ORDINANCE NO. 96

LAND DEVELOPMENT ORDINANCE

OF THE

VILLAGE OF FLAT ROCK,

NORTH CAROLINA

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Table of Contents

I AUTHORITY AND ENACTMENT 1

II TITLE 1

III PURPOSE 1

IV JURISDICTION 1

V WORD INTERPRETATION AND DEFINITIONS 1

Section 500. Word interpretation 1
Section 501. Definitions 2

VI APPLICATION OF REGULATIONS 18

Section 600. General use, size and setback requirements 18
Section 601. Conformance with codes, plans, maps and ordinances 19
Section 602. Vested development rights 20
Section 603. Nonconformances 21
Section 604. Agricultural uses 24
Section 605. Technical review advisors 24
Section 606. Certificate of zoning compliance requirements 24
Section 607. Historic site guidelines 25
Section 608. Applications; requirements for submission 26
Section 609. Prerequisite for plat recordation 27
Section 610. Notice; decisions of the Zoning Administrator, posting of decisions 27

VII ZONING DISTRICTS AND MAP 27

Section 700. Types of zoning districts 27
Section 701. Use districts 29
Section 702. Official zoning map 29
Section 703. District boundaries 30
Section 704. Rules governing district boundaries 30

VIII ZONING USE DISTRICTS 30

Section 800. Use requirements by district 30
Section 801. Site plan and review requirements for uses 31
Section 802. R-40 Low Density Residential District 31
Section 803. R-20 & R-20-CD Low Density Residential District 32
Section 804. R-20-MH Low Density Manufactured Homes Residential District 33
Section 805. R-10 & R-10-CD Medium Density Residential District 33
Section 806. PA Performing Arts District 35
Section 807. C-1 & C-1-CD Commercial District 36
Section 808. NP National Park District 37
Section 809. RC Residential Conference District 38
Section 810. HI & HI-CD Historic Inn District 40
Section 811. MF & MF-CD Multifamily Residential District 42
Section 812. ML & ML-CD Motel Lodging District 42
Section 813. GCPS Government, Civic and Public Service District 43
Section 814. RPUD Residential Planned Unit Development Conditional Overlay District 45
Section 815. CPUD Commercial Planned Unit Development Conditional Overlay District 49

IX GENERAL PROVISIONS 51
Section 900. Fences and walls 51
Section 901. Off-street parking and loading; minimum standards 53
Section 902. Street names, addresses and road signs 55
Section 903. Required connection to the public wastewater system 56
Section 904. Federal, state and local approvals and permits 56
Section 905. Storm water control plan required 56
Section 906. Construction debris and solid waste disposal 56
Section 907. Guarantee of completion 57
Section 908. Accessory buildings and structures 58
Section 909. Soil erosion and sedimentation control plan required 58
Section 910. Landscaping and buffer standards 58
Section 911. Riparian buffers adjacent to streams, lakes, and designated wetlands. 63
Section 912. Exterior and outdoor lighting 63
Section 913. Clustering permitted; standards 64
Section 914. Open space preservation and recreation area requirements 64
Section 915. Ownership and conveyance of common areas 65
Section 916. Small solar energy systems permitted; standards 66
Section 917. Small antennas 69
Section 918. Recreational, commercial and utility vehicle storage and parking 70
Section 919. Preservation of trees along scenic byways and other designated public roads 71
Section 920. Storm water control; forestland 71

X PROHIBITIONS 71
Section 1000. Prohibition of development in designated floodplains and floodways 71
Section 1001. Prohibition of junk accumulation 72
Section 1002. Prohibition of construction of improvements in preservation areas 72
Section 1003. Prohibition of construction of wind energy and commercial solar facilities 72

XI SPECIAL USE STANDARDS 72
Section 1100. General provisions 72
Section 1101. Communication towers 72
Section 1102. Public and private schools 75
Section 1103. Bed and breakfast inns 76
Section 1104. Churches and similar places of worship 78
Section 1105. Planned mixed use developments 79
Section 1106 Cottage industries 80
Section 1107 Recreational facilities 81
Section 1108. Bed and breakfast homes 82
Section 1109. Utility facilities 84
Section 1110. Home occupations 85
Section 1111. Agricultural uses 85

XII PROCEDURES FOR SUBMISSION, REVIEW AND APPROVAL OF SUBDIVISIONS ... 86
Section 1200. Application to subdivide property 86
Section 1201. Final plat required for any subdivision of land 86
Section 1202. Final plat recordation, procedure for approval and affect on dedications 86
Section 1203. Types of subdivisions 87
Section 1204. Procedures for review and approval of a subdivision 87
Section 1205. Procedures for phased developments 89

XIII MINIMUM SUBDIVISION DESIGN REQUIREMENTS 90
Section 1300. General 90
Section 1301. Open space preservation; major subdivisions 90
Section 1302. Gated subdivisions 90
Section 1303. Subdivision road design 91
Section 1304. Subdivision utility design 93
Section 1305. Other subdivision design standards 95

XIV ADMINISTRATION AND ENFORCEMENT 98
Section 1400. Duties and function of the Village Council and Board of Adjustment....98
Section 1401. Zoning Administrator 98
Section 1402. Certificate of zoning compliance requirements 99
Section 1403. Land development permit requirements.... 101
Section 1404. Master plans....102
Section 1405. Site plans; permitted use review and approval 104
Section 1406. Certificate of occupancy required 106
Section 1407. Certificate of nonconformance 107
Section 1408. Administrative Modification of design requirements....107
Section 1409. Enforcement and penalties for violation....109
Section 1410. Fee schedule 113

XV PROCEDURES FOR APPEALS, VARIANCES AND SPECIAL USES 113
Section 1500. General procedures 113
Section 1501. Required findings of fact for variances 115
Section 1502. Required findings of fact for special uses 115

Section 1504. Procedures for hearing appeals and applications....116
Section 1505. Withdrawal and amendment of applications, permits and variances....119
Section 1506. Revocation and expiration of permits....119
Section 1507. Appeals to superior court....120

XVI REZONING, AMENDMENTS AND REPEALS 121
Section 1600. Rezoning, amendments and repeals 121
Section 1601. Initiation of rezoning, amendments or repeals 121
Section 1602. Application for rezoning, amendments or repeals....121
Section 1603. Planning Board action 122
Section 1604. Public hearing....122
Section 1605. Citizen comments 123
Section 1606. Conditional district and conditional overlay district rezoning 123
Section 1607. Conflicts of interest 125
Section 1608. Statement of reasonableness....125
Section 1609. Appeals....125

XVII LEGAL STATUS PROVISIONS 125
Section 1700. Conflict with other laws 125
Section 1701. Severability....125
Section 1702. Prior zoning, subdivision and conflicting ordinances 125
Section 1703. Abrogation....126
Section 1704. Effective date....126

ARTICLE I
AUTHORITY AND ENACTMENT

The Village Council of the Village of Flat Rock, North Carolina, pursuant to the authority granted by the General Statutes of North Carolina, particularly Chapter §160D, Local Planning and Development Regulation, and the authority vested in the Village of Flat Rock by its charter, hereby ordains and enacts into law the following articles and sections.

ARTICLE II
TITLE

This ordinance shall be known and may be cited as the Land Development Ordinance of the Village of Flat Rock, North Carolina.

ARTICLE III
PURPOSE

By adopting this Land Development Ordinance, it is the intent and policy of the Village Council to preserve the unique character of historic Flat Rock, to maintain and preserve the existing development patterns within the community, to provide the planning and legal framework for continued orderly development, to provide for the subdivision of land and the provision of streets and utilities that preserve the natural and cultural resources and open space within the Village of Flat Rock and to promote the health, safety, and general welfare of the Village of Flat Rock.

ARTICLE IV
JURISDICTION

The provisions of this ordinance shall be applicable to all land and each subdivision within the corporate limits of the Village of Flat Rock, North Carolina, as now or hereafter fixed and as shown on the map entitled, "Zoning Map of the Village of Flat Rock, North Carolina." The map, including applicable overlays adopted by the Council, shall be on file in the office of the Village Clerk.

ARTICLE V
WORD INTERPRETATION AND DEFINITIONS

Section 500. Word interpretation.

Except as specifically defined herein, all words used in this ordinance have their customary dictionary definitions. For the purpose of this ordinance, certain words or terms used herein are defined as follows:

(A) The word "Village" means the Village of Flat Rock, North Carolina.

(B) The words "Village Council" or "Council" mean the Council of the Village of Flat Rock, North Carolina.

(C) The words "Board of Adjustment" mean the Village of Flat Rock Board of Adjustment.

(D) The words "Planning Board" mean the Village of Flat Rock Planning Board.

(E) The word "ordinance" means the Land Development Ordinance of the Village of Flat Rock.

(F) The words "shall," "will" and "must" are mandatory; and the word "may" is permissive, except when the context of the particular use is negative (e.g., "may not").

(G) The word "lot" includes the words "plot," "parcel" and "tract."

(H) The word "structure" includes the words "building" and "accessory structure."

(I) The word "street" includes the words "road" and "highway."

(J) The word "person" includes an individual, ~~a~~ firm, association, organization, partnership, corporation, company, trust, governmental unit, limited liability company or any combination thereof.

(K) The words "zoning map" or "Flat Rock Zoning Map" shall mean the Official Zoning Map of the Village of Flat Rock.

(L) The word "day" or "days" means calendar days unless otherwise specified.

(M) Words used in the masculine gender include the feminine gender.

(N) Any reference to a section shall mean a section of this ordinance, unless otherwise specified.

(O) For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined in Section 501. Except as defined herein, all other words used in this ordinance shall have their customary dictionary meaning.

Section 501. Definitions.

Accommodation. A room or rooms within a building intended for temporary lodging as a unit. A unit designed or intended to sleep up to four persons shall constitute one accommodation or lodging unit.

Adaptive reuse. The development of a new use for an older building or buildings.

Adjacent or adjoining property. Any property that physically abuts or touches, by means of a common boundary or corner, any other property. Such terms shall also include the term contiguous property. For the purposes of this ordinance, property that is separated by a public or private road, a right-of-way, an easement, or a body of water less than 250 feet wide shall be considered adjacent or adjoining property.

Administrative review and approval. Plan, plat or any other review and approval by the Zoning Administrator, the Planning Board or the Village Council that is based on the requirements of this ordinance and does not involve discretionary decision making.

Agricultural uses, animal. The breeding, grazing or raising of domestic animals, or fowl, aquaculture or beekeeping, for food, for sale or for any commercial purpose, and the breeding, grazing or raising of exotic animals, inherently wild animals or dangerous animals for any purpose.

Agricultural uses, crop. The use of land for the growing of crops or plants, including truck farming, field crops, vegetables, fruits, nuts, sod, seeds, ornamentals, and flowers, tree production (silviculture), and the commercial propagation of plants in green houses.

Alley. A public way that affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Antenna. Large. A device or array, not exceeding thirty-seven feet in any linear dimension and not including long wire horizontal antennas, used to transmit or receive electromagnetic waves or signals on or associated with a communication tower.

Antenna, small. An antenna and support equipment as described in 47 C.F.R. 1.4000 (a) (1) (i), (ii), (iii), and (iv) that is one meter or less in diameter, or one meter or less in diagonal measurement, that is used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite on property within the exclusive use or control of the small antenna user where the user has a direct or indirect ownership or leasehold interest in the property and where the signals are not distant over the air signals.

Applicant. The owner or a person, firm, or business entity acting with a power of attorney from an owner, who submits an application for any permit, approval, or relief for any purpose under this ordinance and who is responsible for ensuring compliance with the terms and conditions of this ordinance.

Basement. That portion of a building that is partly or completely below grade.

Basement wall. The opaque portion of a wall that encloses one side of a *basement* and has an average below *grade* wall area that is 50 percent or more of the total opaque and nonopaque area of that enclosing side.

Bed and breakfast homes. A detached single-family *dwelling* occupied by the *dwelling* owner and containing four or fewer guest rooms for up to eight guests for rent and conforms to the requirements in Section 1108.

Bed and breakfast inns. A business of not more than twelve guest rooms that offers bed and breakfast accommodations to at least nine but not more than twenty-three persons per night and conforms to the requirements in Section 1103.

Boathouse. A noncommercial residential accessory structure, including a dock, the principle purpose of which is waterfront mooring or storage of small boats. Such structure may have one enclosed nonresidential level above the boat storage level, provided such area shall not contain more square footage than the boat storage level.

Buffer. The plants and landscaping acting as a physical buffer between developments regulated by the provisions of this ordinance and adjacent property, and buffers located along one or more adjacent property boundary lines in accordance with Section 910.

Buildable acreage. The net acreage of a lot or tract available for calculating density. For the purpose of this ordinance, buildable acreage shall be the gross acreage of a lot or tract, less acreage of all areas that include existing and planned public and private roads and rights-of-way, bodies of water, wetlands, floodplains and floodways. In addition, the buildable acreage for portions of a tract with a slope of sixty percent or greater (where such slope areas account for ten percent or more of the tract) shall be one-half the gross buildable acreage. Except as otherwise provided in this ordinance, the calculation of lot sizes under dimensional requirements in the use districts defined in Article VIII shall not be based upon buildable acreage.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Building, Accessory. In one- and two-family *dwellings* not more than three stories above the finished main floor level in height with a separate means of egress, a building, the use of which is incidental to that of the main building and that is detached and located on the same lot. An accessory building is a building that is roofed over and more than 50 percent of its exterior walls are enclosed. Examples of accessory buildings are garages, storage buildings, workshops, boat houses, treehouses, and similar structures.

Building or structure height. The height of a building or structure measured as the vertical distance from the finished main floor level to the highest point of the building or structure. Chimneys, cupolas and steeples are not included in measuring a building or structure's height.

Building, occupied. Any residential or other building that is inhabited on a regular basis by one or more persons. For the purpose of this ordinance, occupied buildings shall include, but are not limited to, residences, schools, places of worship, other buildings for public assembly, hospitals and clinics, and commercial and industrial buildings.

Building, principal. A building used for the same purpose as the principal use of the lot.

Carl Sandburg Home National Historic Site viewshed. All areas visible by line of sight from the property of the Carl Sandburg Home National Historic Site as identified and shown on a map developed and maintained by the Superintendent of the National Historic Site and adopted by the Village Council. For the purposes of Section 1101, the viewshed extends up to one air mile from the visual vantage areas of the site as identified on the viewshed map. A copy of the map shall be located in the Village office and in the Superintendent's office at the National Historic Site.

Certificate of zoning compliance. A permit issued by the Zoning Administrator upon the approval of an application for any activity on a lot or tract of land that is regulated by this ordinance except for the subdivision of a lot or tract and the rezoning of a lot or tract.

Co-location. The placement of an additional antenna on an existing tower, including required support equipment and buildings at the base of the tower and any necessary modification to the structure of the existing tower.

Commercial planned unit development (CPUD). A commercial development where more than one principal building or principal use is proposed for a lot or tract in single or unit ownership at the time of development. A commercial planned unit development may be approved as part of a CPUD conditional overlay district rezoning request as detailed in Section 815 and Section 1606.

Common area. Land and water areas within or related to a development that are reserved for public or private use for active or passive recreation for residents and guests of the development. The common areas may include roads, man-made features and structures.

Communication tower. Any tower, pole, or similar wireless support structure, exceeding sixty-five feet in total height, as measured from the base of the structure at grade to its highest point, which supports or incorporates, or is intended to support or incorporate one or more above ground communication antenna, transmitters or receivers, whether freestanding, guyed, or affixed to a building.

Communication tower, concealed. A communication tower designed and installed in a manner such that the antenna(s), supporting apparatus and associated structures are aesthetically and architecturally appropriate with regard to an existing structure on which the tower is located and conforms to the requirements of Section 1101.

Conceptual plan. A plan for a proposed phased subdivision or conditional overlay district rezoning that presents the general development plan as specified in Section 1404.

Condominium. A single-dwelling unit in a multiunit dwelling or structure, that is separately owned, or rented from owner, and may be combined with an undivided interest in the common areas and facilities of the property. Also see *Dwelling Unit.*

Conference center. A facility constructed for and devoted to meetings and meeting space that may or may not contain lodging facilities, administrative offices, recreational areas, dining facilities, or customary accessory uses.

Conservation areas. Natural, historic and cultural features of a tract of land: these features shall include all bodies of water, perennial streams, wetland areas, Southern Appalachian bogs, land in a floodplain or floodway, areas with biological life unique to the area, areas with mature trees or vegetation, and any structure or landscape listed on the National Register of Historic Places.

Cottage industry. A small commercial use that can be approved as a special use in the Residential Conference (RC) district in accordance with Section 1106.

Cul-de-sac. A dead-end local street provided with a vehicular turn around at its terminus and conforming to the requirements of Section 1303.

Decision. Any final and binding order, requirement, determination or other decision.

Dedication. A gift or transfer by the owner of a right of use of land for a specified purpose or purposes. Because a transfer of property rights is involved, dedication must be made by written instrument, completed with an acceptance by the grantee or transferee, and recorded in the office of the Register of Deeds.

Density. The number of dwelling units per acre. Except as otherwise specified in this ordinance, density calculations shall be based upon buildable acreage. For all calculations of density that result in a fraction, the result shall be rounded down to the nearest whole number.

Designated public roads. Highland Lake Road (SR 1825), Erkwood Drive (SR 1164), West Blue Ridge Road (SR 1812), and Kanuga Road (SR 1127) within the corporate limits of the Village.

Developer. A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development of the property.

Development. Any of the following:
a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.

b. The excavation, grading, filling, clearing, or alteration of land.
c. The subdivision of land as defined in G.S. 160D-802.
d. The initiation or substantial change in the use of land or the intensity of use of land.

Dish antenna. An accessory structure that is greater than one meter in diameter and is a combination of: (1) antenna or dish antenna whose purpose is to receive communications or other signals from orbiting satellites; (2) a low noise amplifier that is situated at the focal point of the receiving component and whose purpose is to magnify and transfer signals; and (3) a coaxial cable whose purpose is to carry the signals into the interior of a building.

Dormitories. Temporary group housing as an accessory use for a permitted or special use where dormitories are specifically listed as an accessory use.

Drip line. The imaginary circle drawn on the soil around a tree directly under its outermost branch tips.

Driveway. A private access to not more than two lots of record that meet the requirements of this ordinance. A driveway may be paved or unpaved, platted or described by metes and bounds, or may be otherwise described or shown as an easement or right-of-way. Any drive, access, road, easement or right-of-way to serve more than two lots shall be deemed a public or private street. NCDOT requires a driveway permit before connecting to a street in their system.

Dwelling. Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Dwelling unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Occupation of property can be under *Condominium* or *Fee Simple* ownership or rental status.

Dwelling, accessory. A dwelling unit located within and occupying a portion of an existing building. Such unit shall not occupy more than forty percent of the total heated floor space in the building.

Dwelling, single-family detached. A detached residential structure intended for use and occupancy by a single family and that is built to accommodate a single meter service for any utilities, including but not limited to, electric, water and gas.

Dwelling, single-family attached. An attached residential structure (see *Duplex* and *Townhouse*) with single meter service per unit for any utilities, including but not limited to, electric, water, and gas. Units may be: a) *Fee* Simple ownership or rental status separated by property lines in which each unit extends from the foundation to roof and with open space on at least two sides, or b) developed under *Condominium* ownership or rental status.

Dwelling, multifamily. A building or portion thereof on a single lot and used or designed as a residence for three or more families living independently of each other with separate housekeeping and cooking facilities for each, and including apartments, townhouses, and condominiums. Units may be developed under *Condominium* ownership or rental status.

Duplex, single-family attached. A single-family *dwelling unit* constructed in a group of two attached units: a) *Fee Simple* ownership or rental status separated by property lines in which each unit extends from the foundation to roof and with open space on at least three sides, or b) developed under *Condominium* ownership or rental status.

Easement. A right of use or privilege, owned by one in the land of another, that restricts the rights of use or privilege of the owner of the land. The right of use or privilege may be for specified purposes and uses by the public or a person or entity.

Excavation. The cutting, filling or clearing of the land, thereby disturbing ten cubic yards or more.

Exterior wall. An above-grade wall that defines the exterior boundaries of a building. Includes between-floor spandrels, peripheral edges of floors, roof and *basement* knee walls, dormer walls, gable end wall, walls enclosing a mansard roof and *basement walls* with an average below-*grade* wall area that is less than 50 percent of the total opaque and nonopaque area of that enclosing side.

Family. Family is an individual, two or more persons related by blood, marriage, or law, or a group of not more than five persons living together in a dwelling unit. Servants having common housekeeping facilities with a family consisting of an individual, or more persons related by blood, marriage, or law, are part of the family for this code.

Fee Simple. Owning all interests in real estate, both building and land underneath a given building.

Fence. Any barrier attached to the ground that serves as a boundary, either actual or perceived, or a separation between sections or parcels of land, and is constructed in whole or in part of wood, stone, brick, concrete, wire, metal, plastic, vinyl or any combination of such materials.

Final plan. An as-built plan or survey of the project that delineates all of the completed improvements installed in accordance with the approved site plan of the project, including all built-upon areas, all structures, any permanent storm water BMP installed on the site, permanent open space, and landscaping.

Final plat. A plat representing a lot, parcel, subdivision or tract of land and designating the location and boundaries of individual properties, rights-of-way, open space, streets, easements

and other information required by this ordinance. A final plat shall be prepared by a qualified professional, and suitable for recording in the office of the Register of Deeds.

Floodplain. Any land area susceptible to being inundated by water from any source. For the purpose of this ordinance, such flood hazard areas are delineated on one or more Flood Insurance Rate Maps (FIRMs) issued for the Village by the Federal Emergency Management Agency.

Floodplain Administrator. The Village official charged with the responsibility of administering the Village Flood Damage Prevention Ordinance.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. For the purpose of this ordinance, base flood means the flood having a one percent chance of being equaled or exceeded in any given year. Floodways are delineated on one or more Flood Insurance Rate Maps (FIRMs) issued for the Village by the Federal Emergency Management Agency.

Garage. A building intended to shelter automotive vehicles and other chattels.

Gated subdivision. A subdivision where all entrances and exits are controlled by a physical barrier.

Health Department. The Henderson County Department of Public Health.

Hearing board. The board responsible for hearing a particular matter as specified by this ordinance. The hearing board could be the Planning Board, the Board of Adjustment or the Village Council.

Heritage tree. A tree so designated by the Village Council due to its exceptional size, form, rarity, age, or association with or contribution to a historic structure, district, noted person or event.

Historic building. Any building listed on the National Register of Historic Places, or as a contributing resource in the Flat Rock Historic District.

Historic district, national. The areas of the Village listed in the National Register of Historic Places as the Flat Rock Historic District.

Historic home. A historic building located in a residential district and used primarily as a single-family home.

Historic site. Any land, building or feature located within and identified as a contributing resource in the Flat Rock Historic District.

Historic site, national. A property owned and maintained by the U.S. Department of the Interior as a National Historic Site. For the purpose of this ordinance, this term shall apply to the Carl Sandburg Home National Historic Site.

Home occupation. A profession or occupation conducted within a dwelling unit by a member of the family residing in the dwelling unit, or as otherwise provided in Section 1110. For the purposes of this ordinance, home occupation does not include the use of a home office that does not involve the employment of anyone outside the home, does not require clients or customers routinely to come to the home, is not in any way easily apparent from neighboring properties, and does not in any way affect neighboring properties.

Improvements. All temporary and permanent features required or installed in the development of a subdivision in accordance with an approved site plan and the requirements of this ordinance. Such improvements may include, but are not limited to, roads, sidewalks and pedestrian trails, utilities, sedimentation and erosion control facilities, storm water detention and disposal facilities, buffers, landscaping, parks and recreational areas.

Incidental retail business. A retail business located on the premises with, and operated by the operators of the principal commercial or institutional use that is directly related to the principal commercial use. Such business shall not occupy more than five percent of the gross floor area of the principal use. This definition shall not include the sale or service of any vehicles and the external dispensing of gasoline, kerosene and diesel petroleum products, drive-through service or exterior storage or display of merchandise.

Individual wastewater system. Any septic tank or ground absorption system, serving a single source and approved by the Health Department.

Individual water supply. A deep well used to supply one residential connection.

Individual water system. A deep well used to supply fewer than fifteen residential connections or less than twenty-five year round residents and approved by the Health Department.

Infrastructure. Improvements within and serving a site or project that support or provide utilities, services, and ingress and egress to the principal use or uses in the development. Such improvements include, but are not limited to, electric, gas, telephone and cable installations; storm drainage; water systems; sewage disposal systems; sidewalks, curbs and gutters; and streets and roadways.

Junk. Junk shall include, but not be limited to, scrapped metals, rope, clothes, rags, plastics, batteries, paper, trash, rubber, building materials, debris, waste, dismantled or wrecked machinery, and unlicensed vehicles that are not operational, or parts thereof.

Lake. An impoundment of water, fed by natural streams, springs or the water table with a surface area of more than 50,000 square feet.

Land Development Permit. A permit issued by the Zoning Administrator in accordance with Section 1403 upon the approval of a conceptual plan, master plan or site plan, if required, for any subdivision of a lot or tract of land or upon the approval of a proposed conditional district or conditional overlay district rezoning of a lot or tract of land. A land development permit must be issued prior to the issuance of any certificates of zoning compliance required by this ordinance and does not take the place of such certificates of zoning compliance.

Loading space. An off-street area for loading or unloading trucks or commercial vehicles that is not less than twelve feet by forty feet, with an overhead clearance of not less than fourteen feet.

Lodging facility. Any building or group of buildings used, maintained, advertised, or intended for use as a temporary lodging place for compensation, whether the temporary lodging is designed for temporary or seasonal living facilities. Lodging facilities shall include any hotel, motel, tourist court, guesthouse, rooming or boarding house, inn, lodge, or bed and breakfast home or inn.

Lot. A parcel of land occupied or legally and physically capable of being occupied by a building, together with its customary accessory buildings, including the open space required by this ordinance.

Lot of record. Any lot within the Village for which a plat has been recorded in the office of the Register of Deeds for Henderson County, or a lot described by a legal description that has been so recorded.

Lot types:

(A) *Corner lot.* A lot located at the intersection of two or more public or private streets.

(B) Double frontage lot. A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

(C) Flag lot. A lot with access provided to the bulk of the lot by means of a narrow corridor from a public or private road.

Master plan. A general development plan for conditional overlay district rezoning, as specified in Section 1606, or for a subdivision proposed to be developed in phases as specified in Section 1205.

Manufactured or mobile home. A portable housing unit or a portion thereof, built on a chassis in a factory, intended for use as a dwelling unit and designed to be transported on its own chassis. A manufactured or mobile home shall be construed to remain such whether or not wheels, axles,

hitch or other appurtenances of mobility are removed, and regardless of the nature of the foundation or underpinning provided. All vehicles that are designated manufactured homes or mobile homes by the Uniform Standards Code for Manufactured Homes Act and display evidence of an inspection by the United States Department of Housing and Urban Development (HUD) shall be considered manufactured homes. For the purposes of this ordinance, a manufactured or mobile home shall not be construed to be a travel trailer or other form of recreational vehicle.

Native vegetation. Mountain laurel, rhododendron and native hollies.

Nonconforming use. Any lot, use of land, building or structure lawfully existing or used on the date of adoption of this ordinance, or the date of a zoning map change or the date it is annexed into the Village, or that occurs through no fault of or action by the property owner, that does not conform with the use or dimensional requirements provided herein for the district in which it is located.

NCDEQ. The North Carolina Department of Environmental Quality.

NCDOT. The North Carolina Department of Transportation.

NCGS. North Carolina General Statutes.

Open space. Natural or landscaped areas, excluding traveled ways and parking areas, which are dedicated to the public, donated to a land trust, or are held in common by a legally constituted property owners association. Open space shall be held in perpetuity and may include ponds, lakes, wetlands, streams, floodplains and floodways.

Park. An area, developed or undeveloped, for either passive or active recreational activities. A developed park may include, but shall not be limited to, open fields, woodlands, water courses, multiuse courts for tennis and similar racket games, walkways, benches, children's playgrounds, swimming and wading pools, golf courses (excluding miniature golf facilities and standalone driving ranges) and incidental concession stands. The term "park" shall not include zoos, recreational vehicle parks, amusement parks, vehicular racing facilities, recreational facilities or any for profit use except incidental concession stands.

Parking space. An area of not less than ten feet by nineteen feet used for parking a vehicle, except for single family dwelling units.

(A) *Parking space, off-street*. A parking space located outside of a public or private street right-of-way with vehicular access to a street or alley.

(B) *Parking space, on-street*. A parking space located on a public or private street right-of-way. An on-street parking space, where permitted by this ordinance, shall be located outside of the traveled way designated for vehicular traffic.

Phase. A group of more than three lots in a development plan, including rights-of-way, common areas and associated improvements therein, and relating to stages of a master plan.

Plat. A map or plan of a parcel of land that is to be, or has been subdivided.

Planned mixed use development. A planned development where more than one principal building or principal use is proposed for a tract in single or unit ownership at the time of development. The development may include residential, commercial and institutional uses.

Pond. A perennial impoundment of water, fed by natural streams, springs or the water table, with a surface area of less than 50,000 square feet.

Premises. Land, with its appurtenances; a distinct portion of real estate.

Preservation area. The land area for a depth of one hundred feet from the edge of the traveled way along scenic byways and the land area for a depth of seventy-five feet from the edge of the traveled way along designated public roads of the Village. Excepted from the preservation area are those tracts of land lying within the commercial district.

Preservation tree. Any tree over six inches in diameter, as measured four feet above the ground, and located in a preservation area.

Presiding officer. The chairman of the Planning Board, the chairman of the Board of Adjustment or the Mayor for any hearing where that officer is presiding during a hearing.

Private homeowners club. Facilities owned and operated by a homeowners association in a RPUD-COD with more than 10 lots, a PMUD or a major subdivision, solely for the benefit of its members, that may include, but are not limited to, swimming pools and pool houses, tennis courts, fitness centers, club houses with office space, meeting and activity rooms, dining facilities, accessory structures and parking areas.

