lights located on buildings for the purpose of illuminating architectural details or signs shall be exempt from the height limitation provided that the light(s) is (are) shielded and directed away from residential areas.
 - 2. All exterior light fixtures shall be located at least 20 feet from the property line of residentially used properties.
 - 3. Light fixtures shall be designed such that the light beam is shielded and/or directed away from residential areas.
 - 4. To the extent possible, lighting within parking areas shall be provided by bollard type lights instead of taller area illumination lights.
 - 5. Lights in parking areas, vehicular access areas, and pedestrian activity areas not required for security shall be turned off when the area(s) is (are) not in use.
 - k. Height of buildings shall not exceed 40 feet. Steeples, spires, bell towers, minarets, and similar architectural features shall not be subject to the height limitation.
 - l. Offices associated with the activities or business of the place of worship shall occupy not more than 25 percent of the total floor area of the buildings on the lot.
 - m. No commercial activities (selling of items to the general public on an on-going basis) shall be permitted.
 - n. No warehouse structures shall be permitted.
 - o. No facilities for vehicle maintenance shall be permitted.
 - p. No grading shall be permitted within ten feet of side and rear property lines, other than for utilities, landscaping, and access.
 - q. No grading shall occur until site development plans for the place of worship have been approved by the City of Asheville.
 - r. Outdoor speaker systems are prohibited.
 - s. Factory fabricated transportable buildings designed to serve as expansion space for existing places of worship may be utilized subject to requirements found in the temporary use section (article XIV) of this chapter.
- (56) *Places of worship.*
- a. Use district: Neighborhood Corridor District, Urban Residential District.
 - b. Main building may be set back up to a maximum of 25 feet.
- (57) *Public utilities and related facilities.*
- a. Use districts: All residential including Urban Residential.
 - b. Permitted facilities shall be limited to switching boxes and transformer stations and buildings.
 - c. No employees shall be based at the facility.
 - d. The facility shall be screened from adjacent properties and streets with a vegetative screen which, at a minimum, meets the standards for "A" buffer as set forth in [section 7-11-3](#) of this chapter.
- (58) *Recreational uses, restricted to membership, non-profit.*
- a. Use districts: All residential including Urban Residential.
 - b. Use limitations: golf courses, tennis courts, swimming pools, playgrounds, clubhouses with indoor recreational facilities.
 - c. Retail sales may occur as an accessory use occupying a maximum of 25 percent of the gross floor area of the clubhouse or other recreational building.
 - d. The use shall be operated on a membership basis and payments, if any, for the use of the recreational facilities are made on an installment basis rather than on a per use or daily fee basis.
- (59) *Recycling operation.*
- a. Use districts: River District, Commercial Industrial, Industrial, Light Industrial.
 - b. New uses and expansions of this type must operate in an enclosed building(s) and comply with the City of Asheville Environmental Protection Standards found in article 12.
 - c. The temporary loading of materials into trucks for transport or distribution may occur in outdoor areas provided materials are not stored for a period of greater than 24 hours.
- (60) *Recycling collection center.*
- a. Use districts: River.
 - 1. New uses and expansions of this type if located in the regulated flood hazard area, must operate in an enclosed building(s) and comply with the City of Asheville Environmental Protection standards found in article 12.
 - b. Use districts: Community Business I, Community Business II, Resort, Highway Business, Regional Business, Commercial Industrial, Urban Village and Neighborhood Corridor, Institutional.
 - 1. If located adjacent to a residential use or zoning, a Type A landscape buffer as set forth in [section 7-11-3](#) of this chapter must be provided.
 - 2. Setbacks shall be as follows:
 - Front: 25 feet.
 - Side: 10 feet.
 - Rear: 20 feet.
- (61) *Retail sales.*
- a. Use districts: Institutional.
 - 1. Maximum gross floor area per retail use: 5,000 square feet.

2. Maximum gross retail use floor area per building: 15,000 square feet.
 3. Permitted retail uses: Same as that of the Community Business I District.
- b. Use districts: Resort.
 1. Shall be an accessory to a permitted use.
 - c. Use districts: Light industrial, Industrial.
 1. Fruit and vegetable markets permitted by right, all other retail uses are limited to no more than 20 percent of the total building square footage in the light industrial districts and no more than ten percent of the total building square footage in the industrial districts.
 - d. Use districts: Head of Montford Transition Overlay District.
 1. Shall be located on the first floor with office and/or residential uses above.
 2. Shall provide an operable storefront entrance on Montford Avenue (or on Hill Street if the entrance is within 50 feet from the Montford Avenue side of the building).
 3. Individual tenants or businesses shall not exceed a total floor area of 5,000 square feet.
 4. May not include gasoline sales.
 - e. Use districts: Urban Village, Neighborhood Business.
 1. No gasoline sales allowed at convenience stores.
 2. No drive through facilities allowed.
- (62) *Schools.*
- a. Use districts: Urban Village, Urban Residential.
 - b. Play yard playfield space shall not count towards open space requirements unless field is open for public play.
 - c. Playgrounds shall be fenced where they are adjacent to roadways.
 - d. Driveway pick up and drop off is allowed in the setback area.
 - e. In the Urban Residential District, gross square footage may occupy up to 100 percent of the ground floor square footage but is not to exceed 10,000 square feet total.
- (63) *Schools.*
- a. Use districts: All residential except Urban Residential.
 - b. Minimum lot size:
 - Kindergarten (only): One acre.
 - K-12: Two acres.
 - c. Minimum setback standards:
 - Front: Twice that for permitted uses in the respective zoning district.
 - Side: 25 feet.
 - Rear: 25 feet.
 - d. Parking and active recreation areas shall not be located within the required building setbacks.
 - e. Primary access shall be provided from thoroughfare or collector streets. Local residential streets shall not be used for primary access.
 - f. Factory fabricated transportable buildings designed to serve as expansion space for existing schools may be utilized subject to requirements found in the temporary use section (article XIV) of this chapter.
- (64) *Shelters.*
- a. Use districts: Urban Village District.
 - b. Distinct times of operable ingress and egress hours shall be agreed upon at time of the permit approval.
 - c. Courtyard space is required but may be placed at side or rear of the property.
- (65) *Small engine repair and service business.*
- a. Use districts: Community Business I, Community Business II.
 1. Only items allowed to be sold as a permitted use within the district shall be repaired or serviced.
 2. No outdoor storage of items, parts, equipment, etc. shall be permitted.
 - b. Use districts: Highway Business, Regional Business, Central Business.
 1. On-site operations shall be conducted within an enclosed building.
- (66) *Stables.*
- a. Use districts: Central Business, Resort.
 - b. All horses, mules or other beasts of burden shall be stabled, washed, and fed within an enclosed building.
 - c. An annual inspection shall be conducted by a licensed veterinarian (D.V.M.), experienced in the care and treatment of horses, for both the sanitary conditions of the stable facility and health of the animals. The veterinarian shall have experience in the care and treatment of horses. The results of this inspection shall be submitted to the City of Asheville animal control officers within 30 days of inspection.
 - d. On-site waste collection receptacles shall be housed within the stable building and all waste shall be disposed of in a sanitary fashion no less frequently than one time per week.
 - e. The drainage of all liquid by-products from the stable shall be discharged into a permitted sanitary sewer line and shall not be disposed of by way of storm sewers.
 - f. No horse, mule, or other beast of burden shall be maintained except pursuant to the permit issued by the city manager or his designee in accordance with chapter 3 of the City of Asheville Code of Ordinances.
 - g. See chapter 3 of the City of Asheville Code of Ordinances for additional restrictions.
 - h. In the Resort District use allowed only when accessory to the primary use.

(67) *Stadiums and arenas.*

- a. Use districts: Institutional.
- b. Shall be an accessory use to a permitted use within the district.
- c. Access shall be from internal streets serving the principal use.
- d. All public address and loud speaker systems shall be directed away from residential areas and shall operate only between the hours of 7:00 a.m. and 10:00 p.m.
- e. Shall be located a minimum of 100 feet from any property zoned or used for residential purposes.

(68) *Studios, galleries and workshops for artists, artisans, and craftspeople - high impact.*

- a. Use districts: Central Business.
- b. Shall not be located on the first floor street level.
- c. Shall be entirely conducted within an enclosed building.
- d. A minimum of 25 percent of the gross floor area shall be used for retail sales, and in the Central Business district must maintain the showroom for retail or wholesale sales at the front entrance.
- e. Must demonstrate that the use controls smoke, noise, soot, dirt, vibration, odor, etc.

(69) *Sustainable development projects.*

- a. Use districts: RM-6, RM-8, RM-16, Office, Office II, Office-Business, Community Business I, Community Business II, Institutional, Highway Business, Regional Business, River, Commercial Industrial.
- b. Purpose. This section is intended to meet key strategic goals by providing incentives for the construction of high quality, sustainably based development projects that are reasonably compatible with the natural and built environments of the city. It is not the intent of this section to provide an alternative for other, small-scale infill development processes, such as the process for allowing duplexes, triplexes and quadraplexes in single-family zoning districts.
- c. General. All sustainable development projects shall meet the following minimum standards. Additionally, all sustainable development projects shall meet the standards established elsewhere in the Unified Development Ordinance except as otherwise afforded through appendix 7-G and subsection f. below.
 1. A minimum of five residential units must be provided.
 2. All property owners in residential districts receiving density bonuses shall execute a good neighbor agreement. A sample of such an agreement can be provided by the planning and development department or may be submitted by the owner for review and approval by the planning director. This agreement shall be posted in clear view of all residents and shall be provided separately to each resident.
 3. All sustainable development projects offering affordable housing shall provide a declaration of deed restrictions ensuring that rents or sale prices shall remain affordable for a period of no less than 15 years, increasing by no more than four percent per annum, or the annual increase in the Consumer Price Index, whichever is lower, excepting rental housing constructed with other public funding that includes a separate long-term affordability requirements that is equal to or more rigorous.
 4. Sustainable development projects receiving density bonuses are not eligible for other use by right, subject to special requirements uses.
 5. All units shall be within one-eighth-mile of a high frequency transit corridor or other corridors as identified on the "Sustainable Development Project Eligibility Map" on file with the planning and development department.
 6. Seventy-five percent of the project area, including all grading activity, must be located within a one-eighth-mile of the designated applicability area identified on the sustainable development project eligibility map.
 7. All units shall be Energy Star Certified.
- d. Off-street parking. Off-street parking shall be provided per subsection 7-11-2(c) with the additional following requirements.
 1. All Off-street parking located in residential districts shall comply with the following:
 - a) When located in a sidewalk priority area or along a major thoroughfare or connector street as described in the City of Asheville Pedestrian Plan, all parking shall be located to the side or rear of the principal structure(s) and shall not be located closer to the street than the leading edge of said structure(s).
 - b) Parking in excess of two spaces located in front of the principal structure may be approved by the planning and development director provided the area will be screened to be 80 percent opaque year round from adjacent single-family zoning, and:
 - The topography of the site makes it difficult to access the side or rear of the property; or
 - The majority of the properties on both sides of the street on the block on which the proposed use is to be constructed have parking areas located in front of the principal structures.
 - c) All off-street parking areas of five or more spaces shall be screened with vegetation from adjacent single-family zoned lots. The vegetative screening shall consist of the planting required for a Type A buffer or its equivalent as determined through the alternative landscape compliance process. Other designated buffers would not be required between structures or open lawn areas.
 - d) Landscaping shall be provided as required per subsection 7-11-3(d)(4).
 2. Off-street parking requirements may be reduced or waived per subsection 7-11-2(c)(4).
- e. Architectural and design requirements.
 1. For all large multi-family and mixed use structure(s) containing more than four units, the following standards apply:
 - a) The structure shall be oriented towards the primary access street in a manner similar to the residential structures on both sides of the street on the block on which it is to be constructed.
 - b) The front yard depth for the proposed structure shall be not less than the average front yard depth for the residential structures on the same side of the street on the block on which the new construction is proposed. A modification of ten percent or two feet, whichever is greater, may be considered in cases of physical hardship or practical difficulty.
 - c) For commercially zoned areas, buildings shall meet the definition of pedestrian oriented design as defined in article 2 of this chapter.
 - d) On corner lots, buildings shall be located at the corner where the exposed corner-side resembles the front of the building. See subsection 7-8-23(f)(2) for building templates.
 - e) Facades facing primary access streets (primary facades) should include well-defined entrances facing the street. Buildings placed at the corner may include a corner entrance.
 - f)

Windows shall be placed evenly across the primary facade and make up a minimum of 20 percent of the wall surface for an exclusively residential structure and, 20 percent of the wall surface above the ground story for a mixed use structure, to complement pedestrian activity.

- g) The first floor of all mixed use structures shall be designed in a way that a minimum of 50 percent of the length of the first floor primary facade incorporates pedestrian scale windows, doors and other openings to complement pedestrian activity.
 - h) All storefront windows shall be transparent or lightly tinted and shall not appear false or applied.
 - i) Sidewalk or greenways shall provide connections from the new construction to the existing community on all frontages where the subject property abuts a public right-of-way. In situations where a parcel does not directly abut a public right-of-way, a sidewalk or greenway connection shall be provided along private easements or rights-of-way. Projects with 50 units or more, shall provide a minimum of two pedestrian/bike access points.
 - j) For projects with a frontage length greater than 400 feet, a network of internal streets and sidewalks shall be required unless otherwise approved by the planning director where exceptions may be considered in cases of practical difficulty and/or conflicting goals.
- f. Development incentives.
- 1. Additional density may be applied to the base density allowed by right under the existing zoning per appendix 7-G. Review levels will be determined by base densities not including units added as a result of the application of this section. Regardless of the base density, any project between 50—69 units total shall be required a Level II review as set forth in subsection 7-5-9(b); projects with 70 or more units shall be required a Level III review as set forth in subsection 7-5-9(a).
 - 2. Minimum lot size, lot width, and setback requirements for single-family structures in a new single-family subdivision may be reduced by 30 percent when one or more of the following criteria is met:
 - Dedicated community open space is provided at a minimum rate of 500 square feet per unit. Community open space areas must be maintained for the benefit of the entire community and must be accessible by all units in the community either directly or by a sidewalk or trail system.
 - The subdivision is within 300 feet of a public park where a connection is provided by sidewalk or greenway.
 - 3. Off-street parking requirements may be reduced by 25 percent if:
 - 60 percent or more of the units are affordable (as defined by the City of Asheville) and if the city's traffic engineer and planning director determine that adequate on-street parking is available within a 100-foot radius to off-set the balance of spaces needed, or
 - 60 percent or more of the units are one-bedroom or efficiency apartments.
 - 4. Height maximums may be extended an additional 10 feet if 100 percent of the units are affordable or if Silver, or higher, LEED certification is achieved.
 - 5. Lot sizes, widths, and setbacks may be reduced by 30 percent if no density bonuses are being sought and the project meets Bronze (or higher) LEED certification or NC Healthy Built Homes certification.

(70) *Tailors/dressmaker shops.*

- a. Use districts: Head of Montford Transition Overlay District.
- b. Shall be located on the first floor with office and/or residential uses above.
- c. Shall provide an operable storefront entrance on Montford Avenue (or on Hill Street if the entrance is within 50 feet from the Montford Avenue side of the building).
- d. Individual tenants or businesses shall not exceed a total floor area of 5,000 square feet.

(71) *Vacation resort housing.*

- a. Use districts: RS-2, RS-4, RS-8, RM-6, RM-8, RM-16.
- b. The minimum lot or parcel area for development of vacation rentals shall be 30 acres.
- c. The maximum number of rental units shall be 25 units. In addition to the rental units, the development may include owner's residence, resident manager's quarters, office, storage and accessory buildings, and passive recreational facilities. Active recreational facilities (tennis courts, swimming pools, ball fields, and similar activities) shall not be permitted.
- d. Each rental unit must be a complete and independent dwelling unit as defined by the North Carolina Residential Building Code and include a kitchen, bathroom, and living and sleeping area.
- e. Each rental unit shall be setback at least 50 feet from front, side, and rear property lines.
- f. Each rental unit shall be a separate building with a minimum separation between buildings of 15 feet.
- g. The rental units must be clustered on one or more areas of the site.
- h. Each rental unit shall contain a minimum of 500 square feet and a maximum of 2,000 square feet of enclosed, heated space.
- i. A minimum of 50 percent of the site must be designated as open space and shall remain undisturbed except for walking/hiking trails. Landscaping, planting, and similar activities are permitted within the area designated as open space. Owners are encouraged to connect open space with the public greenway and open space systems and/or to provide easement for the public greenways within the development's open space area.
- j. For vacation rentals adjacent to the Blue Ridge Parkway, development of trails and other means of access onto the Blue Ridge Parkway shall be permitted only with written permission from the National Park Service.
- k. Services provided to the guests shall be limited to the cleaning of the rental units, the provision of clean linens, the provision of welcome baskets, and related services.
- l. Facilities and services provided by the development shall be for the use and enjoyment of the registered guests only.
- m. Maximum length of stay shall be 90 days.
- n. All units shall be accessed by a road which meets the standards established by the Standard Specifications and Details Manual of the city.
- o. The rental units shall be buffered from the adjacent residential uses with a minimum of an "A" buffer as described in section 7-11-3 of this chapter if existing vegetation is used for the buffer. If existing vegetation is absent or removed, a "B" buffer as described in section 7-11-3 of this chapter shall be required to buffer the rental units from adjacent residential uses.
- p. Tour buses are not permitted to enter the development.
- q. Parking shall be provided for the rental units as required by section 7-11-3 of this chapter. Large parking areas are discouraged; parking spaces are encouraged to be located near the rental units they serve in clusters of one to three spaces. Each cluster of parking spaces shall be screened with vegetation from adjacent residential uses.

