

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest  
Planning Commission

To be held Thursday, April 22, 2021 at 5:00 p.m.

***MEETING OPEN TO THE PUBLIC WITH CAPACITY LIMIT OF 25 PERSONS  
SOCIAL DISTANCING AND FACE COVERING REQUIREMENTS IN EFFECT  
ZOOM VIEWING OPTION AVAILABLE– LOG-IN INFORMATION BELOW***

- A. Roll Call for Attendance
  - B. Approval of Minutes from March 25, 2021
  - C. Review Zoning Ordinance Changes for Part 1 Compliance - per NCGS 160D
    - a. Mandatory Changes
    - b. Non-Mandatory Potential Changes
  - D. Adjourn (Next Meeting Thursday, May 27 – 5pm)
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**Accessing April 22, 2021 Planning Commission Meeting via Zoom**

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TOWN OF BILTMORE FOREST  
PLANNING COMMISSION MEETING  
MARCH 25, 2021

Those in attendance:

Ms. Rhoda Groce, Interim Chairperson (in-person)

Ms. Toya Hauf (via Zoom)

Mr. Paul Zimmerman (via Zoom)

Ms. Marjorie Waddell (via Zoom)

Ms. Karen Cragolin (via Zoom)

Mr. William Morrison (via Zoom)

Mr. Jonathan Kanipe, Town Manager (in-person)

Mr. Harry Buckner (in-person)

Mr. Billy Clarke, Town Attorney (in-person)

The meeting was called to order at 4:00 PM by Interim Chairperson, Ms. Rhoda Groce and roll call was taken.

Mr. Jonathan Kanipe discussed the NCGS 160D changes. NCGS 160D refers broadly to the updating of NC General Statutes that contain rules for how local jurisdictions (both municipalities and counties) can regulate development through areas such as zoning and subdivisions. Chapter 160D and various related provisions were established under Session Law 2019-111, enacted in July 2019.

Mr. Clarke informed the Commission that the North Carolina legislature made changes to the current Zoning laws and regulations. Prior to 2019, county zoning was regulated in Chapter 153 of the General Statutes and cities regulated zoning in Chapter 160-A. The legislature recodified these separate statutes, and put all land development standards under Chapter 160D. Mr. Clarke said the Commission must make a recommendation to the Board of Commissioners about amending the existing Zoning Ordinance to ensure compliance with changes in the state land development code. Mr. Clarke noted that a major component was the requirement to have an updated Comprehensive Land Use Plan. This is something the Town has to adopt with the new

statute. A Comprehensive Land Use Plan starts with the Planning Commission. Mr. Clarke indicated the deadline for this to be completed was July 1, 2022. Staff will provide a list of changes that need to be made within the existing ordinance, and the Planning Commission will review those before making a recommendation to the Board of Commissioners. The Board of Commissioners will ultimately adopt any final changes to the Zoning Ordinance.

Mr. Kanipe showed the Board the list of the statutory reference changes from 160A to 160D that were already compiled by the Town.

Mr. Kanipe asked the Board to review the existing ordinance over the next month and to pay special attention to areas that need to be amended for clarity or other reasons. Mr. Kanipe provided an example, Section 153.034 (Land Disturbance and Sedimentation Control) of the Zoning Ordinance and relayed how a grammatical error changed this ordinance. Mr. Clarke recommended the Board put together a list of recommended statutory changes before the next meeting.

Mr. Kanipe said the next Planning Commission meeting is scheduled for Thursday, April 22, 2021 at 5pm. The meeting will be in person but a Zoom option will be available.

Chairperson Groce adjourned the meeting at 5:45 p.m.

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Laura Jacobs  
Town Clerk

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Rhoda Groce  
Interim Chairperson

# STAFF MEMORANDUM

Planning Commission Meeting – March 25, 2021



## Review Zoning Ordinance Changes for Part 1 NCGS160D Compliance

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### Introduction

Last month, staff presented overall changes within state land use regulations known as NCGS 160D. These changes require the Town to make amendments within our Zoning Ordinance for compliance. In addition to these mandated changes, staff also requested the Planning Commission review the existing ordinance for clarity or other necessary amendments.