Private road. A dedicated private street or right-of-way for vehicular traffic that affords access to abutting properties and conforms to the requirements of Section 1303 (C).

Public road. A public street or right-of-way for vehicular traffic that affords access to abutting properties and conforms to the requirements of Section 1303 (B).
Public wastewater system. Any sewage disposal system owned and operated by a local unit or combination of units of government in Henderson County.

Private water system. Any private water system serving fifteen or more residential connections or serving more than twenty-five year round residents. Such a water system is classified as public water supply by state law, the plans and specifications of which must be approved by the Department of Human Resources, Division of Health Services.

Qualified professional. A professional licensed or registered by the State of North Carolina and performing services only in his area of competence. This term shall include only registered land surveyors, registered engineers, registered architects, and registered landscape architects.

Quasi-judicial decisions. A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

Recreational facilities. Areas, fields or facilities where outdoor activities are conducted, including, but not limited to soccer fields and facilities, baseball or softball diamonds and facilities, football or rugby fields and facilities, and amphitheaters and other outdoor facilities for stage or concert performances and other spectator activities open to the public, that conform to the requirements in Section 1107. Not included in this definition are swimming pools, courts for racket games, bocce ball and similar small, private facilities.

Recreational vehicle. Any vehicle, self-propelled or otherwise, that is designed for camping or transient, nonpermanent living. The definition of a recreational vehicle shall include a travel trailer.

Register of Deeds. The Henderson County Register of Deeds.

Residential planned unit development (RPUD). A residential development that includes more than four detached or attached single or multifamily dwelling units, developed or proposed for development on a lot or tract of lots held in single ownership at the time of development. A residential planned unit development may be approved as part of an RPUD conditional overlay district rezoning request as detailed in Section 814 and Section 1606.

Riparian buffer. A natural or replanted buffer area along a perennial stream, lake or designated wetland.

Scenic byways. Greenville Highway (NC 225) and Rutledge Drive (SR 1166) within the corporate limits of the Village, and Little River Road (SR 1123) for its entire length.

Setback. The required distance between the location of a structure, operation or use and some other point of location, most typically a lot line, right-of-way or the edge of a traveled way; provided that overhanging eaves, gutters and uncovered steps extending up to three feet from a building wall may be located in the setback area.
Setback, front yard. A setback measured from the property line determined to be the front yard property line. Typically the front yard property line is the edge of the traveled way.

Setback, side yard. A setback measured from the side property lines. Where the side property line is a street, the setback is measured from the nearest edge of the traveled way.

Setback, rear yard. A setback measured from the rear property line. Where the rear property line is a street, the setback is measured from the nearest edge of the traveled way.

Site plan. A scaled and detailed drawing and supporting text, prepared by a qualified professional, showing the relationship between lot lines and the existing or proposed uses, buildings or structures and includes a drawing showing the layout of a proposed subdivision, a phase of a proposed subdivision or as otherwise required by this ordinance that contains the information and supporting documentation required by this ordinance and Section 1405 (A) of this ordinance.

Solar energy system, small. A solar collection system that is installed on the ground or on or as part of the roof of a building or structure located on a residential property or in the commercial district to provide energy for water heating, active space heating and cooling, passive heating or generation of electricity for the residential property or commercial district property, including standalone systems, systems integrated as awnings or attached to the roofs of porches, sheds, carports and covered parking structures, where such system is designed to provide only incidental excess power to the grid of a utility company.

Special use. A specific use that may be permitted in a zoning district by the Village Council subject to the findings in Section 1502. Such a use may be permitted only in a zoning district where the use is specifically listed as a special use.

Special use permit. A permit issued upon competent, material and substantial evidence by the Village Council for a use that is permitted in a specific zoning district. The special use permit shall be issued only when the specific conditions and review procedures in Article XV are met.

Stealth technology. Means employed to conceal or disguise man-made structures. Such structures may include, but are not limited to, trees, clock towers, church steeples, light poles, and similar alternatively designed mounting structures, designs and colors that camouflage or conceal the presence of communication towers and antennas.

Street. A public or private road or right-of-way for vehicular traffic serving more than two lots and affording the principal means of access to abutting properties. The term includes, but is not limited to, avenue, place, way, drive, lane, court, boulevard, highway, road or any other thoroughfare except an alley or driveway.

Street, private. A dedicated private right-of-way that affords vehicular access to abutting properties and conforms to the requirements of Section 1303.

(A) An external private street dedicated and constructed within and as part of an approved subdivision is a private street that adjoins adjacent properties outside of the planned subdivision.

(B) An internal private street dedicated and constructed within and as part of an approved subdivision is a street that does not adjoin any properties outside of the subdivision, other than its intersection with a public or private street that is not a part of the approved subdivision.

Street, public. A public right-of-way for vehicular traffic that affords access to abutting properties and conforms to the requirements of Section 1303.

Street trees. Trees to be planted along the street frontage of certain developments provided for in this ordinance.

Structure. That which is built or constructed.

Structure, accessory. A structure that is not defined as an *accessory building*. Examples of accessory structures are fencing, decks, gazebos, arbors, retaining walls, barbeque pits, detached chimneys, playground equipment, yard art, docks, piers, etc.

Structure, alternative. A structure that is not primarily constructed for the purpose of the attachment and support of telecommunications, but on which one or more antennas may be mounted. Alternative structures may include, but are not limited to, buildings, water tanks and electric power transmission towers.

Structure, temporary use. A structure intended for temporary offices, headquarters, or storage of materials on the same lot or tract of land being used or developed for a directly related permanent use.

Subdivision. A division of a tract or parcel of land into two or more lots, building sites or other division when any one or more of those divisions is created for the purpose of sale or building development whether immediate or future, and including all divisions of land involving the

dedication of a new street or change in existing streets, excepting those divisions set out as exceptions in N.C.G.S. §160D-802(a).

Subdivision, cluster. A subdivision of land for detached single family dwelling units that permits the reduction of the required minimum lot sizes and dimensional requirements in order permanently to conserve open space, view corridors, conservation areas, active farmland, and tree canopies and that is in conformance with the overall density permitted in the district in which the cluster subdivision is located.

Subdivision, exempt. Those subdivisions that are exempt from regulation as subdivisions as specified in NCGS §160D-802 (Applicability, Article 8. Subdivison Regulation), and a division of a tract in single ownership, the entire area of which is not greater than three 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 this ordinance.

Subdivision, major. A subdivision not otherwise exempt from these regulations that results in the creation of more than ten lots.

Subdivision, minor. A subdivision that is not otherwise exempt from the provisions of this ordinance and that has ten lots or less and does not meet the criteria for the definition of a major or special subdivision.

Subdivision, special. Any subdivision of land other than a minor subdivision or a major subdivision that is not an exempt subdivision, including, but not limited to, cemeteries, partitions by order of the court and those necessary to grant public rights-of-way.

Technical review advisors. Advisors who, because of their training, background and experience, and on an individual basis, may be called upon to provide advice, information and guidance to the Zoning Administrator, the Planning Board, the Board of Adjustment or the Village Council on the technical review of proposed plans and improvements for compliance with the provisions of this ordinance.

Temporary health care structure. An accessory, transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that:

(A) is primarily assembled at a location other than its site of installation,

(B) is limited to one occupant who shall be the mentally or physically impaired person,

(C) has no more than 300 gross square feet,

(D) is not placed on a permanent foundation, and

(E) complies with applicable provisions of the State Building Code and NCGS §143-139.1(b) and the provisions of this ordinance.

Temporary housing. Housing for any individual or group that is occupied no more than six out of twelve months.

Townhouse. A single-family *dwelling unit* constructed in a group of three or more attached units separated by property lines in which each unit extends from the foundation to roof and with open space on at least two sides.

Trailer. Any non-motorized accessory vehicle designed to be towed by a motorized vehicle by means of a bumper, frame or truck bed hitch and required to be licensed as a trailer.

Trailer, travel. Any non-motorized recreational vehicle designed to be towed by a motorized vehicle by means of a bumper, frame or truck bed hitch and required to be licensed as a trailer.-

Traveled way. That portion of any alley, road, street or highway upon which vehicles normally travel and that is marked by gravel, asphalt packed dirt or other pavement.

Tree canopy. The canopy created by the uppermost branches of a forested area.

Utility facilities. Public or private utility facilities, including distribution and service lines, which shall include, but not be limited to, public water and wastewater disposal systems, electricity, cable television, natural and propane gas, and telephone. Such facilities include major above and below ground transmission lines, substations, pumping stations and water storage facilities. This definition shall not include communication towers and their accessory structures as herein defined, or wind energy facilities or commercial solar energy systems that are prohibited in Section 1003.

Utility vehicle. A trailer or an unlicensed motorized vehicle designed or used for off-road use.

Use. Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure, or on a lot of land.

Use, accessory. A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use.

Use, principal. The principal use of a lot. A second use located on one lot or parcel of land under separate ownership, or physically separated from the first principal use by a partition or wall with an individual exterior entrance, shall be deemed a separate principal use.

Variance. A modification of the terms of the this ordinance in accordance with Article XV, where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

Yard. An open area on the same lot as a structure. Fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in certain yard areas.

Yard, front. An open area within a building lot defined by the front property line, the side property lines, and a line drawn parallel to the front property line through the point of the structure nearest the front property line projected to the side property lines.

Yard, rear. An open area within a building lot defined by the rear property line, the side property lines, and a line drawn parallel to the rear property line through the point of the structure nearest the rear property line projected to the side property lines.

Yard, side. An open area within a building lot defined by the front yard line drawn as previously defined at the building front, the rear yard line drawn as previously defined at the building rear, the side property line, and a line drawn parallel to the side property line through the point of the structure nearest the side property line.

Zoning Administrator. An official appointed by the Village Council and charged with enforcing and administering this ordinance.

ARTICLE VI
APPLICATION OF REGULATIONS

Section 600. General use, size and setback requirements.

(A) *Principal use on any lot.* Only one principal building or principal use and its customary accessory uses may be erected, constructed, or used on any lot, except as specifically authorized in this ordinance.

(B) *Lot use limitation*. No part of any lot of record or other space required by this ordinance shall be included as part of a lot or other space required for any other building or use.

(C) *Use of rights-of-way and easements*. Public and private road rights-of-way shall not be used to calculate a minimum lot area or open space requirement. Utility easements and other easements may be used to calculate minimum lot or open space requirements.

(D) *Lot size*. The lot sizes established in the zoning districts of this ordinance are the minimum lot areas permitted in the district, except where specifically authorized for cluster subdivisions, RPUD-COD and CPUD-COD. No lot shall be reduced in size such

that it will not conform to the dimensional requirements of the district where it is located or the other requirements of this ordinance and a certificate of zoning compliance shall not be issued under any section of this ordinance for such lot. In areas not served by public sewer, larger lot sizes may be required by the Health Department.

(E) *Special lot size requirements*. There are no size and dimensional requirements for lots proposed for open space uses, entrance ways and islands, sight easements and utility facilities and stations.

(F) *Front property line designation and setbacks*. No principal or accessory structure shall be located within fifty feet of the nearest edge of the traveled way of a public or private street comprising the front property line of a lot or parcel of land, except as otherwise provided in this ordinance. The property line adjacent to a public or private street shall be considered the front property line, except that when a property adjoins more than one street, the owner shall designate one of the property lines adjoining a street as the front property line, and all development shall conform to the setback requirements from a street in the district in which it is located.

(G) *Flag lot setbacks*. Flag lots that have no property line adjacent to a public or private street except the narrow corridor leading to the lot, shall have setbacks on all sides of the bulk of the lot equal to the side and rear setbacks in the district in which the flag lot is located.

(H) *Preservation area setbacks*. Construction is prohibited in a preservation area as stated in Section 1002. Therefore, in all districts, except the commercial district, the setbacks shall be one hundred feet from the edge of the traveled way along scenic byways and seventy-five feet from the edge of the traveled way along designated public roads.

(I) *Boundary setbacks*. Properties abutting a more restrictive zoning district, including those in a cluster subdivision, a RPUD-COD and a CPUD-COD, shall be required to have setbacks that are equivalent to those of the adjacent district along the contiguous property boundaries.

(J) *Front yard setbacks*. The front yard setback requirements of this ordinance for dwellings shall not apply on any lot where the average setback of existing buildings located wholly or in part within one hundred feet on each side of such lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required setback. In such cases, the setback on such lot may be less than the required setback but not less than the average of the setbacks of the existing buildings. This section shall not apply to any lot having frontage on a scenic byway or designated public road.

Section 601. Conformance with codes, plans, maps and ordinances.

All buildings and structures shall be designed, constructed, and used in conformance with the North Carolina State Building Code and all local, state, and federal laws applicable to the site. All proposed uses of land including, but not limited to, excavation and grading, structures, utilities, storm water control, tree cutting and clearing, roads, driveways, and the establishment of subdivisions and uses on individual parcels shall comply with all officially adopted plans, maps and ordinances in effect in the Village. Failure to comply with such codes, plans, maps and ordinances may result in revocation of the certificate of zoning compliance and any permits issued under this ordinance, and penalties as specified in Section 1409).

Section 602. Vested development rights.

(A) *In general*. Any amendments, modifications, supplements, repeals or other changes in these regulations or the zoning map shall not be applicable or enforceable without the consent of the owner with regard to buildings and uses:

(1) For which a building permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to NCGS §160D-403 (Appeals of decisions on subdivision plats) and §160D-1108 (Conflicts of interest.), and the building permit has not been revoked pursuant to NCGS §160D-403(f) (Revocation of Development Approvals.) and §160D-1113 (Inspections of work in progress.); or

(2) For which a permit or certificate of zoning compliance has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to this section; or

(3) For which a vested development right has been established and remains valid and unexpired pursuant to this section.

Such vested development right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan, except that development of the property shall be subject to any and all future amendments to this ordinance that do not affect the type and intensity of use (i.e. landscaping, design standards, screening, etc) as vested. All amendments to an approved site specific development plan shall be subject to the requirements of the ordinance in effect at the time of the approval of the amendment and may, at the discretion of the Village Council and upon approval of the owner, result in a forfeiture of a previously established vested right.

(B) *Additional procedures for establishing a vested development right.* A vested right to commence a planned development or use of property according to a site specific development plan shall be established upon approval of a special use permit by the Village Council. The vested development right thus established is subject to the terms and conditions of the site plan. Only those design elements shown on or made a part of the site plan or permit shall be vested.

(C) *Term of a vested development right.* A development right that has been vested by the Village shall remain vested for a period of two years from date of approval. Modifications or amendments to an approved plan do not extend the period of vesting unless specifically so provided by the Village Council when it approves the modification or amendment. A vested right obtained under this subsection is not a personal right, but shall attach to and run with the subject property. A right that has been vested under the provisions of this subsection shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit has been issued except that:

(1) When a vested development plan has been at least fifty percent completed by the end of the vesting period, the project as a whole shall be given three more years to complete development in conformance with the approved plan not to exceed a total vested period of five years; and

(2) Prior to the vested right terminating at the end of the two-year period, the owner of the property may petition the appropriate board for a one-time two-year extension of the vested development right not to exceed a total vested period of five years. In its deliberations regarding the extension request, the public body may consider, among other things: (a) the percentage of the project completed; (b) a demonstration by the applicant of good faith efforts made towards project completion; (c) the reasons for the delay of project build-out; and (d) the compatibility of the planned development with current Village plans and the surrounding landscape. The board may choose to extend the vested development right for the entire project or only a portion of the project and may require one or more design features shown on the plan or incorporated in the permit to meet the current ordinance.

(D) *Declaration of a vested development right upon voluntary annexation.* A petition for annexation filed with the Village under NCGS §160A-31 or NCGS §160A-58.1 shall contain a signed statement declaring whether or not any vested development right with respect to the properties subject to the petition has been established. A statement that declares that no vested right has been established under NCGS §160D – 102 (33), 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 vested right that may have existed shall be terminated.

(E) Except as otherwise provided in this section, any building, structure, or other land use in a territory over which the Village has acquired jurisdiction is subject to the ordinances and regulations of the Village.

Section 603. Nonconformances.

Any parcel of land, use of land, easement, building or structure lawfully existing on the date of any text change in this ordinance, or on the date of a zoning map change or on the date of annexation into the Village, that does not conform to the use or dimensional requirements of the district in which it is located may be continued and maintained in accordance with the provisions of this section and other applicable provisions of this ordinance**.** Nonconformities may continue, but the provisions of this section are designed to curtail substantial investment in nonconformities and to bring about their eventual improvement or elimination.

(A) *Nonconforming vacant lots*. Vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds for Henderson County, which fail to comply with the minimum area or other dimensional requirements of the districts in which they are located may be used for any of the uses permitted in the district in which it is located, provided that:

(1) Where the lot area is not more than twenty percent below the minimum specified in this ordinance, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a certificate of zoning compliance.

(2) Where the lot area is more than twenty percent below the minimum specified in this ordinance, or other dimensional requirements cannot be met, the Board of Adjustment may, in its discretion, approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

(B) *Recombination of nonconforming vacant lots*. When the owner of a nonconforming vacant lot also owns land adjacent to the nonconforming lot, and the adjacent land or portion thereof can be combined with the nonconforming vacant lot to create a conforming lot (without creating other nonconformities), such owner shall, before selling or beginning any construction thereon, so combine the nonconforming lot and the adjacent land to create a conforming lot.

(C) *Nonconforming occupied lots*. Nonconforming lots occupied by buildings or structures that fail to comply with the dimensional requirements for the district in which they are located may continue to be used, provided the specific nonconformity may not be increased.

(D) *Nonconforming, open use of land*. Legally established nonconforming open uses of land that are not permitted to be established in the district in which they are located, such as storage yards, car, vehicle or equipment sale, parking or storage, junkyards, display of merchandise, and similar uses, may be continued except as follows:

(1) When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.

(2) Nonconforming open use of land shall be changed only to a conforming use.

(3) A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.

(4) When any nonconforming open use of land is discontinued for a period in excess of 120 days, regardless of the intent of the owner, any future use of the land shall be limited to those uses permitted in the district in which the land is located.

(E) *Nonconforming structures or use of structures*. Nonconforming buildings or structures or buildings or structures used for purposes or uses not permitted in the district in which they are located may be continued as follows:

(1) When a nonconforming building or structure or use has been changed to a conforming structure or use, it shall not thereafter revert to any nonconforming structure or use.

(2) A nonconforming building or structure or use may not be extended or enlarged, nor shall a nonconforming building or structure be altered except as follows:

(a) Structural alterations as required by law or ordinance to secure the safety of the structure are permissible.

(b) Expansion of a nonconforming use of a building or structure into portions of the structure that, at the time the use became nonconforming, were already erected and arranged or designed for such nonconforming use is permissible.

(3) When any nonconforming use of a building or structure is discontinued for a period in excess of 120 days, regardless of the intent of the owner, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

(F) *Other nonconformances*. Any existing nonconformance that became nonconforming through no fault or action by the owner, or any lot, structure or use that becomes nonconforming through no fault of or action by the owner, may continue as specified in a

certificate of nonconformance issued by the Zoning Administrator, provided that the specific nonconformity may not be increased.

(G) *Reconstruction of nonconforming damaged buildings or structures*. Any nonconforming building or structure that has been damaged by fire, wind, explosion, flood, or other causes, may be reconstructed or repaired and used as before provided that:

(1) The repairs or reconstruction are initiated within six months and are completed within one year of such damage (except that an extension may be approved by the Board of Adjustment, provided reasonable progress is being made).

(2) The total amount of space devoted to a nonconforming use may not be increased.

(3) If the Zoning Administrator determines the building or structure has been damaged to such an extent that the repair costs will exceed sixty percent of the fair market value of the damaged building or structure immediately before the damage was incurred, the reconstructed building or structure and future use of the building or structure and site shall conform to the regulations of the district in which it is located. However, any building or structure listed on the National Register of Historic Places, or any building certified as a state historic building may be rebuilt or restored to its original dimensions or the dimensions of the building or structure before such damage occurred, provided such restoration conforms to the Secretary of Interior Standards for Rehabilitation.

Section 604. Agricultural uses.

(A) Except for animal agricultural uses that are allowed under subsection (D) below, any such use that is in existence on the date of adoption of this ordinance shall become a nonconforming use that shall be permitted to continue, provided that the provisions of Section 603 (D) shall apply.

(B) Noncommercial crop agricultural uses of one acre or less are permitted in any use district.

(C) Any crop agricultural use of more than one acre or any animal agricultural use allowed under subsection (D) that is in existence on the date of adoption of this ordinance may continue as if it had received a special use permit under this ordinance.

(D) Animal agricultural uses for any purpose are prohibited in all use districts after the date of adoption of this ordinance, except for cattle, sheep, horses, lamas, alpacas, free range turkeys and chickens or other free-range fowl that are not bred, raised or concentrated in any type of enclosed structure or in a feed lot where the animals are concentrated in a small area, and the keeping of domestic bees.

(E) The breeding, grazing, raising or keeping of fowl and large domestic animals on any lot for any noncommercial purposes, including but not limited to, horses, cattle, swine, sheep, goats, chickens and turkeys, shall, except for chickens, turkeys and other small fowl, be limited to one animal per acre.

(F) A special use permit is required in accordance with Section 1111 and Article XV with respect to crop agricultural uses on more than one acre and animal agricultural uses allowed under subsection (D) above, that were not in existence on the date of adoption of this ordinance.

Section 605. Technical review advisors.

The Zoning Administrator may establish a roster of technical advisors who, on the basis of their professional or licensing background, have expertise and experience in areas that may include engineering, land planning and surveying, architecture, historic preservation, real estate, natural resources or law. The Zoning Administrator, the Planning Board, the Village Council or the Board of Adjustment, may employ such advisors to review and make recommendations on the technical sufficiency of proposed plans and improvements within their respective areas of expertise.

Section 606. Certificate of zoning compliance requirements.

Prior to any land disturbing activities, including on forestland, excavation or filling of any lot or the erection, construction, relocation, removal, enlargement or other alteration of any building or structure on a lot, a property owner shall comply with Section 1402 to determine if a certificate of zoning compliance from the Zoning Administrator is required for such work. The Zoning Administrator may withhold the issuance of a certificate of zoning compliance for land disturbing activities, excavation or construction begun before the certificate is issued and that does not comply with the requirements of this ordinance. Civil penalties may apply under Section 1409 and shall, when owed, be paid in full prior to the release of the certificate of zoning compliance.

Section 607. Historic site guidelines.

The purpose of this section is to preserve the historic aspects of the Village and require or encourage development that will enhance or protect the historic sites and vistas of the Village.

(A) *Development of property.* When planning new developments, consideration of the preservation of existing historic sites is expected. Development design should protect views of and from historic homes; avoid crowding historic homes with new construction; provide for the recycling of any accessory buildings or structures that are to be removed from the property by relocating them within the Village or elsewhere in the county; protect and design around existing stone walls and gates, recycling those that

cannot be saved in place; and avoid removal of mature landscape material, and design around it so it will thrive.

(B) *Historic resources.* For any proposal for the development, redevelopment or adaptive reuse of a historic site, the applicant is expected to inventory onsite historic features including, but not limited to, remnants of historic buildings, gardens, walls, fences, wells, roads, paths, and similar features. All historic features to be retained should be shown on the site plan, together with an explanation of how the historic features will be altered by the proposed development.

(C) *Landscaping.* For development of a historic site, to the extent feasible, the developer is expected to preserve and maintain the historic landscape, including the land forms and flora of the site, and to replace plant materials that are lost in the development process with species that replicate the original landscape.

(D) *Open space.* Required or proposed open space should be used to protect important scenic vistas, historic buildings and grounds and to ensure that development of the property is located away from any scenic byway or designated public road.

(E) *Placement, compatibility of new construction.* Except as otherwise approved by the Village Council, new development shall respect the historic character of the Village by locating new residences to the rear of any historic buildings on the property that are visible from a public street or road, or to the side of any such building no further forward than the horizontal plane of the front of the building. New residences should be architecturally compatible with historic buildings when located adjacent thereto, and new development should also respect the natural contours of the land and the character of any historic driveways or roads on the property.

(F) *Adaptive reuse.* The adaptive reuse of a historic home, accessory building or structure for a residential or nonresidential use may be permitted by the Village Council upon application by the property owner(s) for conditional overlay district rezoning. Nonresidential uses shall be limited to institutional, commercial and professional office uses that the Village Council finds to be compatible in scale and intensity of use with the historic character of the property, surrounding residential uses, and travel patterns on adjacent public roads. Acceptable uses may include, but shall not be limited to, inns, bed and breakfast establishments, multifamily dwellings, congregate care facilities, museums, art galleries, art studios, educational facilities for artists and craftsmen, professional offices and similar uses; provided, such uses are located within and do not require highly visible external alterations to historic structures.

(G) *Exception to limitation of one single-family dwelling.* Notwithstanding any provisions of this ordinance to the contrary, a historic site consisting of five acres or more and located in a residential district may have two or more single-family dwellings on the site, provided that such dwellings existed prior to August 13, 1998.

Section 608. Applications; requirements for submission.

Applications and supporting documentation to be submitted to the Zoning Administrator for determination of compliance with the requirements of this ordinance shall be submitted in accordance with this section.

(A) *Applications.* Applications must be filed with the Zoning Administrator. Applications that are not complete shall be returned to the applicant with a notation of the deficiencies in the application. The timing for review and approval of an application shall not begin to run until a complete application has been accepted by the Zoning Administrator. Only one application is required for a project. For example, an application for a special use or conditional overlay district rezoning, where the project includes a subdivision of land, shall also include the documentation required for a subdivision application.

(B) *Authorized signatories.* Except for an application for general use district rezoning under Article XVI, a completed application must be signed by all of the property owners of the property that is the subject of the application, or supported by an affidavit signed by all property owners giving the applicant the permission to file the application, or signed by an authorized agent of all of the property owners who has authority to bind the property to the proposal and to conditions that the reviewing board might impose.

(C) *Required support documentation and fees.* The application shall include all documentation and fees required by this ordinance, and shall include any other information and documentation deemed by the Zoning Administrator to be sufficient to review the application.

(D) *Form of applications and copies.* Applications shall be submitted in paper and digital forms, the digital format to be Adobe Acrobat (.PDF). The digital form is not required for applications for certificates of zoning compliance for additions and small projects that do not require a current survey or site plan prepared by a qualified professional. The Zoning Administrator shall determine the number of copies to be submitted by the applicant to ensure that there are sufficient copies for review and comment.

(E) *Rule or ordinance changes.* If a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose the version of the rule or ordinance to be applied to the permit.

(F) *Changes in use.* Applicants should be aware that any change in use may require a permit or certificate of occupancy issued by the Henderson County Building Permit Office.

(G) *Effect of approval.* An approved application and all conditions that may be attached thereto are binding on the property.

Section 609. Prerequisite for plat recordation.

All plats for the subdivision of land in the Village must conform to the requirements of, and be submitted in accordance with, the procedures and specifications established by this ordinance. The description by metes and bounds in an instrument of transfer or other document used in the process of selling or transferring land will not exempt the transaction from compliance with this ordinance. A plat for the subdivision of land that is recorded without the approval of the Village shall be null and void for the purposes of this ordinance and shall subject the owner to civil penalties under Section 1409.

Section 610. Notice; decisions of the Zoning Administrator, posting of decisions.

(A) *Decisions.* The Zoning Administrator shall give written notice to the owner of the property that is the subject of a decision made by him and to the party who sought the decision if different from the owner. The written notice shall be delivered by personal delivery, electronic mail or by first class mail.

(B) *Posting.* It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high, and identifying the means to contact the Zoning Administrator for information about the decision, is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Posting signs is not the only acceptable form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the Zoning Administrator. Posting signs under this subsection is not required by this ordinance.

ARTICLE VII
ZONING DISTRICTS AND MAP

Section 700. Types of zoning districts.

The Village zoning jurisdiction is divided into zoning districts within which the use of land is regulated as herein provided. The four categories of zoning districts are as follows:

(A) *General use zoning districts*. Each general use district (R-40, R-10, ML, etc.) serves a different purpose and imposes a set of requirements and restrictions on the use of land in addition to the general requirements and restrictions of this ordinance that are imposed on all land or uses within the zoning jurisdiction.

(B) *Conditional zoning districts (CD).*

(1) The Village has established parallel or counterpart conditional districts to a number of general use districts. In such cases, references in this ordinance to the general use district shall be construed to include the counterpart conditional district. While general use districts are established by this ordinance, site specific conditional districts are established by a rezoning process as provided in Article XVI.

(2) A conditional district is intended to accomplish the purposes of the counterpart general use district through the development of site plans and additional conditions at a specific location in accordance with Article XVI. All regulations and uses that apply to a general use district shall also apply to the counterpart conditional district and no use shall be allowed in the conditional district that is not allowed in its counterpart general use district.

(3) Conditions that are suggested by the applicant for conditional rezoning shall be binding upon property within that conditional district in perpetuity or until the property is rezoned by the Village Council. Such conditions may include increased buffers, architectural features, access, parking, hours of operation, or any other feature of the development that is integral to meeting the spirit and intent of this ordinance and that serves to mitigate the impacts of the development on adjacent property or the community at large. These conditions must be agreed to and enforceable by the Village Council.

(4) This is a voluntary procedure that must be initiated by all of the property owners within the area to be rezoned that is intended for firm development proposals that must be commenced within a specific time period.

(C) *Overlay districts*. Overlay districts are established by a rezoning process to provide for certain additional requirements, to permit uses not otherwise permitted in the underlying district, to prohibit uses allowed in the underlying district, or to establish special development requirements for uses permitted. Where an overlay district is established and there is a conflict between the requirements or uses specified for the overlay district and the underlying district, the requirements and uses of the overlay district shall prevail. Overlay rezoning may be initiated by the Village Council or by a property owner in accordance with Article XVI and may overlay conditional districts and general use districts. One example of an overlay district would be a floodplain overlay district where the floodplain lies within several general use districts. Certain uses and structures might be restricted or prohibited within the floodplain overlay district. Another example would be a historic overlay district.