(72) *Video rental stores.*

- a. Use districts: Head of Montford Transition Overlay District.
- b. Shall be located on the first floor with office and/or residential uses above.
- c. Shall provide an operable storefront entrance on Montford Avenue (or on Hill Street if the entrance is within 50 feet from the Montford Avenue side of the building).
- d. Individual tenants or businesses shall not exceed a total floor area of 5,000 square feet.

(73) *Vocational and technical school.*

- a. Use districts: Urban Village, Neighborhood Corridor.
 - 1. No truck or motor vehicle driving training school.
- b. Use districts: Light Industrial, Industrial.
 - 1. No living quarters may be provided.

(74) *Warehousing and storage.*

- a. Use districts: Regional Business.
- b. Storage and warehousing shall be permitted as an accessory use only.
- c. The size of the area designated or used for outdoor storage shall not exceed the total gross floor area of the principal building.

(75) *Wireless telecommunication facilities, microcell.* Any reference in this section to "wireless telecommunication facilities" shall be deemed to include the modifier, "microcell," unless the context clearly indicates otherwise.

- a. Use districts: All zoning districts.
- b. Microcellular wireless telecommunication facilities are permitted on buildings and other existing structures (other than off-premises signs) which do not require an increase in height to accommodate the facility. Utility poles may be extended in height in residential zoning districts to the lesser of 20 feet above the vegetative canopy in the vicinity of the site as determined by the city arborist, or 80 feet in height. Such extensions shall qualify as an existing structure for purposes of this section. Such height extensions of utility poles shall only be permitted if no other distribution pole within 1,320 feet of the proposed site has been extended in height above the average pole height on the same distribution line as documented by the utility owning such poles.
- c. All antennas associated with microcellular wireless telecommunication facilities mounted on a building or other existing structure (other than a utility pole) shall be flush-mounted against the side of the building or structure and camouflaged to match or complement the color and architectural treatment of the surface on which they are mounted.
- d. Antennas associated with a microcellular wireless telecommunication facility mounted on a utility pole must be mounted atop the pole or flush mounted against the sides of the pole, and shall be colored to match or complement the color of the utility pole and shall be mounted in as unobtrusive a manner as possible.
- e. Antennas associated with a microcellular wireless telecommunication facility may not be co-located on a tower or other support structure used by an amateur radio operator.
- f. Equipment enclosures associated with microcellular wireless telecommunication facilities mounted on a building or other existing structure (other than a utility pole) shall be mounted inside the building or structure, attached to an exterior surface, or placed underground or on a concrete pad on the ground outside the building or structure. If mounted on an exterior surface, the enclosures shall be colored or camouflaged to match or complement the color and architectural treatment of the surface on which they are mounted. If placed on a concrete pad on the ground, the enclosures shall be screened so as to make them unobtrusive.
- g. Equipment enclosures associated with a microcellular wireless telecommunication facility mounted on a utility pole, must be mounted on the utility pole; provided, however, if combiners are used to allow co-location by sharing of an antenna or antenna array and pole-mounting of equipment enclosures cannot be accommodated on the pole, the combiner and additional equipment enclosures may be placed underground or on a concrete pad on the ground. If placed on a concrete pad on the ground, such additional equipment enclosures shall be screened so as to make them unobtrusive.
- h. All cabling and wiring connecting antennas, equipment enclosures, and other components of a microcellular wireless telecommunication facility shall be colored or concealed in a manner as to render them unobtrusive.
- i. Microcellular wireless telecommunication facilities located in a local historic district or on a historic landmark shall require a certificate of appropriateness from the historic resources commission.
- j. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
- k. A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each such wireless service provider's FCC license. If FCC licenses have previously been filed with the city in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.
- l. As part of its application each applicant for a microcellular wireless telecommunication facility shall be required to execute a standard maintenance/removal agreement binding the applicant and its successors and assigns to maintain properly the exterior appearance of and ultimately remove the facility upon abandonment or cessation of operations. Such agreement shall require the applicant to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the city for all costs it incurs to perform any work required of the applicant by the agreement that the applicant fails to perform. A \$1,000.00 cash bond, or other security acceptable to the city, shall be required in conjunction with the maintenance/removal agreement. The applicant and its successors and assigns shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
- m. Abandoned or unused wireless telecommunication facilities shall be removed within 180 days of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' written notice of its intention to do so to the permittee at its last known address.
- n. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city. Before an annual permit shall be issued or renewed an applicant or permittee must certify that:
 - 1. It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
 - 2. The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.

3. That the facility continues to comply with all FCC and FAA rules and regulations.
 4. That the permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
 5. That it is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
 6. That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the city without the city's approval or, if it has done so, that it has ceased operating and has removed all such facilities. Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of this Code. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' advance written notice to the permittee at its last known address of the pending expiration of the permittee's annual wireless telecommunication facility permit. Fees for annual wireless telecommunication facility permits shall be in accordance with the City of Asheville Fees and Charges Manual.
- (76) *Wireless telecommunication facilities.* Any reference in this section to "wireless telecommunication facilities" shall be deemed to include the modifier, "concealed", unless the context clearly indicates otherwise.
- a. Use districts: All zoning districts except RS-2, RS-4, RS-8.
 - b. Concealed wireless telecommunication facilities are permitted on buildings and alternative structures (other than off-premises signs and telecommunication towers).
 - c. For purposes of this section, antennas mounted on an electric transmission tower shall qualify as a concealed wireless telecommunication facility provided antennas associated with such a facility do not extend more than ten feet above the top of the supporting structure nor more than two feet from the sides of the structure. Equipment enclosures associated with such a facility may be mounted on the structure or placed underground or on the ground. If placed on the ground, equipment enclosures shall be placed on a concrete pad and screened so as to make them unobtrusive.
 - d. For purposes of this section, antennas mounted on an utility pole shall qualify as a concealed wireless telecommunication facility provided antennas associated with such a facility do not extend more than ten feet above the top of the supporting structure nor more than two feet from the sides of the structure, and equipment enclosures associated with the facility occupy less than 60 cubic feet. Equipment enclosures associated with such a facility may be mounted on the structure or placed underground or on the ground on a concrete pad. Utility poles may be extended in height in RM-6, RM-8 and RM-16 zoning districts to the lesser of 20 feet above the vegetative canopy in the vicinity of the site as determined by the city arborist, or 80 feet in height. Such extensions shall qualify as an existing structure for purposes of this section. Such height extensions of utility poles shall only be permitted if no other distribution pole within 1,320 feet of the proposed site has been extended in height above the average pole height on the same distribution line as documented by the utility owning such poles.
 - e. Panel antennas associated with concealed wireless telecommunication facilities may not exceed eight feet in height. If flush-mounted on the side of a building or alternative structure, antennas shall be camouflaged to match or complement the color and architectural treatment of the surface. Antennas extending above the roof line of a building shall be concealed behind an RF-transparent parapet wall or facade which is camouflaged to match or complement the color and architectural treatment of the building or structure. Such parapet walls or facades shall not extend more than ten feet above the roof line. Where a parapet wall is at least eight feet in height, omnidirectional (whip-type) antennas may extend above the parapet wall by a distance equal to the height of the parapet wall.
 - f. Antennas associated with a concealed wireless telecommunication facility may not be co-located on a tower or other support structure used by an amateur radio operator.
 - g. Electronic equipment associated with concealed wireless telecommunication facilities may be placed inside a building or, if placed on a rooftop, all equipment enclosures shall be mounted behind a parapet wall or facade which is camouflaged to match or complement the color and architectural treatment of the building. If placed on the ground on a concrete pad, except as provided in subsection d. above, equipment enclosures shall be screened so as to make them unobtrusive.
 - h. All cabling and wiring connecting antennas, equipment enclosures, and other components of concealed wireless telecommunication facilities shall be colored or concealed in a manner as to render them unobtrusive.
 - i. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
 - j. Concealed wireless telecommunication facilities located in a local historic district or on a historic landmark shall require a certificate of appropriateness from the historic resources commission.
 - k. Applicants for concealed wireless telecommunication facilities shall first be encouraged to consider properties owned by the city or Buncombe County, or instrumentalities thereof, before considering private properties. Public properties shall be subject to the same restrictions and standards of appropriateness as private properties. All such public agencies or instrumentalities shall retain discretion as to whether to make a specific property available for wireless telecommunication facilities and to make determinations with respect to site capacity, aesthetics, or suitability of such facilities. If an applicant proposes to use public property for the location of a concealed wireless facility, the completed application shall receive the same expedited service as for qualified collocated facilities.
 - l. A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each such wireless service provider's FCC license. If FCC licenses have previously been filed with the city in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.
 - m. As part of its application, each applicant for a concealed wireless telecommunication facility shall be required to execute a standard maintenance/removal agreement binding the applicant and its successors and assigns to maintain properly the exterior appearance of and ultimately remove the facility within 180 days of the abandonment or cessation of operations of the facility. Such agreement shall require the applicant to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City of Asheville for all costs it incurs to perform any work required of the applicant by the agreement that it fails to perform. A \$5,000.00 cash bond, or other security acceptable to the City of Asheville, shall be required in conjunction with the maintenance/removal agreement. The applicant and its successors and assigns shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of the maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
 - n. Abandoned or unused wireless telecommunication facilities shall be removed within 180 days of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' written notice of its intent to do so to the permittee at its last known address.

- o. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city. Before an annual permit shall be issued or renewed an applicant or permittee must certify that:
 - 1. It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
 - 2. The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.
 - 3. That the facility continues to comply with all FCC and FAA rules and regulations.
 - 4. That the permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
 - 5. That it is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
 - 6. That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the city without the city approval or, if it has done so, that it has ceased operating and has removed all such facilities. Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of this Code. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' advance written notice to the permittee at its last known address of the pending expirations of the permittee's annual wireless telecommunication facility permits. Fees for annual wireless telecommunication facility permits shall be in accordance with the City of Asheville Fees and Charges Manual.
- (77) *Wireless telecommunication facility, collocation.* Any reference in this section to "wireless telecommunication facility" shall be deemed to include the modifier, "collocated," unless the context clearly indicates otherwise.
 - a. Use districts: All zoning districts.
 - b. Application fees for a co-located wireless telecommunication facility shall be in accordance with the City of Asheville's Fees and Charges Manual.
 - c. Wireless telecommunication facilities may be co-located on any structure which hosts one or more existing permitted and approved wireless telecommunication facilities provided, however, that the proposed co-located wireless facility must meet equipment enclosure and antenna size restrictions for the type of facility and zoning district in which the existing facility was approved (i.e., microcell and concealed wireless telecommunication facilities). The structure on which the wireless telecommunication facilities are to be located may be improved, rehabilitated, or altered structurally to accommodate the proposed co-location, provided that the height of a nonconforming structure is not increased and provided further that the proposed co-location complies with all other requirements of this chapter and other applicable laws and regulations.
 - c.1. Expedited review. Any application for collocation of a wireless telecommunication facility that meets all of the following requirements:
 - 1. The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.
 - 2. The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.
 - 3. The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.
 - 4. The additional wireless facilities comply with all federal, state and local safety requirements.
 - 5. The collocation does not exceed the applicable weight limits for the wireless support structure as determined by the planning director or designee, shall be deemed complete unless within 45 days from the date of submission (or within some other mutually agreed upon time), the applicant is notified of deficiencies or incompleteness of the application. When the application is deemed complete, whether by curing any deficiencies or by operation of the preceding sentence, the city shall issue a written determination approving or denying the application within 45 days.
 - d. Where co-location is proposed by use of a combiner (allowing two or more commercial wireless service providers to share a common antenna or antenna array), an equipment enclosure which houses only the combiner and amplifiers may exceed the maximum permitted dimensions for other types of equipment enclosures up to a maximum of 70 cubic feet.
 - e. Antennas associated with a co-located wireless telecommunication facility may not be co-located on a tower or other support structure used by an amateur radio operator.
 - f. Co-located wireless telecommunication facilities shall be designed to meet the following standards:
 - 1. Use of dual-band/multi-band antennas (to allow sharing of antennas or antenna arrays by wireless providers using different frequency bands) or by using combiners (to allow antenna sharing by users of the same frequency band) is encouraged in order to minimize the height of support structures and the visual impact of multiple co-located antennas or antenna arrays.
 - 2. Antennas associated with a co-located wireless telecommunication facility shall be mounted so as to present the smallest possible silhouette, profile, or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:
 - a. Compact dual-polarized antennas in a cylindrical unicell arrangement extending less than two feet from the structure, and mounted atop the tower;
 - b. Panel antennas flush-mounted against the tower; and
 - c. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
 - 3. No co-located wireless telecommunication facility located on a telecommunication tower shall have constructed thereon, or attached thereto in any way, any platform, catwalk, crow's nest, triangular framework, or like structures or equipment, except during periods of construction or repair. Curved or straight davit arms or brackets used for antenna mounting shall be connected to the tower at the base of the arms or brackets only and such arms or brackets (and any antennas or hardware mounted thereon) shall not be physically interconnected with any similar arm or bracket.
 - 4. All equipment enclosures and other improvements accessory to a co-located wireless telecommunication facility shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure shall exceed 12 feet in height. Ground mounted equipment shall be screened from view with a row of evergreen trees and/or shrubs planted in a landscape strip with a minimum width of five feet, except where a design of nonvegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
 - 5. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
 - 6. Equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight feet in height. The fence may be topped with barbed wire. The planning and development director may require as a condition of approval that the fencing be screened by appropriate landscaping or other means, or may waive or modify the fencing requirement if he/she determines that doing so will enhance the overall appearance of the

facility without any compromise in safety or security.

7. Signage at any ground-based portion of a co-located wireless telecommunication facility site shall conform to the following provisions:
 - a. A sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing.
 - b. Equipment hazard warning and informational signs are permitted.
 - c. The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any telecommunication tower.
- g. A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each such wireless service provider's FCC license. If FCC licenses have previously been filed with the city in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.
- h. As part of its application, each applicant for a co-located wireless telecommunication facility shall be required to execute a standard maintenance/removal agreement binding the applicant and its successors and assigns to maintain properly the exterior appearance of and ultimately remove the co-located facility within 180 days of the abandonment or cessation of operations of the co-located facility. Such agreement shall require the applicant to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City of Asheville for all costs it incurs to perform any work required of the applicant by the agreement that it fails to perform. A \$5,000.00 cash bond, or other security acceptable to the City of Asheville, shall be required in conjunction with the maintenance/removal agreement when a separate equipment shelter is constructed to house the equipment for the co-located wireless telecommunication facility. A \$1,000.00 cash bond, or other security acceptable to the City of Asheville, shall be required in conjunction with the maintenance/removal agreement when the equipment for the co-located telecommunications facility is housed in an existing equipment shelter. The applicant and its successors and assigns shall be required to continue such bond or other security until such time as the co-located facility has been removed and all other requirements of the maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
- i. Abandoned or unused wireless telecommunication facilities shall be removed within 180 days of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' written notice of its intention to do so to the permittee at its last known address.
- j. Co-located wireless telecommunication facilities shall not be constructed unless the facility owner has general liability coverage of at least \$1,000,000.00. The owner of a co-located wireless telecommunication facility shall provide the city with a certificate of insurance showing evidence of its coverage and the certificate shall contain a requirement that the insurance company notify the city 30 days prior to the cancellation, modification or failure to renew the insurance coverage required.
- k. An annual wireless telecommunication facility permit shall be required for every wireless telecommunication facility located in the city. Before a permit shall be issued or renewed an applicant or permittee must certify that:
 1. It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
 2. The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.
 3. That the facility continues to comply with all FCC and FAA rules and regulations and all conditions of its conditional use permit.
 4. That the permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
 5. That it is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
 6. That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the city without the city's approval or, if it has done so, that it has ceased operating and has removed all of such facilities. Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of this Code. Prior to removing a wireless telecommunication facility pursuant to this section, the city shall give 30 days' advance written notice to the permittee at its last known address of the pending expiration of the permittee's annual wireless telecommunication facility permit. Fees for annual wireless telecommunication facility permits shall be in accordance with the City of Asheville Fees and Charges Manual.

(78) *Electrified security fences.*

- a. Use districts: Industrial and Light Industrial.
- b. Must meet the following standards:
 - (1) The construction or use of an electrified security fence for other than animal control is allowed only as provided in this section in addition to the other requirements of [section 7-10-3](#). No person may install, maintain, or operate an electric fence that does not meet the provisions of this section.
 - (2) Electrified security fences are not allowed in:
 - a. Public rights-of-way, utility rights-of-way, and public construction easements; or
 - b. Within 1,000 feet of any residential use.
 - (3) Electrified security fences shall comply with the following design and technical standards:
 - a. Energizer standards - The energizer for electric fences must be driven by a storage battery system (which may include a solar powered system), not to exceed 12 volts direct current. No use of alternating current is allowed. The fence cabling and wires must not be connected to any overhead power line post and no individual section of an electrified fence may be connected to more than one energizer.
The electric charge produced by the fence upon contact must not exceed energizer characteristics described in paragraph 22.108 and shown in Figure 102 of International Electrotechnical Commission (IEC) Standard No. 60335-2-76, latest edition. The electrified fence system must regulate voltage, pulse, and amperage at all times.

A lightning diverter/arrestor must be installed between an electrified fence and its energizer; and any energizer used must be connected to a dedicated ground system. All energized ground system cables must be properly insulated, and any energizer ground system must not be connected to any building or plumbing system, and must be located at least ten feet from any buried pipes, wires, or other utilities of any kind.

- b.

Fence system design - The electrified security fence must be designed so that it does not interfere with the transmission of power, telephone, data, radio, or television signals. The fence must not interfere with overhead utility lines or the maintenance of those lines. The electrified fence must be located to prevent nearby power lines from affecting the performance of the fence.