(D) *Conditional overlay districts*. Two types of conditional overlay districts are specifically established by this ordinance as specified in Section 814 and Section 815, Residential Planned Unit Development conditional overlay districts and Commercial Planned Unit

Development conditional overlay districts, although other types of conditional overlay districts are possible. Conditional overlay districts are subject to a rezoning process under Article XVI. Conditional overlay districts are like conditional districts in that the applicant must initiate an application for the rezoning and that conditions suggested by the applicant and agreed to by the Village Council as part of the rezoning process are binding on the property. These districts are also like overlay districts in that uses not otherwise permitted in the underlying district may be permitted, such as the uses that are specified in Section 814 and Section 815.

Section 701. Use districts.

This ordinance establishes the following zoning districts for the Village:

District	District Name
R-40	Low Density Residential District
R-20 & R-20-CD	Low Density Residential District
R-20-MH	Low Density Manufactured Homes Residential District
R-10 & R-10-CD	Medium Density Residential District
PA	Performing Arts District
C-1 & C-1-CD	Commercial District
NP	National Park District
RC	Residential Conference District
HI & HI-CD	Historic Inn District
MF & MF-CD	Multifamily Residential District
ML & ML-CD	Motel Lodging District
GCPS	Government, Civic and Public Service District
RPUD-COD	Residential Planned Unit Development Conditional Overlay District
CPUD-COD	Commercial Planned Unit Development Conditional Overlay District

Section 702. Official zoning map.

A zoning map entitled the "Official Zoning Map of the Village of Flat Rock, North Carolina," adopted by the Village Council, is hereby made a part of this ordinance and shall be maintained in the office of the Village Clerk. This map shall be available for inspection by any member of the public during the normal business hours of the Village. It shall be the responsibility of the Zoning Administrator to maintain the zoning map and designate thereon any changes adopted by the Village Council in accordance with Article XVI.

Section 703. District boundaries.

The zoning map shall be divided into some or all of the use districts created in Section 701 of this article. The boundaries of the use districts are hereby established as shown on the zoning map.

Section 704. Rules governing district boundaries.

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

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

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

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

(D) Where a district boundary line divides a lot of single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such lot more than thirty-five feet beyond the district boundary line.

(E) Where physical features existing on the ground are at variance with those shown on the zoning map, or in other circumstances not covered by (A) through (D) above, the Board of Adjustment shall, upon appeal, interpret the district boundaries.

ARTICLE VIII
ZONING USE DISTRICTS

Section 800. Use requirements by district.

Within each use district established in this ordinance, specific uses shall be designated as permitted. Other uses may be established as special uses, requiring specific conditions and review procedures by the Village Council. No use of land or structures shall be permitted nor shall any permits be issued except for uses specifically and explicitly established within each use district as provided herein.

Section 801. Site plan and review requirements for uses.

Prior to the issuance of any certificate of zoning compliance or building permit for a permitted use or a special use, an application and a site plan for the proposed development and supporting documentation conforming with the requirements of the district in which it is located and Section 1405 (A) shall be submitted to the Zoning Administrator, provided, however, that an application for the construction of a single-family dwelling unit or other construction on an individual lot shall be submitted, reviewed and approved in accordance with Section 1402. Permitted use applications shall be reviewed and approved in accordance with Section 1405. Special use applications shall be reviewed and approved in accordance with Article XV. A final plan shall be required for all completed uses.

Section 802. R-40 Low Density Residential District.

(A) *Intent*. The R-40 district is established as a district in which the principal use is for low-density, single-family residential development, open space and limited public and semi-public uses that are compatible with the low density residential character of the district. The district is associated with areas with residential development on large lots.

(B) *Permitted uses*. The following uses are permitted in the R-40 Low Density Residential District:

(1) Major subdivisions, including those with private homeowners clubs, minor subdivisions, and cluster subdivisions.

(2) Single-family detached residential dwelling units, excluding manufactured or mobile homes as herein defined.

(3) Accessory buildings and structures not used for commercial purposes and one temporary health care structure that complies with NCGS §160D-915.

(C) *Special uses***.** The following uses may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met:

(1) Bed and breakfast homes in accordance with the provisions in Section 1108.

(2) Religious cemeteries and not-for-profit family cemeteries, excluding pet cemeteries.

(3) Agricultural uses in excess of one acre and allowed animal agricultural uses in accordance with the provisions in Section 604 and Section 1111.

(4) Utility facilities in accordance with the provisions in Section 1109.

(5) Golf courses (excluding miniature golf courses) with related facilities, that may include, but are not limited to, open driving ranges and practice tees; swimming pools and pool houses; tennis courts; fitness centers; pro shops; club houses with office space, meeting and activity rooms, and dining facilities; accessory structures; and parking areas.

(6) Parks.

(7) Home occupations in accordance with the provisions in Section 1110.

(8) Public schools and private schools having curricula substantially the same as offered in the public schools in accordance with Section 1102.

(9) Bed and breakfast inns in accordance with the provisions of Section 1103.

(10) Churches and similar places of worship in accordance with the provisions of Section1104.

(11) Communications towers and equipment in accordance with the provisions of Section 1101.

(12) Recreational facilities in accordance with the provisions in Section 1107.

(D) *Dimensional requirements for the R-40 district*.

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft.	Min. Front Yard Setback	Min. Side Yard Setback	Min. Rear Yard Setback	Max. Building Height From Finished Main Level	Type Of Land Use
40,000	40,000	50	35	35	35	residential
80,000	n/a	50	35	35	35	nonresidential

Section 803. R-20 & R-20-CD Low Density Residential District.

(A) *Intent*. The R-20 district is established as a district in which the principal use is for low-density, single-family residential development, open space and limited public and semi-public uses that are compatible with the low-density residential character of the district. The district is associated with residential areas that have been developed predominantly with single-family dwellings on one-half acre lots.

(B) *Permitted uses*. All uses permitted in Section 802 (B) of the R-40 Low Density Residential District are permitted in the R-20 Low Density Residential District.

(C) *Special uses***.** All special uses allowed in Section 802 (C) of the R-40 Low Density Residential District may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met.

(D) *Dimensional requirements for the R-20 district*.

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft.	Min. Front Yard Setback	Min. Side Yard Setback	Min. Rear Yard Setback	Max. Building Height From Finished Main Level	Type Of Land Use
20,000	20,000	50	25	25	30	residential
80,000	n/a	50	35	35	30	nonresidential

Section 804. R-20-MH Low Density Manufactured Homes Residential District.

(A) *Intent*. The R-20-MH district is established as a district in which the principal use is for low-density, single-family residential development, open space and limited public and semi-public uses that are compatible with the low density residential character of the district. The district is associated with residential areas that have been developed with a mix of traditional single-family dwellings, manufactured or mobile homes.

(B) *Permitted uses*. The following uses are permitted in the R-20-MH Manufactured Housing Residential District:

(1) Manufactured or mobile homes located on lots that meet the dimensional requirements of Section 804 (C) and that have pitched, shingled roof and wood or vinyl siding, that have all hitches, wheels, axles, lights and appurtenances of travel removed and that have permanent masonry underpinning and permanent steps and decking installed.

(2) One accessory building or structure not used for commercial purposes and one temporary health care structure that complies with NCGS § 160D-915.

(C) *Dimensional requirements for the R-20 MH district*.

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft. *	Min. Front Yard Setback	Min. Side Yard Setback	Min. Rear Yard Setback	Max. Building Height From Finished Main Level	Type Of Land Use
20,000	20,000	50	25	25	30	residential
80,000	n/a	50	35	35	30	nonresidential

**Lots that do not meet these dimensional requirements and that were platted prior to August 13, 1998, shall not be nonconformances under this ordinance.*

Section 805. R-10 & R-10-CD Medium Density Residential District.

(A) *Intent*. The R-10 district is established as a district in which the principal use is for medium-density residential development, single-family, open space and limited public and semi-public uses that are compatible with the medium density residential character of the district. The district is suited for higher densities of use because of its access to public water and sewer systems, accessibility to thoroughfares and existing development patterns that have higher densities and intensities of use.

(B) *Permitted uses*. The following uses are permitted in the R-10 Medium Density Residential District:

(1) Multifamily dwellings, limited to a maximum of four dwelling units per acre.

(2) Single-family detached residential dwelling units, excluding manufactured or mobile homes as herein defined.

(3) Accessory dwelling, one per lot.

(4) One accessory building or structure not used for commercial purposes, and one temporary health care structure that complies with NCGS §160D-915.

(C) *Dimensional requirements for the R-10 district*.

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft. *	Min. Front Yard Setback **	Min. Side Yard Setback **	Min. Rear Yard Setback **	Max. Building Height From Finished Main Level	Type Of Land Use
10,000	10,000	50	10	10	30	residential
60,000	n/a	50	25	25	30	nonresidential

*The maximum density shall not exceed four single-family dwelling units per acre, based upon the buildable acreage, as defined in Section 501.
***For lots platted prior to August 13, 1998, that are less than 10,000 sq. ft. in area, setbacks for projects that require a certificate of zoning compliance are waived subject to the additional requirements of this section. These small lots shall not be nonconformances under this ordinance.*

(D) *Additional requirements for small lots*. Residential lots of record as of August 13, 1998, that are less than 10,000 sq. ft. are exempt from the lot size and setback requirements of subsection (C), subject to a determination by the Zoning Administrator that the following conditions have been met:

(1) All adjacent property owners within the R-10 district have signed a statement recommending approval of the project as proposed; and

(2) If the lot is subject to the requirements of a property owners association, that association has given written approval of the project and recommends the issuance of a certificate of zoning compliance; and

(3) The setbacks along the boundaries with the R-40 or the R-20 districts for new construction on a vacant lot are no less than equal to the setbacks in those districts, or

(4) For additions to existing structures on a lot, the project does not further encroach on the boundary lines with the R-40 or R-20 districts, or

(5) If any property lines of the lot are on the boundary with the RC district, the owner of the property in the RC district has signed a statement recommending approval of the project as proposed.

Section 806. PA Performing Arts District.

(A) *Intent*. The PA district is established as a district in which the principal use is for performing arts uses. The purpose of this district is to protect the existing performing arts uses in the district and promote future development and uses that are compatible. The district shall have access to and utilize a municipal water and a municipal sewage disposal system.

(B) *Permitted uses*. The following uses are permitted in the PA Performing Arts District:

(1) Minor subdivisions.

(2) Theaters for the performing arts.

(3) Incidental retail businesses related to the performing arts use.

(4) Single-family detached residential dwelling units, excluding manufactured or mobile homes as herein defined.

(5) Accessory buildings and structures, including temporary housing and dormitories.

(C) *Special uses*. The following uses may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met:

(1) Bed and breakfast homes in accordance with the provisions in Section 1108.

(2) Utility facilities in accordance with the provisions in Section 1109.

(3) Parks.

(D) *Dimensional requirements for the PA district*.

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft.	Min. Front Yard Setback	Min. Side Yard Setback	Min. Rear Yard Setback	Max. Building Height From Finished Main Level	Type Of Land Use
20,000	20,000	50	25	25	35	residential
80,000	n/a	50	25	25	35	nonresidential

Section 807. C-1 & C-1-CD Commercial District.

(A) *Intent*. The commercial district is established as a district in which the principal use is for limited commercial activities. The purpose of this district is to provide concentrated areas for limited commercial retail sales and services for residents and visitors in the Village. The district shall have access to and utilize a municipal water and a municipal sewage disposal system.

(B) *Permitted uses*. The following uses are permitted in the commercial district:

(1) Minor subdivisions.

(2) Art studios and galleries; craft, antique and book shops; and other retail sales businesses, but excluding drive-through facilities, commercial storage units and the sales and services related to vehicles and internal combustion powered machines. The incidental retail sale of motor oil, bottled gas and other petroleum products is permitted with other general convenience merchandise. Unless otherwise provided, all sales shall be conducted within an enclosed structure, provided merchandise may be displayed. The exterior display and sale of living plants is permitted. Exterior storage of merchandise is prohibited.

(3) Restaurants and other eating establishments, including take out establishments, provided that such establishments shall not provide drive-in or drive-through service.

(4) Accessory buildings and structures.

(5) Offices; business, professional, governmental and civic.

(6) Residential dwelling units.

(7) Financial institutions provided that such establishments shall not provide drive-in or drive-through service.

(8) Churches and similar places of worship and their accessory buildings in accordance with the provisions in Section 1104.

(C) *Special uses*. The following uses may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met:

(1) Utility facilities in accordance with the provisions in Section 1109.

(2) Parks.

(3) Accessory dwellings; one per lot.

(D) *Dimensional requirements for the C-1 district.*

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft.	Min. Front Yard Setback	Min. Side Yard Setback	Min. Rear Yard Setback	Max. Building Height From Finished Main Level
20,000	N/A	30	25	25	35

(E) *Design requirements and appearance standards*. All development regulated by this ordinance within the commercial district shall conform to the following design and appearance standards. Buildings containing any permitted commercial uses shall be limited to a maximum floor space of 6,000 square feet.

(1) *Utility services*. All exterior wiring shall be placed underground. Exterior solid waste containers or dumpsters, visible from adjacent properties or rights-of-way shall be located and maintained in a side or rear yard area within an enclosed, opaque fence or structure.

(2) *Outdoor lighting*. Outdoor lighting shall conform to the requirements of Section 912.

(3) *Landscaping and lot coverage*. A minimum of twenty-five percent of the gross lot area shall be reserved and developed only for landscaping, which shall conform to the standards of Section 910. No more than seventy-five percent of the gross lot area shall be covered with impervious surfaces. Landscaping for all parking areas shall conform to the minimum requirements of Section 901 (D).

(4) *Buffers*. A buffer, as provided in Section 910, shall provide visual separation between the C-1 development and adjoining residentially zoned property.

(5) *Off-street parking*. Off-street parking for permitted uses in the C-1 district shall conform to the requirements in Section 901.

(6) *Outdoor sound systems*. Loud speakers or other means of sound amplification for a commercial use shall be designed and placed such that the sound being amplified shall not significantly carry beyond the boundaries of the C-1 district.

Section 808. NP National Park District.

(A) *Intent*. The Carl Sandburg Home National Historic Site is a unit of the National Park System and administered by the National Park Service, U.S. Department of the Interior. The site was authorized by Public Law 90-592 on October 17, 1968. As a national park, the site's "purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (NPS organic act, 16 USC 1.) The district shall have access to and utilize a municipal water and a municipal sewage disposal system.

(B) *Jurisdiction*. Under the United States Constitution, Congress possesses complete authority to "make all needful rules and regulations respecting the territory and other property belonging to the United States." With respect to zoning, no state or local government possesses: (1) power to zone federal land, or (2) authority to enforce any land development ordinance on federal land. In the event the federal government were to sell all or any portion of the Carl Sandburg Home National Historic Site, such site, or portion thereof, will become subject to this ordinance upon transfer of the property from federal ownership and prior to the issuance of any zoning compliance or building permit.

(C) *Management*. Recognizing that the Carl Sandburg Home is an integral part of a larger environment, the National Park Service will work cooperatively to protect park resources, to anticipate, avoid, and resolve potential conflicts, and to address mutual interests relating to the quality of life. Cooperative planning with the Village is encouraged to integrate the Carl Sandburg Home into its environment and to address adjacent land use issues that influence park resources. Cooperative planning will occur on an ongoing basis as well as during the development of general management plans and other plans.

(D) *Permitted uses***.** Historic sites, public parks, and open space owned by federal, state, or local government or a legally constituted nonprofit conservation organization shall be permitted. Any land within the NP district not so owned and operated shall be subject to any and all requirements of the R-40 district including use, density, and dimensional standards and shall be subject to any and all conditions established by this ordinance for the R-40 district.

Section 809. RC Residential Conference District.

(A) *Intent*. The RC district is established as a district for conference centers, as defined in Section 501. Conference center facilities shall be developed in a manner that is compatible with the existing residential character within the district. The district shall have access to and utilize a municipal water and a municipal sewage disposal system.

(B) *Permitted uses*. The following uses are permitted in the RC Residential Conference District:

(1) Minor subdivisions.

(2) Conference centers, and related facilities; including lodging facilities and dormitories, public dining and restaurant facilities, places of worship, and group assembly and meeting rooms; supporting recreational facilities and recreational areas and incidental retail businesses related to the conference center; provided that;

(a) The total area of the site contains a minimum of fifty acres;

(b) No single building footprint exceeds 6,000 square feet; and

(c) Open space, as herein defined, is permanently preserved on the site in an amount not less than fifty percent of the gross acreage of the site.

(3) Churches and similar places of worship and their accessory buildings in accordance with the provisions in Section 1104.

(4) Parks and open space.

(5) Single-family detached and duplex residential dwelling units, excluding manufactured or mobile homes as defined in Section 501, that conform to the overall density standards of the R-10 Medium Density Residential District.

(6) Accessory buildings and structures and one temporary health care structure that complies with NCGS §160D-915.

(C) *Special uses*. The following uses may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met:

(1) Utility facilities in accordance with the provisions in Section 1109.

(2) Agricultural uses in excess of one acre and allowed animal agricultural uses in accordance with the provisions in Section 604 and Section 1111.

(3) Conference center buildings having individual footprints in excess of 6,000 square feet.

(4) Public schools and private schools having curricula substantially the same as offered in public schools in accordance with Section 1102.

(5) Planned Mixed Use Developments that conform to the provisions in Section 1105, provided that an application for a special use permit for any such Planned Mixed

Use Development shall have been submitted to the Zoning Administrator prior to December 18, 2001.

(6) Cottage industries in accordance with Section 1106.

(7) Recreational vehicle and campground facilities comprised of up to thirty spaces.

(8) Communication towers in accordance with the provisions of Section 1101.

(D) *Dimensional requirements for the RC district*.

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft.	Min. Front Yard Setback *	Min. Side Yard Setback *	Min. Rear Yard Setback *	Max. Building Height From Finished Main Level	Type Of Land Use
20,000	10,000	50	25	25	40	residential
80,000	N/A	50	25	25	40	nonresidential

** The minimum setback from any side of a building or structure from any other public or private external street shall be fifty feet as measured from the nearest edge of the traveled way of an adjacent street. Within a conference center development, the setbacks from any internal private street may be reduced to twenty feet.*

Section 810. HI & HI-CD Historic Inn District.

(A) *Intent*. The HI Historic Inn District is established as a district in which the principal use is for historic inn lodging facilities and landscapes. It is the intent of this district to protect the unique character and historic integrity of the inns and their natural landscape settings; provide for the future developmental needs of the facility to remain an economically productive establishment; and to safeguard the residential character of adjacent properties. The district shall have access to and utilize a municipal water and a municipal sewage disposal system.

(B) *Permitted uses*. The following uses are permitted in the HI Historic Inn District:

(1) Lodging facilities listed on the National Register of Historic Places, not exceeding a maximum of twenty-five accommodations, which may include a restaurant or other food service establishments, provided no drive-in or drive-through service is permitted. Exterior dining is permitted.

(2) Single family dwelling units that existed prior to the date of adoption of this ordinance.

(3) Accessory, noncommercial recreational areas, defined as tennis courts, croquet grounds, ponds, walking trails, and temporary and portable recreational equipment, designed and intended to serve the guests of the inn.

(4) Incidental retail business related to the lodging business.

(5) Open space uses.

(6) Use of existing or rehabilitated buildings and open areas for meetings, conferences, receptions and special events associated with the inn facility.

(7) Adaptive reuses of an existing inn and accessory structures, limited to art galleries, museums, offices for historic organizations, and educational facilities for artists and craft persons; provided these uses are located within and do not require external alterations to the existing structures.

(C) *Special uses*. The following uses may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met:

(1) Expansion, relocation or new construction of additional lodging facilities; provided the use of the lodging facilities is directly related to the operation of the existing inn and provided further, that such additional lodging facilities shall be located to the side or rear of the principal inn building and shall be compatible with the applicable historic standards for the buildings and site.

(2) Minor subdivisions in accordance with Articles XII and XIII and residential uses, provided such uses are located to the rear of the principal inn building and are architecturally compatible or otherwise integrated with the historic character of the existing structures and landscape.

(3) Utility facilities in accordance with the provisions in Section 1109.

(4) Agricultural uses in excess of one acre and allowed animal agricultural uses in accordance with the provisions in Section 604 and Section 1111.

(5) The construction or expansion of any existing or new structure or permanent facility or use. As a condition of approval, any landscape associated with the principal inn building that is visible from a public road shall be preserved.

(D) *Dimensional requirements for the HI district*.

Min. Lot Area In Sq. Ft. *	Min. Lot Area Per Dwelling Unit In Sq. Ft. *	Min. Front Yard Setback **	Min. Side Yard Setback **	Min. Rear Yard Setback **	Max. Building Height From Finished Main Level	Type Of Land Use
40,000	40,000				35	Residential **
20 acres	n/a	100	35	35	35	nonresidential

** Dwelling unit density calculation may include only the land area to the rear of the principal inn structure and shall not include any land area used for another principal or accessory use.*
*** Residential development shall conform to the density requirements of the R-40 district; units shall be a minimum of thirty-five feet from any external district boundary.*

(E) *Other requirements*. The following requirements shall apply to existing and future development in the district:

(1) *Outdoor lighting*. Outdoor lighting shall conform to the requirements of Section 912.

(2) *Landscaping*. The historic landscape, including the land forms and flora of the site shall be maintained in conformance with the historic landscape of the site. Plant materials that are lost shall be replaced, to the extent feasible, with species that replicate the original landscape.

Section 811. MF & MF-CD Multifamily Residential District.

(A) *Intent*. The MF district is established as a district in which the principal use is for multifamily residential development. The construction, expansion or reconstruction of multifamily dwellings shall conform to the maximum density of eight units per acre, based upon the buildable acreage; and shall have access to and utilize a municipal water and municipal sewage disposal system.

(B) *Permitted uses*. The following uses are permitted in the MF Multifamily Residential District:

(1) Multifamily dwellings, limited to a maximum of eight dwelling units per acre.

(2) One accessory building or structure not used for commercial purposes.

(3) Parks and open space.

(C) *Special uses*. The following uses may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met.

(1) Utility facilities in accordance with the provisions of in Section 1109.

(2) Churches and similar places of worship in accordance with the provisions in Section 1104.

(D) *Dimensional requirements for the MF district.*

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft.	Min. Front Yard Setback	Min. Side Yard Setback	Min. Rear Yard Setback	Max. Building Height From Finished Main Level	Type Of Land Use
40,000	*	50	25	25	35	residential
60,000	n/a	50	25	25	35	churches

** The maximum density shall not exceed eight dwelling units per acre, based upon the buildable acreage, as defined in Section 501.*

Section 812. ML & ML-CD Motel Lodging District.

(A) *Intent*. The ML district is established as a district in which the principal use is for lodging facilities. It is the intent of this district to protect the character and integrity of the lodging facilities; to provide for the facilities to remain an economically productive establishment; and to safeguard the residential character of adjacent properties. The district shall have access to and utilize a municipal water and a municipal sewage disposal system.

(B) *Permitted uses*. The following uses are permitted in the ML Motel Lodging District:

(1) Minor subdivisions.

(2) Lodging facilities, equal to a maximum of forty-five units, which facilities may include a restaurant or other food service establishment, provided no drive-in or drive-through service is permitted. Exterior dining is permitted.

(2.1) Multifamily dwellings permitted for any lodging facility in the ML &ML-CD Motel Lodging District.

(3) Accessory, noncommercial recreational areas, defined as tennis courts, pool, ponds, walking trails, and temporary and portable recreational equipment, designed and intended to serve residents or guests of the lodging facility.

(4) Incidental retail business related to the lodging business.

(5) Open space uses.

(C) *Special uses*. The following uses may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met.

(1) Utility facilities in accordance with the provisions of in Section 1109.

(2) Alteration, expansion or new construction of the lodging facility, accessory buildings and structures that comply with Section 607.

(D) *Dimensional requirements for the ML district*.

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft.	Min. Front Yard Setback	Min. Side Yard Setback	Min. Rear Yard Setback	Max. Building Height From Finished Main Level	Type Of Land Use
5 acres	n/a	50	35	35	35	nonresidential

Section 813. GCPS Government, Civic and Public Service District.

(A) *Intent*. The GCPS district is established as a district in which the principal use is for the administration of government. The primary purpose of this district is to provide for governmental functions and services for residents and visitors to the Village. An additional purpose of the district is to provide facilities for use by civic and other nonprofit, public service organizations. The district shall have access to and utilize a municipal water and a municipal sewage disposal system.

(B) *Permitted uses.* The following uses are permitted in the GCPS district:

(1) Governmental centers and related facilities, including offices, meeting and assembly rooms, and conference facilities.

(2) Facilities for police, fire protection and emergency medical services.

(3) Facilities, including offices and meeting and assembly rooms, for use by civic and other nonprofit, public service organizations.

(4) Accessory buildings and structures not used for commercial purposes.

(5) Public parking facilities.

(6) Parks and open spaces.

(C) *Special uses*. The following uses may be permitted as a special use subject to a conclusion by the Village Council that the findings in Section 1502 and all applicable requirements of this ordinance are met.

(1) Utility facilities in accordance with the provisions in Section 1109.

(2) Residential dwelling units.

(D) *Dimensional requirements for the GCPS district*.

Min. Lot Area In Sq. Ft.	Min. Lot Area Per Dwelling Unit In Sq. Ft.	Min. Front Yard Setback *	Min. Side Yard Setback *	Min. Rear Yard Setback *	Max. Building Height From Finished Main Level
20,000	N/A	30	25	25	35

** The minimum setback from any street other than a scenic byway or designated public road shall be thirty feet as measured from the nearest edge of the traveled way of an adjacent street, provided the front yard is landscaped and the off-street parking areas for the use are located in the side and rear yard areas in accordance with Section 901. If parking is located in the front yard, the minimum setback shall be seventy-five feet as measured from the nearest edge of the traveled way of an adjacent street.*

(E) *Design requirements and appearance standards*. All development regulated by this ordinance within the GCPS Government, Civic and Public Service District shall conform to the following design and appearance standards.

(1) *Utility services*. All exterior wiring shall be placed underground. Exterior solid waste containers or dumpsters, visible from adjacent properties or rights-of-way shall be located and maintained in a side or rear yard area within an enclosed, opaque fence or structure.

(2) *Outdoor lighting*. Outdoor lighting shall conform to the requirements of Section 912.

(3) *Landscaping*. A minimum of twenty-five percent of the gross lot area shall be reserved and developed only for landscaping, which shall conform to the standards of Section 910. No more than seventy-five percent of the gross lot area shall be covered with impervious surfaces. Landscaping for all parking areas shall conform to the minimum requirements of Section 901 (D).

(4) *Buffers*. A buffer, as provided in Section 910, shall provide visual separation between the GCPS development and adjoining residentially zoned property.

(5) *Off-street parking*. Off-street parking for permitted uses in the GCPS district shall conform to the requirements in Section 901.

Section 814. RPUD Residential Planned Unit Development Conditional Overlay District.

(A) *Intent*. The purpose and intent of the Residential Planned Unit Development Conditional Overlay District (RPUD-COD) is to provide a creative and aesthetic approach for residential development to be incorporated within a single site plan. The development will provide a level of residential density suited to the district in which it is located and the capacity of the land and utilities available at the site. A RPUD-COD is approved as a legislative rezoning process in accordance with Article XVI and the requirements of Section 1606. A residential planned unit development (RPUD) that was approved as a special use prior to May 14, 2009, and that becomes subject to this ordinance, shall be regulated in accordance with this section and other applicable provisions of this ordinance.

(B) *Location*. A RPUD overlay rezoning may be considered only for lot(s) located in the R-40, R-20, R-10 and RC districts.

(C) *Possible uses*. Any of the following uses may be permitted in a RPUD-COD on a case-by-case basis by the Village Council as part of the rezoning process, and on the basis of individual site characteristics, impacts, and supporting infrastructure.

(1) Any uses listed as permitted or special uses in the underlying district, including private homeowners clubs in accordance with Section 1305 (G) when the RPUD-COD contains more than ten lots, except prohibited uses set out herein below.

(2) Adaptive reuse of historic homes, buildings, estates and accessory structures for residential and nonresidential uses, as provided in Section 607.

(3) The development or redevelopment of any historic site resulting in a total of three or more additional dwelling units or a change in use not otherwise defined as an adaptive reuse.

(4) Any mix of the uses stated in (1) through (3) above that the Council deems appropriate for the development site.

(D) *Prohibited uses*. All of the following uses shall be prohibited in all locations within a RPUD-COD:

(1) Outside storage.

(2) Drive-through facilities.

(3) Outdoor loud speakers.

(E) *Minimum size*. Any area considered for an RPUD-COD shall have a minimum lot area of five contiguous acres if overlaying lots in the R-10, R-20, RC and MF districts and ten contiguous acres if overlaying lots in a R-40 district. The minimum acreage shall be based upon the buildable acreage of the site. Minimum acreage requirements for a RPUD-COD shall not apply to adaptive reuse sites.

(F) *Design requirements*.

(1) *Development density*.

(a) If the RPUD-COD is proposed to overlay a single use district, the total residential density shall not exceed the maximum density of dwelling units per acre in the underlying district based upon the buildable acreage of the site.

(b) If the RPUD-COD is proposed to overlay more than one use district, the maximum density allowed shall be calculated on the basis of the total dwelling units permitted throughout the ENTIRE site. Therefore, the density limitations imposed as to each use district shall not apply to restrict the density permitted within the portions of the RPUD-COD located within individual use districts.

(c) The total number of bedroom units associated with any nonresidential adaptive reuse shall equal no more than four times the total number of dwelling units permitted on the total RPUD-COD site; however, the maximum number of bedrooms shall be limited to twenty.

(d) The maximum allowable dwelling units (density), as specified in subsections (a) and (b) above, may be increased in a RPUD-COD of ten acres or more if open space is increased up to a maximum of fifty percent. These “bonus units” are based upon 40,000 sq. ft. of buildable acreage regardless of the district(s) in which the RPUD-COD is located. For developments exceeding thirty percent open space, the number of units in the project may be increased proportionally up to a maximum of 1.253 units per buildable acre, which is 1.15 units per 40,000 square feet of buildable acres. The example in the following table assumes a ten buildable acre development in the R-40 district.

Project Area (acres)	Percent Open Space Req'd	Developable Land (acres) (A)	Overall Maximum Density in DU/A	Maximum Dwelling Units (DU)	Minimum Lot Size for SF Detached Residential
10	30%	7.0	1.089	10	30,492
10	35%	6.5	1.130	11	25,740
10	40%	6.0	1.171	11	23,760
10	45%	5.5	1.212	12	19,965
10	50+%	5.0	1.253	12	18,150

(i) No more than a total of fifteen additional dwelling units shall be permitted for any development.

(ii) Fractions generated by applying the overall maximum density in dwelling units per acre to the actual acreage of the tract shall be rounded down to the nearest whole number.

(iii) Conversion of dwelling units to bedrooms in nonresidential uses shall be limited to a maximum of twenty as stipulated in Section 814 (F) (1) (c).

(2) *Dimensional requirements*. The maximum building height of all structures in the RPUD-COD shall not exceed the maximum height of the underlying district, except that for a RPUD-COD proposed to overlay more than one district the maximum building height shall be 35 feet. Within the RPUD-COD, minimum lot sizes, setbacks from private, internal streets shall be appropriate for the site, the district in which it is located, and the development plan as approved by the Village Council.

(3) *Water and sewer service*. All development within a RPUD-COD shall have an approved connection with a municipal water and municipal sewage disposal system.

(4) *Streets*. Street and road design and construction shall comply with the requirements of Section 1303.

(5) *Parking*. Parking in a RPUD-COD shall conform to the requirements of Section 901.

(6) *Outdoor lighting.* Outdoor lighting shall conform to the requirements of Section 912.

(7) *Buffers*. Where the Planning Board or the Village Council finds that the existing vegetation and topography are inadequate, a buffer, as provided in Section 910, shall be provided to form a visual separation between the development and adjacent residential areas. In addition to buffering, the provision and maintenance of fencing may also be required.

(8) *Electrical service*. All exterior wiring shall be placed underground unless an alternative placement is required for safety. All exposed utility service units shall be screened by fencing, evergreen plantings and walls as approved by the Village Council as part of the site plan review.

(9) *Solid waste*. Exterior solid waste containers or dumpsters, visible from adjacent properties or rights-of-way, shall be located and maintained in a side or rear yard area within an enclosed, opaque fence or structure.

(10) *Design*. Conformity to the following standards is encouraged. Where possible, the project should use indigenous materials of the region, including stone and wood. Building designs should utilize colors, materials, finishes and proportions in a manner to produce a coordinated appearance within the development and with the architectural character of the community. Preservation of existing mature trees and vegetation is encouraged. Retention of open spaces that contain wooded areas or open vistas within the development is recommended.

(11) *Pedestrian access*. Pedestrian trails and walks shall be provided to connect parking areas and the open spaces within the development. When feasible, such pedestrian trails or walks shall connect with pedestrian trails or walks on adjacent properties.

(12) *Open space preservation*. Natural or landscaped open space shall be designated on the site plan and permanently preserved in accordance with Section 914 in an amount not less than thirty percent of the gross acreage of the site. The conservation areas identified on the site plan shall be included, to the extent feasible, within the areas preserved for open space.

(13) *Infrastructure*. The construction of infrastructure, as defined in Section 501 and as designated in the required site plans, shall be initiated within one year and completed within two years of the site plan approval.

(14) *Landscape planting*. Within a RPUD-COD, landscaping and a landscaping plan shall conform to the standards of Section 910.

(G) *Phased development*. A RPUD-COD may be constructed in phases, provided a section or phase of a plan shall not be further phased into sub-phases. No phase shall be less than ten units. When development is in phases, a site plan for each phase of a RPUD-COD shall be submitted to the Zoning Administrator and reviewed by the Planning Board in accordance with Section 1204 (B) and approved in accordance with Section 1204 (C) (2).

(H) *Final plan and final plat required*. A final plan and final plat for each phase of a RPUD-COD shall be reviewed and approved in accordance with Section 1204, subsections (E) and (F).

(I) *Site specific RPUD-COD districts*. The following property or properties have been rezoned RPUD-COD.

(1) Rezoned May17, 2012, the 1.25 acre parcel in the underlying R-40 district and formerly known as the Andrews property (PIN 9577218052) is located at 2731 Greenville Highway. The permitted adaptive reuse of the historic home on the property, in addition to its use as single-family detached residence, is as a commercial art gallery. No other commercial use of the property is permitted.

(2) (Reserved}

Section 815. CPUD Commercial Planned Unit Development Conditional Overlay District.

(A) *Intent*. The purpose and intent of the Commercial Planned Unit Development Conditional Overlay District (CPUD-COD) is to provide a creative and aesthetic approach for commercial development to be incorporated within a single site plan. The development will provide a level of commercial density suited to the area in which it is located and the capacity of the land and utilities available at the site. A CPUD-COD is approved as a legislative rezoning process in accordance with Article XVI and the requirements of Section 1606.

(B) *Location*. A CPUD-COD may be considered only for lots located in the commercial district.

(C) *Allowable uses*. Any of the following uses may be permitted in a CPUD-COD on a case-by-case basis by the Village Council as part of the rezoning process, and on the basis of individual site characteristics, impacts, and supporting infrastructure.

(1) Any uses listed as permitted or special uses in the C-1 district, except prohibited uses set out herein below;

(2) Residential uses shall be permitted as noted in the C-1 district except that they shall be limited to a maximum of twenty-five percent of the total square footage of the proposed overlay district and shall not exceed the density of the R-10 district;

(3) Adaptive reuse of historic homes, buildings, estates and accessory structures for residential and nonresidential uses, as provided in Section 607.

(4) Any mix of the uses stated in (1) through (3) above that the Council deems appropriate for the development site.

(D) *Prohibited uses*. All of the following uses shall be prohibited in all locations within a CPUD-COD:

(1) Outside storage.

(2) Drive-through facilities.

(3) Outdoor loud speakers.

(E) *Minimum size*. A proposed CPUD-COD shall have a minimum lot area of two contiguous acres, based upon the buildable acreage of the site.

(F) *Design requirements*.

(1) *Dimensional requirements*. Within the CPUD-COD, minimum lot sizes, setbacks from private, internal streets shall be appropriate for the site, the district in which it is located, and the development plan as approved by the Village Council. The total building coverage area of all principal and accessory structures shall not exceed thirty percent of the buildable acreage of the proposed site. The maximum building height of all structures in the CPUD-COD shall not exceed the maximum height permitted in the C-1 district.

(2) *Water and sewer service*. All development within a CPUD-COD shall have an approved connection with a municipal water and municipal sewage disposal system.

(3) *Streets*. Street and road design and construction shall comply with Section 1303 to the extent practicable.

(4) *Parking and loading*. Parking and loading in a CPUD-COD shall conform to the requirements of Section 901 and in addition shall provide a minimum of one off-street loading space at the side or rear of the development.

(5) *Outdoor lighting.* Outdoor lighting shall conform to the requirements of Section 912.

(6) *Landscape planting*. Within a CPUD-COD, landscaping and a landscaping plan shall conform to the standards of Section 910 and shall require that a minimum of twenty-five percent of the gross lot area shall be reserved and developed only for landscaping. The landscaping plan shall require that all unpaved disturbed surfaces be covered with a permanent plant or mulch material. Landscape planting for all parking areas shall conform to the requirements of Section 901 (D).

(7) *Buffers*. Where the Planning Board or the Village Council finds that the existing vegetation and topography are inadequate, a buffer, as provided in Section 910, shall be provided to form a visual separation between the development and adjacent residential areas. In addition to buffering, the provision and maintenance of fencing may also be required.

(8) *Electrical service*. All exterior wiring shall be placed underground unless an alternative placement is required for safety. All exposed utility service units shall be screened by fencing, evergreen plantings and walls as approved by the Village Council as part of the site plan review.

(9) *Solid waste*. Exterior solid waste containers or dumpsters, visible from adjacent properties or rights-of-way, shall be located and maintained in a side or rear yard area within an enclosed, opaque fence or structure.

(10) *Design*. Where possible, the project should use indigenous materials of the region, including stone and wood. Building designs should utilize colors, materials and finishes in a manner to produce a coordinated appearance within the development. Preservation of existing mature trees and vegetation is encouraged. Retention of open spaces, wooded areas and open vistas, are recommended.

(11) *Pedestrian access*. Pedestrian trails and walks shall be provided to connect parking areas, buildings and the open spaces within the development and connect with pedestrian trails or walks on adjacent properties when feasible.

(12) *Infrastructure*. The construction of infrastructure, as defined in Section 501 and as designated in the required site plans, shall be initiated within one year and completed within two years of the site plan approval**.**

(G) Phased development. A CPUD-COD may be constructed in phases*,* provided a section or phase of a plan shall not be further phased into sub-phases. No phase shall be less than one acre. A site plan for each phase shall be submitted to the Zoning Administrator and reviewed by the Planning Board in accordance with Section 1204 (B) and approved in accordance with Section 1204 (C) (2).

(H) *Final plan and final plat required*. A final plan and final plat for each phase of a CPUD-

COD shall be reviewed and approved in accordance with Section 1204, subsections (E) and (F).

ARTICLE IX
GENERAL PROVISIONS

Section 900. Fences and walls.

(A) *In general*. The following standards shall apply to all fences and walls in all zoning districts unless otherwise noted.

(1) Fences and walls shall be maintained in good order.

(2) Fences shall not contain advertising, signs, logos or other lettering unless expressly permitted by the Village's Sign Control Ordinance.

(3) Where a fence or wall is used as part of required screening, all required vegetation shall be planted on the exterior side of the fence or wall (exterior to the lot).

(4) Fences and walls shall be installed and maintained so as not to interfere with the sight distance requirements of this ordinance or the sight distance needs of drivers in parking areas, at entrance and exit locations, and at street intersections.

(5) Fences and walls shall be constructed such that the "finished" part of the fence or wall is located to the exterior of the property.

(6) Nothing in this subsection shall preclude the installation of temporary fences around construction works, erected or maintained pursuant to the N.C. Building Code, the Henderson County Land Development Ordinance, or the requirements of this ordinance.

(B) *Material and design.* The following standards shall apply to all fences and walls in all zoning districts, unless otherwise noted.

(1) Uncoated chain link and other wire material fences shall not be permitted along a scenic byway or a designated public road, except when placed on the inside of a split rail or other wooden fence or used when fully screened by vegetation.

(2) Security walls and fences over six feet in height shall be accompanied by vertical landscaping to screen the wall or fence from view and setback from the property line at least three feet to allow for maintenance of the vertical landscaping on both sides..

(3) Barbed wire, razor wire, concertina wire, and similar high security fencing material shall not be permitted except as noted in subsection (B) (4).

(4) Barbed wire and electric fencing used for agricultural purposes that are accessory to a permitted agricultural use shall be permitted.

(5) Unless otherwise specified in this subsection, walls and fences shall be constructed of masonry, stone, wood, vinyl, chain link or a material similar in composition and appearance as the principal building. Walls and fences used for screening shall be opaque or shall be of a design approved by the Zoning Administrator.

(6) Unfinished concrete block walls (excluding decorative concrete block) shall not be permitted.

(7) Fences constructed of readily flammable material such as paper, cloth, Styrofoam or canvas shall be prohibited.

(8) Fences or walls topped with or containing metal spikes, broken glass, or similar material shall be prohibited.

(C) *Height*. The following height limitations shall apply to all fences and walls.

(1) The maximum height of fences and walls shall be four feet above grade when located adjacent to a public street and a maximum of six feet when not located adjacent to a public street unless part of a required screen or security fencing as approved by the Village.

(2) Decorative caps or spires that extend above the highest horizontal member of the fence shall not be included in the measurement of height.

(D) *Maintenance and safety*. Walls and fences shall be erected and maintained in a safe manner. Walls and fences not erected or maintained in a safe manner through neglect, lack of repair, manner of construction, method of placement, or otherwise deemed unsafe by the Zoning Administrator shall be repaired, replaced, or removed.

Section 901. Off-street parking and loading; minimum standards.

(A) *Intent*. This section provides minimum standards for adequate parking and loading facilities on private and public property in order to promote public safety and to reduce and prevent traffic congestion and unsafe conditions.

(B) *Minimum parking requirements*. Except as otherwise provided, off-street parking shall be provided for the uses in the table below with the number of spaces indicated. Parking

spaces shall be provided in a garage or driveway for single-family dwellings, and in garages or parking lots for all other uses. No parking space or lot shall be situated in such a manner that obscures visibility for vehicles at an intersection or for vehicles entering or exiting a parking area. For two or more uses on a tract of land, the parking requirements for all uses shall be combined in determining the required parking.

Uses	**Required Parking Spaces**
Churches or places of worship, places of public assembly	One space for each four seats, or one space for each forty square feet of moveable seating area plus one space for each 300 square feet of floor area not used for seating.
Hotels and motels, bed and breakfast homes and inns	One space per accommodation plus one space for each two employees.
Medical and dental offices and clinics	Five spaces for each medical or dental professional plus one space for each employee.
Offices, business and professional, including banks, savings and loans, and other similar financial institutions	One space for each 400 square feet of gross floor area.
Private homeowners clubs	One space for each 300 square feet of gross floor area.
Public and private schools	One space for each classroom and administrative office. Schools with driving age students shall provide additional parking at one space for each twenty students.
Recreational facilities and parks	One space for each three persons using the facility at maximum capacity, plus one space for each two employees.
Restaurants	One space for each four seating accommodation, plus one space for each two employees.
Retail sales and service	One space for each 300 square feet of retail floor area.
Residential dwellings	At least one and one half spaces per dwelling unit except for single family dwelling units on residential lots that require two spaces.
Residential dormitories	One space for each four beds.
Theaters	One space for each two seats.

(C) *Satellite parking*. Required off-street parking may be located on off-site properties, provided there is evidence that adequate provisions exist for pedestrian safety and the following requirements are met:

(1) The satellite parking areas are located within 800 feet of the use requiring the off-street parking.

(2) The parking areas shall comply with the design and landscape provisions of subsection (D) and shall provide pedestrian walks from the parking areas to the use requiring the parking.

(3) Prior to approval of a certificate of zoning compliance or building permit, a written agreement shall be submitted with the application that provides the following:

(a) Permission from the owner of the property where the satellite parking will be located.

(b) Evidence that the satellite parking will not displace any required parking currently required on the satellite property.

(c) The owner of the satellite parking area will be responsible for the design, landscaping and maintenance of the parking area in accordance with this ordinance.

(D) *Design and landscaping provisions for parking lots*. All new parking areas that contain eight or more parking spaces, or any existing off-street parking area that adds off-street spaces after the effective date of adoption of this ordinance this ordinance, shall be designed and landscaped in accordance with the standards in this section. Any development that requires a landscaped parking area shall submit a landscape plan with an application for a certificate of zoning compliance. Parking areas that exceed the minimum number of parking spaces shall be required to increase the number of trees in a parking area to one tree for each six parking spaces. Where dedicated landscaping is required, the area to be landscaped shall be increased by an area equivalent to the area of the additional parking spaces.

(1) Parking areas shall be located in the rear or side yard areas.

(2) Every off-street parking facility shall provide and maintain landscaped planting areas within and adjacent to the parking area. Each planting area shall contain at least one locally adapted deciduous tree for each three parking spaces. Every parking space shall be located within twenty feet of a tree. The trees shall be a minimum of eight feet in height as measured from the top of the root ball.

(3) All landscaped areas shall have a minimum width of eight feet and shall be planted in a manner that will prevent damage from cars in the parking areas. Where parking areas abut a public road, there shall be a minimum landscaped setback of ten feet from the edge of the traveled way or the edge of the right-of-way, whichever is greater.

(4) All damaged or diseased landscape materials shall be replaced with new landscape materials that meet the minimum standards of this section within six months of notification. It shall be the responsibility of the property owner to maintain the landscaped areas and replace any diseased or dead materials. If any required landscaped area is removed due to condemnation or other circumstance, an equivalent landscaped area shall be provided on the property in proportion to the parking spaces provided in this section.

(5) When natural vegetation is retained in the construction of a parking area, new landscape materials shall not be required if the standards of this section are met or exceeded. However, materials that do not survive shall be replaced.

(E) *Special event parking*. A parking space for a one-time or limited-duration special event activity may be located on public or private property. Such parking spaces, which are permitted in all use districts, shall be properly planned and spaced in such a manner that visibility for vehicles at an intersection is not obscured, and to assure safe passage for vehicles entering and exiting a temporary special event parking area from or to public or private access roads, with manpower available to direct traffic as required.

Section 902. Street names, addresses and road signs.

All proposed street names and addresses, whether for public or private designation, shall be pre-approved by Henderson County in accordance with applicable Henderson County ordinances. An applicant for a subdivision shall provide street name signs and the requisite regulatory signs for all roads within a subdivision in accordance with applicable Henderson County ordinances and applicable County and NCDOT policies.

Section 903. Required connection to the public wastewater system.

Any new residential building structure shall be required to connect to the public sanitary sewer system if the structure's property lines lie within 200 linear feet of the system. Should there be a failure of any private wastewater treatment system , connection to the public system will be mandatory if the failed system's property lines lie within 200 linear feet of the public system.

Section 904. Federal, state and local approvals and permits.

Prior to the commencement of construction, renovation or any land disturbing activities, including forestry activities, in any use district within the jurisdiction of this ordinance, all federal, state and local approvals and permits beyond the control of the Village and required for such new construction, renovation or land disturbing activities shall have been obtained by the applicant, and evidence thereof shall be submitted to the Zoning Administrator.

Section 905. Storm water control plan required.

Prior to the commencement of any land disturbing activities that cumulatively, on the project or site involved, disturb one acre or more of land, a storm water control plan shall be submitted to and approved by the Henderson County Water Quality Administrator, or any other administrator or governmental agency having authority to control and regulate land disturbing activities for the lot, phase or portion of the site to be disturbed. Evidence of that approval shall be submitted to the Zoning Administrator prior to the commencement of construction or any land disturbing activities. When land disturbing activities involve forestland where water quality issues are managed by the North Carolina Forest Service and the North Carolina Department of Land Resources, Section 920 shall apply.

Section 906. Construction debris and solid waste disposal.

(A) It shall be the responsibility of the landowner and the developer to maintain the development site in a manner that controls and properly disposes of all construction debris and waste and any waste incidental to the construction project.

(B) It shall be the responsibility of the landowner and the developer to ensure that all adjacent public streets are kept free of mud, dirt and debris.

(C) It shall be the responsibility of the landowner and the developer to ensure that no waste or debris is allowed to accumulate, blow offsite or in any way constitute a nuisance for adjacent property owners or the public.

Section 907. Guarantee of completion.

(A) In order to ensure that the improvements specified in an approved subdivision site plan are properly completed within a period of time specified as a condition of approval, the developer shall guarantee completion by:

(1) Posting a surety bond issued by a company authorized to do business in this state in an amount equal to 125% of the total estimated cost of the specified infrastructure improvements and specified buffering and landscaping improvements; or

(2) Entering into an agreement with the Village Council whereby the completion of the specified improvements is guaranteed, such agreement to be secured by an escrow

deposit of cash or an irrevocable letter of credit issued by a financial institution licensed to do business in this state in an amount equal to 125% of the total estimated cost of the specified infrastructure improvements and specified buffering and landscaping improvements. Portions of any cash security deposit may be released as work progresses; or

(3) Providing a letter of credit issued by any financial institution licensed to do business in this state in an amount equal to 125% of the total estimated costs of the specified infrastructure improvements and specified buffering and landscaping improvements.

The determination of the type of guarantee shall be at the election of the developer.

(B) If the improvements are not complete and the current guarantee of completion is expiring, the developer shall obtain an extension, or obtain a new guarantee of completion, for an additional period until such required improvements are complete. The form of any extension shall remain at the election of the developer and shall be equal to 125% of the improvements remaining to be completed.

(C) When the Zoning Administrator receives a certification as specified in section 1204 (D), or otherwise receives proof under any other section of this ordinance, that the improvements have been completed, the guarantee of completion shall be returned or released, as appropriate, in a timely manner.

(D) If a developer fails to demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the guarantee of completion or any extension thereof, the Village may call the guarantee and use the funds to complete the unfinished improvements.

(E) No guaranty of completion shall be required where the Village is the developer of the property.

Section 908. Accessory buildings.

Accessory buildings that are permitted in zoning districts shall be in the side or rear yards and shall be subject to the setback, use and other requirements of the district in which they are located.

(A) Except as specifically provided herein, no dwelling units are permitted in an accessory building.

(B) The Village Council may approve overnight accommodations in buildings accessory to a permitted inn or conference center, provided that the total overnight accommodations in the inn or conference center do not exceed four such accommodations per acre.

(C) Temporary family health care structures in the districts where permitted by this ordinance shall be strictly limited to one on each lot and shall be removed within sixty days after the mentally or physically impaired person is no longer receiving assistance or is no longer in need of assistance.

Section 909. Soil erosion and sedimentation control plan required.

Prior to any regulated land disturbing activities on any development site that involves disturbing more than one acre of land, a soil erosion and sedimentation control plan shall be submitted to and approved by the Henderson County Water Quality Administrator, for the lot, phase or portion of the site to be disturbed. Evidence of that approval shall be submitted to the Zoning Administrator prior to the commencement of construction or any land disturbing activities.

Section 910. Landscaping and buffer standards.

In order to maintain and enhance the Village's existing tree coverage, to promote careful landscaping of outdoor areas, and to soften and enhance the manmade environment, the following standards shall apply to all new construction and all timber harvesting activities over one acre in all zoning districts except for those involving single-family dwellings.

(A) *Landscaping, in general*.

(1) Commercial parcels shall be landscaped while vacant to maintain an attractive appearance. Landscaping shall consist of turf grass, shrubs, trees, or any other vegetative cover that will stabilize the soil and create an attractive appearance.

(2) All required plantings installed shall be free from disease or growth problems.

(3) Only landscaping and approved fences, walls and ornamental enhancements shall be permitted within a required buffer, except that sidewalks and other pedestrian walkways, bicycle paths, above ground utilities, drainage ways, and approved signs shall be permitted where they do not comprise more than twenty percent of the total area of the required buffer.

(4) Landscaping, including berms, shall be installed and maintained so as not to interfere with the sight distance requirements of this ordinance or the sight distance needs of drivers in parking areas, at entrance and exit locations, and at street intersections, or as required by NCDOT.

(5) Small trees are permitted to be substituted for required large trees whenever the larger tree would interfere with existing overhead utility lines. See NC Cooperative Extension publication HIL 8616: *Urban Trees for Use Under Utility Lines,* revised 11-93, for a list of recommended species.

(6) A guarantee of completion may be accepted by the Village in accordance with procedures outlined in Section 907. The Zoning Administrator may approve revisions and time extensions to a landscaping plan approved by the Village Council, Planning Board or Board of Adjustment in order to accommodate seasonal planting problems or a lack of plant availability as long as:

(a) There is no reduction in the quantity of plant material.
(b) There is no significant change in the size or location of plant materials.

(c) The new plants are of the same general category and have the same general design characteristics as the materials being replaced.

(B) *Installation and maintenance.* All landscape materials required or committed voluntarily by the developer shall be properly maintained. Maintenance includes all actions necessary to keep landscaping materials healthy, neat, and orderly in appearance, and free of litter and debris. Any landscaping lost or diseased shall be removed and replaced unless, in the opinion of the Zoning Administrator, the maturity of the remaining vegetation sufficiently fulfills the intent of this ordinance.

(C) *Protection of existing vegetation on new construction sites*.

(1) *Purpose*. Wooded sites provide distinct aesthetic, economic and environmental significance and value as a natural resource of the Village. Existing vegetation plays a critical role in maintaining aesthetics, water quality, minimizing erosion and downstream flooding, and increasing quality of life.

(2) *General standards*.

(a) Except when necessary to provide access to a site or to ensure the safety and security of people and property, any existing healthy trees that are eight inches or greater in DBH (diameter at breast height) and mature shrubs that are located within a public right-of-way or undeveloped setback area shall be retained unless approved for removal by the Zoning Administrator. In addition, every reasonable effort shall be made to protect and retain existing trees and shrubs not growing within planned roadways, drainage ways, building foundation sites and construction activity areas.

(b) Existing trees and shrubs that are preserved may be used to satisfy the

landscaping requirements of these standards as long as they are: (1) free from disease or growth problems; (2) clearly shown on the site plan; (3) approved by the Zoning Administrator prior to grading and development; and (4) are adequately protected during grading and development of the site. The Zoning Administrator may waive planting requirements if it is determined that a densely vegetated area to be preserved sufficiently fulfills the intent of this section.

(c) Large, healthy specimen trees and significant tree stands on the site shall be identified prior to development and preserved whenever practicable.

(d) Protective measures shall be taken to minimize damage to existing trees and other vegetation to be retained.

(e) Site plans shall show the location of trees and shrubs to be retained and the locations of protective fencing, if any.

(f) Prior to construction, grading or other land disturbing activity, substantial protective barriers shall be placed around the root protection area of all trees and shrubs to be saved. For trees, the root protection area shall be not less than the drip line plus an additional five feet around the perimeter.

(g) No soil disturbance or compaction, stock piling of soil or other construction materials, vehicular traffic, or storage of heavy equipment is allowed in the areas designated for protection.

(h) Should preserved trees or shrubs die at any time during or immediately after construction, the developer or owner must replace the trees or shrubs with equal landscaping within six months of completion of the project.

(3) *Tree preservation*.

(a) *Applicability*. Significant forest stands, specimen trees, and heritage trees, as defined in this ordinance shall be preserved whenever practicable. Wooded sites shall be developed with careful consideration of the natural characteristics of the site. When portions of forested stands must be developed careful consideration shall be given to preserving wooded perimeters or the most desirable natural features in order to retain the aesthetic or visual character of the site.

(b) *Tree save area*. Whenever trees are to be saved on a development site, the tree save area shall be delineated on the site plan. The tree save area shall be considered the area in which the drip line of the saved tree is located plus

an additional five feet around the perimeter. If root disturbance or construction activities occur within the drip line of any tree designated as protected, only the area actually being protected will be included in any calculated tree save area where such area is being used to meet the landscaping or buffering requirements of this ordinance.

(c) *Tree save delineation*. All tree save areas must be specified on the recorded plat, individual recorded deeds, and all property association documents for land held in common. All trees located within a tree save area shall be preserved.

(d) *Heritage trees and trees of local significance*. The Zoning Administrator may require that any heritage tree or other tree of local significance be included within or set aside as an additional tree save area on any development site.

(e) *Encroachment into Required Buffers and Tree Save Areas*.

(i) If encroachment into a required tree save area occurs during or after construction that causes irreparable damage to the vegetation, the area shall be replanted as required by this section. In addition to required mitigation, any encroachment into a tree save or buffer area may subject the violator to the maximum penalties and enforcement action as permitted by this ordinance and state law.

(ii) If a tree save area or required undisturbed buffer area is disturbed for any reason, it shall be restored at a rate of ten trees per 1,000 square feet. Trees to be planted shall have a minimum caliper of two inches, shall be eighteen feet in height at installation, and shall be at least seventy-five percent large maturing varieties.

(iii) Where a disturbed area also functioned to buffer adjacent properties or public street(s), at least fifty percent of the trees shall be evergreen varieties. Trees shall be distributed throughout the disturbed area in such a way as effectively to replace the vegetation disturbed.

(iv) Where understory vegetation is removed or disturbed it shall be replaced. Shrubs shall be evergreen and three feet in height when installed.

(v) When a tree is destroyed due to an act of God, it shall be replaced with the same species or comparable species.

(4) *Post timber harvest development limitation*. In the event that timber is harvested on any lot or tract of land, which harvest is exempt from regulation under this ordinance in accordance with the provisions set forth in NCGS §160D-921, the Village may deny a certificate of zoning compliance, or refuse to approve a site specific development plan or subdivision plat for that lot or tract of land for up to three years after the completion of timber harvest if the harvest results in the removal of all or substantially all of the trees, and up to five years if the harvest was a willful violation of this ordinance or the Tree Preservation Ordinance.

(D) *Street Trees*.

(1) Except as otherwise provided in (5), below, street trees shall be planted along both sides of all public streets in new developments on private property within thirty-five feet of the nearest edge of the traveled way, but not within a right-of-way.

(2) Street trees shall be exempt from the evergreen requirement listed in this section. At the time of planting, each tree shall be three inches or greater in diameter measured six inches above ground level, and each shall be a minimum of twelve feet in height above grade. Small maturing trees planted a maximum of thirty feet on center may be used to meet street tree requirements only where overhead utility lines along existing streets prevent or interfere with the maturing of large trees.

(3) The planting area for street trees shall be a minimum of five feet in width as measured perpendicularly from the street.

(4) On any street for which a streetscape plan has been adopted by the Village the streetscape plan shall control.

(5) Along streets that are well-forested or new streets that are to be maintained in a forested condition by the developer, the requirements of this section may be reduced or eliminated upon approval of the Zoning Administrator to minimize grading and enhance preservation of existing, mature trees. Tree planting requirements may be modified or reduced where extreme topography or other practical difficulties would require excessive grading or other extraordinary measures to meet the specific standards above.

(E) *Buffers*. Where required by this ordinance, or as a condition recommended by the Planning Board and ordered by the Board of Adjustment or the Village Council, buffers shall be planted and maintained by the property owner in accordance with the standards contained in this section. These requirements may be modified on a site-by-site basis, depending upon the type and density of the existing vegetation. The buffer requirements shall be applied proportionally for boundary lines or sections of line less than one

hundred feet in length. The plantings shall be maintained and all dead materials shall be replaced by the next growing season. For every one hundred feet of property boundary, the following minimum size and types of planting are required.

Number	Type	Minimum Size
10	Evergreen Trees	Eight feet in height as measured from the top of the root ball
4	Deciduous Trees	Two inches caliper; mature height; greater than thirty feet
4	Deciduous Trees	One inch caliper; mature height; fifteen feet to thirty feet
16	Shrubs	Seventy-five percent evergreen - five gallon containers

Section 911. Riparian buffers adjacent to streams, lakes and designated wetlands.