- c. Alarm system - Electrified fences must be equipped with a monitoring alarm system and must obtain a permit meeting the standards of the City of Asheville for alarms in [chapter 13](#), article II, [section 13-32](#) of the City Code that activates simultaneously with any contact to the electrified area of the fence.
- d. Fence height - In no case may an electrified security fence exceed ten feet in height. The electrified security fence must be completely surrounded on its perimeter by a nonelectrical fence or wall that also may not exceed ten feet in height.
Any portion of an electrified security fence or its surrounding perimeter nonelectric fence that exceeds six feet in height must be located beyond the front setback, and any portion that exceeds eight feet in height it must be located beyond the side or rear setback.
- e. Fence separation - The electrified security fence must be separated from the perimeter fence or wall by a distance of at least 12 inches and no more than 36 inches, except at gate openings. The area between the perimeter fence and the electrified fence must be kept unobstructed and clear of any vegetation or objects. The lowest portion of the perimeter fence or wall of an area enclosed by an electrified fence must be constructed so that no space exists between the ground and fence or wall.
- f. Electrified fence sign - At least one warning sign must be placed on each side the electrified security fence, no higher than four feet from the ground. There can be no less than 25 feet between signs. At least one sign must be placed on any vehicle or pedestrian access gate. The signs must be not larger than one square foot in size with lettering a minimum of one inch high. Signs must be black, or black and red, on a white or yellow background; and must state "Danger - Electric Fence Inside" or "Warning - Electric Fence Inside" in English and Spanish and contain the an illustration indicating the potential for electric shock.
- g. Disconnect box - An disconnect switch within a "key box" (Knox Box) must be installed at a location or locations acceptable to the fire department that will disconnect the electrified fence completely from all energizers in an emergency by police, fire, or other emergency personnel. The location of this switch must be clearly marked and easily observable and accessible from a primary path of entry. The type of key box, type of key, installation, and maintenance must be as determined and approved by the fire department.
- h. The owner of the electric fence and/or the owner of the property where the fence is located must provide the city with a hold harmless/indemnification agreement in a form satisfactory to the city attorney prior to the installation of the electrified fence.
- i. The city, or a third party designated by the city, may conduct inspections with notice and may enter the premises for such purpose with permission.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, §§ 21, 22, 11-11-97; Ord. No. 2462, §§ 1(c), 2, 4-14-98; Ord. No. 2490, § 1, 6-9-98; Ord. No. 2506, § 1, 8-11-98; Ord. No. 2527, § 1, 11-10-98; Ord. No. 2539, §§ 2—4, 1-26-99; Ord. No. 2535, §§ 6—9, 1-12-99; Ord. No. 2619, § 1(g), 9-28-99; Ord. No. 2622, §§ 1(b), (c), 10-12-99; Ord. No. 2634, §§ 1(a), (b), (g), (h), 11-9-99; Ord. No. 2650, § 1, 1-11-00; Ord. No. 2651, § 1, 1-11-00; Ord. No. 2663, § 1(h)—(j), 2-8-00; Ord. No. 2723, § 1, 6-27-00; Ord. No. 2851, §§ 1(b), 1(c), 9-25-01; Ord. No. 2903, § 1, 3-12-02; Ord. No. 2973, § 1(d), (e), 11-12-02; Ord. No. 3018, 4-22-2003; Ord. No. 3022, 5-13-2003; Ord. No. 3028, § 1(g) and (h), 5-27-2003; Ord. No. 3052, §§ 1(c) and (d), 8-26-03; Ord. No. 3083, §§ 1(b) and (c), 1-13-04; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(11), 8-24-04; Ord. No. 3187, § 1, 1-23-04; Ord. No. 3327, § 1(b), (c), 1-24-06; Ord. No. 3335, § 1(b), 2-28-06; Ord. No. 3337, § 1(b), 2-28-06; Ord. No. 3362, §§ 1(c), (d), 5-23-06; Ord. No. 3394, §§ 1(b)—(g), 9-26-06; Ord. No. 3412, §§ 1(d), (e), 12-12-06; Ord. No. 3479, §§ 1(c)—(e), 5-22-07; Ord. No. 3480, § 1(f), 6-12-07; Ord. No. 3489, §§ 1(c), (d), 6-19-07; Ord. No. 3572, §§ 1(p), (q), 1-8-08; Ord. No. 3579, §§ 1(c), (d), 1-22-08; Ord. No. 3685, § 1e—j, 1-13-09; Ord. No. 3700, § 1n, 2-10-09; Ord. No. 3713, § 1, 3-10-09; Ord. No. 3743, §§ 1b—d, 6-9-09; Ord. No. 3744, § 1, 6-9-09; Ord. No. 3757, § 1h, 7-14-09; Ord. No. 3792, §§ 1d, e, 9-22-09; Ord. No. 3793, §§ 1a—c, 9-22-09; Ord. No. 3794, §§ 1e, f, 9-22-09; Ord. No. 3856, §§ 1d, e, 5-25-10; Ord. No. 3874, §§ 1q—cc, 6-8-10; Ord. No. 3897, §§ 1(c)—(e), 9-14-10; Ord. No. 3908, §§ 1c, d, 10-26-10; Ord. No. 3959, § 1q, 4-12-11; Ord. No. 4007, § 1d, 9-13-11; Ord. No. 4017, § 1, 9-13-11; Ord. No. 4151, §§ 1a, b, 1-8-13; Ord. No. 4152, §§ 1c—h, 1-8-13; Ord. No. 4207, §§ 1a—c, 6-25-13; Ord. No. 4233, §§ 1d—f, 9-24-13; Ord. No. 4280, § 1, 2-11-14)

Sec. 7-16-2. - Conditional uses.

- (a) *Purpose.* Conditional uses are uses which are generally compatible with other land uses permitted in a zoning district but which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may also call for the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare.

All conditional uses shall, at a minimum, meet the conditions set forth in this chapter. Any use identified as a conditional use in a zoning district shall not be permitted without the approval of city council.

The approval procedure for conditional uses is set forth in [section 7-5-5](#) of this chapter.

(b) *Conditional uses listed (by zoning district)*

- (1) Historic landmark conditional use.
- (2) Level III site plan review projects.
- (3) Telecommunications towers.
- (4) Telecommunication tower/support structure, concealed.
- (5) Dwellings, duplexes.
- (6) Dwellings, triplexes.
- (7) Dwellings, quadraplexes.
- (8) Adult establishments.
- (9) Those uses listed as uses by right subject to special requirements in the Montford Transition Overlay District that exceed a gross floor area of 5,000 square feet.
- (10) Single tenant and/or multi-tenant retail structures over 100,000 square feet.
- (11) Ancillary non-residential uses in residential districts.
- (12) Detention centers, jails, and related correctional facilities.
- (13) Government buildings and uses.
- (14) Motor vehicle and boat sales, new and used.
- (15) Drive through facilities.
- (16) Group homes.
- (17) Electrified security fences.

- (c) *Conditional use standards.* The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case:
- (1) That the proposed use or development of the land will not materially endanger the public health or safety;
 - (2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;
 - (3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
 - (4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
 - (5) That the proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the city;
 - (6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
 - (7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.
- (d) *Additional conditional use standards.*
- (1) *Historic landmark conditional use.*
 - a. Use districts: All districts.
 - b. Property must be designated by the city council as a historic landmark.
 - c. Property owner must show that the current permitted uses or restricted uses of the property in the zoning district in which it is located are such that the property cannot be preserved and the granting of a conditional use permit enables its preservation.
 - d. Uses which may be permitted shall be limited to uses that are not inconsistent with the design and/or uses for which the structure(s) on the property had been designed or used during the life of the structure(s).
 - e. Prior to consideration of the request for the conditional use permit by the city council, the historic resources commission of the Asheville and Buncombe County shall submit to city council a written recommendation relative to the appropriateness of the applications being considered.
 - (2) *Level III site plan review projects.*
 - a. Use districts: All districts.
 - b. Projects shall comply with all standards established for the district in which they are proposed except as modified by the Asheville City Council in accordance with subsections 7-5-5(h) and 7-5-9(a)(8).
 - c. Projects shall be reviewed under the procedures established in section 7-5-9 of this chapter in addition to review under the procedures established by section 7-5-5 of this chapter.
 - (3) *Telecommunication towers.*
 - a. Use districts: Office/Business, Community Business II, Resort, Institutional, Highway Business, Regional Business Commercial Industrial, River, Industrial, Light Industrial. In addition, where the city council determines that a concealed telecommunication support structure is not feasible or not an available alternative, a telecommunication tower shall be allowed as a conditional use in residential districts at schools, fire stations, publicly-owned housing complexes, recreation centers, community centers; provided: (i) said use is not otherwise non-conforming, (ii) the property is not subdivided for the purpose of accommodating a telecommunication tower and, (iii) the application meets the standards set forth in subsections 7-16-2(c) and (d) of this chapter.
 - b. The applicant for a conditional use permit for a telecommunication tower shall bear the burden of demonstrating by substantial evidence in a written record that a bona fide need exists for the proposed telecommunication tower and that no reasonable combination of locations, techniques or technologies will obviate the need for, or mitigate the height or visual impact of, the proposed telecommunication tower.
 - c. Application fees for a conditional use for a telecommunication tower shall be in accordance with the City of Asheville's Fees and Charges Manual.
 - d. The city may elect to retain outside consultants or professional services to review a conditional use application for a telecommunication tower and to make recommendations on relevant issues including, but not limited to, verification of the applicant's due diligence, analysis of alternatives, conditions of approval, and compliance with state and federal rules and regulations at the applicant's expense. An application shall not be deemed complete until the applicant has posted a \$5,000.00 cash bond, or other security satisfactory to the city, guaranteeing payment of such expenses. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
 - e. In addition to the notice requirements of section 7-5-20 of this chapter, the applicant for a conditional use permit for a telecommunication tower shall be required to notify by regular mail all property owners within a one-quarter mile (1,320 feet) radius of the proposed location of any public hearing on the application at least ten days prior to the hearing. The planning and development director may require the applicant to conduct a crane or balloon test to simulate the height of the proposed tower. Notice of the dates and times of such tests shall be mailed by the applicant to all property owners within a one-quarter mile (1,320 feet) radius of the proposed location at least ten days prior to the primary test date. The notice shall state primary and alternate test dates, as well as a range of dates for testing in the event of extended periods of inclement weather. The planning and development director shall review and approve the sufficiency of the notice prior to mailing and, as part of its application, the applicant will be required to submit a certificate of mailing and attach a copy of the notice and a list of the addresses to which it was sent. In the event the applicant shall seek to increase the height of a proposed tower, or move its location more than 50 feet laterally, from that stated in the original notices, additional notice shall be required to be given in accordance with the above provisions and all time periods shall run from the date of supplemental notification.
 - f. Applicants for telecommunication towers shall first be encouraged to consider properties owned by the city or Buncombe County, or instrumentalities thereof, before considering private properties. Public properties shall be subject to the same restrictions and standards of appropriateness as private properties. All such public agencies or instrumentalities shall retain discretion as to whether to make a specific property available for wireless telecommunication facilities and to make determinations with respect to site capacity, aesthetics, or suitability of such facilities.
 - g. Telecommunication towers proposed on properties under the ownership or control of the North Carolina Department of Transportation shall simulate typical highway lighting towers in height and appearance and shall be clustered amongst or near such towers so as to be unobtrusive. If due to topography, existing vegetative canopy, or other local conditions, the city council determines that a tower disguised as a coniferous tree is a preferable aesthetic alternative to a simulated lighting tower, it may require such camouflage treatment as a condition of approval. If any portion of a telecommunication tower located on such properties is used to mount cameras, instruments, sensors or antennas for governmental use, and the same structure supports or incorporates commercial wireless telecommunication facilities, the governmental use shall be deemed incidental or accessory to the commercial use and the entire facility shall be treated as a commercial use for purposes of this section.

- h. It is the policy of the city to encourage co-location and the use of existing structures where appropriate. In furtherance of that policy objective, the following provisions shall apply to an application for a conditional use permit for a telecommunication tower:
1. A conditional use for a telecommunication tower shall not be approved unless the tower is designed structurally, electrically, mechanically and in all respects to accommodate at least two additional users. An application shall not be deemed complete until the applicant submits:
 - a. A letter of intent agreeing to make all of its wireless telecommunication facilities (including existing facilities) within the city available to providers of functionally equivalent services at commercially reasonable rates.
 - b. A copy of an executed lease for the proposed tower site that allows co-location or leasing or subleasing to other providers of functionally equivalent services.
 2. Applicants are encouraged to meet co-location requirements by using dual-band/multi-band antennas to allow sharing of antennas or antenna arrays by wireless providers using different frequency bands or by using combiners to allow antenna sharing by users of the same frequency band.
 3. A conditional use application for a telecommunication tower shall not be approved if an electric transmission tower is located above, or no less than 25 feet below, the ground elevation of and within the search radius of a proposed telecommunication tower, unless the applicant can demonstrate one or more of the following:
 - a. That sufficient easements or other interests in real property cannot be obtained to accommodate the wireless telecommunication facility;
 - b. That the electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities;
 - c. That the applicant is unable to gain sufficient ingress and egress to the electric transmission tower;
 - d. That the existing use of the electric transmission tower would interfere with the operations of the applicant as documented by a qualified and licensed North Carolina engineer, and the interference cannot be prevented;
 - e. That the planned equipment would exceed the structural capacity of the electric transmission tower as documented by a qualified and licensed North Carolina professional engineer, and the electric transmission tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.

Electric transmission towers may be increased in height to that allowed for telecommunication towers in the district in which the electric transmission tower is located if the city council determines such height extension is preferable to placement of a new telecommunication tower in that area.
 4. A conditional use application for a telecommunication tower shall not be approved unless the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings or alternative structures more than 30 feet in height (after first considering electric transmission towers) within a one-quarter mile (1,320 foot) radius of the proposed telecommunication tower due to one or more of the following reasons:
 - a. The planned equipment would exceed the structural capacity of the existing or approved tower, building or alternative structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - b. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment on the towers, buildings or alternative structures, as documented by a qualified and licensed North Carolina engineer, and the interference cannot be prevented at a reasonable cost.
 - c. Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer.
 - d. Other unforeseen reasons that make it infeasible to locate the planned telecommunication equipment upon existing or approved towers, buildings or alternative structures.
 5. Antennas associated with a wireless telecommunication facility may not be co-located on a tower or other support structure used by an amateur radio operator.
- i. No wireless telecommunication facility shall interfere with usual and customary radio and television reception excepting broadcast facilities as provided for in the regulations of the FCC.
- j. All telecommunication towers must comply with FCC and FAA regulations.
- k. A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each such wireless service provider's FCC license. If FCC licenses have previously been filed with the city in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.
- l. As part of its application, each applicant for a telecommunication tower shall be required to execute a standard maintenance/removal agreement binding the applicant and its successors and assigns to maintain properly the exterior appearance of and ultimately remove the facility within 180 days of the abandonment or cessation of operations of the facility. Such agreement shall require the applicant to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City of Asheville for all costs it incurs to perform any work required of the applicant by the agreement that it fails to perform. A \$5,000.00 cash bond, or other security acceptable to the City of Asheville, shall be required in conjunction with the maintenance/removal agreement. The applicant and its successors and assigns shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of the maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
- m. Abandoned or unused wireless telecommunication facilities shall be removed within 180 days of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days written notice of its intention to do so to the permittee at its last known address.
- n. All telecommunication towers shall comply with FAA lighting requirements. In addition, in a specific instance, the city may impose lighting requirements for a tower that is not required by FAA regulations to be lit.
- o. Except as otherwise provided herein, minimum setbacks for telecommunication towers shall be in accordance with the setback requirements set forth in the development standards for the district in which the location of the tower is proposed. In addition, for all properties other than city-owned properties, telecommunication towers must be setback from any residentially zoned or residentially used properties a distance equivalent to the full height of the tower being erected. The city council may reduce the setback requirement upon a showing by the applicant that there are special physical circumstances or conditions affecting the proposed site such that the strict application of the setback requirement would not allow the most effective use of the proposed site to minimize the visual impact of the wireless telecommunication facility.