(A) All lots and tracts of land that include streams, lakes and designated wetlands, and for which a certificate of zoning compliance or a land development permit is sought, or timber harvesting activities are planned, shall have riparian buffers as herein described along such streams, the water's edge of such lakes and the borders of designated wetlands. All structures, including any extensions or enlargements thereof, and other impervious surfaces shall be located outside of the required buffer area. Notwithstanding the foregoing, bridges over streams and paved driveways and roads providing ingress to and egress from lots or tracts of land may be constructed over such streams, and boathouses may be located within the buffer area along the water's edge of a lake if such bridges, driveways, roads and boathouses comply with the Flood Damage Prevention Ordinance and are properly engineered, designed and constructed so as to minimize the impact on the buffer area.

(B) The buffer area along perennial streams [streams shown on a USGS 1:24,000 (7.5 minute) scale topographic map] shall include the land that lies within the area that is thirty feet in width on each side of the stream, as measured horizontally from the edge of the stream bed at normal pool. The buffer area around lakes and designated wetlands shall include an area thirty feet in width, as measured horizontally from the water's edge of a lake at normal pool or the border of a designated wetland. The fifteen foot buffer area adjacent to a perennial stream or along the water's edge of a lake or wetlands border shall be left or, if disturbed during construction, reestablished in natural vegetation, while the remainder of the buffer area shall be planted with grass or other indigenous vegetation if the natural vegetation is removed. In buffer areas that are required to be disturbed during construction, the application for a certificate of zoning compliance or the site plan and master plan, where applicable, shall indicate the areas to be disturbed and the type and placement of the vegetation proposed to be used to restore the area.

(C) Nothing contained in this section shall be construed to prevent a property owner from ordinary and customary maintenance of riparian buffer areas, such as the cutting and removal of dead trees and other plant materials, the trimming of brush, the mowing of grass, and other similar grounds maintenance activities; provided, however, that the property owner shall comply with the terms of the Flat Rock Tree Preservation Ordinance before the cutting and removal of any preservation tree or native vegetation.

Section 912. Exterior and outdoor lighting.

Except as otherwise provided in this ordinance, exterior lighting used for decoration, security, recreational facilities or recreational areas shall be provided electricity or gas through the wall of the façade on which they are mounted or through underground wiring or piping. Light fixtures and poles and the type and intensity of the light shall be designed to be compatible with the architectural scale and character of the site. Light fixtures shall be designed as full cutoff fixtures, except on residential lots. Light fixtures shall be designed to direct light towards the ground area to be lighted and shall be located and directed so as to prevent light trespass and glare on adjoining properties and vehicular traffic.

Section 913. Clustering permitted, standards.

To offset the requirements for open space contained within this ordinance and to encourage the set aside of additional open space and conservation areas, cluster subdivisions are permitted in all residential zoning districts in accordance with the following zoning criteria:

(A) Residential subdivisions are permitted to cluster lots and to reduce lot sizes in order to compensate for the minimum open space requirements established herein; however, density shall not be permitted to increase for the development site as a whole unless it is part of and conforms to the requirements of an approved RPUD-COD.

(B) Permanent open space conserved as part of the cluster subdivision shall be designed to preserve conservation areas and mitigate the impacts of clustering on adjoining properties to the extent feasible.

(C) Except in a RPUD-COD and CPUD-COD, the minimum lot size and interior lot setbacks may not be reduced to less than fifty percent of the minimum lot size and setbacks for the district in which the cluster subdivision is located.

Section 914. Open space preservation and recreation area requirements.

In general. In order to maintain open spaces throughout the Village's jurisdiction, the following standards shall apply to all required open space and recreation areas in all zoning districts unless otherwise noted.

(A) Required open space may be publicly or privately owned.

(B) Open space and recreation areas intended for public access shall have direct access from public streets.

(C) Public open space may be held by any unit of government or private nonprofit organization created for such purposes that has been approved by the Village Council.

(D) The planning, construction, and maintenance of privately owned open space and recreational areas conform to the requirements of Section 915.

(E) Each phase of a phased development shall meet the minimum requirements for open space and recreational areas as specified in Section 1405 (A) (16).

(F) Proposed open space shall be designed to preserve conservation areas to the extent feasible.

(G) Any privately held open space that is required by this ordinance and has not been reserved in perpetuity shall not be developed in any way inconsistent with the definition of open space in this ordinance, regardless of the termination of a planned community, the dissolution of a property owners association or any other circumstance that might result in an application under this ordinance to develop that open space.

Section 915. Ownership and conveyance of common areas.

(A) *Ownership of common areas*. Private roads, open space and other common areas intended to fulfill the requirements of this ordinance shall be held and maintained by a legally constituted property owners association.

(B) *Dedication and maintenance of common areas and facilities*. All common areas and facilities, including but not limited to, roads, parking areas, open space, recreational areas, landscaping, common areas, lighting, signage, waste storage and pick-up facilities, within and a part of the development proposed for common ownership, and as shown on the site plan, shall be conveyed to a legally constituted property owners association and dedicated by recorded restrictive covenants running with the land that describe the areas and facilities and their maintenance and improvement requirements.

(C) *Property owners association*. The applicant shall create a property owners association and submit to the Zoning Administrator copies of all documents pertaining to the organization and operation of such association prior to approval of the site plans. The instruments shall include the following provisions.

(1) The association shall be established prior to the recording of a plat or the sale of lots or units.

(2) Open space areas shall be reserved in perpetuity and shall be maintained in such a way as to ensure that it conforms to the requirements of this ordinance.

(3) The association shall be responsible for liability insurance, local taxes, and the maintenance of all designated common facilities that may include streets, open space and recreational areas, pedestrian facilities, storm water facilities and easements.

(4) The association shall provide for the payment of member dues for the pro rata share of the cost. The assessments levied by the association may become a lien on the property of the members.

(5) The association shall have the right periodically to adjust the assessments to meet the changing needs of the development.

*(*D*)* *Title transferred free of debt*. Prior to the conveyance of the first lot in any subdivision, all common areas and facilities, except for public open space to be held by a unit of government or a nonprofit organization created for such purpose, shall be transferred free of debt to such association.

Section 916. Small solar energy systems permitted; standards.

In order to preserve the unique character of historic Flat Rock, the unique residential settings, and existing landscapes, open spaces and scenic vistas, the construction or location of solar energy systems and collectors are permitted for residential properties in all residential districts and businesses in the commercial district, subject to the issuance of a certificate of zoning compliance, in accordance with the following requirements:

(A) Except as otherwise approved by the Village Council, the location of small solar energy systems and collectors that are visible by a person standing on the ground is prohibited:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within an area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(B) Small solar energy systems and collectors shall not be located on properties listed, or eligible to be listed, on the National Register of Historic Places unless the systems, installation and location comply with the recommended guidelines published by the Preservation Assistance Division of the National Park Service, U.S. Department of the Interior and the applicable provisions of Section 607 of this ordinance.

(C) The applicant for a certificate of zoning compliance for a small solar energy system shall submit a site plan and documentation that provides the following information:

(1) A property map of the site on which the facilities are to be located.

(2) A solar site survey that demonstrates the feasibility of the type and location of the collectors and that the location and type are the least intrusive options available and do not significantly exceed the requirements to supply solar energy to the property in question.

(3) A design and buffer plan for ground-mounted systems that will reduce the visual impact on adjacent properties and rights-of-way. Buffers shall comply with Section 910 unless the applicant can demonstrate through a solar site analysis that one or more standards will impair the effectiveness of the solar collectors, in which case the standards must be met to the maximum extent practicable. The plantings shall be maintained and all dead materials shall be replaced by the next growing season. In addition to the buffers, the design may include walls, fences, existing vegetation and buildings or a combination of screening techniques that comply with the terms of this ordinance and provide a reasonable visual screen for adjacent properties, while not impairing the effective collection of solar energy.

(4) If the system is to be attached to a building, the Zoning Administrator may require an elevation or rendering prepared by a qualified professional or a solar panel installation specialist. The architectural design shall incorporate a design and materials that will be compatible with the architecture of the property where it is to be installed and development on adjacent properties.

(D) A maximum of one ground-mounted solar energy system is allowed on each residential property or business property in the C-1 district unless otherwise approved by the Village Council.

(1) The total height of the small solar energy system, including any mounts, shall not exceed 12 feet above the ground when oriented at maximum tilt. If the solar energy system is intended to provide power for outdoor lighting, the system shall not extend higher than the permitted height of the structure to which it is attached or interconnected. Ground-mounted systems shall not be placed within the setbacks applicable for the district in which it is located.

(2) Ground-mounted small solar energy systems shall be mounted onto a pole, rack or suitable foundation, in accordance with manufacturer specifications, in order to ensure the safe operation and stability of the system. The mounting structure (fixed or tracking capable) shall be comprised of materials approved by the manufacturer, which are able fully to support the system components and withstand adverse weather conditions.

(3) Any glare generated by the system must be mitigated or directed away from an adjoining property or adjacent road, when it creates a nuisance or safety hazard.

(4) It shall be demonstrated that the small solar energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as a public park, a scenic byway, or historic site.

(5) All electrical wiring used in the system shall be underground (trenched).

(6) No ground-mounted small solar energy system shall be affixed to a block wall or fence.

(E) Roof and façade-mounted small solar energy systems shall conform to the following Requirements:

(1) Roof-mounted small solar energy systems shall include integrated solar shingles, tiles, or panels as the surface layer of the roof structure with no additional apparent change in relief or projection (the preferred installation), or separate flush or frame-mounted solar panels attached to the roof or a façade surface.

(2) Separate flush or frame-mounted small solar energy systems installed on the roof or façade of a building or structure shall not:

(a) Project vertically above the peak of the sloped roof to which it is attached;

(b) Project horizontally beyond the eaves of the roof; or

(c) Project vertically more than five (5) feet above a flat roof installation.

(3) The combined height of a roof-mounted or façade-mounted system and the principal structure to which it is attached may not exceed the maximum height for the district in which it is located as specified in Article VIII.

(4) It shall be demonstrated that the placement of the system shall not adversely affect safe access to the roof, pathways to specific areas of the roof, and safe

egress from the roof.

(5) Any glare generated by the system must be mitigated or directed away from an adjoining property or adjacent road when it creates a nuisance or safety hazard.

(F) Appearance of small solar energy systems shall conform to the following requirements:

(1) If the manufacturer's color and finish do not blend in with the structure to which the system is attached, or the surrounding area, in the case of a ground-mounted system, frames, and other surfaces that do not collect solar energy, shall be painted in a color that mitigates the standout appearance of the system.

(2) All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a solar energy system shall be prohibited. Not more than one manufacturer label bonded to or painted upon the solar energy system shall be permitted.

(G) The construction and installation of small solar energy systems shall comply with the manufacturer's instructions and recommendations, with applicable building codes and permitting requirements and with relevant provisions of this ordinance that might apply.

(H) All obsolete or unused systems and those that are obviously in disrepair or partially dismantled shall be removed within twelve months of cessation of operations without cost to the Village.

(I) Subsequent to the effective date of adoption of this ordinance, no solar energy system shall be constructed, installed, or operated that is not in compliance with this ordinance or with any condition contained in a building permit issued by Henderson County.

Section 917. Small antennas.

The Village Council hereby finds and declares that the installation, maintenance and use of small antennas, as defined in Section 501, in certain locations and at certain heights within the jurisdiction of the Village pose legitimate safety hazards and could compromise the historic character of the Village. Therefore, the following restrictions shall apply to all small antennas except those mounted on a building or structure with a mast no more than six feet in length and measuring one meter or less in diameter or one meter or less in diagonal measurement. This section does not apply to communication towers or antennas or equipment mounted on communication towers.

(A) *General requirements*.

(1) A certificate of zoning compliance is required when installing, moving, constructing or reconstructing a ground mounted small antenna or any small antenna mounted on a mast over six feet in height.

(2) A small antenna dish or receiving surface and mast shall have a flat (non-glossy) finish. No patterns, lettering or numerals shall be permitted on the antenna surface or structure except those placed there by the manufacturer.

(3) A small antenna shall not be installed or located within any public right-of-way or within any drainage or utility easement.

(4) A small antenna to be installed on a property listed in the National Registry of Historic Places shall comply with the guidelines in Section 607 in addition to the requirements of this section that do not conflict with Section 607.

(B) *Location in yards and setback requirements*.

(1) A ground mounted small antenna shall be installed in a yard that does not abut a public street, if feasible. In no case shall it be mounted in a front yard, unless that is the only location where an acceptable quality signal can be achieved.

(2) The minimum required setback for a ground mounted small antenna from a side lot line shall be the same as for the principal building except on corner lots. On corner lots, the minimum required setback on the side abutting the street shall be the same as the required front yard setback along that street. A ground mounted small antenna shall not be located within twenty feet of the edge of any traveled way.

(3) The minimum required setback for a small antenna from the rear lot line shall be fifteen feet, but in no case shall any part of the antenna be located closer than ten feet from the property line.

(C) *Height requirements*. The maximum height of a ground mounted small antenna shall be fifteen feet, or the minimum height necessary to achieve an acceptable quality signal, and the maximum height of a structure mounted small antenna on a mast shall be twelve feet above the roof line or the minimum height above the roof line necessary to achieve an acceptable quality signal.

(D) *Buffer requirement*. A ground mounted small antenna shall be screened on all sides to the extent practicable with any one or a combination of evergreen vegetation, topography, landscaped earth berm, or architectural features such as fences or buildings. If vegetation is used as a screen it shall comply with Section 910 (E).

(E) *Safety considerations*. The Zoning Administrator shall review the size, location and installation plan for all small antennas to determine that no unreasonable safety hazards are presented by the installation and use of the antenna. Safety considerations include, but are not limited to, stability of the antenna, proximity to power lines and interference with vehicular traffic or pedestrian traffic.

(F) *Prohibited small antennas*. Dish antennas greater than one meter in diameter or one meter in diagonal measurement and small antennas designed to receive distant signals are prohibited no matter where mounted on a property.

Section 918. Recreational, commercial and utility vehicle storage and parking.

(A) The overnight storage and parking of recreational and commercial vehicles exceeding a two-ton capacity or a length of twenty-five feet or height of twelve feet within the jurisdiction of this ordinance shall be prohibited, except as otherwise provided herein. All permitted recreational, commercial, and utility vehicles, including motor powered vehicles, trailers or campers, and boats used solely by the residents of the premises shall be stored on the lot or tract of the principal residence in a garage or other enclosed accessory building, or in a side or rear yard if screened from the view of adjacent properties and roadways. For the purpose of this section, buffers may include plantings, walls, fences, existing vegetation and buildings or a combination of buffering techniques.

(B) Recreational vehicles may be temporarily parked on the lot or tract of the principal residence of the owner for the purposes of loading and unloading, maintenance and cleaning, for a period not to exceed seven consecutive days or a total of six weeks in a calendar year. Except as permitted in Section 809, no such vehicle shall be used for sleeping or eating purposes within the jurisdiction of this ordinance.

(C) Except where not visible from an adjacent property or roadway, no recreational, commercial or utility vehicle shall be stored outside of an enclosed garage or building.

(D) No recreational, commercial or utility vehicle shall be parked overnight on any public or private street or road within the jurisdiction of this ordinance.

Section 919. Preservation of trees along scenic byways and other designated public roads.

In order to preserve the existing forested landscapes and the scenic vistas along the scenic byways and other designated public roads within the Village, the removal of native vegetation and preservation trees from preservation areas along such scenic byways and other designated public roads is prohibited, unless otherwise allowed by this ordinance or the Tree Preservation Ordinance. Plans for a proposed development or expansion of existing improvements on public

and private property involving a preservation area shall provide for the retention and preservation of all such native vegetation and all preservation trees within such preservation area, except for that which must be removed for the construction of driveways and roads providing ingress to and egress from lots or tracts of land to be developed, and for the construction and maintenance of utilities facilities. The areas identified for preservation shall be shown on the site plan submitted to the Zoning Administrator with an application for a certificate of zoning compliance. See the Flat Rock Tree Preservation Ordinance for permitting requirements for the removal of native vegetation and preservation trees from preservation areas along scenic byways and other designated public roads in the Village.

Section 920. Storm water control; forestland.

NCGS §113A-52.1 requires that if land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practices Guidelines Related to Water Quality, the provisions of the Sedimentation Pollution Control Act of 1973, as amended, shall apply to such activity and any related land disturbing activity on the tract. For any land disturbing activities on forestland, evidence that such land disturbing activities are to be conducted in accordance with Forest Practices Guidelines Related to Water Quality shall be submitted to the Zoning Administrator prior to the commencement of any land disturbing activities on that forestland.

ARTICLE X
PROHIBITIONS

Section 1000. Prohibition of development in floodplains and floodways.

Development, as defined in the Flood Damage Prevention Ordinance, is prohibited in a floodplain or floodway as specified in that ordinance. A certificate of zoning compliance shall not be issued for development in a floodplain or floodway unless the Floodplain Administrator has first issued a floodplain development permit for that development.

Section 1001. Prohibition of junk accumulation.

Junk, as herein defined, that is visible from any adjacent property or any public right-of-way, shall not be accumulated on any lot or tract of land and no lot, tract of land or structure shall be used for the accumulation of junk. The Zoning Administrator shall notify the property owner of any lot, tract of land or structure that contains junk that is visible from adjacent property or any public right-of-way. Such notification shall provide the owner thirty days to remove the materials cited in the notice, or be subject to civil penalties under Section 1409.

Section 1002. Prohibition of construction of improvements in preservation areas.

No building or other structure shall be constructed within any preservation area along a scenic byway or other designated public road within the Village. Land disturbance and construction within a preservation area shall be limited to driveways and roads providing ingress to and egress from existing improvements or planned improvements contemplated by site development plans approved by the Zoning Administrator, and utility facilities in utilities easement areas and public right of ways.

Section 1003. Prohibition of construction of wind energy and commercial solar facilities.

In order to preserve the unique character of historic Flat Rock, the unique residential settings, and existing landscapes, open spaces and scenic vistas, the construction or location of wind energy facilities, including small residential wind turbines, and commercial solar energy systems within the Village is prohibited. For the purpose of this ordinance, a wind energy facility is an electric generating facility the main purpose of which is to supply electricity, and that consists of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and appurtenant structures and facilities. A commercial solar energy system is a solar collection system, and related facilities, that generates electricity from sunlight to be sold for profit, or to provide electricity to more than one residential property or any other solar energy system that does not come under the definition of a small solar energy system.

ARTICLE XI
SPECIAL USE STANDARDS

Section 1100. General provisions.

Special use permits may be granted by the Village Council subject to the requirements and review procedures in Article XV. The special uses listed in this article have specific requirements that shall be met as a condition of approval.

Section 1101. Communication towers.

Communication towers may be permitted as special uses only in the R-40 and RC districts in accordance with the following provisions:

(A) *Setback requirements*. Communication towers shall be set back from all occupied buildings or structures, all adjacent property lines and public roads as measured from the edge of the traveled way in accordance with the following requirements:

(1) 100 percent of the communication tower's height or its fall zone, as measured by engineering standards, whichever is greater.

(2) New communication towers erected in the Village shall not be located closer than 5,000 feet from any free standing communication tower within or outside of the Village corporate limits; provided, however, communications equipment may be placed on existing structures in accordance with the provisions in subsection (D) below, without the required setbacks from any free standing communication tower.

(3) 1,500 feet from the property boundary of any national or local historic district.

(4) 1,000 feet from the nearest edge of a scenic byway or other designated public road.

(5) 1,500 feet from the property boundary of a National Historic Site or a property listed on the National Register of Historic Places or a property listed on the North Carolina Study List as eligible to be listed on the National Register of Historic Places.

(B) *Maximum height requirements*. The maximum height of any new communication tower, including all antennas, as measured from the base of the structure at grade to its highest point, may extend thirty feet above the height of the surrounding tree canopy, but in no case shall any communication tower exceed 130 feet in total height. Where no canopy exists, the maximum height of a new communication tower shall not exceed seventy-five feet.

(C) *Lighting for communications towers*. Lighting for communication towers shall not be permitted unless otherwise required by federal or state law or regulation.

(D) *Location of communications equipment on existing structures*. With the exception of structures listed on, or eligible to be listed on the National Register of Historic Places, communications equipment may be located on any alternative structure existing at the date of the passage of this ordinance, provided the equipment shall:

(1) Incorporate stealth technology or be concealed to reduce the visibility from adjacent properties;

(2) Not extend more than fifteen feet above the highest point of the existing structure.

(E) *Stealth technology required for new communication towers*. All new communication towers shall be constructed with stealth technology in order to reduce the visual impact of the tower on the historic sites, properties and resources in the Village. Communication towers shall not display any advertising or identification signage.

(F) *Co-location required for new communications towers*. All new communication towers shall be designed and constructed to provide for the co-location of a minimum of two additional services.

(G) *Fencing, buffers and landscaping*. All communication towers and their ancillary and accessory structures and equipment shall be enclosed within a secured fence. The name and telephone number of the tower owner and operator shall be posted on the site for emergencies. The fenced area shall be screened with buffers in accordance with Section 910.

(H) *Submission of plans for a special use permit*. The applicant for a new communication tower facility shall submit documentation, including supporting engineering data that may be verified by an independent, qualified professional (i.e., an engineer who has no involvement with the proposed facility), that attempts have been made to use or co-locate on existing structures in the service area, either in or outside the boundaries of the Village, and that such existing structures cannot provide service to the Village. The plans accompanying the application shall include the following:

(1) The proposed location of the communication tower and accessory structures in relationship to the proposed site's property boundaries and required setbacks from adjacent properties, the boundaries of a National Historic Site, historic districts and historic properties, scenic byways and other designated public roads. The documentation shall provide the names of all adjacent property owners and written evidence that the applicant has notified the adjacent property owners of the proposed tower's location.

(2) The design and height of the proposed communication tower, including certification and authorization that the proposed tower structure is designed and available for co-location of other communications services. The plans shall include a description of any surrounding tree canopy.

(3) The proposed fencing, buffering and landscaping plan for the site.

(I) *Communications towers to be located within the Carl Sandburg Home National Historic Site viewshed*. The applicant shall submit to the Superintendent of the Carl Sandburg Home National Historic Site the plans for any proposed communication tower that is to be located within the designated viewshed of the site. The Superintendent shall have thirty days to review the plans and make recommendations with respect thereto to the applicant and the Village Council. The Superintendent may recommend alternative locations, design criteria to incorporate stealth technology, and height limitations to mitigate any adverse impact of the tower on the site. If the Village Council finds that the proposed tower would have an adverse impact on the site's viewshed, the applicant shall be required to modify the design, color, height or location of the tower to reduce or eliminate such adverse impact, and to submit to the Village Council revised plans that reflect such modifications.

(J) *Impact on national historic districts.* The applicant shall submit all environmental planning and historic preservation compliance documentation, as required by the National Historic Preservation Act, as well as proof that such information has been submitted to the State Historic Preservation Office for determination of impacts on the National Historic District.

(K) *Replacement of existing communication towers*. If an existing communication tower is to be replaced by another tower structure, the owner shall be subject to the application, requirements and review process of this section for a new communication tower.

(L) *Removal of abandoned communication towers*. If the permitted use of any communication tower ceases for a continuous period of ninety days, the tower owner or the owner of the property on which the tower is located shall dismantle and remove the entire tower structure within ninety days following notification that the ninety day cessation period has passed. The owner of the tower shall, within seven days of the filing of a notice of the cessation of operations with the FCC, submit a copy of such notice to the Zoning Administrator.

Section 1102. Public and private schools.

Public schools and private schools having curricula substantially the same as offered in the public schools may be permitted as special uses as specified in Article VIII, provided the following conditions are met and the proposed facility is compatible with the character of the area and does not negatively affect the health, safety and general welfare of Village residents. A school facility shall meet the following requirements:

(A) *Minimum lot area*. The minimum lot area for a school facility shall be .040 buildable acres per student at the maximum capacity of the facility.

(B) *Dimensional requirements*. All buildings and structures shall be setback a minimum of fifty feet along the exterior boundaries of the project property. The total building coverage area of all principal and accessory structures shall not exceed thirty percent of the gross square footage of the proposed site. The maximum building height of all structures shall not exceed the maximum height of the district in which it is located.

(C) *Water and sewer service*. A school facility shall have an approved connection with a municipal water and municipal sewage disposal system; provided, however, an approved existing private treatment system may be used until the municipal system is available to the site. The facility shall connect to the municipal sewage disposal system when said system becomes available within 500 feet of the premises.

(D) *Off-street parking*. Off-street parking for a school facility shall conform to the requirements in Section 901.

(E) *Outdoor lighting.* Outdoor lighting shall conform to the requirements of Section 912.

(F) *Landscape planting*. Landscaping and a landscaping plan shall conform to the standards of Section 910 and shall require that all unpaved disturbed surfaces be covered with a permanent plant or mulch material. Landscape planting for all parking areas shall conform to the requirements of Section 901 (D).

(G) *Electrical service*. All exterior wiring shall be placed underground unless an alternative placement is required for safety. All exposed utility service units shall be screened by fencing, evergreen plantings and walls as approved by the Village Council as part of the site plan review.

(H) *Solid waste*. Exterior solid waste containers or dumpsters, visible from adjacent properties or rights-of-way shall be located and maintained in a side or rear yard area within an enclosed, opaque fence or structure.

(I) *Pedestrian access*. Pedestrian trails and walks shall be provided to connect parking areas and the open spaces within the development. When feasible, these pedestrian trails or walks shall connect with pedestrian trails or walks on adjacent properties.

(J) *Open space preservation*. Open space shall be permanently preserved on the site in an amount not less than forty percent of the gross acreage of the site. The open space shall be designated on the site plan and shall conform to the requirements of Section 914.

(K) Recreational areas. Adequate recreational areas shall be provided for the students, either on site or on safely accessible nearby property.

(L) *Health and fire safety requirements*. Prior to the issuance of a certificate of occupancy from the Village, the applicant shall provide to the Zoning Administrator written approval from the Health Department and the appropriate fire official, verifying that all applicable requirements have been satisfied and the final inspection procedures have been completed by the Henderson County Inspections Department.

Section 1103. Bed and breakfast inns.

Bed and breakfast inns may be permitted as special uses as specified in Article VIII, provided the following conditions are met and the proposed facility is compatible with the character of the area and does not negatively affect the health, safety and general welfare of area residents.

(A) The bed and breakfast inn shall be located in an existing structure at least five years old.

(B) The minimum lot area required for the bed and breakfast inn shall be one acre and shall be increased on the basis of the total number of accommodations. For the purpose of determining the density or minimum lot area requirements, one accommodation (as herein defined) shall equal one dwelling unit. The permanent residence of the owner or manager shall be considered one dwelling unit for the purpose of determining the density or minimum lot size and parking requirements; however, the owner's or manager's unit shall not be considered an accommodation for rent. For each accommodation for rent over four the minimum lot area shall be increased by 10,000 square feet.

(C) The bed and breakfast inn shall connect to a municipal water and a municipal sewage disposal system; provided, however, an approved existing private treatment system may be used until the municipal system is available to the site. The inn shall connect to the municipal sewage disposal system when the system becomes available within 500 feet of the premises.

(D) In addition to any other site plan requirements imposed by this ordinance, the site plan shall contain the following information:

(1) The proposed floor plan, designating the number of accommodations and any proposed alterations to the exterior of the structure or structures that extend the foot print of the structures; and

(2) The location and description of all proposed signs, buffers, landscaping and screening, including the screening of exterior mechanical systems, solid waste storage areas and parking.

The plan for structural modifications (if any are required or contemplated), access, parking, signage, screening and landscaping shall be submitted and reviewed in order to determine compliance with the Village ordinances and the facility's compatibility with adjacent properties.

(E) Prior to approval of the use of a building for a bed and breakfast inn, the Village Council shall receive the following;

(1) A written notice from the Health Department that the sewage disposal system and capacity for the proposed number of rooms in the bed and breakfast inn are adequate.

(2) A written notice from the appropriate fire official confirming that the site and structures have adequate water available, and that access to the structures is sufficient for providing fire protection to the facility and adjacent properties.

(F) The Village Council may require new or additional landscaping and screening for the facility and the parking if it is determined that the existing visual screening is inadequate.

(G) Prior to the issuance of a certificate of occupancy from the Village, the applicant shall provide to the Zoning Administrator written approval from the Health Department and the appropriate fire official, verifying that all applicable requirements have been satisfied and the final inspection procedures have been completed by the Henderson County Inspections Department.

(H) The bed and breakfast inn shall also meet all of the following requirements;

(1) The inn shall not serve food or drink to the general public for pay except for the uses noted in subsection (J) below;

(2) The inn shall serve only the breakfast meal and teas to overnight guests of the business;

(3) Inn accommodations shall include the price of breakfast and tea, if applicable, in the room rate;

(4) The owner or manager of the business shall reside in the facility during the time of its operation.

(I) The inn may include incidental retail business related to the lodging business; and

(J) The inn shall be permitted to host teas, parties, weddings, receptions, and similar events as an accessory use for groups and individuals who are not overnight guests provided that:

(1) The offsite impacts as proposed are, in the opinion of the Council, not a burden on or a nuisance to nearby and adjacent property owners; and

(2) The onsite impacts do not diminish the use or enjoyment of the principal use of the property as a bed and breakfast inn.

Section 1104. Churches and similar places of worship.

Churches and similar places of worship may be permitted as special uses as specified in Article VIII, provided the proposed facility does not adversely affect health, safety and general welfare, and the following conditions are met:

(A) *Minimum lot area*. The minimum lot area for a worship facility shall meet the requirements of the district in which it is located.

(B) *Dimensional requirements*. All buildings and structures shall meet the minimum setback requirements of the district in which it is located. The total building coverage area of all principal and accessory structures shall not exceed thirty percent of the buildable acreage of the proposed site. The maximum building height of all structures shall not exceed the maximum height of the district in which it is located unless otherwise approved by the Village Council. or allowed in the district in which the structure is located.

(C) *Water and sewer service*. The facility shall connect to a municipal water and a municipal sewage disposal system; provided, however, an approved existing private treatment system may be used until the municipal system is available to the site. The facility shall connect with the municipal sewage disposal system when the system becomes available within 500 feet of the premises.

(D) *Off-street parking*. Off-street parking for a church or similar place of worship shall conform to the requirements in Section 901.

(E) *Outdoor lighting.* Outdoor lighting shall conform to the requirements of Section 912.

(F) *Landscape planting*. Landscaping and a landscaping plan shall conform to the standards of Section 910 and shall provide for the reservation of a minimum of twenty-five percent of the gross lot area for landscaping. All unpaved disturbed surfaces shall be covered with a permanent plant or mulch material. Landscape planting for all parking areas shall conform to the requirements of Section 901 (D).

(G) *Buffers*. Where the Planning Board or the Village Council finds that the existing vegetation and topography are inadequate, a buffer, as provided in Section 910, shall be provided to form a visual separation between the development and adjacent residential areas. The plantings shall be maintained and all dead materials shall be replaced by the next growing season. In addition to buffers, the provision and maintenance of fencing may also be required.

(H) *Solid waste. Ext*erior solid waste containers or dumpsters visible from adjacent properties or rights-of-way shall be located and maintained in a side or rear yard area within an enclosed,-opaque fence or structure.

(I) *Design*. Conformity to the following standards is encouraged. Where possible, the project should use indigenous materials of the region, including stone and wood. Building designs should utilize colors, materials, finishes and proportions in a manner to produce a coordinated appearance within the development and with the architectural character of the community.

(J) *Health and fire safety requirements*. Prior to the issuance of a certificate of occupancy from the Village, the applicant shall provide to the Zoning Administrator written approval

from the Health Department and the appropriate fire official, verifying that all applicable requirements have been satisfied and the final inspection procedures have been completed by the Henderson County Inspections Department.

(K) *Electrical service*. All exterior wiring shall be placed underground unless an alternative placement is required for safety. All exposed utility service units shall be screened by fencing, evergreen plantings and walls as approved by the Village Council as part of the site plan review.

Section 1105. Planned mixed use developments.

Planned mixed use developments (PMUD) were permitted as special uses prior to December 18, 2001. A PMUD approved as a special use prior to that date shall be regulated in accordance with the provisions of the zoning ordinance that was in effect when it was approved, except that any modification to the original site plan or master plan shall conform with the zoning ordinance in effect when the modification was approved or this ordinance. Notwithstanding the foregoing, a private homeowners club shall be allowed as a nonresidential use in an existing PMUD in accordance with Section 1305 (G). No new PMUD shall be allowed in the Village.

Section 1106. Cottage industries.

(A) *Location*. Cottage industries may be permitted in the RC Residential Conference District as special uses.

(B) *Industries permitted*. Industries that incorporate the assembly, fabrication, production or processing of goods and materials using processes that do not create noise, smoke, fumes, odors, glare or health or safety hazards outside of the lot where such activity takes place, and where such activities are contained entirely within the building, are permitted. Business and professional offices, retail sales businesses, and institutional uses are also permitted. The sales and services related to vehicles and internal combustion powered machines, and other drive through facilities for retail sales and services, the external dispensing of gasoline, kerosene and diesel petroleum products and the exterior storage of raw materials, finished products or merchandise are prohibited. All sales and services shall be conducted within an enclosed structure, provided merchandise may be displayed in an area that is permanently covered and attached to a principal structure. Dining facilities are permitted in enclosed or open areas adjacent to the primary structure. Residential, office and commercial uses may be incorporated within one or more principal buildings. The maximum building footprint per establishment is limited to 6,000 square feet. No multistory structure or building shall exceed 12,000 square feet in gross floor area.

(C) *Minimum size*. A cottage industry shall have a minimum lot area of two contiguous acres, based upon buildable acreage.

(D) *Design requirements*.

(1) *Dimensional requirements*. The Village Council shall evaluate the site plan in order to determine that the proposed design of the project is acceptable with regard to the health, safety and general welfare of the commercial development, the patrons and adjacent properties, and meets the requirements of Section 809 (E).

(2) *Water and sewer service*. A lot shall have an approved connection with a municipal water system and a municipal sewage disposal system.

(3) *Off-street parking*. Cottage industries require one parking space for each employee, plus one space for each 500 square feet of floor area used for commercial purposes. An off-street loading area shall be provided adjacent to the structure where the industry is located.

(4) *Outdoor lighting*. Outdoor lighting shall conform to the requirements of Section 912.

(5) *Landscape planting*. Landscaping and a landscaping plan shall conform to the standards of Section 910 and shall require that all unpaved disturbed surfaces be covered with a permanent plant or mulch material. Landscape planting for all parking areas shall conform to the requirements of Section 901 (D).

(6) *Screen planting*. Where the Planning Board or the Village Council finds that the existing vegetation and topography are inadequate, a screen planting shall be provided to form a visual separation between the development and adjacent residential areas. Screen plantings shall include two staggered rows of mixed evergreen and deciduous trees. Trees in each row shall be planted at eight foot intervals, and shall be a minimum of eight feet in height when planted, as measured from the top of the root ball. The trees shall be maintained and all dead materials shall be replaced by the next growing season.

(7) *Electrical service*. All exterior wiring shall be placed underground unless an alternative placement is required for safety. All exposed utility service units shall be screened by fencing, evergreen plantings and walls as approved by the Village Council as part of the site plan review.

Section 1107. Recreational facilities.

Recreational facilities may be permitted as special uses as specified in Article VIII, provided the proposed facility does not adversely affect health, safety and general welfare, and the following conditions are met:

(A) *Facilities permitted*. Recreational facilities as defined in this ordinance, except that permitted facilities shall not include zoos, amusement parks, vehicular or other racing facilities or for-profit recreational facilities. Concession stands incidental to the operation of the facility may be approved by the Village Council if included in the site plan.

(B) *Minimum size*. Recreational facilities shall have a minimum lot area of two contiguous acres, based upon buildable acreage.

(C) *Design requirements*.

(1) *Dimensional requirements*. The Village Council shall evaluate the site plan in order to determine that the proposed design of the project is compatible with the district in which it is located and provides a minimum setback on all sides of fifty feet.

(2) *Water and sewer service*. A lot shall have an approved connection with a municipal water system and a municipal sewage disposal system.

(3) *Off-street parking*. Off-street parking shall conform to the requirements of Section 901 and shall be designed to minimize traffic congestion on adjacent roadways.

(4) *Outdoor lighting*. Outdoor lighting shall conform to the requirements of Section 912.

(5) *Landscape planting*. Landscaping and a landscaping plan shall conform to the standards of Section 910 and shall require that all unpaved disturbed surfaces be covered with a permanent plant or mulch material. Landscape planting for all parking areas shall conform to the requirements of Section 901 (D).

(6) *Screen planting*. Where the Planning Board or the Village Council finds that the existing vegetation and topography are inadequate, a screen planting shall be provided in order to form a visual separation between the development and adjacent residential areas. Screen plantings shall include two staggered rows of mixed evergreen and deciduous trees. Trees in each row shall be planted at eight foot intervals, and shall be a minimum of eight feet in height when planted, as measured from the top of the root ball. The trees shall be maintained and all dead materials shall be replaced by the next growing season.

(7) *Electrical service*. All exterior wiring shall be placed underground unless an alternative placement is required for safety. All exposed utility service units shall be screened by fencing, evergreen plantings and walls as approved by the Village Council as part of the site plan review.

(8) *Outdoor sound systems*. Loud speakers or other means of sound amplification shall be designed and placed such that the sound being amplified shall not significantly carry beyond the boundaries of the site.

Section 1108. Bed and breakfast homes.

Bed and breakfast homes may be permitted as special uses as specified in Article VIII, provided the following conditions are met and the proposed facility is compatible with the character of the area and does not negatively affect the health, safety and general welfare of area residents.

(A) The bed and breakfast home shall be located in an existing structure at least five years old.

(B) The bed and breakfast home, if not connected to a municipal water and a municipal sewage disposal system, shall have a private water and a private sewage disposal system approved by the Health Department. In the event of a failure of the bed and breakfast home's private sewage disposal system, the home shall connect to the municipal sewage disposal system when the system becomes available within 500 feet of the premises.

(C) The minimum lot area required for the bed and breakfast home shall be one acre.

(D) A plan shall be submitted that contains the following:

(1) The property lines and the location of the existing structures, landscaping and vegetation;

(2) The proposed floor plan, designating the number of accommodations and any proposed alterations to the exterior of the structure that extend the foot print of the structure;

(3) The existing access to the property and any proposed changes, including the location of all proposed parking spaces; and

(4) The location and description of all proposed signs, landscaping and screening, including the screening of exterior mechanical systems, solid waste storage areas and parking.

The plan for structural modifications (if any are required or contemplated), access, parking, signage, screening and landscaping shall be submitted and reviewed in order to determine compliance with the Village ordinances and the facility's compatibility with adjacent properties.

(E) Prior to approval of the use of a building for a bed and breakfast home, the Village Council shall receive the following:

(1) A written notice from the Health Department that the sewage disposal system and capacity for the proposed number of rooms in the bed and breakfast home are adequate; and

(2) A written notice from the appropriate fire official confirming that the site and structures have adequate water available, and that access to the structures is sufficient for providing fire protection to the facility and adjacent properties.

(F) The Village Council may require new or additional landscaping and screening for the facility and the parking if it is determined that the existing visual screening is inadequate.

(G) Additions, including new accessory structures, to a bed and breakfast home may be approved for a certificate of zoning compliance by the Zoning Administrator if the following conditions are met:

(1) There is no increase in the total number of commercial lodging bedrooms.

(2) Written approval from the Health Department that the sewer capacity for the total number of bedrooms is adequate.

(3) The addition or added accessory structure meets the requirements of the zoning district in which the bed and breakfast home is located.

(4) There is no question that the health, safety and general welfare of the area residents will be maintained as a result of such additions.

(H) Prior to the issuance of the certificate of occupancy from the Village, the applicant shall provide to the Zoning Administrator written approval from the Health Department and the appropriate fire official verifying that all applicable requirements have been satisfied and the final inspections procedures have been completed by the Henderson County Inspections Department.

(I) The bed and breakfast home shall also meet all of the following requirements;

(1) Does not serve food or drink to the general public for pay;

(2) Serves only the breakfast meal, and that meal is served only to overnight guests of the business;

(3) Includes the price of breakfast in the room rate; and

(4) The owner or manager of the business resides in the facility during the time of its operation.

(J) A bed and breakfast home may include incidental retail business related to the lodging business.

Section 1109. Utility facilities.

Utility facilities as herein defined, including all structures, may be permitted as special uses in all use districts provided the following conditions are met and the proposed facility is compatible with the character of the area and does not negatively affect the health, safety and general welfare of area residents.

(A) To the extent feasible, utility facilities and stations shall not be located on properties listed, or eligible to be listed, on the National Register of Historic Places.

(B) The public or private entity requesting the special use shall submit a site plan and documentation that provides the following information:

(1) A property map of the site on which the facilities are to be located.

(2) A justification for the facilities needed or requested for this location.

(3) A design and buffer plan that will reduce the visual impact on adjacent properties and rights-of-way. Where feasible, the buffers shall comply with Section 910. The plantings shall be maintained and all dead materials shall be replaced by the next growing season. In addition to the buffers, the design may include walls, fences, existing vegetation and buildings or a combination of screening techniques that comply with the terms of this ordinance and provide a reasonable visual screen for adjacent properties.

(4) If the facilities include a building, the plans shall include an elevation or rendering. The architectural design shall incorporate a design and materials that will be compatible with development on adjacent properties.

Section 1110. Home occupations.

A special use permit for a home occupation may be issued in any residential district provided the following conditions are met and the proposed facility is compatible with the character of the area and does not negatively affect the health, safety and general welfare of Village residents.

(A) A home occupation is a permitted retail or professional service that is conducted entirely within an existing residential dwelling by a resident and occupant and is incidental to the use of the dwelling as a primary residence. The home occupation may employ one person who is not a resident of the premises. A home occupation may be issued a special use permit for a retail or professional service in a detached accessory structure, provided the principal residence and the accessory structure are located on a lot five acres or more in size and provided the accessory structure is located not less than one hundred feet from any adjacent property boundary.

(B) No external alterations to the footprint of the structure to accommodate the home occupation are permitted, nor is any external on or off premises signage permitted.

(C) The occupation shall be limited to a maximum of twenty-five percent of the total floor space of all structures. External storage is prohibited.

(D) The onsite retail sale, rental or wholesale distribution is not permitted from a home occupation residence, nor is the pick-up or delivery of products by commercial carriers, except for occasional pickup and delivery by FedEx, UPS and similar services.

(E) Only one vehicle associated with the home occupation and not licensed to the residents of the dwelling is permitted.

The applicant for a special use permit for a home occupation shall submit a plat of the lot that includes the foot print of the primary dwelling and the location of all off-street parking intended for the residents and the home occupation. The applicant shall also submit a floor plan of the primary residence that delineates the area of the dwelling that will be used for the home occupation. Documentation shall also include proof of permanent residency by the applicant and the type of service or profession to be practiced.

Section 1111. Agricultural uses.

Crop agricultural uses in excess of one acre, and allowed animal agricultural uses in accordance with Section 604, not in existence as of the date of adoption of this ordinance, may be permitted as special uses as specified in Article VIII, provided the proposed use does not adversely affect health, safety and general welfare, and the following conditions are met:

(A) Agricultural uses shall have setbacks consistent with the district in which they are located.

(B) The owner of the tract being used for agricultural uses shall provide off-street parking and loading for all vehicles providing labor and material handling, and for retail customers, if applicable.

(C) On site retail sales of the crops being grown by the owner or lessee of the site, on or off site, may be permitted if such activities are merely incidental to the primary purpose of growing crops on the site.

(D) Riparian buffers shall be established and maintained as required in Section 911.

(E) Fencing in accordance with Section 900 may be required by the Village Council depending on the agricultural use and where it is located.

(F) A buffer, as provided in Section 910, may be required by the Village Council depending on the agricultural use and where it is located.

ARTICLE XII
PROCEDURES FOR SUBMISSION, REVIEW AND APPROVAL OF SUBDIVISIONS

Section 1200. Application to subdivide property.

All applicants seeking to subdivide land, except those seeking conditional district or conditional overlay district rezoning, shall complete a subdivision application, which shall constitute an application for a land development permit as specified in Section 1403, and certain other applications as required by this ordinance. Applications for conditional district rezoning and conditional overlay district rezoning are submitted, reviewed and approved in accordance with Article XVI, but any subdivision of land involved in conditional rezoning shall be reviewed and approved in accordance with Articles XII and XIII. Applicants for a land development permit to subdivide property must be the property owners of record in the Register of Deeds at the time of the application or have an affidavit or other written proof of the permission of the owners of record.

Section 1201. Final plat required for any subdivision of land.

A final plat shall be prepared, approved and recorded pursuant to the provisions of this ordinance for any subdivision of land.

Section 1202. Final plat recordation; procedure for approval and affect on dedications.

(A) No final plat of land within the Village's jurisdiction shall be filed or recorded until it has been approved as set forth in this ordinance, and until this approval is entered in writing on the face of the final plat by the Zoning Administrator and is attested by the Village Clerk, except as otherwise provided herein.

(B) The Register of Deeds shall not file or record a plat of a subdivision of land located within the Village's jurisdiction that has not been approved in accordance with the provisions of this ordinance, nor shall the Clerk of the Superior Court order or direct the recording of a plat if the recording of such plat would be in conflict with this section.

(C) Pursuant to NCGS §160D-806, the approval of a final plat does not constitute or effect the acceptance by the Village or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility shown on the final plat and shall not be construed to do so.

Section 1203. Types of subdivisions.

Subdivisions defined in this ordinance are: a minor subdivision, a major subdivision, a cluster subdivision and a special subdivision. Each subdivision of land shall comply with the requirements of this ordinance, unless it is an exempt subdivision.

Section 1204. Procedures for review and approval of a subdivision.

The review and approval process for a subdivision shall include the conceptual plan, master plan, when applicable, site plan, final plan and the final plat.

(A) *Predevelopment conference and conceptual plan submission.* The applicant shall submit a completed application and a conceptual plan in accordance with Section 1404 (B), to the Zoning Administrator not fewer than twenty days before the next scheduled Planning Board meeting for a predevelopment conference to review the conceptual plan and supporting documentation. The purpose of the predevelopment conference is to familiarize the Planning Board with the proposed subdivision and the applicant with the requirements of the ordinance. A site visit by the Planning Board and the Zoning Administrator shall be made if the site is reasonably accessible. The Planning Board shall review the submission and approve, approve with conditions, or disapprove the conceptual plan within thirty days of its first consideration of the plan based on the requirements of this ordinance. The Zoning Administrator shall issue the applicant a land development permit within ten days after the Planning Board approves the conceptual plan. If the subdivision is to be developed in phases, the applicants shall also submit a master plan of the entire subdivision and otherwise comply with Section 1205.

(B) *Site plan review.* A site plan for a subdivision, prepared in conformance with the approved conceptual plan and Section 1405 (A), shall be submitted to the Zoning Administrator with all completed materials, fees and supporting documentation not fewer than twenty days before a scheduled meeting of the Planning Board. The twenty day period shall not begin until all materials and supporting documentation have been completed and submitted. Prior to the scheduled Planning Board meeting, the Village shall notify all adjacent property owners, as identified by the applicant and confirmed by the Zoning Administrator, of the Planning Board's consideration of the proposed subdivision. The notice shall identify the name and location of the proposed subdivision and time, date and place of the Planning Board's meeting. Notices shall be mailed by first class mail to the identified property owners at least ten days prior to the Planning Board's scheduled meeting.

(C) *Site plan approval*. Site plans shall be reviewed and approved on basis of the plans' compliance with the requirements of this ordinance and the approved conceptual plan and master plan, when applicable.

(1) Minor subdivisions and special subdivisions. The site plan shall be reviewed and approved, approved with conditions, or disapproved by the Planning Board within forty-five days after its first consideration of the plan.

(2) Major subdivision. The Planning Board shall review and make a recommendation to the Village Council to approve, approve with conditions, or disapprove the site plan within forty-five days after its first consideration of the plan. The Village Council shall approve, approve with conditions or disapprove the site plan within forty-five days after receiving the recommendation from the Planning Board.

(D) *Installation of improvements.* Upon approval of the site plan and conformance with any conditions of approval, and approval of a soil erosion and sedimentation plan and storm water management plan by the county, the applicant may proceed with the installation of the improvements specified in the site plan. Prior to the submittal of a final plan, the applicant shall have installed all improvements specified in the site plan. If installation of such improvements is to be completed after the final plan approval, the applicant shall guarantee the completion of such improvements in accordance with the requirements of Section 907 of this ordinance. Documentation of the completion of all improvements or the executed improvements guarantee shall be submitted to the Zoning Administrator with the final plan. The developer's engineer or other qualified professional shall provide written certification under seal to the Zoning Administrator that the improvements have been installed in accordance with the site plan and the requirements of this ordinance.

(E) *Final plan review, verification and approval.* The applicant shall submit a final plan and supporting documentation to the Zoning Administrator within twelve months of the approval of the site plan. The applicant may apply for an extension of up to six months for such submission. Upon the expiration of the time period or any approved extension, the site plan approval shall become null and void. The Zoning Administrator may submit the final plan and supporting documentation to a technical review advisor for its review and recommendations within ten days of receiving all completed documentation. Upon request, the technical review advisor shall review the final plan and all supporting documentation, including the certification of the completion of improvements, and shall report its findings to the Zoning Administrator within ten days of its first consideration. Following verification, the Zoning Administrator shall approve or disapprove the final plan on the basis of its conformance with the approved site plan and the requirements of this ordinance within ten days after receiving the technical review advisor's report.

(F) *Final plat review, verification and approval.* Within thirty days of the approval of the final plan, and before any lots are transferred, the applicant shall submit the final plat and supporting documentation to the Zoning Administrator. Supporting documentation shall include, but not be limited to, a certificate of incorporation of the property owners association, if applicable, recorded or recordable copies of the declaration of covenants and deeds consistent with Section 915, bylaws of the property owners association, and certificates required by Sections 1303 and 1304. Within ten days, the Zoning Administrator shall review and approve or disapprove the final plat on the basis of the completeness of the documentation, the compliance of the final plat with the approved final plan and the installation of all required improvements. Upon approval of the final plat, the applicant shall record the final plat and all requisite documents in the office of the Register of Deeds within thirty days. The applicant shall submit copies of all recorded documents to the Zoning Administrator within twenty days after recordation.

(G) *Limiting the use of the minor subdivision.* If the initial application is for a minor subdivision, that process may not be used a second time within five years from the date of the last application on property currently or previously owned (within the last five years) by the applicant within 1,500 feet of any boundary line of the original tract of the minor subdivision.

(H) *Requests for variances*. Applications for variances from the requirements of Article XII and Article XIII must be submitted subsequent to the predevelopment conference and conceptual plan review and before site plan review.

(I) *Plan or plat reviews*. The Planning Board may require reviews and recommendations from other agencies, and may, at its discretion, secure professional services to be used to review plans and plats as provided in Section 605.

Section 1205. Procedures for phased developments.

If an applicant proposes to construct a major subdivision in phases, the procedures of Section 1204 shall apply as follows:

(A) Upon approval of a conceptual plan, a master plan and appropriate supporting documentation that conforms with Section 1404 (C) shall be submitted to the Zoning Administrator not fewer than twenty days before the next scheduled Planning Board meeting. The Planning Board shall review the master plan in accordance with Section 1204 (B).

(B) Each phase of development shall be preceded by submittal and approval of a site plan that conforms to Section 1405 (A). A site plan for one or more initial phases may be submitted simultaneously with submittal of the master plan. The Planning Board shall review the master plan and site plans in accordance with Section 1204 (B). The Zoning Administrator

shall issue a land development permit for each approved site plan for each phase of the development.

(C) As each phase is completed, a final plan and final plat shall be submitted and approved in accordance with Section 1204, subsections (E) and (F).

(D) An approved master plan shall remain valid as long as an approved and permitted phase of the project is actively under development. An approved master plan will become null and void if no permits for an initial phase of the development have been issued within two years of the date of the master plan approval; if a subsequent phase is not approved within two years of the completion of the last phase approved; or if an approved phase is not completed within two years or is out of compliance with either the master plan or the approved phase.

ARTICLE XIII
MINIMUM SUBDIVISION DESIGN REQUIREMENTS

Section 1300. General.

In addition to other design standards contained in this ordinance, all subdivisions shall be designed and constructed in accordance with the minimum design standards set forth in this article, except as otherwise provided in this ordinance.

Section 1301. Open space preservation; major subdivisions.

Natural or landscaped open space shall be permanently preserved on the site in an amount not less than twenty percent of the gross acreage of the site for any major subdivision having more than 150 feet frontage on a scenic byway.

Section 1302. Gated subdivisions.

Gated subdivisions proposed for development after the effective date of adoption of this ordinance shall be subject to approval by the Village Council consistent with the following criteria:

(A) Gated subdivisions shall not be permitted in any location where the Village Council determines that such location interferes with roadway, pedestrian, or shared-use path networks outlined in an official plan adopted by the Village or NCDOT.

(B) Entrances shall be designed to permit full access by police, fire, rescue and similar emergency vehicles and shall have written approval of all appropriate emergency service agencies, including the County Emergency Management Services Department, prior to approval of the gate. Unmanned gates shall open automatically at the sound of a “yelp” from an emergency vehicle siren unless otherwise approved in writing by all appropriate

emergency service agencies. In addition, a keypad at the entry gate shall be programmed to allow entry by emergency personnel. The developer and property owners association shall provide unfettered access to all private streets for emergency and law enforcement vehicles, and shall provide reasonable access for Village, county and state employees and vehicles operating within the scope of their official duties to perform those duties, and to all public utility companies and vehicles to perform installation and maintenance of public utilities infrastructure.

(C) Entry gates shall have sufficient minimum gate widths and openings to allow safe passage of all vehicles permitted to use public roadways. Unless overhead barriers provide a minimum of thirteen feet, six inches of clearance at the lowest point, there must be at least one additional entry gate and one additional exit gate without overhead barriers or obstructions.

(D) Any gatehouse, entry gate, external fence, wall, or berm shall be located outside any public street right-of-way and shall be designed to blend in, to the greatest degree feasible, with the proposed development and be attractive to motorists and pedestrians from adjoining public streets.

(E) Gatehouses and entry gates shall be located outside any required buffer areas.

(F) Entry gates shall be set back sufficiently far from public street entrances to meet NCDOT requirements, and shall provide for stacking and safe access for at least three passenger vehicles (at least fifty-four feet). An additional setback between the point of the access control device and the entry gate shall be required to allow a passenger vehicle that is denied access to turn around and exit safely onto a public street.

(G) Two lane gates serving twenty-four or fewer homes shall have a minimum unobstructed clearance of sixteen feet in width. Two lane gates serving more than twenty-four homes shall have a minimum of eighteen feet in width.

(H) All gatehouses, entry gates, external fences and walls shall be subject to review by the Village Council as part of the approval process and shall include any signage and illumination integral to subdivision gatehouses, entry gates, external fences and walls.

Section 1303. Subdivision road design.

All new subdivision lots shall be contiguous to an approved public or private road as provided herein. Except as otherwise provided in this section, public and private roads within all subdivisions shall be designed and constructed to the minimum standards required for public roads in the most current edition of the NCDOT publication, Subdivision Roads, Minimum Construction Standards. If proposed as public, the roads must be approved by the NCDOT, dedicated for public use and offered for acceptance to the NCDOT. If proposed as private, the

roads must be transferred to a property owners association for ownership and maintenance as provided in Section 915.

(A) General provisions.

(1) All roads in minor and major subdivisions shall be paved, except for subdivisions of five lots or fewer for which the Village Council may give written approval for gravel road surfaces.

(2) The Planning Board may approve gravel roads for special subdivisions if such roads are internal to the special subdivision and do not provide through traffic for public use.

(3) Where a gravel road surface is approved, a paved apron (not less than ten feet in length and twenty feet in width at the public road) shall be required in order to protect the integrity of the public road edge and to prevent washout of gravel onto the public road.

(4) All rights-of-way for roads in minor and major subdivisions shall be a minimum of fifty feet wide.

(5) All existing private roads within a proposed minor or major subdivision shall be upgraded to the minimum NCDOT standards for public roads as specified above.

(6) Roadways within minor and major subdivisions shall be coordinated with the existing or a proposed road system in the surrounding area.

(7) All driveway connections to roadways shall be at least twelve feet wide and not more than twenty-four feet wide and shall not be above or below the roadway by more than five degrees for a distance of ten feet from the traveled way.

(8) All roads shall be constructed to be three feet above the floodplain and floodway and shall comply with the Flood Damage Prevention Ordinance.

(9) The applicant shall provide a disclosure statement in accordance with NCGS §136-102.6 with the site plan and final plan.

(10) A certificate of satisfactory completion of all roads (in a form acceptable to the Village) shall be submitted by the developer, a qualified professional and the contractor prior to acceptance of the final plat or the release of any surety bond The certificate shall state that all roads comply with the NCDOT standards and the requirements of this ordinance.

(11) Where steep topographic conditions exist, the design of roads should avoid

excessive cuts and fill slopes whenever alternatives are available to the design professional.

(B) *Public roads.* All roads proposed for public use shall be designated as public on all site plans and plats. A written ownership and maintenance agreement acceptable to the Planning Board for a minor subdivision and acceptable to the Village Council for a major subdivision, sufficient for recording in the office of the Register of Deeds, shall be submitted with the site plan and final plan in accordance with Section 915. Such agreement shall provide for the applicant to own and maintain the road, drainage easements and facilities, and rights-of-way until such time as the roads are accepted for ownership and maintenance by the NCDOT.

(C) *Private roads.* All roads proposed for private use shall be designated as private on all site plans and plats. A written ownership and maintenance agreement acceptable to the Planning Board for a minor subdivision and acceptable to the Village Council for a major subdivision, and sufficient for recording in the office of the Register of Deeds, shall be submitted with the site plan and final plan in accordance with Section 915. Such agreement shall provide for the applicant to own and maintain the road, drainage easements and facilities, and rights-of-way until such time as the road is transferred to a property owners association for ownership and maintenance.

(1) *Standards for private roads.*

All roads designated for private use shall meet the minimum design and construction standards of this section.

(2) *Entrance way standards for private roads.*

Entrance way architectural features, including but not limited to fencing, stone or masonry walls and posts, gate houses and gate structures, shall be designed and located to allow for emergency and service vehicles to enter through the gates or entrance features without obstructions, or to bypass the features. The location of such entrance features shall be in accordance with the Subdivision Roads, Minimum Construction Standards, Sections I and J.

(D) *Sidewalks and pedestrian trails required for cluster subdivisions and for planned unit developments.* Cluster subdivisions and planned unit developments shall provide pedestrian sidewalks along one side of all public or private roads within the development. The sidewalks shall be a minimum of five feet in width and paved on a compacted sub-base with four inches of concrete or paving brick or paving stones set on gravel and sand. The Planning Board may recommend and the Village Council may permit pedestrian trails to be used to supplement or substitute for required sidewalks. The ownership and maintenance of all sidewalk and pedestrian trails shall comply with the provisions in Section 915.

(E) *Driveway connections within residential subdivisions, including planned unit developments, fronting on a scenic byway.* Individual lots within a residential subdivision, including planned unit developments, fronting on a scenic byway shall be accessed by an internal street network and shall not have driveway connections to a scenic byway.

Section 1304. Subdivision utility design.

(A) *Water supply.* Every lot proposed for development within a subdivision shall be provided with a water supply that conforms to the minimum requirements of the applicable county and state regulations and the standards of this section. Water pressure requirements and capacity shall be certified by a professional engineer or as determined by the Hendersonville Water and Sewer Department, and approved by the fire department with jurisdiction over the development site.

(1) *Public water supply.* Where a public water supply system is proposed, a written approval from the Hendersonville Water and Sewer Department stating that there is adequate water capacity and pressure to serve the location and the number of lots proposed shall accompany the application for a subdivision or evidence that approval is being sought. A site plan may be approved or approved with conditions, contingent upon the final approval from such agency. The water system shall be installed, certified and approved by the requisite agency prior to final plan approval. All major subdivisions shall have an approved connection to a municipal water system.