- o.1. In residential districts, a minimum lot size of five acres is required for all properties other than city-owned properties. This requirement may be reduced by the city council if other site features are found to mitigate the impact of the tower but, under no circumstances shall the lot size be reduced to less than three acres.
- p. Telecommunication towers shall be buffered from adjacent properties with a buffer which, at a minimum, meets the requirements of an "A" buffer as described in [section 7-11-3](#) of this chapter, regardless of adjacent zoning district classifications or uses.
- q. No telecommunication tower shall be located:
 1. On top of buildings;
 2. In local historic districts, on the property on which a local historic landmark is located, or within 1,000 feet of any local historic district or local historic landmark.
 3. In areas determined by the city council to be "view areas" (formerly "viewsheds of superior quality"), taking into consideration the definitions by the United States Department of Interior, Blue Ridge Parkway Office. A map indicating the location of the "view areas" which has been reviewed and adopted by the city council shall be kept on file in the planning and development department of the city.
 4. On a restricted mountain ridge.
- r. In cases where an applicant is required to perform an environmental assessment (EA) or an environmental impact statement (EIS) under the National Environmental Policy Act or the National Historic Preservation Act, such EA or EIS shall be submitted as part of its application for a conditional use permit. An application for a conditional use permit will not be deemed complete until any required EA or EIS has been submitted to the city.
- s. Telecommunication towers shall not be constructed unless the company erecting the tower has general liability coverage of at least \$1,000,000.00. The owner of a telecommunication tower shall provide the city with a certificate of insurance showing evidence of its coverage and the certificate shall contain a requirement that the insurance company notify the city 30 days prior to the cancellation, modification or failure to renew the insurance coverage required.
- t. Telecommunication towers shall be designed to meet the following standards:
 1. Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment. The city council may condition approval on the use of specific concealment techniques where it determines that doing so is necessary or desirable.
 2. Guyed towers are prohibited. Commercial wireless telecommunication towers shall be of a monopole design unless the city council determines that an alternative design would better blend in to the surrounding environment.
 3. Use of dual-polarized antennas which electronically combine the functions of transmit and receive antennas (rather than spatial diversity antenna arrays which rely on antennas being physically separated), dual-band/multi-band antennas (allowing two or more providers of different types of commercial wireless services to share a common antenna), and use of combiners (allowing antenna sharing by providers using the same frequency band) are encouraged.
 4. Antennas shall be mounted on telecommunication towers so as to present the smallest possible silhouette, profile, or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:
 - a. Compact dual-polarized antennas in a cylindrical unicast arrangement extending no more than two feet from the sides of the supporting structure and mounted atop the tower;
 - b. Panel antennas flush-mounted against the tower;
 - c. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
 5. No telecommunication tower shall have constructed thereon, or attached thereto in any way, any platform, catwalk, crow's nest, triangular framework, or like structures or equipment, except during periods of construction or repair. Curved or straight davit arms or brackets used for antenna mounting shall be connected to the tower at the base of the arms or brackets only and such arms or brackets (and any antennas or hardware mounted thereon) shall not be physically interconnected with any similar arm or bracket.
 6. All equipment enclosures and other improvements accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed 12 feet in height. Ground mounted equipment shall be screened from view with a minimum "B" buffer as described in [section 7-11-3](#) of this chapter, except where a design of nonvegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
 7. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
 8. Telecommunication towers, equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight feet in height. The fence may be topped with barbed wire. The city council may require as a condition of approval that the fencing be screened by appropriate landscaping or other means. The city council may waive or modify the fencing requirement if it determines that doing so will enhance the overall appearance of the facility without any compromise in safety or security.
 9. Telecommunication towers shall have a flat gray or galvanized finish unless the city council determines another color scheme would be a preferable aesthetic alternative.
 10. No two telecommunication towers shall be constructed within 1,320 feet of each other unless documentation is provided to the planning and development department to show that co-location on towers within the 1,320 feet is not technically feasible.
 11. No telecommunication tower shall be permitted which exceeds 100 feet in height.
 12. Signage at any telecommunication tower site shall conform to the following provisions:
 - a. A sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing.
 - b. Equipment hazard warning and informational signs are permitted.
 - c. The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any telecommunication tower.
 13. The city council may require any other conditions deemed necessary or desirable to ameliorate the impact of the tower on the adjacent properties and uses. Such conditions shall include, but are not limited to: the height of the tower; the construction or type of tower; lighting; and co-location of the antennas and facilities of different parties on a single tower.
- u. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city. Before a permit shall be issued or renewed an applicant or permittee must certify that:
 1. It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
 2. The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.

3. That the facility continues to comply with all FCC and FAA rules and regulations and all conditions of its conditional use permit.
4. That the permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
5. That it is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
6. That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the city without the city's approval or, if it has done so, that it has ceased operating and has removed all such facilities.

Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of this Code. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' advance written notice to the permittee at its last known address of the pending expiration of the permittee's annual wireless telecommunication facility permit. Fees for annual wireless telecommunication facility permits shall be in accordance with the City of Asheville Fees and Charges Manual.

- v. Conditional use permits for telecommunication towers shall be valid for an initial period of five years. Upon application by the permittee within 60 days prior to the expiration of the initial permit period, a review shall be conducted to determine whether and under what conditions the conditional use may be extended for successive five-year periods. Costs associated with the review process shall be borne by the permittee. Fees for five-year permit renewal shall be in accordance with the City of Asheville Fees and Charges Manual. Grounds for nonrenewal or revocation include:
 1. The use involved is no longer allowed as a conditional use in the zoning district or fails to comply with the relevant requirements of this chapter as adopted on January 12, 1999, or any subsequently enacted land use regulations in effect at the time of renewal and the permittee has failed to supply reasonable assurances that the facility will be brought into compliance within 180 days of the initial permit's expiration;
 2. The permittee has failed to comply with the conditions of any conditional use approval;
 3. The facility has not been properly maintained;
 4. The facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology exists at the time of renewal; or
 5. The permittee has failed to operate the facility for a continuous period of 180 days or more.

If a conditional use is not renewed prior to its expiration, it shall automatically become null and void without notice and hearing five years after it is issued or upon cessation of use for more than 180 days, whichever comes first. Within 180 days after expiration or revocation of a conditional use approval for a telecommunication tower, or the abandonment or cessation of operation of the wireless facility, the tower and facility shall be removed from the property. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' written notice of its intent to do so to the permittee at its last known address.

- w. A conditional use approval for a telecommunication tower shall become null and void if the facility is not constructed and placed in service within one year of the date of approval provided, however, that the conditional use approval may be extended one time for six months if substantial construction has commenced before the end of the initial year.

(4) *Concealed telecommunication support structures.*

- a. Use districts: All zoning districts except the Central Business District. In residential districts, concealed telecommunication support structures may only be permitted as a conditional use at schools, places of worship, fire stations, publicly-owned housing complexes, recreation centers, community centers, or other properties not used for residential purposes; provided that the existing or current use is not otherwise non-conforming, and that the property is not subdivided for the purpose or accommodating a telecommunications tower.
- b. Concealed telecommunication support structures are a narrowly limited alternative means for providing wireless service to parts of the community, such as residential areas, where conventional telecommunication towers would be aesthetically unacceptable. In order to encourage design creativity and to assure that such structures are in harmony with their setting, the city council shall not approve the conditional use application for a concealed telecommunication structure unless it finds that:
 1. The structure is a work of public art that enhances and is compatible with its surroundings; or
 2. On developed parcels, that the structure appears integral to or complements the design of any building or complex of buildings located on the same parcel and is not readily discernible or distinguishable as a telecommunication structure; and
 3. That the overall location, design, and configuration is appropriate to the particular proposed location.
- c. The applicant for a conditional use permit for a concealed telecommunication support structure shall bear the burden of demonstrating by substantial evidence in a written record that a bona fide need exists for the proposed structure and that no reasonable combination of locations, techniques or technologies will obviate the need for, or mitigate the height or visual impact of, the proposed structure.
- d. Application fees for a conditional use for a concealed telecommunication support structure shall be in accordance with the City of Asheville's Fees and Charges Manual.
- e. The city may elect to retain outside consultants or professional services to review a conditional use application for a concealed telecommunication support structure and to make recommendations on relevant issues including, but not limited to, verification of the applicant's due diligence, analysis of alternatives, conditions of approval, and compliance with state and federal rules and regulations at the applicant's expense. An application shall not be deemed complete until the applicant has posted a \$5,000.00 cash bond, or other security satisfactory to the city, guaranteeing payment of such expenses. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
- f. In addition to the notice requirements of [section 7-5-20](#) of this chapter, the applicant for a conditional use for a concealed telecommunication support structure shall be required to notify by regular mail all property owners within a one-quarter mile (1,320 feet) radius of the proposed location of any public hearing on the application at least ten days prior to the hearing. The planning and development director may require the applicant to conduct a crane or balloon test to simulate the height of the proposed structure. Notice of the dates and times of such tests shall be sent by the applicant by regular mail to all property owners within a one-quarter mile (1,320 feet) radius of the proposed location at least ten days prior to the primary test date. The notice shall state primary and alternate test dates, as well as a range of dates for testing in the event of extended periods of inclement weather. The planning and development director shall review and approve the sufficiency of the notice prior to mailing and, as part of its application, the applicant will be required to submit a certificate of mailing and attach a copy of the notice

- and a list of the addresses to which it was sent. In the event the applicant shall seek to increase the height of a proposed structure, or move its location more than 50 feet laterally, from that stated in the original notices, additional notice shall be required to be given in accordance with the above provisions and all time periods shall run from the date of supplemental notification.
- g. Applicants for a conditional use for a concealed telecommunication support structure shall first be encouraged to consider properties owned by the city or Buncombe County, or instrumentalities thereof, before considering private properties. Public properties shall be subject to the same restrictions and standards of appropriateness as private properties. All such public agencies or instrumentalities shall retain discretion as to whether to make a specific property available for wireless telecommunication facilities and to make determinations with respect to site capacity, aesthetics, or suitability of such facilities.
 - h. It is the policy of the city to encourage co-location and the use of existing structures where appropriate. In furtherance of that policy objective, the following provisions shall apply to an application for a conditional use permit for a concealed telecommunication support structure:
 - 1. A conditional use for a concealed telecommunication support structure shall not be approved unless the tower is designed structurally, electrically, mechanically and in all respects to accommodate at least one additional user. An application shall not be deemed complete until the applicant submits:
 - a. A letter of intent agreeing to make all of its wireless telecommunication facilities (including existing facilities) within the city available to providers of functionally equivalent services at commercially reasonable rates.
 - b. A copy of an executed lease for the proposed tower site that allows co-location or leasing or subleasing to other providers of functionally equivalent services.
 - 2. Applicants are encouraged to meet co-location requirements by using dual-band/multi-band antennas to allow sharing of antennas or antenna arrays by wireless providers using different frequency bands or by using combiners to allow antenna sharing by users of the same frequency band.
 - i. A conditional use application for a concealed telecommunication support structure shall not be approved if an electric transmission tower is located above, or no less than 25 feet below, the ground elevation of and within a one-quarter mile (1,320 feet) radius laterally of a proposed structure, unless the applicant can demonstrate that sufficient easements or other interests in real property cannot be obtained to accommodate the wireless telecommunication facility, or that the electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities. Such electric transmission towers may be increased in height to that allowed for concealed telecommunication support structures in the district in which the transmission tower is located (other than in residential districts) if the city council determines such height extension is preferable to placement of a new concealed telecommunication support structure.
 - j. A conditional use application for a concealed telecommunication support structure shall not be approved unless the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings or alternative structures more than 30 feet in height (after first considering electric transmission towers) within a one-quarter mile (1,320 foot) radius of the proposed structure due to one or more of the following reasons:
 - 1. The planned equipment would exceed the structural capacity of the existing or approved tower, building or alternative structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - 2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment on the towers, buildings or alternative structures, as documented by a qualified and licensed North Carolina engineer, and the interference cannot be prevented at a reasonable cost.
 - 3. Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer.
 - 4. Other unforeseen reasons that make it infeasible to locate the planned telecommunication equipment upon existing or approved towers, buildings or alternative structures.
 - k. Antennas associated with a wireless telecommunication facility may not be co-located on a tower or other support structure used by an amateur radio operator.
 - l. Before approving a concealed telecommunication support structure, the city council may consider the desirability of relocating wireless facilities located on other structures to the proposed new structure in order to facilitate reductions in visual impacts or the decommissioning of other structures.
 - m. No wireless telecommunication facility shall interfere with usual and customary radio and television reception excepting broadcast facilities as provided for in the regulations of the FCC.
 - n. All telecommunication towers must comply with FCC and FAA regulations.
 - o. A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each such wireless service provider's FCC license. If FCC licenses have previously been filed with the city in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.
 - p. As part of its application, each applicant for a concealed telecommunication support structure shall be required to execute a standard maintenance/removal agreement binding the applicant and its successors and assigns to maintain properly the exterior appearance of and ultimately remove the facility within 180 days of the abandonment or cessation of operations of the facility. Such agreement shall require the applicant to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City of Asheville for all costs it incurs to perform any work required of the applicant by the agreement that it fails to perform. A \$5,000.00 cash bond, or other security acceptable to the City of Asheville, shall be required in conjunction with the maintenance/removal agreement. The applicant and its successors and assigns shall be required to continue such bond or other security unit until such time as the facility has been removed and all other requirements of the maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
 - q. Abandoned or unused wireless telecommunication facilities shall be removed within 180 days of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' written notice of its intent to do so to the permittee at its last known address.
 - r. Concealed telecommunication support structures shall not have aircraft obstruction lighting unless, in a particular instance, the city council may require such lighting. The exterior of the structure may be illuminated if such lighting is approved by the city council as part of the concealed structure's overall design.
 - s. Except as otherwise provided herein, minimum setbacks for concealed telecommunication support structures shall be in accordance with the setback requirements set forth in the development standards for the district in which the location of the tower is proposed. In addition, telecommunication towers must be set back from any residentially zoned or residentially used properties a distance equivalent to one-half the height of the tower being erected. The city council may reduce the setback requirement upon a showing by the applicant that there are special physical circumstances or conditions affecting the proposed site such that the strict application of the setback requirement would not allow the most effective use of the proposed site to minimize the visual impact of the wireless telecommunication facility.

- t. Concealed telecommunication support structures shall be buffered from adjacent properties with a row of evergreen trees and/or shrubs planted in a landscape strip with a minimum width of five feet, except where a design of nonvegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
- u. No concealed telecommunication support structure shall be located:
 1. In local historic districts, on the property on which a local historic landmark is located, or within 1,000 feet of any local historic district unless the historic resources commission shall issue a certificate of appropriateness indicating its approval of the proposed structure;
 2. In areas determined by the city council to be "view areas" (formerly "viewsheds of superior quality"), taking into consideration the definitions by the United States Department of Interior, Blue Ridge Parkway Office, unless the applicant demonstrates that the structure will not result in derogation of resources, values or purposes for which the Blue Ridge Parkway was established. A map indicating the location of the "view areas" which has been reviewed and adopted by the city council shall be kept on file in the planning and development department of the city.
 3. On a restricted mountain ridge.
- v. In cases where an applicant is required to perform an environmental assessment (EA) or an environmental impact statement (EIS) under the National Environmental Policy Act or the National Historic Preservation Act, such EA or EIS shall be submitted as part of its application for a conditional use permit. An application for a conditional use permit will not be deemed complete until any required EA or EIS has been submitted to the city.
- w. Concealed telecommunication support structures shall not be constructed unless the company erecting the structure has general liability coverage of at least \$1,000,000.00. The owner of such a structure shall provide the city with a certificate of insurance showing evidence of its coverage and the certificate shall contain a requirement that the insurance company notify the city 30 days prior to the cancellation, modification or failure to renew the insurance coverage required.
- x. Concealed telecommunication support structures shall be designed to meet the following standards:
 1. Structures and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment. The city council may specify a particular concealment technique or architectural treatment as a condition of approval.
 2. All antennas shall be mounted behind an RF-transparent facade and shall be arranged so as to make efficient use of space inside the support structure in order to maximize co-location opportunities. Use of dual-polarized antennas which electronically combine the functions of transmit and receive antennas (rather than spatial diversity antenna arrays which rely on antennas being physically separated), dual-band/multi-band antennas (allowing two or more providers of different types of commercial wireless services to share a common antenna), and use of combiners (allowing antenna sharing by providers using the same frequency band) are encouraged in order to make efficient use of space within a concealed structure.
 3. All equipment enclosures and other improvements accessory to a concealed telecommunication support structure shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed 12 feet in height. Ground mounted equipment shall be screened from view with a minimum "B" buffer as described in subsection 7-11-3(d)(15) of this chapter, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood and land uses.
 4. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
 5. Equipment enclosures and other improvements associated with a concealed telecommunication support structure shall be enclosed within a security fence consisting of chain link fencing at least eight feet in height. The fence may be topped with barbed wire. The city council may require as a condition of approval that the fencing be screened by appropriate landscaping or other means. The city council may waive or modify the fencing requirement if it determines that doing so will enhance the overall appearance of the facility without any compromise in safety or security.
 6. The height of any concealed telecommunication support structure shall be limited to the minimum height necessary to achieve effective signal propagation above the surrounding vegetative canopy, and to maintain an appropriate sense of scale with the surrounding buildings, land uses and landscape. No concealed telecommunication support structure shall be permitted which exceeds 100 feet in height.
 7. Signage at any concealed telecommunication support structure site shall conform to the following provisions:
 - a. A sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing or entrance.
 - b. Equipment hazard warning and informational signs are permitted.
 - c. The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any concealed telecommunication support structure provided, however, that the city council may approve signage on the exterior of a concealed telecommunication support structure identifying the property on which the facility is located if such signage is integral to the overall concealment scheme.
 8. The city council may require any other conditions deemed necessary or desirable to ameliorate the impact of the support structure on adjacent properties and uses. Such conditions shall include, but are not limited to: the height of the structure; the design, construction or type of structure; lighting; and co-location of the antennas and facilities of different parties on a single structure.
- y. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city. Before a permit shall be issued or renewed an applicant or permittee must certify that:
 1. It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
 2. The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.
 3. That the facility continues to comply with all FCC and FAA rules and regulations and all conditions of its conditional use permit.
 4. That the permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
 5. That it is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
 6. That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the city without the city's approval or, if it has done so, that it has ceased operating and has removed all such facilities.

Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of this Code. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' advance written notice of its intent to the permittee at its last known address of the

pending expiration of the permittee's annual wireless telecommunication facility permit. Fees for annual wireless telecommunication facility permits shall be in accordance with the City of Asheville Fees and Charges Manual.

- z. Conditional use permits for concealed telecommunication support structures shall be valid for an initial period of five years. Upon application by the permittee within 60 days prior to the expiration of the initial permit period, a review shall be conducted to determine whether and under what conditions the conditional use may be extended for successive five-year periods. Costs associated with the review process shall be borne by the permittee. Fees for five-year permit renewals shall be in accordance with the City of Asheville Fees and Charges Manual. Grounds for nonrenewal or revocation include:
1. The use involved is no longer allowed as a conditional use in the zoning district or fails to comply with the relevant requirements of this chapter as adopted on January 12, 1999, or any subsequently enacted land use regulations in effect at the time of renewal and the permittee has failed to supply reasonable assurances that the facility will be brought into compliance within 180 days of the initial permit's expiration;
 2. The permittee has failed to comply with the conditions of any conditional use approval;
 3. The facility has not been properly maintained;
 4. The facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology existing at the time of renewal; or
 5. The permittee has failed to operate the facility for a continuous period of 180 days or more.