(2) *Individual water system*. For subdivisions in which the water supply is proposed to be an individual water system, plans and specifications for such system shall be submitted to the Environmental Health Division of the Health Department and approval of such plans submitted to the Zoning Administrator prior to final plan approval.

(3) *Individual water supply.* For subdivisions in which the water supply is proposed to be an individual well for each lot, the installation of the well is not required prior to the final plat approval. Where individual water supply systems are to be used with an individual waste water system to serve individual lots within a proposed subdivision, the applicant and owner shall submit a copy of the septic suitability permit issued by the Environmental Health Division of the Health Department for each lot prior to final plan submittal.

(4) *Fire suppression.* A written approval from the appropriate fire official confirming that the lots and proposed structures have adequate water available, and that access to the lots is sufficient for providing fire protection to the facility and adjacent properties shall be required for all subdivisions.

(5) *Location and placement of water storage facilities.* Water storage facilities shall be located to reduce the visibility of such facilities from adjacent properties and visibility within the Village. The facility shall not be located where the uppermost point of the storage facility extends above the elevation of the top of the tree canopy on the crest of the ridge on which it is located. When visible from other properties or rights-of-way, water storage facilities shall be landscaped and painted in such a manner as to camouflage the facilities to reduce their visibility. Paint colors and textures should blend with the surrounding vegetation and reduce reflection and glare.

(B) *Wastewater disposal systems.* Every lot proposed for development within a subdivision shall be provided with a wastewater disposal system that conforms to the minimum requirements of applicable county and state regulations and the standards of this ordinance. All major subdivisions shall have an approved connection to a municipal sewage disposal system or a state approved privately owned sewage disposal system.

(1) *Public wastewater systems.* A proposed subdivision shall connect to a municipal sewage disposal system when such system is located within one thousand feet of the property boundary of the proposed subdivision. The applicant shall submit with the application for a subdivision a letter from the Hendersonville Water and Sewer Department approving the connection to the public system or evidence that such approval has been sought. A site plan may be conditionally approved contingent upon the final approval of the waste water system by the department. Connection to the public wastewater system shall be installed and approved by the department prior to final plat approval.

(2) *Individual wastewater systems.* For subdivisions in which the sewage disposal system is proposed to be an individual wastewater system, the installation of the system is not required prior to the final plan approval. Where an individual wastewater system is to be used with an individual water supply to serve individual lots within a proposed subdivision, the applicant and owner shall submit a copy of the septic suitability permit from the Environmental Health Division of the Health Department for the property prior to final plan submittal. For subdivisions with soils that are identified during the pre-application conference as having septic suitability problems by the Soil Conservation Service, the lots proposed for development with such problem soils shall be approved by the Environmental Health Division of the Health Department as a condition of the site plan approval.

(3) *Private wastewater systems.* For subdivisions in which the sewage disposal system is proposed to be a private wastewater system, the installation of the system is required prior to the final plan approval. The applicant shall submit with the application for a subdivision a letter from the State of North Carolina, Division of Water Quality approving the system or evidence that such approval has been sought. A site plan may be conditionally approved contingent upon the final approval of the waste water system by the state.

(C) *Underground location of all utility facilities.* All proposed utility facilities serving or located within a subdivision, shall be located in common easements and underground. To the extent feasible, gas and water lines shall be located in the same trench, and all wiring and cable shall be consolidated for installation in a separate trench. Where utility facilities cannot be placed underground the applicant shall provide a written explanation of the reasons for above ground utility facilities, which may include safety, code requirements or function. If above ground utility facilities are approved by the Zoning Administrator, provisions for screening or minimizing the visual impact of such facilities shall be incorporated in the site plan for the subdivision. Within ten days of the completion of the installation and covering of the trench with fill, the applicant shall be responsible for having the disturbed area replanted. Where practical, existing above ground utility facilities shall be relocated underground.

(D) *Off-site improvements.* When a proposed subdivision impacts existing facilities that do not meet minimum design standards, an applicant may be required to construct off-site improvements on rights-of-way, easements or other property in order to meet the design standard or to minimize the potential impact on existing facilities.

Section 1305. Other subdivision design standards.

(A) *Utility facility easements and rights-of-way.* Easements for utility facilities using pipes shall be a minimum of twenty feet in width and easements for utilities using cables and wires shall be a minimum of fifteen feet in width. Easements for all lots shall be located along adjacent rights-of-way or centered along the side or rear lot lines. To the extent possible, utility facilities shall be located in areas of the subdivision that will minimize adverse impacts on the identified conservation areas. The location and width of utility facility easements shall be determined in coordination with the utility companies serving the subdivision. The Village may assist with condemnation in instances where a developer has demonstrated good faith in negotiating for easements but is unsuccessful. The Village, however, will NOT participate in the cost of extending private infrastructure including any and all costs associated with condemnation and purchase. These costs shall be the sole responsibility of the developer.

(B) *Drainage easements.* Drainage easements for open storm water management systems that intersect property boundaries shall be a minimum of ten feet in width and, where practical, follow property boundaries.

(C) *Layout, grading, preservation of natural cover.* Land to be subdivided shall be laid out and improved in reasonable conformity with the existing topography in order to minimize grading, cut and fill, and to retain, insofar as possible, the natural contours, reduce storm water runoff, and conserve the natural cover and soil. No top soil shall be removed from any lots shown on any subdivision plan except for the purpose of improving such lots for development (the foot print of proposed structures and driveways) and for the laying out of streets shown therein.

(D) *Setback for subdivisions adjacent to the Carl Sandburg Home National Historic Site.* All proposed subdivisions or extensions of existing subdivisions adjacent to a property line of the Carl Sandburg Home National Historic Site shall have a minimum setback of thirty-five feet from the closest point of the park property boundary to the closest corner of any structure or to the closest point of any land disturbance on the property. Within the identified setback, there shall be no clearing and no structures erected or located. All existing trees and vegetation shall be retained, and a landscaped buffer as provided in Section 910 (E) shall be required where existing vegetation has been removed, does not exist, or is deemed insufficient by the Zoning Administrator in consultation with the Superintendent of the Carl Sandburg Home National Historic Site.

(E) *Review of subdivisions located within the Carl Sandburg Home National Historic Site viewshed.* The applicant for a proposed subdivision or the extension of an existing subdivision located within the Carl Sandburg Home National Historic Site viewshed as herein defined shall submit the conceptual plan for the subdivision to the Superintendent of the Carl Sandburg Home National Historic Site for review. The Superintendent shall have thirty days to review the conceptual plan and make recommendations to the applicant and the Planning Board. The Superintendent may recommend alternative designs for road and lot layout, open space and vista protection, and buffers in order to mitigate the impact of the subdivision on the National Historic Site.

(F) *Flag lots.* Flag lots may be permitted as a more reasonably suitable alternative to extending a road or a more conventional lot design when justified by topographic and natural features. Flag lots shall be reviewed for their effect on the local environment and their suitability for emergency access.

(G) *Private homeowners club design standards and requirements.*

(1) *Dimensional requirements*. A private homeowners club, which can only be approved as part of a RPUD-COD, a PMUD and a subdivision of more than ten lots, shall conform to the dimensional requirements of the district in which it is located in accordance with Article VIII of this ordinance.

(2) *Off-street parking*. A private homeowners club shall provide off-street parking in accordance with Section 901.

(3) *Building size*. Unless otherwise approved by the Village Council, total building footprint for a private homeowners' club shall not exceed 6,000 square feet.

(4) *Members*. Membership in a private homeowners club shall be limited to property owners in the development in which it is located.

(5) *Open space*. The lot or lots on which a private homeowners club is constructed shall not be considered open space as required for a PMUD, cluster subdivision or in a RPUD-COD unless the property complies with the definition of open space in this ordinance.

(6) *Commercial use prohibited*. A private homeowners club shall be maintained for the exclusive use of its members and their guests and the club shall not engage in any type of commercial activity that involves nonmembers, provided that the club may occasionally allow the use of its facilities by members of other organizations in the community for meetings and social events when such groups are sponsored by a member of the club.

ARTICLE XIV
ADMINISTRATION AND ENFORCEMENT

Section 1400. Duties and function of the Village Council and the Board of Adjustment.

(A) *Village Council.* The duties of the Village Council in connection with this ordinance shall be to hold public hearings and to vote upon any proposed amendment or repeal of this ordinance as provided by law, and to review and approve, approve with conditions or disapprove certain subdivision master and site plans, to review and approve or deny special use permits as specifically provided in this ordinance, to hear appeals from final decisions made by the Planning Board under this ordinance and to hear appeals and applications for variances as specified in any other ordinance of the Village.

(B) *Board of Adjustment*. A Board of Adjustment, established by the Village's original zoning ordinance (Ordinance No. 9 adopted August 13, 1998) as the "Zoning Board of Adjustment," shall have the powers and duties and shall operate under the practices and procedures provided in this ordinance and otherwise as may be provided by separate ordinance(s) adopted by the Village Council, and shall consist of five regular members and four alternate members serving staggered three year terms, as provided in Ordinance No. 25, dated October 12, 2000. The Board of Adjustment shall hear and decide appeals from a decision made by the Zoning Administrator, interpret the zoning map, pass upon disputed questions of lot lines or district boundary lines and similar questions that might arise in the administration of this ordinance, vary or modify any of the regulations or provisions of this ordinance (except permitted uses), and hear and decide all matters referred to it or upon which it is required to pass under this ordinance or as specified in any other ordinance of the Village.

Section 1401. Zoning Administrator.

The Village Council shall appoint a person to the office of Zoning Administrator and may appoint such other persons as deputy Zoning Administrators as the Village Council shall choose to appoint. Any person so appointed shall be employed at such salary and other compensation as may be set by the Village Council and shall serve at the pleasure of the Village Council. It shall be the duty of the Zoning Administrator to administer, interpret and enforce this ordinance. The Zoning Administrator also shall render such counsel and advice to the Planning Board, the Board of Adjustment and the Village Council and perform such other duties in connection with the requirements and the enforcement of this ordinance as may reasonably be requested. A deputy Zoning Administrator shall have the duties and exercise the functions of the Zoning Administrator with respect to those matters assigned to such officer by the Zoning Administrator or the Village Council, except that only the Zoning Administrator may approve applications, issue Administrative Modifications and deal with other matters where the exercise of discretion is involved. Any written interpretation of this ordinance and the zoning map by the Zoning

Administrator shall be publicly posted at the Village office for thirty days following the rendering of such interpretation.

Section 1402. Certificate of zoning compliance requirements.

(A) *Procedure*. The Village coordinates the enforcement of this ordinance with the Henderson County Inspections Department and building permit system. The Village enforces this ordinance primarily through the issuance of certificates of zoning compliance. The Henderson County Inspections Department is authorized to issue building permits and enforce all applicable state building codes in the Village. A certificate of zoning compliance must be obtained from the Zoning Administrator prior to obtaining a building permit from the inspections department.

(B) *Certificate of zoning compliance; development.* No building or other structure may be erected, moved, removed, demolished, extended, enlarged or otherwise structurally altered, no use or development of land initiated, including the installation of infrastructure, nor the excavation or filling of any lot for the construction of any building or use of the land be commenced until the Zoning Administrator has determined that the activity complies with all requirements of this ordinance and has issued a certificate of zoning compliance for such work, and the Henderson County Inspections Department has issued a building permit. A temporary use structure shall require a temporary certificate of zoning compliance from the Zoning Administrator for a maximum period of one year, with renewal extensions of six months each.

(C) *Certificate of zoning compliance; forestland.* No land disturbing activities shall be commenced on forestland until the Zoning Administrator has determined that the activity complies with all requirements of this ordinance and the Tree Preservation Ordinance and has issued a certificate of zoning compliance under this ordinance, or the applicant has received a permit under the Tree Preservation Ordinance. However, if the Zoning Administrator determines that the activity is not in preparation for development and qualifies as forestry activity as specified in NCGS §160D-921 and otherwise complies with this ordinance, the Zoning Administrator shall provide the landowner with a written statement that a certificate of zoning compliance is not required for such activity.

(D) *Application for certificate of zoning compliance required*. All applications for certificates of zoning compliance shall be submitted to the Zoning Administrator. The application and supporting documentation shall indicate or include the following as deemed necessary by the Zoning Administrator to determine compliance with the standards and requirements of this ordinance:

(1) A front elevation drawing of the proposed structure to scale.

(2) A survey on a scale of at least 1" = 100', prepared by and containing the seal

and signature of a qualified professional, that accurately shows the information required by this section, and which shall not be more than twenty-five years old. The Zoning Administrator may accept a tax map in lieu of a survey for a single-family development on a lot of five acres or more.

(3) Property lines and corners.

(4) Setbacks. The setbacks shall include any applicable setbacks required by Article VI, Article VIII and Article IX of this ordinance.

(5) Existing buildings and structures.

(6) All utility easements, rights-of-way, culverts and drainage ways.

(7) The location of all utility lines, septic tank and drain field, and other facilities on the lot, including a permit from the Health Department to construct a septic tank and drain field if applicable.

(8) The shape, size, use, and location of all proposed buildings and structures, including driveways and parking areas, to be erected or altered, accurately drawn to scale and dimensioned from the property corners or lines.

(9) Signatures of the land owner(s) on the application or notarized authorization by the owner(s) for an agent to sign the application.

(10) The extent and location of any lake, perennial stream, wetland, floodplain, floodway, or any slope of sixty percent or greater, as well as buffer area setbacks as required by Section 911.

(11) A certification that the property is not in a floodplain or floodway as determined from the latest Flood Insurance Rate Maps, or a floodplain development permit issued by the Floodplain Administrator.

(12) A plan for handling and disposal of construction debris.

(13) Other information required or as may be necessary to provide for the determination of compliance and enforcement of the provisions of this ordinance.

(E) *Review procedures for certificate of zoning compliance*. The Zoning Administrator shall review the application and all supporting documentation for conformance with the provisions of the ordinance and shall inspect the site to verify that the building or structure will meet all the area and dimensional requirements. In order to perform such verification, it will be necessary that:

(1) Property corners shall be permanently marked with iron pins or concrete monuments by a qualified professional.

(2) The corners of the building location and any riparian buffer setbacks shall be flagged or marked for easy identification and verification by the Zoning Administrator.

(F) *Issuance of certificate of zoning compliance.* When the Zoning Administrator has verified that both the application and site meet all requirements, a certificate of zoning compliance shall be issued. One copy of all the documents submitted shall be retained by the Zoning Administrator. One copy of the certificate of zoning compliance shall be posted by the owner in a weatherproof clear display on the site until issuance of a certificate of occupancy.

(G) *Expiration of certificate*. A certificate of zoning compliance issued by the Zoning Administrator shall become null and void:

(1) If after six months from the date of issuance a valid building permit has not been Issued, or

(2) If the building permit is revoked or expires prior to the completion of the construction to which the permit pertains, or

(3) If the work authorized is suspended for a period of one year, or

(4) If all construction to which a building permit pertains is not completed and a certificate of occupancy has not been issued within eighteen months from the date of the building permit, unless the building permit remains valid.

When such certificate has expired, construction on the property in question cannot proceed until a new certificate of zoning compliance and building permit have been issued.

Section 1403. Land development permit requirements.

(A) *Procedure*. The Henderson County Water Quality Administrator requires a certificate of zoning compliance or a permit from the Village prior to considering soil erosion and sedimentation control plans and storm water management plans for applicable land disturbing activities in the Village. The land development permit shall serve this purpose for a subdivision or conditional district or conditional overlay district rezoning but shall not serve the purpose of a certificate of zoning compliance that is required by the Henderson County Inspections Department prior to issuing a building permit.

(B) *Land development permit.* No lot or tract may be subdivided, infrastructure installed, or the excavation or filling of any lot or tract for the establishment of a subdivision, or development commenced on a conditional district or conditional overlay district rezoning site, until the Zoning Administrator has determined that the subdivision, or the conditional district or conditional overlay district rezoning, complies with the requirements of this ordinance and has issued a land development permit.

(C) *Application for land development permit and review procedures*. An application for a subdivision as required by Article XII or an application for conditional rezoning as required by Section 1606 shall constitute an application for a land development permit. An application shall be reviewed in accordance with the procedures specified in Article XII or Article XVI, whichever applies.

(D) *Issuance of land development permit.* The Zoning Administrator shall issue a land development permit for a subdivision in accordance with Section 1204 and for a conditional district or conditional overlay district rezoning in accordance with Section 1606. One copy of all the documents submitted shall be retained by the Zoning Administrator. One copy of the permit shall be posted by the applicant in a weatherproof clear display on the site.

(E) *Expiration of permit*. A land development permit issued by the Zoning Administrator shall become null and void:

(1) For a subdivision, the permit shall expire six months from the date of issuance if a site plan has not been submitted as required by Section 1204 (B), or if the work authorized is suspended for a period of one year.

(2) For a conditional district or conditional overlay district rezoning, the permit shall expire three years from the date of issuance if construction has not commenced in accordance with an approved development plan.

When such permit has expired development of the property in question may not proceed until a new land development permit has been issued.

Section 1404. Master plans.

The purpose of the master plan is to allow the Village to review large projects with respect to their impacts on traffic patterns, open space connections, pedestrian linkages, natural and historic resources, and adjacent uses.

(A) *Conceptual plan required*. Prior to formal review of any master plan for a conditional overlay district rezoning or phased subdivision, a conceptual plan drawn to a scale of not less than one inch equals one hundred feet and containing all of the elements under

subsection (B) shall be submitted to the Zoning Administrator not fewer than twenty days before the next scheduled Planning Board meeting. The purpose of the conceptual plan and review is to familiarize the Planning Board with the proposed project and the applicant with the requirements of the ordinance. A site visit by the Planning Board and the Zoning Administrator shall be made if the site is reasonably accessible.

(B) *Conceptual plan elements*. A conceptual plan shall include:

(1) A north arrow and date;

(2) The proposed name of the development;

(3) The names and contact information for the developer, owner, engineer, architect, designer, and landscape architect involved in the project along with designation and information for the primary contact person with whom the Village will be dealing;

(4) The general location and use of each existing structure on the property;

(5) The general boundaries of the property involved and proposed phase lines;

(6) The general location of all conservation areas, rights-of-way, easements, streams, ponds, lakes, wetlands, waterways, floodplains and floodways, heritage trees, forested areas and similar natural resources, areas with slopes greater than twenty-five percent and areas with slopes of sixty percent or greater.

(7) The location and designation of areas for residential development by type; the location, type, and square footage of any nonresidential uses proposed; and the location of proposed new driveways, streets, parking areas, recreation facilities, open space, and landscaped areas.

(C) *Master plan required*. Prior to or concurrently with the submission of an initial site plan for a conditional overlay district rezoning or phased subdivision, a master plan for the entire development shall be submitted, reviewed and approval in accordance with the approval process outlined in subsection (D). The master plan shall substantially conform to the approved conceptual plan. Such master plan shall include or be accompanied by documentation as to all of the following elements in addition to those required by subsection (B), and any other section of this ordinance:

(1) Residential densities per residential area, maximum total density of dwelling units per acre, and the total number of dwelling units by type proposed for the project site.

(2) Proposed structural elevations or perspectives indicating the design, materials and function of the proposed development.

(3) The names and addresses of adjacent property owners.

(4) Documentation of the methods to be used to guarantee the permanent preservation and maintenance of the required open space.

(5) The location, design, orientation, and materials used for all signs. All proposed signs shall conform to the Sign Control Ordinance for the Village. Written documentation that provides for the ownership and maintenance of all common areas, including, but not limited to, streets, utilities, parks, recreational areas, pedestrian facilities and open spaces.

(6) The total acreage in the project site, if the project is more than one parcel intended for single-family residential detached use, and the calculation of the percentage of the site acreage to be disturbed, the percentage of the site acreage to be covered by buildings, the location and acreage of conservation areas, and the percentage of the site acreage to be permanently retained as natural or landscaped open space.

(7) Any other information deemed by the Zoning Administrator, Planning Board, or Village Council necessary to determine the scope and intent of the proposed development.

(D) *Master plan approval process*. Master plans for phased subdivisions shall be reviewed and approved in accordance with Sections 1204 and 1205. Master plans for conditional overlay district rezoning shall be reviewed and approved in accordance with Article XVI.

Section 1405. Site plans; permitted use review and approval.

(A) *General site plan requirements*. All site plans required by this ordinance shall include the following information as deemed necessary by the Zoning Administrator to determine compliance with the standards and requirements of this ordinance:

(1) A site plan drawn to a scale of not less than one inch equals fifty feet. The plan shall include a north arrow, date, the proposed name of the development, and the names of the developer, engineer, architect, designer, and landscape architect.
(2) Topographic contour lines shown at five foot intervals or larger scale.

(3) Rendered elevations of proposed structures.

(4) Location and extent of all proposed streets and roads, off-street parking, sidewalks, trails, and outdoor lighting together with the design of lighting fixtures to be installed.

(5) A survey prepared by and containing the seal and signature of a qualified professional. The survey, which shall be not more than twenty five years old, shall be prepared at a scale of at least one inch equals one hundred feet and shall accurately show the information required by this section. The accuracy of the survey shall be the responsibility of the applicant. For a building or land use that is proposed for single-family detached development on a lot where the proposed new construction is at least one hundred feet from the property line, a tax map may be substituted for the required survey.

(6) Property lines and corners including the boundaries of the property involved, the location of all existing and proposed rights-of-way, easements, streams, ponds, lakes, wetlands, waterways, floodplains and floodways, riparian buffers, slopes of sixty percent or greater and the size in acres of all existing and proposed rights-of-way, streams, ponds, lakes, wetlands, waterways, floodplains and floodways and slope areas of sixty percent or greater.

(7) Setbacks, including any applicable setbacks required by Article VI, Article VIII or Article IX of this ordinance.

(8) The existing access to the property and any proposed changes, including the location of all existing and proposed parking spaces and interior driveways/aisles.

(9) The shape, size, use, and location of existing and proposed buildings and structures to be erected or altered, accurately drawn to scale and dimensioned from the property corners or lines.

(10) The location of any structure or site listed on the National Register of Historic Places and any contributing lands surrounding such site in relation to all proposed development on the site along with detailed information on how the structure or site is proposed to be altered.

(11) The location and identification of water, sewer and storm water utilities within or adjacent to the development site including utility easements, rights-of-way, culverts and drainage ways.

(12) The location of all lots proposed for open space uses, entrance ways and islands, sight easements and utility facilities and stations and any other nonresidential use shall be designated specifically for the intended use. All open space areas shall be

labeled with an accurate description of the type and purpose of the open space (e.g., public park, forest, wetlands, etc.).

(13) The location of existing and proposed septic tanks, drain fields, community facilities and similar wastewater facilities on the development site.

(14) Required buffers, landscaping and screening plans, including the location of buffer areas and the method of screening or concealing loading areas, garbage retention and collection areas, mechanical equipment, and utility entrances from public and residential areas. The plan shall provide the location and general description of the vegetation and other buffers, landscaping and screening materials.

(15) The maximum total density of dwelling units per acre and the total number of dwelling units proposed for the project site.

(16) All phase boundaries, if applicable. The development of the project in phases shall require the designation and reservation of any required permanent open space based upon the open space percentage for the total project. For example, if the open space percentage is forty percent and the developer seeks approval for development of units on six acres, the developer must permanently reserve 2.4 acres of open space. The required open space reservation for any phase is cumulative with all prior phases and can be met with a previous reservation as long as the percentage requirement for the total is satisfied.

(17) Written approvals to connect to the municipal water and sewage disposal systems, or alternatively, documentation from the county that a community or private system is permissible.

(18) Written approval of the soil erosion and sedimentation control plan and the storm water management plan. When these plans are required to be submitted, approval of such plans shall be a condition for approval of the site plan.

(19) A plan for handling and disposal of construction debris.

(20) Any other information required or deemed necessary by the Zoning Administrator or the Planning Board to ensure the intent to comply with the provisions of this ordinance.

(B) *Site plan review and approval for permitted uses*. A complete application and site plan for a permitted use shall be submitted to the Zoning Administrator for review. The Zoning Administrator shall review the application and site plan for conformance with the provisions in this section and all other applicable provisions of this ordinance within twenty days of receipt of a complete application and site plan.

(C) *Modification of an approved of permitted use site plans*. The Zoning Administrator shall review any modification of an approved site plan in accordance with the zoning requirements in effect at the time of the modification. To apply for approval of a modified plan, the applicant shall resubmit the plan and all supporting documentation relating to the proposed modification(s). The Zoning Administrator may require complete resubmission of the application and plan if he deems the modification to be substantial.

Section 1406. Certificate of occupancy required.

(A) *Occupancy of new construction.* A certificate of occupancy issued by the Henderson County Inspections Department and approved by the Zoning Administrator is required in advance of occupancy or use of a building erected, altered or moved, unless the structure is less than 150 square feet.

(B) *Change of use.* A certificate of occupancy issued by the Zoning Administrator is required in advance of a change in use of any building or land.

(C) *Issuance of a certificate of occupancy for new construction*. A certificate of occupancy, either for the whole or part of a building, will be issued after the erection or structural alteration of such building, or part, shall have been completed in conformity with the provisions of this ordinance, and all construction inspections by the Henderson County Inspections Department have been satisfactorily completed. Upon receipt of the final inspection notification from the county, and the receipt of an as-built survey, prepared by and containing the signature and seal of a qualified professional and indicating the date of the survey, the Zoning Administrator shall inspect the property solely for compliance with this ordinance. Portable toilet facilities must either be removed prior to this inspection or within thirty days after the inspection. For buildings or land uses on tracts five acres or larger, the applicant may submit a tax map with the building drawn to scale. The as-built survey shall include all setbacks. All such documentation, including the as-built survey, shall be submitted to the office of the Zoning Administrator at least seven days before the issuance of the certificate of occupancy. The Zoning Administrator shall verify that the building meets all applicable provisions of this ordinance and the site has been cleared of all construction debris and materials and that all soils are stabilized or permanent vegetation is installed. A certificate of occupancy shall not be approved by the Zoning Administrator unless the proposed use of a building or land conforms to the applicable provisions of this ordinance. If the certificate of occupancy is denied, the Zoning Administrator shall state in writing the reasons for denial and the applicant shall be notified of the denial. A record of all certificates shall be kept on file in the office of the Zoning Administrator.

(D) *Temporary certificate of occupancy*. The Zoning Administrator may issue or approve a

temporary certificate of occupancy in cases where the requirements of this section have been substantially met, the property owner is expeditiously correcting the deficiencies and failure to grant a certificate of occupancy would result in an unnecessary hardship for the property owner.

(E) *Remedies*. In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building or land is used in violation of this ordinance, the Zoning Administrator, or any other appropriate Village authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, mandamus, or other appropriate action or proceeding to remedy such violation.

Section 1407. Certificate of nonconformance.

A certificate of nonconformance shall be required for every legal nonconformance, as defined in Section 603, and resulting from the adoption of this ordinance or any prior zoning ordinance, or by any subsequent amendment to this ordinance. The certificate shall be issued by the Zoning Administrator. The Zoning Administrator shall include with the certificate a written explanation of the nonconformance, citing the section or sections of the ordinance with which the use does not comply. The Zoning Administrator shall maintain a file of certificates of nonconformance, which file shall contain a copy of the certificate, the written explanation, a tax map of the property and a dated photograph of the use taken on or about the date the certificate was issued.

Section 1408. Administrative Modification of design requirements.

In order to encourage creative design, to avoid undue hardship, and to expedite the zoning approval process for developments within the Village, an administrative modification of any of the design requirements contained within this ordinance may be approved as follows.

(A) *Administrative Modification.* The Zoning Administrator is authorized to grant an administrative modification from the design requirements or dimensional requirements of this ordinance subject to the following:

(1) Any request for an administrative modification of a requirement set forth in this ordinance including, but not limited to, height requirements and limitation, open space requirements, parking requirements and parking lot layout, screening or buffer requirements, planting requirements and landscaping materials, ratio requirements, density requirements, spacing requirements, signage requirements, fencing requirements, and building design may be granted only after the applicant has demonstrated that:

(a) The deviation is a result of unique conditions of the property; or

(b) The deviation will result in a project that is at least equal to or better than what would be accomplished under the strict application of this ordinance; or

(c) Failure to grant an administrative modification will result in undue hardship for the applicant.

(2) Before granting an administrative modification, the Zoning Administrator shall reasonably determine that granting the modification:

(a) Does not and will not violate the spirit and intent of this ordinance; and

(b) Does not and will not adversely affect the rights of other property owners in any material manner.

(3) An administrative modification shall be in writing and may not deviate by more than ten percent from any of the measurable standards of this ordinance or substantially deviate from any other requirements of this ordinance.

(4) The Zoning Administrator shall grant such administrative modifications if they satisfy the requirement of this section. In the event the Zoning Administrator declines to grant an administrative modification, the applicant shall have the right to appeal to the Board of Adjustment.

(5) The Zoning Administrator shall revoke an administrative modification and issue a stop work order if the applicant deviates from or exceeds the authority granted by the modification.

Section 1409. Enforcement and penalties for violation.

(A) *Certificate of zoning compliance or land development permit revocation*. Any certificate of zoning compliance or land development permit may be revoked by the person, board or other entity who issued it after written notification to the owner of the subject property and the certificate or permit holder, if different from the owner, when violations of this ordinance have occurred, when false statements or misrepresentations were made in securing the certificate or permit, work is being or has been done or use is being or has been made of the property in substantial departure from the approved application or plan, a certificate or permit has been mistakenly issued in violation of this ordinance, when it is determined that use or work fails to comply with any Village, county, state or federal regulation pertaining to use or development of the site, or land has been subdivided in violation of this ordinance, or transferred or sold by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been approved

under this ordinance and recorded in the office of the Register of Deeds, except in strict conformity with NCGS §160D-807, and shall be subject to civil penalties as provided in this section Written notice of intent to revoke a certificate of zoning compliance or land development permit must be served by personal delivery, electronic delivery or first-class mail. The process to revoke a certificate of zoning compliance and any land development permit must be the same as that required for issuance of such certificate or permit.