If a conditional use is not renewed prior to its expiration, it shall automatically become null and void without notice and hearing five years after it is issued or upon cessation of use for more than 180 days, whichever comes first. Within 180 days after expiration or revocation of a conditional use approval for a concealed telecommunication support structure, or the abandonment or cessation of operation of the wireless facility, the structure and facility shall be removed from the property. Prior to removing a wireless telecommunication facility pursuant to this provision, the city shall give 30 days' written notice of its intention to do so to the permittee at its last known address.

- aa. A conditional use approval for a concealed telecommunication support structure shall become null and void if the facility is not constructed and placed in service within one year of the date of approval provided, however, that the conditional use approval may be extended one time for six months if substantial construction has commenced before the end of the initial year.

(5) *Dwellings, duplexes.*

- a. Use districts: RS-2, RS-4, RS-8.
- b. Duplexes shall be located a minimum of 300 feet from all other multi-family uses (excluding dwellings with accessory apartments) on the same street in the single-family district.
- c. Minimum lot area shall be 125 percent of that required for a single residential unit in the respective district.
- d. Parking shall be located in the rear and shall be screened with vegetation from adjacent single-family uses as set forth in subsection 7-11-3(d)(4)k. Parking shall be located in the rear and shall be screened with vegetation from adjacent single-family uses. The vegetative screening shall consist of the planting required for a Type A buffer or its equivalent as determined through the alternative landscape compliance process. On-street parking or parking in the front or side of the lot may be approved by the city council provided that any off-street parking area can be adequately screened from adjacent residential uses and:
 - The topography of the site makes it difficult to access the rear of the property; or
 - The property on the opposite side of the street is developed with non-residential uses; or
 - The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed are served primarily by on-street parking in which case the use may be likewise served by such parking; or
 - The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed have parking located in the front or side; no more than three parking spaces shall be provided in front using this option.
- e. The structure shall have a single front entrance and other entrances as required.
- f. Requirements of the N.C. State Building Code shall be met.

(6) *Dwellings, triplexes.*

- a. Use districts: RS-2, RS-4, RS-8.
- b. Triplexes shall be located a minimum of 300 feet from all other multi-family uses (excluding dwellings with accessory apartments) on the same street in the single-family district.
- c. Minimum lot area shall be 150 percent of that required for a single residential unit in the respective district.
- d. Parking shall be located in the rear and shall be screened with vegetation from adjacent single-family uses as set forth in subsection 7-11-3(d)(4)k. The vegetative screening shall consist of the planting required for a Type A buffer or its equivalent as determined through the alternative landscape compliance process. On-street parking or parking in the front or side of the lot may be approved by the city council provided that any off-street parking area can be adequately screened from adjacent residential uses and:
 - The topography of the site makes it difficult to access the rear of the property; or
 - The property on the opposite side of the street is developed with non-residential uses; or
 - The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed are served primarily by on-street parking in which case the use may be likewise served by such parking; or
 - The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed have parking located in the front or side; no more than three parking spaces shall be provided in front using this option.
- e. The structure shall have a single front entrance and other entrances as required.
- f. Requirements of the N.C. State Building Code shall be met.

(7) *Dwellings, quadraplexes.*

- a. Use districts: RS-2, RS-4, RS-8
- b. Quadraplexes shall be located a minimum of 300 feet from all other multi-family uses (excluding dwellings with accessory apartments) on the same street in the single-family district.

- c. Minimum lot area shall be 200 percent of that required for a single residential unit in the RS-8 district.
- d. Parking shall be located in the rear and shall be screened with vegetation from adjacent single-family uses as set forth in subsection 7-11-3(d)(4)k. The vegetative screening shall consist of the planting required for a Type A buffer or its equivalent as determined through the alternative landscape compliance process. On-street parking or parking in the front or side of the lot may be approved by the city council provided that any off-street parking area can be adequately screened from adjacent residential uses and:
 - The topography of the site makes it difficult to access the rear of the property; or
 - The property on the opposite side of the street is developed with non-residential uses; or
 - The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed are served primarily by on-street parking in which case the use may be likewise served by such parking; or
 - The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed have parking located in the front or side; no more than three parking spaces shall be provided in front using this option.
- e. The structure shall have a single front entrance and other entrances as required.
- f. Requirements of the N.C. State Building Code shall be met.

(8) *Adult establishments.*

- a. Use districts: Regional Business, Commercial Industrial, Highway Business.
- b. The purpose of this section shall be to set forth the appropriate special requirements by which adult establishments may be established within the City of Asheville's zoning jurisdiction. Adult establishments, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when they are located near a residential zoning district or certain other districts which permit residential, educational, religious, or recreational uses. Studies have shown that lower property values and increased crime rates tend to accompany and are brought about by the concentration of adult establishments. The city council finds that regulation of these uses is necessary to ensure that these adverse effects do not contribute to the blighting of surrounding neighborhoods and to protect the integrity of the city's residential areas, schools, places of worship, libraries, child care centers, and public parks and playgrounds which are typical areas in which juveniles congregate.

To address the purposes set forth above, the following restrictions are established:

1. No lot containing an adult establishment shall be located within a 1,000 foot radius of any lot containing another adult establishment.
 2. No lot containing an adult establishment shall be located within a 1,000 foot radius of any residential zoning district. Provided, however, the establishment of a residential zone subsequent to the lawful commencement of an adult establishment will not render the adult establishment non-conforming.
 3. No lot containing an adult establishment shall be located within a 1,000 foot radius of any church, school, library, licensed child care center, public recreation center, or public park or playground. Provided, however, the establishment of any place of worship, school, library, licensed child care center, public recreation center, or public park or playground subsequent to the lawful commencement of an adult establishment will not render the adult establishment non-conforming.
 4. The required distance shall be measured from the closest edge of the property occupied by an adult establishment to the closest edge of the property occupied by a protected use, zone, or by another adult establishment. Provided, however, that an adult establishment is located in a multi-tenant facility, the distance shall be measured from the closest edge of the portion of the facility occupied by such establishment.
 5. Except for permitted business identification signage, no printed material, slide, video, photograph, written text, live show, or other visual presentation shall be visible, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.
 6. Any external lighting shall be arranged so as not to be directed toward any residential area.
- (9) Those uses listed as a use by right, subject to special requirements which exceed a total floor area of 5,000 square feet.
- a. Use district: Head of Montford Transition Overlay District.
- (10) *Single tenant and/or multi-tenant retail structures over 100,000 square feet.*
- a. Use districts: Highway Business, Regional Business, River, Commercial Industrial.
 - b. Retail structures in the Highway Business district may exceed the structure size limits set forth in subsection 7-8-16(f)(2) by up to 50 percent if they comply with the conditions set forth in subsection 7-16-2(c) and incorporate supplemental design standards for large retail structures to achieve a total of 150 points to be selected from a variety of design elements listed in Appendix 7-F. All retail structures which fail to achieve sufficient points shall not receive a positive recommendation from city staff for approval of the conditional use permit.
 - c. Retail structures in the Highway Business district not seeking a square footage bonus along with retail structures in all other zoning districts shall be evaluated by city staff for their ability to comply with the supplemental design standards set forth in Appendix 7-F.
- (11) Ancillary non-residential uses:
- a. Use districts: All residential districts including Urban Residential.
 - b. Ancillary non-residential uses shall be limited to landscaping, and stormwater detention and related facilities in support of the principal use.
 - c. Ancillary uses shall be located on lots adjacent to, or immediately across the street from the principal use.
 - d. The principal use must be located in a non-residential zoning district, and must be a permitted use in that district.
 - e. Ancillary uses under this section may not be located on lots that, within 18 months prior to the date of application, had more than one residential structure that was demolished, except pursuant to a determination by the city building inspector that said structures were dilapidated.
 - f. Ancillary uses under this section may not extend into the adjacent residential zone by more than one lot, and the maximum lot size shall be one acre unless city council determines that a larger lot size will be compatible with the residential character of the area.
 - g. Once a conditional use permit is granted for an ancillary non-residential use, no other conditional use permits for ancillary non-residential uses shall be granted for the same principal use.
 - h. Ancillary uses under this section must be buffered from adjacent residential property and meet all other landscaping requirements set forth in section 7-11-3 of this chapter.
 - i. All activities associated with non-residential uses conducted in the residential district, including deliveries and refuse collection, shall be conducted between the hours of 7:00 a.m. and 9:00 p.m. unless city council determines that other operating hours are appropriate.
 - j. Outdoor storage, storage containers, and display of goods shall be prohibited.

(12) *Detention centers, jails, and related correctional facilities*

- a. Use districts: Central Business District, Regional Business District, Commercial Industrial District.
- b. Design standards: The structure must comply with the downtown design review guidelines for new construction in the areas covered by the design review guidelines. Compliance with the design guidelines for structures located in this area shall be mandatory. The city council approving the conditional use permit shall assume authority for determining compliance with the downtown design review standards for these uses. In other locations, the structure must comply with the design standards set forth in the supplemental developmental standards for large retail structures. For the purpose of this condition, the structure shall be treated as a general retail structure.
- c. Fencing: No chain link, barbed wire, razor wire, or similar fence materials shall be used in areas that are visible from adjacent properties or from the public way unless specifically permitted by the city council approving the conditional use permit.
- d. Fenced areas: Fenced areas shall not abut any principal street unless specifically permitted by the city council approving the conditional use permit.
- e. Lighting: Lights in pedestrian areas and parking lots shall not exceed 16 feet in height. All lights other than those in public pedestrian areas, including security lights, shall be full cut-off type fixtures, and shall not produce direct glare or light trespass on adjacent properties.
- f. Signage: All signage must be reviewed and approved as part of the conditional use permit application. City council may attach conditions addressing the location, size, number, and illumination of signs based upon circumstances related to the location and impact of the sign(s).
- g. Operational standards: No outdoor speaker systems shall be permitted. Vehicle entering and/or leaving the facility shall not use sirens or emergency lights unless responding to an emergency.
- h. Loading/unloading: All loading and unloading areas shall be located internally on the site and screened from view from adjacent properties and public ways. All loading and unloading activities shall take place between the hours of 6:00 a.m. and 9:00 p.m., unless specifically waived by the city council approving the conditional use permit or in conflict with a judicial order. This condition includes prisoner pick up and drop off of more than two prisoners.
- i. Exercise yard exercise yards and other outdoor activity areas shall be located internally on the site and screened from view from adjacent properties and public ways.
- j. Vehicle storage: All vehicles associated with the use shall be stored in an enclosed or screened area. The vehicle storage area may be screened with vegetation, fences, a combination of fences and landscape material, or other means designed to effectively screen the stored vehicles from adjacent properties and the public way.

(13) *Government buildings and uses.*

- a. Use districts: Central Business District.
- b. The proposed location for the use or building will not unduly or unreasonably restrict the availability of key land for private development.
- c. No alternative location for the building or use exists within areas previously developed for government buildings and/or uses.
- d. If a new structure is proposed in the areas covered by the design review guidelines, the ability of the structure's design to comply with the downtown design review guidelines for new construction shall be a factor in the review of the request. New structures in these areas must substantially comply with the design guidelines as determined by the Asheville City Council.

(14) *Motor vehicle and boat sales, new and used.*

- a. Use district: Central Business
- b. Minimum lot size: 1 acre
- c. In order to maintain an urban streetscape, storage of automobiles outside an enclosed building shall be limited to not more than 25 percent of the total number of automobiles offered for sale, or, alternately, the outdoor storage of automobiles for sale shall be screened by buildings occupying at least 75 percent of the street frontage of the subject property.
- d. Automobiles needing repair shall be stored within an enclosed building or, alternately, screened from all public rights-of-way.
- e. Lighting shall comply with the standards of the City of Asheville.
- f. If a new structure is proposed in the areas covered by the design review guidelines, the ability of the structure's design to comply with the downtown design review guidelines for new construction shall be a factor in the review of the request. New structures in these areas must substantially comply with the design guidelines as determined by the Asheville City Council.

(15) *Drive through facilities and uses.*

- a. Use districts: Neighborhood Corridor.
- b. The purpose of this section is to ensure the pedestrian character and safety along the corridor are protected but allow drive through facilities at locations that will not detract from the rest of the district.
- c. Drive through facilities will generally operate with a single window and will be located to the side or rear of the structure. City Council may consider other proposals with more than a single window for locations that are appropriate for this use.
- d. Drive through facilities shall not be placed on the street side of a building on a corner lot but shall be located to the side or rear of the structure.
- e. Outdoor speakers and lighting must be designed and used in such a way to eliminate both noise and light trespass to neighboring properties.
- f. Hours of operation may also be limited by City Council to ensure compatibility with neighboring uses in the vicinity of the drive through.
- g. For new structures in the Neighborhood Corridor district, compliance with items in the Design and Operation Standards in article 12 of the Neighborhood Corridor District shall be a requirement of this conditional use review as determined by City Council.

(16) *Group homes.*

- a. Use districts: RS-8, RM-6, RM-8.
- b. Separation requirement: Group homes shall be spaced a minimum of 600 feet from all other group homes and family care homes as measured from the closest property line of each property containing a family care home or group home.
- c. Parking shall be located in the rear and shall be screened with vegetation from adjacent single-family uses as set forth in subsection 7-11-3(d)(4)k. The vegetative screening shall consist of the planting required for a Type A buffer or its equivalent as determined through the alternative landscape compliance process. Parking in the front or side of the lot may be approved by the planning and development director provided that the parking area can be adequately screened from adjacent residential uses and:
 - The topography of the site makes it difficult to access the rear of the property; or
 - The property on the opposite side of the street is developed with non-residential uses; or

- The majority of the residential properties on both sides of the street on the block on which the proposed use is to be constructed have parking located in the front or side; no more than two parking spaces shall be provided in front using this option for a group home located in an RS-8 zoning district.
- d. It is the intent of these standards to ensure that group home structures resemble other residential structures in the neighborhoods where they are to be located. Pursuant to this intent, a group home structure shall be architecturally compatible with residential structures in the area in which it is to be constructed. Architectural compatibility shall be determined based upon compliance with the following standards:
- The structure shall be oriented on the lot in a manner similar to the residential structures on both sides of the street on the block on which it is to be constructed.
 - In the RS-8 district, the structure shall have a single front entrance and any other entrances as required under various codes shall be located on the side(s) or rear of the structure. A corner side of the structure may have a single entrance provided the intent of this section is met.
 - The height of the structure shall be no more than four feet taller than the height of the tallest residential structure located on the side of the street on the block on which the proposed use is to be constructed.
 - The roof design, pitch and materials proposed for the structure shall be similar to the roof design, pitch and materials of the residential structures on both sides of the street on the block on which it is to be constructed.
 - A front porch shall be provided on the proposed structure if a majority of the residential structures on both sides of the street on the block on which the new structure is proposed have front porches.
 - Unless precluded by topography, the front yard depth for the proposed structure shall be not less than the average front yard depth for the residential structures on the same side of the street on the block on which the new construction is proposed.
 - In RS-8 districts, the floor area of the group home structure shall not be more than 150 percent larger than the average floor area of single-family residential structures in the same block of the group home structure unless this floor area is provided below the grade of the principal facade of the group home structure or is otherwise designed to minimize its difference in size with said residences.
- e. It is the intent of this section that group home uses will be located in areas where employment, goods, and services can readily be reached by a variety of means of transportation. Transit, a sidewalk network, and/or close proximity to employment, goods, and services shall be required for approval of a conditional use permit for a group home unless the intended residents of the group home do not require this service.
- f. The group home structure(s) and the site on which it is located shall be maintained in accordance with standards established by applicable local and state regulations, including, but not limited to, the City of Asheville Minimum Housing Code. The City Council may require the submittal and implementation of a specific maintenance plan in order to ensure proper maintenance of the property in accordance with this provision."
- g. That the definition of group home in section 7-2-5 be amended to read: *Group home* means a residential home provided by an agency, organization or individual for persons who need sheltered living conditions for rehabilitation, but not including mentally ill persons who are dangerous to others as defined in N.C. Gen. Stat. sec. 122C-3(11)b (or its successor). This definition does not include family care home as defined herein.
- (17) *Electrified security fences.*
- a. Use districts: Commercial Industrial.
 - b. Must meet standards for such fences in subsection 7-16-1(c).
- (e) *Conditions attached to approval.* In approving the conditional use, the Asheville City Council may attach such conditions to the approval as it deems necessary to have the proposed use meet the standards set forth in subsection 7-16-2(c) above and elsewhere in this chapter, and to protect the public health, safety, and general welfare. All such conditions shall be stated in the resolution approving the application. Such conditions may be stricter than any requirement or limitation stated elsewhere in this chapter for the proposed use. Such conditions may include, but are not limited to the following: limitations on the size, bulk and location of structures; requirements for landscaping, signage, and outdoor lighting; the provision of adequate ingress and egress; dedication of rights-of-way for streets or utilities; provision of recreational space and facilities; limitations on the duration of the approval and the time period within which the use will be developed; limitations on hours of operation; limitations on the transfer of such approval to a successor-in-interest or lessee of the property; provision of special fire protection features; and the mitigation of environmental impacts.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2462, §§ 2, 3, 4-14-98; Ord. No. 2535, §§ 10—12, 1-12-99; Ord. No. 2589, § 1(f), 7-13-99; Ord. No. 2622, § 1(d), 10-12-99; Ord. No. 2634, §§ 1(c)—(f), 1(i)—(k), 11-9-99; Ord. No. 2649, §§ 1(f), (g), 12-21-99; Ord. No. 2735, § 1b., c., 8-22-00; Ord. No. 2792, § 1(f), 2-13-01; Ord. No. 2850, § 1, 9-25-01; Ord. No. 2871, §§ 1(l)—1(o), 11-27-01; Ord. No. 2872, §§ 1(c), 1(d), 11-27-01; Ord. No. 2973, § 1(d), (e), 11-12-02; Ord. No. 3028, § 1(i), 5-27-2003; Ord. No. 3052, § 1(e), 8-26-03; Ord. No. 3064, §§ 1(e)(f), 10-14-03; Ord. No. 3083, § 1(d), 1-13-04; Ord. No. 3156, § 1, 8-24-04; Ord. No. 3157, § 1(a)(12)—(15), 8-24-04; Ord. No. 3262, §§ 1(d, e), 7-12-05; Ord. No. 3479, §§ 1(f), (g), 5-22-07; Ord. No. 3582, §§ 1(e), (f), 2-12-08; Ord. No. 3757, §§ 1i, k, 7-14-09; Ord. No. 3793, § 1d, 9-22-09; Ord. No. 3897, § 1(f), 9-14-10; Ord. No. 3908, §§ 1f, g, 10-26-10; Ord. No. 3922, §§ 1a—e, 11-9-10; Ord. No. 3959, §§ 1r—z, 4-12-11; Ord. No. 4280, § 1, 2-11-14)

ARTICLE XVII. - NONCONFORMITIES

FOOTNOTE(S):

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Editor's note—Ord. No. 3478, § 1, adopted May 22, 2007, deleted Art. XVII, §§ 7-17-1—7-17-9, in their entirety. Former Art. XVII, §§ 7-17-1—7-17-9, pertained to similar subject matter and derived from Ord. No. 2428, §§ 23—25 adopted Nov. 11, 1997; Ord. No. 2369, § 1, adopted May 27, 1997; Ord. No. 3156, § 1, adopted Aug. 24, 2004; and Ord. No. 3417, §§ 1(f), (g), adopted Nov. 28, 2006.

Sec. 7-17-1. - Nonconformities—Purpose, application and definitions.

- (a) *Purpose.* It is recognized that, over time, lawful nonconformities may develop as a result of amendments to the zoning map or unified development ordinance which change the application of city development regulations to particular properties. It is important that such properties, while nonconforming, be adequately maintained and permitted to continue, but not expanded or enlarged in any fashion that increases the extent of nonconformity. Where possible, such nonconformities should be made, wholly or incrementally, conforming.
- (b) *Application.* The provisions of this section apply only to lawful nonconformities, except as noted below. Nonconformities other than lawful nonconformities shall be considered violations of the unified development ordinance. This article shall not apply, however, to any feature which is the subject of a variance from particular regulations that has been granted by an authorized reviewing board or commission or to applications of flexible development standards to such features. Where a variance or flexible development determination has been granted for a feature which does not otherwise conform to the requirements of this chapter, that feature shall be deemed conforming. Nonconformities associated with signs are addressed in section 7-13-8 of this chapter.

(c) *Definitions.* As used in this section, the following terms have the meaning ascribed to them below:

- (1) *Appraised value* means the value assigned to a structure by the Buncombe County Tax Assessor or by an MAI-certified real estate appraiser.
- (2) *Dimensional nonconformity* means any nonconformity involving a dimensional or numerical development requirement except those involving signs or landscaping and buffering which are addressed in article XIII and [section 7-11-2](#), respectively. Dimensional nonconformities may include, without limitation, nonconformities associated with density, lot size, lot width, lot depth, setbacks, height, structure size standards, impervious surface standards, open space, number of parking spaces, or separation requirements between particular uses or zoning districts.
- (3) *Impact* means the effect of one land use upon another as measured by traffic or noise generation, site activity, hours of operation, site lighting, vibration, smoke or odor emissions, or similar factors.
- (4) *Lawful nonconformity* means any nonconformity involving a dimensional or numerical requirement or use of property that affects a structure erected or a lot created in conformity with the then-applicable development requirements of the city, but subsequently made nonconforming by action of the city through a zoning map or unified development code amendment.
- (5) *Nonconforming use* means any nonconforming involving the use of the property. This may include, without limitation, nonconformities associated with a use not permitted in the zoning district in which it is located or a use conditionally allowed in the zoning districts in which it is located but for which no conditional use permit has been obtained.
- (6) *Renovation* means the repairing or remodeling of a structure in which the exterior walls, foundation and roof are maintained structurally intact.

(Ord. No. 3478, § 1, 5-22-07)

Sec. 7-17-2. - Dimensional nonconformities.

- (a) *Lawfully established nonconforming lots.* Lawfully established nonconforming lots having one or more dimensional nonconformities may be used for any permitted or conditional use allowed in the zoning district in which the lot is located provided that any structure or expansion/addition to an existing structure proposed for the use meets all applicable dimensional and numerical requirements and all applicable procedures are followed. Such lots may be recombined with adjoining lots to increase the extent of their conformity provided new nonconformities are not created. A lot that is only nonconforming due to the fact that it does not comply with access standards can be developed with one single-family residence and typical residential accessory structures if some form of legal access is provided the property.
- (b) *Structures.* Structures having one or more dimensional nonconformities may be used for any permitted or conditional use allowed in the zoning district in which the structure is located, and, upon any change in use, shall comply with the requirements of article XI of this chapter. Such structures may be expanded or enlarged provided the extent of the applicable nonconformity is not increased or new nonconformities are not created. Expansions, enlargements, or reconstruction of such structures exceeding 50 percent of the pre-expansion floor area, shall require such structures to meet all applicable dimensional and numerical requirements, except density, which may be retained at the prior nonconforming level but not increased. For the purpose of this section, the value of any expansion, enlargement, or reconstruction of such structures over a three-year period shall be used when calculating the 75 percent threshold. A structure undergoing renovation, as defined in [section 7-17-1](#) above, shall not be subject to the above provisions and shall only be required to meet the provisions of article XI if the renovation cost exceeds 75 percent of the structure's appraised value as determined by Buncombe County Tax Assessor or by an MAI-certified real estate appraiser.
- (c) *Overcoming presumption of discontinuation of use.* A presumption that a nonconforming use of structure has ceased, based solely on the length of time the structure has remained vacant or inactive, may be rebutted if the structure has not been vacant for more than two years. Such a presumption may be overcome, upon demonstrating that substantial good faith efforts have been made to re-establish the use during this period. Obtaining permits to maintain the existing use or providing documentation that shows continuous marketing of the property for sale or lease for the existing use (e.g. MLS listing, realtor contract, etc.) shall be regarded as substantial good faith efforts.

(Ord. No. 3478, § 1, 5-22-07; Ord. No. 3791, §§ 1h, i, 9-22-09)

Sec. 7-17-3. - Nonconforming uses.

- (a) *Discontinuation of nonconforming uses.* A nonconforming use is allowed to continue unless the use is discontinued for a period of 180 or more consecutive days, and there are no substantial good faith efforts to re-establish the use during this period. Obtaining permits to maintain the existing use or significant continuous efforts to market the property for sale or lease for the existing use (e.g., MLS listing, realtor contract, etc.) shall be regarded as substantial good faith efforts. A nonconforming use shall be deemed discontinued after a period of 365 consecutive days regardless of any substantial good faith efforts to re-establish the use. Thereafter, the structure or property associated with the use may be used only for conforming use. Conditional uses discontinued for a period of 365 or more consecutive days shall be regarded as nonconforming uses and shall not be re-established without new conditional use permit approval.
- (b) *Replacement of one nonconforming use with another nonconforming use.* A nonconforming use may be allowed to be replaced by another nonconforming use of equal or lesser impact as provided in subsection (c) below. For uses not listed below, a nonconforming use may be allowed to be replaced by another nonconforming use upon a finding by the planning and zoning commission that the proposed use is more nearly compatible with the surrounding properties than the nonconforming use which it replaces, as measured by traffic or noise generation, site activity, hours of operation, and other factors that the commission finds relevant to compare or differentiate between the existing use(s) and the proposed replacement use(s). The planning and development director or commission, as applicable, may establish conditions to ensure that the compatibility factors are maintained as approved.

(c) *Land use impact table.*

General Land Use Classification	Land Use Impact		
	Low	Medium	High
Residential	0-8 dwelling units/acre	8-16 dwelling units/acre	> 16 dwelling units/acre
Recreational	Arboretums; camps; campgrounds; golf courses; passive parks	Commercial indoor recreation; governmental recreation	Commercial outdoor recreation
Institutional	Adult care centers and homes; assisted living facilities; child care centers and homes; places of worship; family care homes; orphanages	Colleges and universities; medical centers and hospitals ≤25,000 square feet of gross floor area; shelters; schools (including vocational and training schools) ≤25,000 square feet of gross floor	Armories; dormitories; fraternity and sorority houses; hospitals; medical centers and hospitals >25,000 square feet of gross floor area; schools (including vocational and training schools) >25,000

		area	square feet of gross floor area
Public/Semi-public	Libraries; museums; public cultural facilities	Civic, social service and fraternal facilities; community centers; government buildings not elsewhere classified; post offices	Amphitheatres; auditoriums; convention and conference centers; detention facilities, jails and related correctional facilities; exhibition halls; public utilities and related facilities; stadiums and arenas; transportation terminals
Office/Business	Bakeries; barber shops and salons; bed & breakfast inns; bicycle shops; bookstores; candy, pastry, ice cream and snack shops; florists; funeral homes; gift shops; health and fitness facilities; home occupations; homestays; instructional services; laboratories; livework units; offices, not classified elsewhere <10,000 sq. ft.; pharmacies <10,000 sq. ft.; radio and television studios; residentially related commercial services; studios galleries, and workshops for artists designers, and photographers; tailors/dressmaker shops	Adult establishments; boardinghouses; camper/trailer park; car washes; optical clinics; medical, dental and, psychiatric, veterinary offices and clinics; convenience stores; copying centers; delicatessens; distributive businesses; financial institutions; fruit and vegetable markets; grocery stores; hardware/garden supply stores; industrial equipment sales with no outdoor storage or display; laundry and dry cleaning establishments; lodging facilities; manufactured home sales and servicing; motor vehicle and boat service and repair; offices not classified elsewhere: > 10,000 sq. ft.; pharmacies > 10,000 sq. ft.; plant nurseries, sales and greenhouses; printing and publishing; recycling collection centers; rental businesses; repair and servicing businesses; research and technology production uses; restaurants; retail gasoline sales; retail sales not classified elsewhere; self-service storage facilities; taxi stands; video rental stores; warehousing	Automobile, truck, and utility trailer rental; automobile sales, new and used; automobile service stations; bars, nightclubs; flea markets; heavy equipment and specialized vehicle sales, rental, and service establishments; industrial equipment sales with outdoor storage or display; kennels; lumber yards; motor freight terminals; recreational vehicle sales and servicing; theaters; wholesale sales
Industrial	Cottage industries		Assembly, packaging, processing, production, and manufacturing; recycling and resource recovery.
Other uses	Agriculture; bona fide farms; cemeteries; columbariums; fish hatcheries and farms; parking lots, as principal use; stables	Communication towers, satellite dishes, and related equipment, as principal use; parking decks; recycling collection centers	Telecommunication towers

NOTE: Uses with drive-through service or facilities increase impact one level.

- (d) *Overcoming presumption of discontinuation of use.* A presumption that a nonconforming use of the land has ceased, based solely on the length of time the use of the land has remained vacant or inactive, may be rebutted if the use of the land has not ceased for more than two years. Such a presumption may be overcome, upon demonstrating that substantial good faith efforts have been made to re-establish the use during this period. Obtaining permits to maintain the existing use or providing documentation that shows continuous marketing of the property for sale or lease for the existing use (e.g. MLS listing, realtor contract, etc.) shall be regarded as substantial good faith efforts.
- (e) *Conforming uses becoming nonconforming.* No use may be established if it renders another conforming use to become nonconforming.
(Ord. No. 3478, § 1, 5-22-07; Ord. No. 3700, § 1o, 2-10-09; Ord. No. 3791, § 1j, 9-22-09; Ord. No. 3793, § 1f, 9-22-09)

Sec. 7-17-4. - Maintenance and repair.

In the interest of the public safety and health, structural alterations or remodeling of nonconforming structures or conforming structures on nonconforming lots which are required by any public law, and so ordered by a public officer in authority, shall be permitted. Routine maintenance shall also be permitted for nonconforming situations so long as no expansion of the nonconformity occurs as a result of the maintenance.

(Ord. No. 3478, § 1, 5-22-07)

Sec. 7-17-5. - Replacement of manufactured homes.

Dimensional or use nonconformities associated with manufactured homes shall be addressed in the following manner.

- (a) *Replacement of one manufactured home with another manufactured home in a lawfully established manufactured housing park or area covered by a manufactured housing zoning overlay.* Such replacement shall be permitted without regard to dimensional nonconformity provided that the replacement manufactured home is no older and no smaller than the existing manufactured home, the replacement home is placed in the same location as the original home, and such replacement occurs within 180 days of the removal of the original manufactured home. In all other situations, replacement shall be prohibited.
- (b) *Replacement of one manufactured home with another manufactured home in areas other than a lawfully established manufactured housing park or area covered by a manufactured housing zoning overlay.* Such replacement shall be permitted provided that new dimensional nonconformities are not created, the replacement manufactured home is no older and no smaller than the existing manufactured home, the replacement home is placed in the same location as the original home, and such replacement occurs within 180 days of the last day of occupancy of the original manufactured home. In all other situations, replacement shall be prohibited.

(Ord. No. 3478, § 1, 5-22-07)

ARTICLE XVIII. - ENFORCEMENT

Sec. 7-18-1. - Duties regarding enforcement.

- (a) Unless specifically set forth otherwise in this chapter, the City of Asheville Planning and Development Director is hereby authorized to enforce the provisions of this chapter. The planning and development director may enter any building, structure, or premises as provided by law, to perform any duty imposed upon him or her by this chapter.
- (b) *Interference.* It shall be unlawful for any person to interfere with, hinder, resist, or obstruct a city employee while the city employee is carrying out any duty created under this chapter. A violation of this section is a misdemeanor as set forth in N.C. Gen. Stat. sec. 14-4.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 3467, § 1(a), 5-8-07)

Sec. 7-18-2. - Penalties for violations.

- (a) *Liabilities for violations.* Pursuant to N.C. Gen. Stat. sec. 160A-175, any person who erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this chapter, any person who uses any building, structure, sign or sign structure or land in violation of this chapter or owns the property where a person erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this chapter shall be subject to civil and criminal penalties in accordance with this article.
- (b) *Civil penalties.*
 - (1) *General.* Violations of this chapter, except violations of sections 7-5-13, 7-12-1, and 7-12-2 and article XV, shall subject the offender to a penalty in the amount of \$100.00 per day for each day the violation continues, to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for the violation.
 - a. There shall be a civil penalty for damaging or destroying trees and vegetation for use in landscaping and buffering as set forth in section 7-11-2 of the chapter. This section is also applicable to trees and vegetation destroyed from a historic landmark or property in a historic district without a certificate of appropriateness as set forth in section 7-5-11. The additional one time fine shall be set forth in Appendix B — Schedule of Civil Penalties subsection I. The replacement schedule will not be applicable for violations of section 7-5-11. This civil penalty is in addition to the civil penalty issued in subsection 7-18-2(b)(1).
 - b. There shall be an additional civil penalty for altering, damaging or destroying the exterior of a historic landmark or structure in a historical district without a valid certificate of appropriateness issued pursuant to section 7-5-11 as set forth in Appendix B — Schedule of Civil Penalties subsection J. This civil penalty is in addition to the civil penalty issued in 7-18-2(b)(1).
 - (2) *Stormwater control, soil erosion and sedimentation control, illicit discharge and connection.*
 - a. *Violation of soil erosion and sedimentation regulations:* Any person who violates any of the provisions of the soil erosion and sedimentation control requirements of section 7-12-2 and/or who initiates a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty. The maximum civil penalty for a violation is \$5,000.00. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.
 - b. *Violation of stormwater control, illicit discharge and connection regulations:* Any person who violates the stormwater control, illicit discharge and connection regulations of section 7-12-2, shall be subject to a civil penalty. The maximum civil penalty for a violation is \$25,000.00; however; for a continuing violation the maximum per day per violation penalty shall be \$10,000.00, unless a civil penalty has been imposed against the violator within the five years preceding the current violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.
 - c. *Assessment of penalty:* The amount of the civil penalty shall initially be determined and assessed by the stormwater administrator in strict accordance with the table of penalties as set forth herein.