(B) *Stop work orders*. Whenever a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired or development is occurring or use is being made of the land or structures in substantial violation of any applicable provision of this ordinance or any other Village, county, state or federal regulation pertaining to use or development of the site or in any manner that endangers life or property, the Zoning Administrator may order the specific part of the work that is in violation or creates a danger, or would when the work is completed, to be immediately stopped. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary lawfully to resume work. A copy of the order shall be delivered to the holder of the certificate or permit and to the owner of the property if different from the holder by personal delivery, electronic delivery or first-class mail.

(C) *Civil penalty process*. In addition to the other remedies cited in this ordinance for the enforcement of its provisions, and pursuant to N.C. General Statute 160A-175, the regulations and standards of this ordinance may be enforced through the issuance of civil penalties by the Zoning Administrator as detailed in the following subsections.

(1) Upon determination that a violation exists, the Zoning Administrator shall cause a notice of violation to be issued to the violator and served on the violator or his agent, either in person, electronic mail or first class United States mail, postage prepaid and addressed to the last known address of the violator as contained in the records of the Village or Henderson County or as obtained from the violator or his agent. The Zoning Administrator shall sign and have notarized an affidavit describing the type of service and the date of service. The violator shall be deemed to have been served upon the first class mailing, electronic mailing or personal service of the notice of violation. The notice of violation shall set out the nature of the violation, the section of this ordinance violated, and the date or dates of the violation, and shall contain an order immediately to cease the violation. The notice of violation shall specify that a second and subsequent citation will assess a civil penalty, together with costs, attorney fees, and such other relief as provided by law. The notice of violation shall also inform the violator of the violator's appeal rights. If the violation is in the nature of an offense for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated within which the violation must be abated.

(2) The violator must file an appeal from a notice of violation with the Village Clerk within thirty days from the service date of the notice of violation as indicated on the affidavit of service. An appeal is deemed filed on the date it is received by the Zoning Administrator. For the purposes of this section, the Village Clerk's receipt of a notice of appeal shall be deemed constructive receipt by the Zoning Administrator. Forms and instructions for filing an appeal shall be made available at Village Hall. A violator who fails to file an appeal within the time period described above is deemed to have forfeited the appeal for the violation, the notice of violation, the civil citations, and the civil penalties assessed for the violation. Appeals shall be heard by the Board of Adjustment. The decision of the Board of Adjustment is subject to review in the Superior Court of Henderson County in the nature of certiorari.

(3) Where the Zoning Administrator determines that the period of time stated in the original notice of violation is not sufficient for abatement based upon the work required or based on a consent agreement, he may amend the notice of violation to provide for an additional thirty days. Upon petition, the Board of Adjustment may grant additional time for abatement if it determines that such time is warranted.

(4) Upon failure of the violator to comply with the notice of violation within thirty days of service of the notice of violation, or within any later time period specified in the notice, or an amended notice, or granted by the Board of Adjustment, a civil citation shall be issued by the Zoning Administrator and served on the violator or his agent, either in person or by first class United States mail, postage prepaid and addressed to the last known address of the violator as contained in the records of the Village or Henderson County or obtained from the violator or his agent. The Zoning Administrator shall sign and have notarized an affidavit describing the type of service and the date of the service. The violator shall be deemed to have been served upon the mailing or personal service of the civil citation.

(5) The civil citation shall direct the violator immediately to cease the violation, shall inform the violator of the civil penalty, and shall direct the violator to make payment of the civil penalty to the Village Clerk within ten days of the date of the civil citation, or alternatively to pay the citation by mail postmarked within ten days of service of the civil citation. When a notice of violation has been issued and the thirty day warning period has expired, civil citations may be issued for each day the same or similar violation continues until the prohibited activity is ceased or abated. If a violation is repeated within a two year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies as set forth in this section. A repeat violation is one that is identical to or reasonably similar to a

previous violation for which a notice of violation or civil citation has been issued by the Village.

(6) If the violator fails to respond to a civil citation within thirty days of its service, and pay the penalty prescribed therein, the Village may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees and such other relief as permitted by law.

(D) *Civil penalties*. The assessment factors for determining a civil penalty for a violation under subparagraphs (2) through (5) below shall include degree and extent of harm caused by the violation, 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 this ordinance.

(1) Civil penalties for violations where the Zoning Administrator requires remedial action to correct the violation or for other violations not specifically covered in subparagraphs (2) through (5) below shall be $100 per day.

(2) Excavation of land or other land disturbing activities prior to the issuance of a certificate of zoning compliance, or in the case of a subdivision, a land development permit, may result in a civil penalty not to exceed $500.

(3) Failure to obtain a certificate of zoning compliance or a land development permit when required by this ordinance may result in a civil penalty not to exceed $5,000, and may result in the requirement of removal, demolition or remediation of any construction or development work completed.

(4) Failure to construct a building or other structure or improvements, or otherwise to develop property in accordance with an approved site plan may result in a civil penalty not to exceed $5,000 and may result in the requirement of removal or demolition of improvements that do not conform to the approved site plan.

(5) Failure to notify the Village Council in writing of any field conditions found at the site during development or construction and unknown at the time of approval of a special use permit, certificate of zoning compliance or a land development permit, or an act of God affecting the site or the improvements under construction, or any other matter beyond the permit holder's control that precludes construction in accordance with an approved site plan prior to the permit holder's deviation from such plan may result in a civil penalty not to exceed $1,000, and may result in the requirement of removal or demolition of improvements that do not conform to the approved site plan.

(6) Failure to obtain a certificate of occupancy before use or occupancy may result in a civil penalty not to exceed $2,500. Decks and outbuildings, the construction cost of which is less than $10,000, are exempt from such penalty.

(E) *Enforcement*. The Zoning Administrator shall administer the enforcement of the provisions of this ordinance, violations of the ordinance or violations of orders or conditions issued or imposed by the Zoning Administrator, Board of Adjustment or the Village Council. The Zoning Administrator shall have the authority, following issuance of an administrative search warrant based upon probable cause, to enter the property of a suspected violator and inspect the property to determine if a violation has occurred, or if refused entry, seek an administrative warrant for such an inspection.

(F) *Criminal penalties*. A violation of this ordinance shall not subject the offender to criminal penalties.

(G) *Equitable remedy*. The Zoning Administrator may apply to a court of competent jurisdiction for any appropriate equitable remedy to enforce the provisions of this ordinance. It is not a defense to the Zoning Administrator's application for equitable relief that there are other remedies provided under general law or this ordinance.

(H) *Injunction.* Enforcement of the provisions of this ordinance may also be achieved by injunction. When a violation occurs, the Zoning Administrator may, either before or after the institution of other authorized action, apply to the appropriate division of the general court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

(I) *Order of abatement*. In addition to an injunction, the Zoning Administrator may apply for and the court may enter an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:

(1) Buildings or other structures on the property be closed, demolished, or removed;

(2) Fixtures, furniture or other moveable property be moved or removed entirely;

(3) Improvements, alterations, modifications or repairs be made; or

(4) Any other action be taken that is necessary to bring the property into compliance with this ordinance.

(J) *Public health nuisance*. Pursuant to NCGS §160A-193 the Village Council may cause the removal, abatement, or remedy of any zoning violation within the Village limits or one mile thereof that it finds and declares to be dangerous or prejudicial to the public

health or public safety. Such may include, but shall not be limited to, swimming pools, storm water management facilities, overgrown landscaping, and signage.

(K) Nothing in this section shall be construed to limit the use of remedies available to the Village. The Village may seek to enforce this ordinance by using any one, all, or a combination of remedies.

Section 1410. Fee schedule

The Village Council may establish, and modify from time to time, a fee schedule for the administration and enforcement of this ordinance. Fees may include expenses for technical advisors or other professionals when needed to evaluate an application. In order to be deemed complete, all applications and appeals filed under this ordinance shall be accompanied by payment of all applicable fees. The Village Council may waive or lower the fees for an application when requested to do so by the Zoning Administrator when imposition of the standard fee would be unfair to the applicant on the basis of unusual circumstances.

ARTICLE XV
PROCEDURES FOR APPEALS, VARIANCES AND SPECIAL USES

Section 1500. General procedures; hearing board.

(A) *Appeals*. The Village Council shall hear appeals as specified in Section 1400 (A). The Board of Adjustment shall hear appeals as specified in Section 1400 (B).

(1) *Standing to appeal.* An appeal to the hearing board may be taken by any person who has standing under NCGS §160D-1402 or by an officer, department, or board of the Village.

(2) *Notice of appeal*. A written notice stating the grounds for appeal shall be filed with the Village Clerk, on forms specified for such purposes, within thirty days after the owner or other party receives notice of the decision that is the basis for the appeal The notice shall also state why the appellant has standing to appeal under NCGS §160D-405 (b). Any other person with standing to appeal shall have thirty days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. The notice of appeal shall include a list identifying all adjacent property owners by name and mailing address. The Village Clerk shall notify the Zoning Administrator and the presiding officer of the hearing board that a notice of appeal has been received.

(3) *Stays*. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the hearing board, after notice of appeal has been filed, that because of facts stated in an affidavit, a stay would cause

imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by the hearing board or by a court. If enforcement proceedings are not stayed, the appellant may file with the Zoning Administrator a request for an expedited hearing of the appeal, and the hearing board shall meet to hear the appeal within fifteen 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 this 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 hearing board may grant a stay of a final decision on permit applications affected by the issue being appealed.

(4) *Hearing and deciding appeals*. The hearing board shall follow the procedures established in Section 1504 for hearing and deciding appeals.

(B) *Variances*. When unnecessary hardships would result from carrying out the strict letter of this ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of this ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(1) *Applications*. All applications for variances shall be submitted to the Zoning Administrator on forms specified for such purposes and shall include a list identifying all adjacent property owners by name and mailing address. The Zoning Administrator shall act as clerk for the Board of Adjustment in receiving such applications and shall notify the chairman of the hearing board that an application has been received.

(2) *Hearing and deciding variances*. The Board of Adjustment shall follow the procedures established in Section 1504 for hearing and deciding variances in accordance with the findings in Section 1501.

(C) *Special uses*.

(1) *Applications*. A written application for a special use permit shall be submitted to the Zoning Administrator at least twenty days prior to a scheduled meeting of the Planning Board on forms provided for that purpose. The application shall indicate the section of the ordinance under which the special use is sought, and shall include a list identifying all adjacent property owners by name and mailing address, all the required plans, maps and documentation required by Article XI and a site plan as specified in Section 1405 (A).

(2) *Planning Board review*. Applications shall be reviewed by the Planning Board for conformance with any officially adopted comprehensive or other plan, the provisions of Section 1502 (F) and any specific conditions required in Article XI for a special use. The Planning Board may recommend such other conditions and safeguards as will assure that the use will conform to the intent and requirements of this ordinance. Within forty-five days of the hearing board's first consideration of the application, the board shall forward any recommendations regarding special uses to the Village Council. If no action is taken by the Planning Board within forty-five days after its first consideration of the application, the application may be considered by the hearing board without a recommendation.

(3) *Hearing and deciding special uses*. The hearing board shall follow the procedures established in Section 1504 for hearing and deciding special uses in accordance with the findings in Section 1502.

Section 1501. Required findings of fact for variances.

A variance may be granted upon a showing of all of the following:

(A) *Unnecessary hardship.* Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(B) *Peculiar conditions*. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(C) *Fault of applicant.* The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(D) *Harmony with ordinance.* The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

(E) *Permitted use in district.* The variance is not a request to permit a use of land, building or structure that is not permitted in the district involved.

(F) *Retroactive time extensions.* The variance is not a request retroactively to extend a time limit of an expired certificate of zoning compliance or any other time limit specified in the ordinance that has expired.

Section 1502. Required findings of fact for special uses.

No special use shall be approved unless the following written findings of fact are made by the Village Council concerning the proposed use:

(A) *Public health and safety.* The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to the plan submitted and will not adversely affect the public interest.

(B) *Compliance with regulations.* The use complies with all applicable regulations and standards of this ordinance.

(C) *Adjoining property; public necessity.* The use will not substantially injure the value of adjoining property, or the use is a public necessity.

(D) *Harmony with area.* The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located.

(E) *Adequate utilities.* Public water and sewer service are available in adequate capacity, if needed.

(F) *Other provisions.* Satisfactory provisions and arrangements have been made concerning the following when applicable:

(1) Ingress and egress to property and proposed structures with particular reference to automobile and pedestrian safety, convenience, traffic flow and control, and access in case of an emergency.

(2) Off-street parking and loading areas where required, with particular reference to the items in (1) above; aesthetics; and to the effects the special use may have on adjoining properties, including noise, glare, odor, appearance and the economic impact.

(3) Refuse and service areas, with particular reference to the items in (1) and (2) above.

(4) Utilities, with reference to location, appearance and compatibility.

(5) Screening, buffers and landscaping with reference to type, dimensions, and character.

(6) Signs and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and aesthetic compatibility with properties in the district.

(7) The location of required setbacks and open space.

Section 1504. Procedures for hearing appeals and applications.

(A) *Timing*. Upon delivery of a notice of appeal or an application to the presiding officer of the responsible hearing board, the presiding officer shall direct the Zoning Administrator to schedule a time for a hearing that shall be within sixty days of the filing of such notice of appeal or application. The Zoning Administrator shall provide the appellant or applicant with a copy of the "order of business" for these quasi-judicial hearings and in the case of an appeal shall expeditiously transmit to the hearing board all documents and exhibits constituting the record upon which the action appealed from is taken and provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(B) *Notice of hearing*. The Zoning Administrator shall mail a notice of the hearing to the person or entity whose appeal, 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; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the Village may rely on the Henderson County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than twenty-five days, prior to the date of the hearing. Within that same time period, the Zoning Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. All notices shall state the location of the tract, lot or building, the type and nature of the appeal or application and the time, date and place of the hearing.

(C) *Conduct of hearing.* The presiding officer of the hearing board and the secretary of the board are authorized to administer oaths to witnesses in any matter coming before the hearing board. Any person who, while under oath during a proceeding before the hearing board, willfully swears falsely is guilty of a Class 1 misdemeanor. The hearing board may subpoena witnesses and compel the production of evidence in accordance with NCGS §160D-406 (g), whichever is applicable.

(D) *Conditions on approval.* Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance or that are reasonable and appropriate conditions and safeguards for a permit, may be imposed on any approval issued by the hearing board; except that, conditions and safeguards imposed under this subsection shall not include requirements for which the Village does not have statutory authority to impose or requirements that the courts have held to be unenforceable if imposed directly by the Village.

(E) *Voting*. If the hearing board is the Board of Adjustment, the concurring vote of four-fifths of the members of the board shall be necessary to grant a variance. A concurring vote of

a majority of the Board of Adjustment shall be necessary to reverse any decision or determination of the Zoning Administrator, or otherwise to render a decision on matters arising in the administration of this ordinance. If the hearing board is the Village Council, it may issue special use permits or make other decisions upon a majority vote of the Council. Except for votes taken by the Village Council on an amendment to a zoning ordinance under Article XVI, a failure to vote by a Council member who is physically present at the hearing, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. For the purposes of this subsection, vacant positions on the hearing board and members who are disqualified from voting on a quasijudicial matter shall not be considered "members of the hearing board" for calculation of the requisite vote if, in the case of the Board of Adjustment, there are no qualified alternates available to take the place of such members.

(F) *Conflicts of interest*. A member of a hearing board shall not participate in or vote on any quasijudicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself, the remaining members shall by majority vote rule on the objection.

(G) *Decisions*.

(1) *Time*. A decision by the hearing board shall be made within a reasonable time but not more than forty-five days from the date of conclusion of the public hearing.

(2) *Form and content*. Each quasi-judicial decision shall be based upon competent, material and substantial evidence in the record. The secretary of the hearing board shall give a preliminary notice of the vote taken by the board by personal delivery, electronic mail or first class mail to the applicant or appellant, and to other persons who have submitted a written request for a copy, no later than the close of business following the date of the vote and post a copy of the decision at the Village office for a period of thirty days. The hearing board shall meet no later than thirty days following the decision to review the minutes of the hearing and approve the final decision to be signed by the presiding officer. The secretary of the hearing board shall deliver the final decision of the board to the applicant, property owner, and other persons who have submitted a written request for a copy, prior to the date the decision becomes effective by personal delivery, electronic mail or first class mail and shall certify for the record that proper notice has been made. The final decision will become effective when filed with the record of the case as entered in the

approved minutes of the hearing board in the office of the Village Clerk. Such decision shall reflect the hearing board's determination of the contested facts and their application to the applicable standards. The decision on an appeal may reverse or affirm, wholly or partly, or may modify the decision or determination of the Zoning Administrator, and the hearing board shall have all the powers of the Zoning Administrator to make any order, requirement, decision, or determination that ought to be made. The decision on an application for a variance or permit shall provide the findings of fact used to grant, deny or modify the request for a variance or permit. The record shall state in detail what, if any, conditions and safeguards are imposed by the hearing board in connection with the granting of a variance or a permit.

(3) *Public record of decisions*. The decisions of the hearing board, as filed in its minutes, shall be a public record, available for inspection at the Village office during normal office hours. Any party desiring a written copy of the hearing board's decision shall submit a written request for such written decision with the chairman at the time of the public hearing.

(H) *Rehearings*. An applicant shall have fifteen days following the date the hearing board has made a ruling to file an application for a rehearing. An application for a rehearing shall be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the hearing board to determine whether there has been a substantial change in the facts, evidence or conditions in the case. The application for rehearing shall be denied by the hearing board if, from the record, it finds that there has been no substantial change in facts, evidence or conditions. If the hearing board finds that there has been a change, it shall thereupon treat the request in the same manner as any other appeal or application.

Section 1505. Withdrawal and amendment of applications, permits and variances.

An application for a special use or variance may be withdrawn by the applicant at any time, or applications or permits may be amended as follows:

(A) *Amending pending applications*. When the application has been filed, the applicant shall not be allowed to amend it except by request to the Zoning Administrator no later than three weeks prior to the scheduled public hearing date. No amendments to the application shall be accepted in the intervening weeks prior to the public hearing.

(B) *Amendment during hearing*. No amendments to the application shall be made at the hearing, although potential amendments proposed by the applicant, the hearing board and other interested parties may be presented at the hearing and considered by the hearing board during their deliberations. If the hearing board deems any amendment to be a substantial amendment to the application, it shall defer action on the application for thirty

days to allow interested parties the opportunity to comment on the amendment to the application. If the hearing board deems any amendment to expand significantly the scope of the application, it shall call for a new public hearing.

(C) *Amendment of permits or variances*. The applicant shall file a new application in accordance with this article to amend a permit or variance that has been approved by the hearing board under this article. Evidence presented at the hearing on the proposed amendment will be limited to the effect of the proposal on the original permit or variance, any plans or conditions that were a part of the original permit or variance, and the then present standards and requirements in this ordinance.

Section 1506. Revocation and expiration of permits.

(A) *Revocation of a special use permit*.

(1) If at any time the Zoning Administrator determines that construction inconsistent with the approved permit is occurring within the development, he shall issue a stop work order on such construction, and notify the responsible parties of the violation. Further work on the project must immediately cease. If the violation is not brought into compliance with the permit or the applicant has not within thirty days filed an appeal with the hearing board that granted the permit, the Zoning Administrator shall initiate action to revoke the permit. The Zoning Administrator may also revoke existing certificates of zoning compliance or suspend the issuance of any additional certificates of zoning compliance within the development if he has reason to believe that such construction will not be in conformance with the approved permit or such construction will increase or reinforce the degree of violation.

(2) If the violation involves a completed, unoccupied building, no certificate of occupancy shall be granted for such building until the violation is corrected. If the violation involves initial construction or provision of any of the public facilities, open space, required landscaping, or similar common features of the approved permit, no certificates of zoning compliance or certificates of occupancy will be issued within the development until the violation is corrected or a new permit has been granted by the hearing board.

(3) Action to revoke a permit shall be taken by the hearing board after receiving a request from the Zoning Administrator. Such a request shall be in writing and shall declare that the applicant and all property owners within the development, as recorded at the Register of Deeds office, have been notified at least ten days before the meeting of the pending action and the date, time, and place of the board meeting at which the request will be made. The applicant and property owners shall have the right to appear before the board at the meeting and show cause why the board should not revoke the permit. Notification shall be deemed given when written

notice is sent by first class mail to the property owner at the address shown on the most recent property tax records and one or more signs are posted in prominent locations on the subject site reasonably calculated to give notice of the action.

(B) *Expiration of a special use permit*.

(1) Approval of a special use permit shall confer upon the applicant all vested rights as set forth in this ordinance.

(2) In order for a permit to remain in effect, a valid building permit must be issued for construction within the time period vested. If at any time after this date, construction has not been completed and no valid building permits are outstanding for construction within the development, the permit shall expire. No further construction may occur within the development until a new permit has been issued by the responsible hearing board in accordance with the procedures outlined in this ordinance.

Section 1507. Appeals to superior court.

(A) *Quasi-judicial decisions*. Every quasi-judicial decision of the hearing board under this ordinance shall be subject to review by the superior court by proceedings in the nature of certiorari. A petition for review shall be filed with the clerk of superior court by the later of thirty days after the decision is effective or after a written copy thereof is delivered in accordance with Section 1504 (G) (2). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(B) *Administrative decisions*. Any person or persons jointly or severally aggrieved by an administrative or ministerial decision of the Village Council in approving a final subdivision plat or site plan under this ordinance, including any officer, official, department or board of the Village, may, within thirty days after the decision is final, or, after written copies of the decision are delivered to the aggrieved parties, file in superior court an action seeking appropriate declaratory or equitable relief.

(C) *Legislative decisions*. Any person or persons jointly or severally aggrieved by a legislative decision of the Village Council under Article XVI in approving an amendment to, or a repeal of, this ordinance or an amendment of the zoning map, may within thirty days after the decision is final, file in superior court an action seeking appropriate declaratory or equitable relief.

ARTICLE XVI
REZONING, AMENDMENTS AND REPEALS

Section 1600. Rezoning, amendments and repeals.

This ordinance and the zoning map may be amended or repealed by the Village Council in a legislative process in accordance with the provisions of this article.

Section 1601. Initiation of rezoning, amendments or repeals.

Proposed changes or amendments to the ordinance or map and a repeal of any part of this ordinance may be initiated by the Village Council, the Planning Board or the Board of Adjustment. Additionally, a change in the zoning map may be initiated by one or more owners of property located within the area proposed to be changed or affected or by a property owner seeking conditional district rezoning or conditional overlay district rezoning.

Section 1602. Application for rezoning, amendments or repeals.

Before any action is taken on a proposed rezoning, request for repeal or amendment initiated by a property owner, an application shall be submitted to the office of the Zoning Administrator at least twenty-eight days prior to the scheduled Planning Board meeting at which the application is to be considered. Before any action is taken on a proposed conditional district rezoning or conditional overlay district rezoning initiated by a property owner, an application complying with Section 1606 shall be submitted to the office of the Zoning Administrator at least forty-five days prior to such meeting. An application for general use district rezoning shall contain the name(s) and address(es) of the owner(s) of the property in question, the location of the property, and a description or statement of the present and proposed zoning regulation or district as shown on the application forms supplied by the Village. All applications requesting a change in the zoning map shall include a description of the property in question, including the composite aerial photograph from the Henderson County land records on which the property is located. In addition, a statement shall be prepared analyzing the reasonableness of the proposed amendment as part of each application for a rezoning to a conditional district, conditional overlay district or other smallscale rezoning. When an application is filed to request a zoning map amendment and that application is not made by the owner, or all of the owners, of the parcel of land to which the amendment would apply, the applicant shall certify to the Village Council that the owners of the parcel of land as shown on the county tax listing have received actual notice of the proposed amendment and a copy of the notice of public hearing in accordance with NCGS §160A-384 (a) and (b1). Applications omitting this or any other required information shall be rejected by the Zoning Administrator. The Planning Board and the Village Council will not consider an application for a zoning change for property or any part thereof denied within the preceding twelve months by the Village Council.

Section 1603. Planning Board action.

Before taking any action on a proposed amendment to the ordinance or map, the Village Council shall consider the Planning Board's recommendation on such proposed amendment. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. When considering an application for conditional district rezoning or conditional overlay district rezoning, the Planning Board shall review all documentation submitted with the application and make a recommendation to the Village Council to approve, approve with conditions or disapprove on the basis of compliance with the requirements of this ordinance. The Planning Board shall also provide a written recommendation to the Village Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Village Council. If no written report is received from the Planning Board within thirty days of referral of the amendment to that board, the Village Council may proceed in its consideration of the amendment without the Planning Board report. The Village Council is not bound by the recommendations, if any, of the Planning Board.

Section 1604. Public hearing.

(A) Before adopting, amending, or repealing any portion of this ordinance, the Village Council shall hold a public hearing. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the Flat Rock area. The notice shall be published the first time not less than ten days or more than twenty-five days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

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

(C) The first class mail notice required under subsection (B) shall not be required if the zoning map amendment directly affects more than fifty properties, owned by a total of at least fifty different property owners, and the Village elects to use the expanded published notice provided for in this subsection. In this instance, the Village may elect to make the mailed notice provided for in subsection (B) of this section or it may as an alternative elect to publish notice of the hearing as required by subsection (A), but provided that

each advertisement shall not be less than onehalf of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (B).

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

Section 1605. Citizen comments.

If any resident or property owner in the Village submits a written statement regarding a proposed amendment or repeal of this ordinance to the Village Clerk at least two business days prior to the proposed vote on such change, the Village Clerk shall deliver such written statement to the Village Council, except if the amendment involves a combined legislative and quasi-judicial matter. For a combined legislative and quasi-judicial matter only the names and addresses of the commenters shall be provided to the Council.

Section 1606. Conditional district and conditional overlay district rezoning.

(A) *Initiation.* The rezoning of property to a conditional district or a conditional overlay district may be initiated only by the property owner(s), or an agent authorized by power of attorney to act on the owner's behalf.

(B) *Application.* A request for rezoning to a conditional district or conditional overlay district shall include an application consisting of the following:

(1) A completed application form.

(2) A list of adjacent property, as defined in Section 501, including tax parcel numbers and the name and address of each owner.

(3) A map of the parcel and its relationship to the general area in which it is located.

(4) All documentation required for an application for the subdivision of land, if applicable.

(5) A detailed site plan consistent with the provisions established for site plans outlined in Section 1405 (A), and a master plan in accordance with Section 1404, where the application is for conditional overlay district rezoning.

(6) A written description or notation on the map explaining the proposed use of all land and structures, including the number of residential units or the total square footage of any nonresidential development.

(7) Where the application is for RPUD-COD or CPUD-COD, the applicant shall comply with all of the requirements of Section 814 or Section 815, respectively.

(8) Where adaptive reuse of a historic structure is part of an application for RPUD-COD, a change to a commercial use may require a certificate of occupancy from Henderson County and a driveway permit from NCDOT if a driveway for the structure is entered from a State maintained road.

(9) Any other information deemed necessary by the Zoning Administrator or the Village Council, and including a proposed start date and completion date of the project.

(C) *Conditions.* Prior to or during the Planning Board action as required by Section 1603 and prior to the public hearing as required by Section 1604, any Planning Board or Village Council member (or any group of members not comprising a majority of such board) may meet with the applicant to discuss the proposed plan and suggest features to be included in the rezoning proposal. The specifics of the plan may be negotiated to address community issues or concerns and to insure that the spirit and intent of this ordinance are preserved. During the public hearing, the Village Council may suggest additional features to be included or reflected in the proposal prior to taking action on the request.

(D) *Workshops*. The Planning Board or Village Council may require the applicant to hold one or more formal workshops with neighbors and other stakeholders prior to the public hearing. The applicant shall be responsible for providing adequate public notice, arranging for meeting space, documenting attendance, and creating a written summary of the comments received at the workshop. Proof of meeting notice, attendance logs, and the comments summary including the applicant's response to each shall be forwarded to the Village for inclusion in the board agenda packet. Adequate public notice for any workshop shall include a written notice and a sign posted on the property in a manner that is visible to the public providing the day, time and location of the meeting, both of which must occur not less than ten nor more than twenty-one days prior to the workshop.

(E) *Land development permit issuance.* Upon the adoption of a conditional district rezoning or a conditional overlay district rezoning by the Village Council under this article, the Zoning Administrator shall issue to the applicant a certificate of zoning compliance, if

otherwise required by this ordinance, or, if a subdivision of land is involved, a land development permit.

(F) *When development not begun within three years.* The property owner shall commence construction in accordance with the approved development plan within three years after the rezoning. If the Planning Board determines that construction has not commenced in accordance with the plan within such time period, it may, at its discretion, recommend to the Village Council that the Village rezone the property to the appropriate general-use zoning district.

Section 1607. Conflicts of interest.

A Village Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the Village Council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Section 1608. Statement of reasonableness.

Prior to adopting or rejecting any amendment, the Village Council shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

Section 1609. Appeals.

Actions taken in accordance with this article may be appealed as specified in Section 1507 (C).

ARTICLE XVII
LEGAL STATUS PROVISIONS

Section 1700. Conflict with other laws.

Whenever this ordinance imposes more restrictive standards than are required under any North Carolina statute or any other Village ordinance, the requirements of this ordinance shall govern. Whenever any statute or any other Village ordinance requires more restrictive standards than are required by this ordinance, the provisions of such statute or ordinance shall govern.

Section 1701. Severability.

Should any section or provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 1702. Prior zoning, subdivision and conflicting ordinances.

This ordinance shall supersede all prior zoning and subdivision ordinances, as well as all ordinances in conflict with this ordinance.

Section 1703. Abrogation.

This ordinance shall not repeal, abrogate, annul, impair or interfere with any existing subdivisions, the plats of which were properly recorded in the office of the Register of Deeds prior to the effective date of adoption of this ordinance, or existing easements, covenants, deed restrictions, agreements, or permits issued pursuant to law prior to the effective date of adoption this ordinance.

Section 1704. Effective date.

This ordinance shall take effect and be in force on and after June 30, 2021.

Michelle Parker, CMC
Village Clerk

Nick Weedman
Mayor

As to form:

Sharon B. Alexander
Village Attorney