Table of Penalties										
Erosion and Sediment Control										
	Grading without permit	Site/Plan not in accordance with approved plan	Failure to maintain erosion control measures	Offsite Sedimentation	Buffer zone violation	Graded slopes or fills not in compliance	Lack of ground cover	Improper fill material	Failure to file/falsification of inspection report	Other Violations of Erosion and Sediment Laws

Immediate Fine	\$100 per 2,000 SF disturbed max of \$5,000 NOV Issued	NOV Issued	NOV Issued	Slight-\$0—\$500 Moderate \$501—\$2,000 Severe \$2,001—\$5,000 NOV Issued	\$100 per 5 SF disturbed, max of \$5,000, NOV Issued	NOV Issued	NOV Issued	NOV Issued	\$2,000 for falsification of report	Possible \$0—\$5,000
On Going Violation (Failure to Comply with NOV)	Per day penalty equal to or greater than immediate penalty	\$500 per measure not installed correctly or \$1,000 per measure not installed, max of \$5,000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure)	\$500 per measure not maintained correctly, max of \$5,000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure)	Per day penalty equal to or greater than immediate penalty	Per day penalty equal to or greater than immediate penalty \$100 per 100 SF not compliant max of \$5,000	\$100 per 100 SF not compliant max of \$5,000	\$0—\$5,000 (To be based on amount of improper fill and possible hazard for failure or leeching of pollutants)	\$200 per reporting period for each report not filed	Possible \$0—\$5,000	

- d. *Guidelines for penalty assessment:* In determining the amount of the penalty to assess, the stormwater administrator shall be guided by the following:
 - 1. *Soil erosion and sedimentation regulation:* The stormwater administrator shall be guided by the degree and harm caused by the violation; the cost of rectifying damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with referenced subsection.
 - 2. *Stormwater control, illicit discharge and connection regulations:* The stormwater administrator shall be guided by the degree and extent of harm to the natural resources of the city, to the public health, or to private property resulting from the violation; the duration and gravity of the violation; the effect on ground or surface water quantity or quality or on air quality; the cost of rectifying the damage; the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with referenced subsection.
 - e. *Notice of civil penalty assessment:* The stormwater 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 in writing, within 30 days after receipt of the notice of assessment.
 - f. *Appeal to erosion control plan review committee:* Any aggrieved party may file an appeal of the penalty assessment made by the stormwater administrator to the erosion control plan review committee (committee) within 30 days of receipt of the penalty assessment. The appeal must be submitted in writing to the stormwater administrator and shall specify the grounds for appeal. The stormwater administrator shall forthwith transmit to the Committee all documents constituting the record on which the decision appeal was taken. A hearing for the appeal shall be held within 30 working days after the receipt of the written appeal. The hearing shall be quasi-judicial with the right of the aggrieved party to have counsel present, to confront and examine witnesses and to review all documents. In the absence of an appeal to the committee, the penalty assessment of the stormwater administrator shall be final. The committee may reverse or affirm, wholly or partly, or may modify the penalty appealed from along with the associated findings made therein to support the penalty. To this end, the committee shall have all the powers of the stormwater administrator from whom the appeal is taken.
 - g. *Appeal to superior court:* Every decision of the committee shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the committee is filed in the office of the stormwater administrator or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the committee at the time of its hearing of the case, whichever is later. The decision of the committee may be delivered to the aggrieved party either by personal service, by registered mail or certified mail returned receipt requested or by any means authorized under G.S. 1A-1, Rule 4. The appeal shall be limited to the record before the committee.
 - h. *Failure to appeal and/or pay:* Any civil penalty assessed a person who violates the provisions of section 7-12-2 of this chapter shall be recovered by the city in a civil action in the nature of debt, to be brought in the Buncombe County Superior Court if the offender fails to give notice of timely appeal and fails to pay the penalty within the prescribed period of time after he or she has been cited for the violation.
- (c) *Criminal penalties.*
- (1) *Stormwater control, soil erosion and sedimentation control, illicit discharge and connection:* Any person, who knowingly or willfully violates provisions of section 7-12-2 of this chapter, shall be guilty of a misdemeanor, which may include a fine not to exceed \$5,000.00.
 - (2) *Flood protection:* Any person who violates any of the provisions of section 7-5-12 or section 7-12-1 of this chapter shall be guilty of a Class I misdemeanor. Failure to remove any artificial obstruction or enlargement or replacement thereof that violates any of the provisions of section 7-12-1 shall constitute a separate violation for each ten days that such failure continues after written notice from the city.
 - (3)

Subdivisions: Any person who, being the owner or agent of the owner of any land located within the planning and regulations jurisdiction of the city, subdivides his/her land in violation of the requirements of section 7-15 of this chapter or who 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 requirements of this chapter and recorded in the Office of the Register of Deeds for Buncombe County shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument or transfer of other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.

- (d) *Each day a separate violation.* Except as indicated in subsection 7-18-29(b)(3) above, each day that a violation continues shall constitute a separate and distinct violation or offense.
- (Ord. No. 2369, § 1, 5-27-97; Ord. No. 2902, § 1(t), 3-12-02; Ord. No. 3467, §§ 1(b)—(d), 5-8-07; Ord. No. 3522, §§ 1, 2, 8-21-07; Ord. No. 3812, § 1, 11-24-09; Ord. No. 3877, §§ 1, 2, 6-8-10)

Sec. 7-18-3. - Notice of violation and citation procedure.

- (a) *Notice required before penalty.* No penalty shall be assessed pursuant to section 7-18-2 above unless and until the person alleged to be in violation has been notified of the violation in accordance with this section. Provided however, for purposes of section 7-12-2 of this chapter, notice shall be deemed sufficient to comply with this paragraph if the notice of violation is issued simultaneously with the penalty assessment.
- (b) *Notice of violation; opportunity to cure.*
- (1) *Recipient of notice of violation.* Whenever any city official charged with the duty of enforcing regulations in this chapter has reasonable cause to believe that a person is violating any of the provisions of this chapter or any permit, plan, order, or condition issued pursuant to this chapter, that official shall notify that person of the violation. If the violator cannot be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation occurs.
 - (2) *Service requirements.* Notices of violation shall be in writing and shall be served by personal delivery or by certified or registered mail, return receipt requested. In addition, service hereunder may be made in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice of violation may include, but not be limited to, an order to discontinue the illegal use of land, buildings or structures; require removal of illegal buildings, structures, or uses or removal of illegal additions, alterations or structural changes; discontinue the illegal work being done; or require any other action to insure compliance with or prevent violation of this chapter. The notice of violation shall include an opportunity to cure the violation within a prescribed period of time.
 - (3) *Notification of owner upon violator noncompliance.* Where the person violating a provision of this article is not the owner of the property, the city shall send a notice of violation to both the tenant and the owner of the property.
- (c) *Extension of time to cure.* Upon receipt of a written request from the alleged violator or the property owner for an extension of time to cure or correct the violation, the city official charged with the duty of enforcing the regulations(s) being violated may grant a single extension of time, not to exceed a period of 30 days, in which the alleged violator may cure or correct the violation before the city issues a citation pursuant to subsection 7-18-3(d) below.
- (d) *Citation for violation.* Any person who, after being given a notice of violation pursuant to subsection 7-18-3(b) above, does not comply with this chapter within the time period set forth in the notice of violation or within any extension of time granted pursuant to subsection 7-18-3(c) above, and who continues such violation, shall be subject to the enforcement remedies set forth in this article. The city shall serve a written fine citation on the alleged violator and/or property owner by personal delivery or by first class U.S. mail with delivery conformation or similar service offered by the U.S. Postal Service. The citation shall specify the amount of any civil penalty which shall be levied against the alleged violator or the type of criminal penalty applicable.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2618, § 1(a), 9-28-99; Ord. No. 3204, § 1, 1-25-05; Ord. No. 3467, §§ 1(e), (f), 5-8-07; Ord. No. 3522, § 3, 8-21-07; Ord. No. 3877, § 3, 6-8-10)

Sec. 7-18-4. - Action for recovery of civil penalty; action for institution of criminal process.

- (a) If payment of a civil penalty is not made, or violations are not cured or corrected, within the time specified in the citation, then the matter may be referred to the city attorney for institution of a civil action in the name of the city in a court of competent jurisdiction.
- (b) If a violation which constitutes a criminal penalty is not cured or corrected within the time specified in the citation, then a criminal action may be instituted in a court of competent jurisdiction.

(Ord. No. 2618, § 1(c), 9-28-99)

Sec. 7-18-5. - Summary removal of signs/sign structure; remove orders for signs/sign structure.

- (a) Pursuant to N.C. Gen. Stat. § 160A-193, the city shall have the authority to summarily remove, abate, or remedy a sign or sign structure which the city determines to be 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 ascertained, by the property owner, and if not paid, there shall be a lien placed upon the land or premises where the nuisance arose, and it shall be collected as unpaid taxes.
- (b) Pursuant to N.C. Gen. Stat. §§ 160A-193 and 160A-296, any signs or sign structures prohibited under subsections 7-13-3(1) and (2) are hereby declared to be a public health nuisance in that they are dangerous or prejudicial to the public health or public safety and the sign administrator shall have the authority to remove summarily the sign and/or sign structure.
- (c) The sign administrator shall have the authority to issue a remove order for any sign not repaired or brought into compliance within the time prescribed by a notice of violation. Remove orders shall be issued to and served upon the sign/sign structure owner, or if the sign/sign structure owner cannot be ascertained, to and upon the property owner by the means set forth in subsection 7-18-3(b). The sign or sign structure shall be removed 30 days after the service of the remove order at the expense of the offender. The remove order shall describe with particularity the location of the sign or sign structure to be removed and the reason(s) for issuance of the remove order, including specific reference to the provisions of article XII of this chapter which have been violated.
- (d) In the event of failure to comply with the requirements of a remove order, the sign administrator may cause such sign or sign structure to be removed. The sign owner and property owner may be jointly and separately liable for the expense of removal. Notice of the cost of removal shall be served as set forth in subsection 7-18-3(b). If said sum is not paid within 30 days thereafter, said sum may be collected by the city in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of N.C. Gen. Stat. § 14-4.

(Ord. No. 2618, § 1(d), 9-28-99)

Sec. 7-18-6. - Injunctive relief and other remedies.

- (a) *Injunctive or other relief.* In addition to, or in lieu of, the other remedies set forth in this article, the planning and development director or other city official charged with the duty of enforcing the regulations of this chapter, in the event of a violation of this chapter, may request that the city attorney institute in a court of competent jurisdiction an injunctive action, mandamus action, or other appropriate proceeding to prevent the completion or occupation of such building or structure, or use of land. Upon determining that an alleged violation is occurring or is threatened, a court hearing an appeal for relief, shall enter such orders and/or judgments as are necessary to abate or prevent the violation. The institution of an action for injunctive or other relief under this section shall not relieve any party to such proceeding from any civil or criminal penalty prescribed by this article for violations of this chapter.
- (b)

Revocation of permits. In the event of a violation of any regulation of this chapter, the planning and development director, or any other city official charged with the duty of enforcing the regulations of this chapter, may stop any development of, use of or activity on property by the revocation of applicable permits.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2618, § 1(b), 9-28-99)

Appendix 7-A. - Reserved.

Editor's note— Ord. No. 3466, § 2, adopted Apr. 24, 2007, deleted App. A in its entirety. Former App. A pertained to map and plan standards.

Appendix 7-B. - Reserved.

Editor's note— Ord. No. 3466, § 2, adopted Apr. 24, 2007, deleted App. B in its entirety. Former App. B pertained to checklists for applications.

**APPENDIX 7-C
RECOMMENDED SPECIES LIST**

Appendix 7-C

Recommended Species List

Name	Description	Mature Height	Growth Rate	Comments
<u>Shrubs for Buffer Areas</u>				
Euonymus alatus Winged Euonymus "Burning Bush"	D	5-8'	Moderate	Dense winged twigs; red fall color
Forsythia intermedia Border forsythia	D	8-10'	Rapid	Several varieties; yellow flowers
Ilex cornuta 'Burfordii' Burford Holly	Broadleaf E	8-12'	Fast	May wind burn during winter, but is hardy
Ilex crenata Japanese Holly	Broadleaf E	10-12'	Moderate	Many varieties are low growing
Rhododendron hybrida Hybrid Rhododendron	Broadleaf E	10-12'	Slow to Moderate	Many varieties available; verify height and flower color
Viburnum plicatum tomentosum Doublefile				
Viburnum	D	8-10'	Moderate	Horizontal branching; white flowers
Viburnum rhytidophyllum Leatherleaf Viburnum	Broadleaf E	6-10'	Moderate	Prefers shelter from wind
<u>Small Trees</u>				
Acer palmatum varieties Japanese Maple	D	15-20'	Slow	Some varieties are dwarf
Crataegus phaenopyrum Washington Hawthorn	D	20-25'	Medium	Thorny, but handsome
Ilex opaca	E	25-35'	Slow	Plant female tree for berries

American Holly				
Koelreuteria paniculata Golden Raintree	D	25-30'	Slow	Yellow flowers, brown seed pods
Magnolia soulangiana Suacer Magnolia	D	15-25'	Slow	Spreading: "Speciosa" and "Verbanica" are late-blooming varieties
Malus hybrida Flowering Crab Apple	D	15-25'	Medium	Many varieties; check for disease resistance
Medium Trees				
Ilex x Fosteri Foster No. 2 Holly	Columnar E	25-35'	Medium	Plant female tree for berries
Pinus nigra Austrian Pine	E	20-40'	Medium	Use for buffering
Pyrus calleryana Bradfordi Bradford Pear	D	35-45'	Fast	Capitol & Whitehouse' cultivars
Tillia cordata Little Leaf Linden	D	35-45'	Slow to	Chancellor' is upright variety
Large Trees				
Acer rubrum Red Maple	D	40-50'	Moderate	Columnare' & Armstrong' have columnar form
Acer saccharum Sugar Maple	D	50-75'	Slow	Temple's Upright' is a columnar form
Gleditsia triacanthos Thornless Honeylocust	Large	45-60'	Medium	Various varieties, avoid Sunburst', because of fireblight
Liquidambar styraciflua Sweetgum	Large	45-55'	Medium	Good fall color; will tolerate damp soils
Quercus rubra maxima Eastern Red Oak	D	50-7'-	Rapid	For an oak, relatively easy to transplant
Tsuga canadensis Canadian Hemlock	Large E	30-80'	Medium	If sheared, can be used for hedge
Pinus Strobus White pine	Large	80-100'	Fast	With effort, can be kept sheared in hedge form
Zelkova serrata	Large	40-50'	Medium	Village Green' similar to form of American Elm

Japanese Zelkova				
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Trees and Shrubs for Damp Sites and River District

Common Name	Description	Size	Location
Trees:	D = Deciduous E = Evergreen		
Ilex opaca American Holly	E	Sm./Med. to 25'	Sun/Pt. shade
Amelanchier arborea Serviceberry	D	Medium to 20'	Part shade
Amelanchier canadensis Serviceberry	D	Medium to 20'	Part shade
Carpinus caroliniana Musclewood	D	Medium to 20'	Shade/Pt. sun
Asimina triloba Paw Paw	D	Medium to 25'	Sun/Pt. shade
Resculus pavia Red Buckeye		Medium 20-25'	Sun
Alnus glutinosa Black Alder	D	Medium 20-25'	Sun/Pt. shade
Magnolia tripetala Umbrella Magnolia	D	Medium 30-40'	Shade/Pt. sun
Magnolia virginica Sweetbay Magnolia	D	Medium 30-40'	Sun/Pt. shade
Betula nigra River Birch	D	Med./Lg. 30-50'	Sun/Pt. shade
Nyssa aquatica Water Tupelo	D	Med./Lg. 30-50'	Sun/Pt. shade
Nyssa sylvatica Black Tupelo	D	Med./Lg. 30-50'	Sun/Pt. shade
Picea glauca White Spruce	E	Med./Lg. 30-50'	Sun/Pt. sun
Quercus lyrata Overcup Oak	D	Med./Lg. 30-50'	Sun
Taxodium ascendens Pond Cypress	D	Med./Lg. 30-50'	Sun
Taxodium distichum Bald Cypress White Cedar, Eastern	D	Med./Lg. 30-50'	Sun
Thuja occidentalis Arborvitae	E	Med./Lg. 30-50'	Sun
Diospyros virginica Persimmon	D	Med./Lg. 35-50'	Sun

Fraxinus nigra Black Ash	D	Med./Lg. 40-50'	Sun/Pt. shade
Fraxinus caroliniana Carolina Ash	D	Med./Lg. 40-50'	Sun/pt. shade
Magnolia macrophylla Big Leaf Magnolia	D	Med./Lg. 40-50'	Shade/Pt. sun
Gleditsia triacanthos Honey Locust	D	Large to 50'	Sun
Quercus phellos Willow Oak	D	Large 40- 50'	Sun
Quercus muelenbergii Chinkapin Oak	D	Large 40- 50'	Sun
Quercus bicolor Swamp White Oak	D	Large 40- 60'	Sun
Quercus palustris Swamp Oak Pin Oak	D	Large 40- 60'	Sun
Thuja plicata Western Red Cedar	E	Large 40- 60'	Sun
Acer rubrum Red maple	D	Large 50- 60'	Sun
Fraxinus pennsylvanica Green Ash	D	Large 50- 60'	Sun
Fraxinus quadrangulata Blue Ash	D	Large 50- 60'	Sun
Liquidambar styraciflua Sweet Gum	D	Large 50- 60'	Sun
Quercus nigra			
Water Oak	D	Large 50- 70'	Sun
Plantanus occidentalis American Sycamore	D	Large 50- 75'	Sun/Pt. shade
Shrubs for Buffer Areas:			
Hydrangea arborescens Smooth Hydrangea	D	3'	Shade/Pt. sun
Fothergilla gardenii Dwarf Fothergilla	D	3'	Sun/Pt. shade
Rhododendron viscosum Swamp Azalea	D	3'	Shade
Rosa virginica Virginia Rose	D	4'	Sun/Pt. sun
Clethra alnifolia Summersweet Clethra	D	4-8'	Sun/Pt. shade
Hydrangea quercifolia Oakleaf Hydrangea	D	5'	Pt. Sun

Itea virginica Sweetspire	D	5'	Sun
Rhododendron arborescens Sweet Azalea	D	5'	Shade
Dirca palustris Leatherwood	D	5'	Shade
Viburnum cassinoides	D	5-6'	Sun/Pt. shade
Rhododendron vaseyi Pinkshell Azalea	D	5-8'	Shade
Ilex cassine Dahoon Holly	E	6'	Sun
Leucothoe fontanesiana Drooping Leucothoe	E	6'	Shade/Pt. sun
Physocarpus opulifolius Ninebark	D	6'	Sun/Pt. shade
Ilex verticillata Vinterberry Holly	D	6-8'	Sun
Viburnum alnifolium Hobblebush	D	6-9'	Shade
Aronia arbutifolia Red chokeberry	D	6-10'	Sun
Sambucus canadensis Elderberry	D	6-10'	Sun/Pt. shade
Vaccinium corymbosuml Highbush Blueberry	D	6-10'	Sun/pt/sun
Cephalanthus occidentalis Button Bush	D	6-10'	Sun/Pt. sun
Lindera benzoin Spicebush	D	6-10'	Sun/Pt. shade
Cornus sericea Red Osier Dogwood	D	7-9'	Sun/Pt. sun
Fothergilla major Fothergilla	D	8'	Sun/Pt. shade
Ilex glabra Inkberry Holly	E	8'	Sun
Baccharis halimifolia Groundsel Tree	E	8-10'	Sun
Clethra acuminata Cinnamon Clethra	D	10-15'	Sun/Pt. shade
Cyrilla recemiflora Swamp Cyrilla	D	10-15'	Sun/Pt. shade

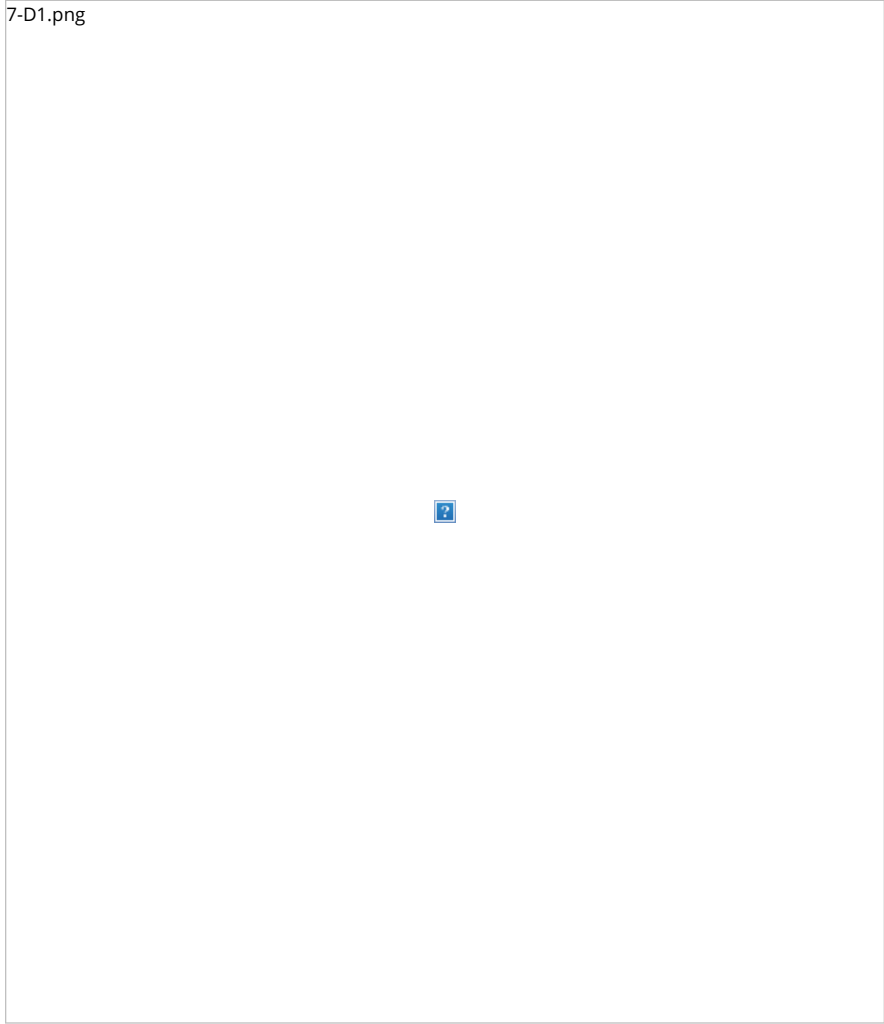
Perennials:	
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Butterfly Weed	<i>Asclepas tuberosa</i>
Swamp Milkweed	<i>Asclepias</i> spp.
New England Aster	<i>Aster noveangliae</i>
Fall Aster	<i>Aster</i> spp.
Coreopsis	<i>Coreopsis</i> spp.
Joe Pye Weed	<i>Eupatorium dubium</i>
Swamp Sunflower	<i>Helianthus angustifolius</i>
Sunflower	<i>Helianthus</i> spp.
Rose Mallow	<i>Hibiscus moscheutos</i>
Cardinal Flower	<i>Lobelia cardinalis</i>
Giant Lobelia	<i>Lobelia siphilitica</i>
Loosestrife	<i>Lysimachia clethroides</i>
Bee Balm	<i>Monarda</i> spp.
Water Forger-Me-Not	<i>Myosotis scoparius</i>
Mexican Primrose	<i>Oenothera speciosa</i>
Black Eye Susan	<i>Rudbeckia fulgida</i>
Hardy Verbena	<i>Verbena canadensis</i> hybrids
Iron Weed	<i>Vernonia noveboracensis</i>
Bog Plants	
Sweet Flag	<i>Acorus calamus</i>
Flowerinf Rush	<i>Butomus umbellatus</i>
Bog Arum	<i>Calla palustris</i>
Marsh Marigold	<i>Caltha palustris</i>
Spike Rush	<i>Eleocharis acicularis</i>
Horsetail	<i>Equisetum hyemale</i>
Water Iris	<i>Iris laevigata</i>
Yellow Flag Iris	<i>Iris pseudoacorus</i>
Blue Flag Iris	<i>Iris vericolor</i>
Southern Blue Flag	<i>Iris virginica</i>
Rush	<i>Juncus</i> spp.
Golden Club	<i>Orontium aquaticum</i>
Hardy Arum	<i>Peltandra virginica</i>
Pickerel Weed	<i>Pontederia cordata</i>
Arrowhead	<i>Sagittaria</i> spp.
Pitcher Plant	<i>Sarracenia</i> spp.

Lizards Tail	Saururus cernuus
Soft Stem Bulrush	Schoenoplectus validus
Common Threesquare	Scirpus americanus
Cordgrass	Spartina alterniflora
Cattail	Typha spp.

APPENDIX 7-D
DEVELOPMENT PROCESSES
FLOW CHART

Appendix 7-D



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APPENDIX 7-E HISTORIC DISTRICT BOUNDARIES

Appendix 7-E

Historic District Boundaries:

1. *Montford Historic District*

BEGINNING at a point on the northeast corner of the junction of Cherry and Flint Streets; thence north along the east side of Flint Street approximately 200 feet; thence approximately east to a point on the east side of Rankin Avenue approximately 125 feet south of the junction of Starnes and Rankin Avenues; thence continuing east approximately 175 feet to a point in the block bounded by Rankin Avenue, Cherry Street, Starnes Avenue, and Broadway; thence north to a point on the north side of Starnes Avenue midway between Rankin Avenue and Broadway; thence west approximately 100 feet to a point on the north side of Starnes Avenue; thence north to the north side of Elizabeth Street taking in all structures on the east side of Rankin Avenue; thence west approximately 125 feet to a point on the north side of Elizabeth Street; thence north bisecting the block bounded by Woodlawn Avenue, Rankin Avenue, West Chestnut Street, and Elizabeth Street taking in all the houses on the north side of Elizabeth Street west of Rankin Avenue and the east side of Woodlawn Avenue; thence west approximately 50 feet to a point on the north side of West Chestnut Street; thence north along an unnamed alley to a point on the north side of Magnolia Street; thence west along the north side of Magnolia Street to the point on the northeast corner of the junction of Magnolia and Flint Streets; thence north along the east side of Flint Street to a point on the north side of Ocala Street; thence north and east in a curve taking in all houses on the east side of Ocala Street, the Greek Community Center property, and the houses on the west and north sides of Cumberland Circle and Cumberland Avenue to a point on the north side of Catawba Street approximately 100 feet from the junction of Cumberland Avenue and Catawba Street; thence west approximately 100 feet to the northeast corner of the junction of Catawba Street and Cumberland Avenue; thence along the east and north sides of Cumberland Avenue in a curve to the point on the east side of Zillicoa Street at the junction with the line marking the point of elevation 2,100 feet; thence to the north, west and south along the 2,100 feet line to a point on the east side of Montford Avenue approximately 300 feet north of the junction of Montford Avenue and Zillicoa Street; thence north along the east side of Montford Avenue to the point on the northeast corner of the junction of Montford Avenue and Santee Street; thence west along the north side of Santee Street to the point on the northwest side of the junction of Santee Street and Pearson Drive; thence south along the west side of Pearson Drive approximately 800 feet; thence west approximately 300 feet; thence south to a point approximately 200 feet west of the junction of Tacoma Street and Pearson Drive; thence south and east in a curve to a point approximately 100 feet north of Hawthorne Road and 125 feet west of Rosewood Avenue; thence south approximately 600 feet to the Riverside Cemetery property line; thence west, south and east in an irregular line following the property line for Riverside Cemetery to a point approximately 100 feet south of Birch Street; thence east and south in a curve to a point approximately 200 feet west of the junction of Courtland Avenue and Pearson Drive taking in all structures on the south side of Birch Street and the west side of Pearson Drive; thence east approximately 225 feet to a point at the west side of the junction of Courtland Avenue and Courtland Avenue Extended; thence south, east and north in a curve around Arborvale Avenue including all structures on the south, east and north sides of Arborvale Avenue, to a point approximately 150 feet south of Courtland Avenue; thence east to the east side of an unnamed alley behind the William Randolph School to include all structures on the south side of Courtland Avenue; thence in a curve around the William Randolph School following the property line to a point approximately 150 feet west of Montford Avenue; thence south to a point on the south side of Hill Street including all structures on the west side of Montford Avenue; thence approximately 150 feet east to the junction of Hill Street and Montford Avenue; thence approximately 150 feet east to the junction of Cherry Street and Montford Avenue; thence along the south side of Cherry Street to the point of beginning.

Including a parcel with boundaries described as follows:

BEGINNING at a stake in the intersection of the southern margin of Courtland Avenue with the western margin of Pisgah Avenue, and runs with the western margin of Pisgah Avenue south 37 Degrees 8 minutes west 50 feet to a stake in the western margin of Pisgah Avenue; thence north 64 Degrees and 40 minutes west 136.7 feet to a stake in the southeastern margin of Long Street; thence with said margin of Long Street north 42 Degrees 11 minutes east 50 feet to a stake in the southern margin of Courtland Avenue; thence south 69 Degrees 48 minutes east with the southern margin of Courtland Avenue 132.45 feet to the beginning, being Lot No. 1 of Block "D" of the plat of lands of Arborvale Park, made by F. J. Fanning(,), Civil Engineer.

Further, all properties listed on the National Register of Historic Places as part of the Montford Historic District which lie within the above described boundaries shall also be included in the Local Montford Historic District.

2. *Biltmore Village Historic District*

All lot references herein are to Ward 7, Sheet 2 of the Buncombe County tax maps, unless otherwise indicated, and are identified on maps kept on file in the City of Asheville Planning Department. The lots will be further identified by the lot number for the Buncombe County tax maps of the ward and sheet.

BEGINNING at the extreme southwest corner of Lot 45, being the northeast corner of the intersection of the department of transportation right-of-way for Hendersonville Road and Lula Avenue; thence in an easterly and southeasterly direction along the northern boundary of Lula Avenue to the extreme southeastern corner of Lot 46-1/4; thence traversing Reed Street in a southeasterly direction to the extreme southwestern corner of Sheet 3, Lot 60; thence northerly along the eastern margin of Reed Street, traversing Warren Avenue, to the southwestern corner of Lot 100-1/4; thence southeasterly approximately 60 feet along the southern boundary of lot 100-1/4 to the southeastern corner of lot 100-1/4 thence southeasterly approximately 163 feet along the southern boundary of Lot 100 to the northeastern corner of Lot 101; thence southerly approximately 124 feet to the southeastern corner of Lot 101; thence easterly approximately 190 feet along the southern boundary of Lot 100 to the southeastern corner of Lot 100; thence northerly approximately 99 feet to the northeastern corner of Lot 100; thence northeasterly traversing Brook Street to the extreme southeastern corner of Sheet 30, Lot 260; thence northerly along the eastern boundary of Sheet 30, Lot 260 to the extreme northeastern corner of sheet 30, lot 260; thence northeasterly traversing Fairview Road to the extreme northeastern corner of Lot 109; thence northwesterly approximately 415.5 feet along the northern boundary of Lot 109 to the northwestern corner of Lot 109; thence northwesterly, traversing an unnamed alley, to the northeastern corner of Lot 115; thence northwesterly along the northern boundaries of Lots 115, 113-1/2, 117, 118, 119-1/4, 119, 129 and 129-1/2 to the northwestern corner of Lot 129-1/2; thence northwesterly traversing Hendersonville Road to the extreme northeastern corner of Lot 2-3/4; thence northwesterly along the northern boundary of Lot 2-3/4 to the extreme northwestern corner of Lot 2-3/4 at the intersection of Lot 2-3/4 with the southern boundary of the Swannanoa River; thence southwesterly following the southern boundary of the Swannanoa River to the extreme southwestern corner of Lot 2-3/4; thence southwesterly, traversing an unnamed alley, to the northwestern corner of Lot 254; thence easterly along the northern boundary of Lot 254 to the intersection of Lot 254 with the McDowell Street Viaduct; thence southeasterly along the western boundary of the McDowell Street Viaduct to a point where the McDowell Street Viaduct, Lodge Street and All Souls Crescent intersect on the southern boundary of Lot 254; thence southerly, traversing Lodge Street, to the northeast corner of Lot 14-1/2; thence westerly approximately 50 feet to the extreme northwestern corner of Lot 14-1/2; thence southerly approximately 100 feet to a common corner of Lots 14-1/2 and 11; thence westerly approximately 50 feet to another common corner of Lots 14-1/2 and 11; thence southwesterly approximately 60.48 feet to another common corner of Lots 14-1/2 and 11, being the extreme southeastern corner of Lot 11; thence southerly approximately 822 feet along the eastern boundary of the town limits of the Town of Biltmore Forest and the western boundary of Lots 14-1/2, 32, 34, 36, 271, 40, and 42, to the southwestern corner of Lot 42; thence, continuing southerly along the western boundary of Ward 7, Sheet 3, Lot 86 to its intersection with Vanderbilt Road; thence northeasterly along the common boundary of Ward 7, Sheet 3, Lot 86 and Vanderbilt Road; thence southeasterly, traversing Hendersonville Road, to the extreme southwestern corner of Lot 49; thence easterly to the northwestern corner of Lot 45; thence southerly approximately 123.5 feet to the southwestern corner of Lot 45, the point and place of beginning.

3. *Albemarle Park*

All lot references hereinafter are to Sheet 15 of Ward 2 of the Buncombe County tax maps, unless otherwise identified, and are shown on maps kept on file in the City of Asheville Planning Department.

BEGINNING at the intersection of Charlotte Street and the northern fork of Cherokee Road and being the southwestern most corner of Lot 98 and running thence northerly along the eastern margin of Charlotte Street to the northwestern corner of said Lot 98; thence easterly and northeasterly approximately 608.5 feet along the northern boundaries of Lots 98, Lot 97 and Lot 96 to the northwestern corner of Lot 31-1/2; thence northeasterly and southeasterly approximately 401.55 feet along the northern boundaries of Lots 31-1/2 and Lot 68 and along the southern margin of Canterbury Road to the northeastern boundary of Lot 68; thence crossing Canterbury Road to the northwestern most corner of Lot 101; thence easterly along the northern boundary of Lot 101 to its northeastern corner; thence southerly approximately 33 feet to the intersection of a point on the eastern boundary of said Lot 101 with the northwestern most corner of Lot 52; thence easterly to the northeastern corner of Lot 48; thence southerly along the eastern boundary of said Lot 48 and the western margin of Sunset Drive approximately 168.8 feet to the intersection of Sunset Drive and Cherokee Road at the southeastern corner of said Lot 48; thence southwesterly crossing Cherokee Road to the northeastern most corner of Lot 45; thence along the western margin of Sunset Drive and along the eastern boundaries of Lots 45, 44, 42, and 41 and continuing along the western margin of Sunset Drive to its intersecting with a point in the southern boundary of Lot 39; thence along the southern boundary of lot 39 approximately 75.5 feet to its southwestern corner; thence westerly approximately 386.2 feet along the southern boundaries of Lots 38, 37, 36 and 35-1/4 to the southwestern corner of Lot 35-1/4; thence westerly approximately 544.93 feet along the southern boundaries of Lots 34, 33, 32, 78, 79 and 82 to a point in the southern boundary of Lot 82 which is the northeastern corner of Lot 80; thence southerly approximately 80.7 feet to the southeastern corner of Lot 80; thence westerly approximately 166 feet to the southwestern corner of Lot 77; thence crossing Orchard Road to the southeastern most corner of Lot 93; thence westerly along the southern boundaries of Lots 93, 92 and 94 to the northeastern corner of Lot 72; thence westerly along the northern boundary of Lot 72 to its northwestern corner which is also the southwestern corner of Lot 71; thence northerly along the western boundary of Lot 71 to its northwestern corner; thence easterly along the northern boundary of Lot 71 to its northeastern corner; thence northeasterly traversing Hillside Walk to the southeastern corner of lot 91; thence along the eastern boundary of lot 91 to its northeastern corner; thence westerly along the northern boundary of lot 91 to its northwestern corner; thence northerly along the western boundary of lot 70 to its northwestern corner; thence easterly along the northern boundary of lot 70 to its northeastern corner; thence southerly along the eastern boundary of lot 70 to the intersection of said eastern boundary with the western margin for Orchard Road; thence northeasterly along the western margin for Orchard Road to its intersection with Cherokee Road; thence northwesterly along the southern margin for Cherokee Road and southwesterly along the southern margin of the southern fork of Cherokee Road to its intersection with the eastern margin of Charlotte Street; thence northerly along the eastern margin of Charlotte Street, running along the western boundary of lot 121 and along the terminus of the northern fork of Cherokee Road to the point and place of beginning. This description includes all of the property shown on the plats recorded in Plat Book 198 at pages 178 and 178B and in Plat Book 154 at pages 104B (#2) and 104C (#3) of the Buncombe County Registry, save and excepting therefrom those parcels identified as "Public Garage," "Fir Tree," "Locust," "Rose Bank" and "Club," all shown on the Buncombe County tax maps as lots 73, 72, 91 and 99 of sheet 15 and lot 86-1/2 and a portion of lot 84 of Sheet 16, but specifically including extensions of those lots identified as "Manzanita" and "30" as shown on the above-referenced plats, with said extensions specifically shown on that plat recorded in Plat Book 19 at page 67 of the Buncombe County Registry.