### Attachments

#### *Zoning Ordinance*

The attached document is the Town's existing zoning ordinance with redline strike through and blue additions. I provided footnotes for each addition indicating why it was included, and whether it was a mandatory change or a discussion point item (i.e. non-mandated change). The vast majority of these changes are mandatory, and placed within the Zoning Ordinance where they currently reside or where it seemed most logical. I welcome review, advice, and feedback from the Town Attorney and Planning Commission regarding these placements.

#### *UNC School of Government NCGS 160D Checklist*

I utilized the School of Government's NCGS 160D checklist to ensure compliance with all mandated changes. There are a multitude of permissible changes, but for the most part, these were not included within the attached redline zoning ordinance. Again, please review and provide comments as to whether these permissible changes should be included within the final recommendation to the Board of Commissioners.

Portions in the checklist related to the Comprehensive Plan and Plan Consistency were intentionally left from this initial draft. While the plan consistency portions may need to be more affirmatively referenced within the Town's ordinance, the Comprehensive Plan portions will all occur during Part 2 of the NCGS 160D process later this year.



## CHAPTER 153: ZONING

### Section

#### General Provisions

- 153.001 Title
- 153.002 Authority and enactment
- 153.003 Jurisdiction
- 153.004 Interpretations and definitions
- 153.005 Establishment of zoning districts and map
- 153.006 Permitted use table
- 153.007 Dimensional requirements
- 153.008 ~~Conditional~~ [Special](#) uses
- 153.009 Exceptions and modifications
- 153.010 Amendments
- 153.011 Violations and remedies
- 153.012 Legal status provisions
- [153.013 Conflicts of Interest](#)

#### General Regulations

- 153.025 Affect on every building and lot
- 153.026 Relationship of building to lot
- 153.027 Lot frontage
- 153.028 Required yards and other spaces
- 153.029 Accessory structures and buildings
- 153.030 Home occupations
- 153.031 Visibility at intersection
- 153.032 Vacant structures and lots
- 153.033 Signs in residential districts, R-1, R-2, R-3, R-4, and R-5
- 153.034 Land disturbance and sedimentation control
- 153.035 Buffer strip required
- 153.036 Nonconforming land uses, or structures
- 153.037 Accessory structures of buildings utilized as dwellings
- 153.038 Off-street parking
- 153.039 Off-street loading and unloading space
- 153.040 No lot subdivision of platted and recorded lots
- 153.041 Minimum dwelling unit size
- 153.042 Subdivision of tracts of land
- 153.043 Maximum roof coverage
- 153.044 Material and color requirements for residential dwelling units
- 153.045 Site design and building form and mass for residential dwelling units
- 153.046 Material and color requirements from commercial buildings
- 153.047 Site design and building form and mass commercial buildings

153.048 Impervious surface coverage

153.049 Fence, gate and wall regulations

#### Buffers, Screening, and Landscape

153.060 Purpose and intent

153.061 General information

153.062 Existing vegetation

153.063 Buffer strip and screen requirements

153.064 Parking lot landscaping requirements

153.065 Screening of dumpsters, loading docks, outdoor storage areas, and utility structures

153.066 Street trees

153.067 Certification of completion

153.068 Maintenance

153.069 Residential screening of utility structures

153.070 Plant specifications

153.071 Recreational and commercial vehicle storage

#### Administration, Enforcement, and Appeals

153.085 General process; Duties of the Zoning Administrator, Board of Adjustment, Planning Commission, Board of Commissioners, and courts on matters of administration

153.086 Zoning Administrator

153.087 Certificate of zoning compliance required

153.088 Requirements prior to issuance of a building permit

153.089 Building permit required

153.090 Certificate of occupancy required

153.091 Construction of progress

153.092 Construction completion

153.093 Compliance

[153.094 Notice of Violations and Inspections](#)

~~153.094~~ ~~095~~ Appeal from the Zoning Administrator

#### Board of Adjustment

153.105 Establishment of Board of Adjustment

153.106 Selection of alternate members

153.107 Rules of conduct for members

153.108 General proceedings of the Board of Adjustment

153.109 Meetings

153.110 Powers and duties of the Board of Adjustment

153.111 Appeals and applications

153.112 Appeals from the Board of Adjustment

#### Design Review Board

153.125 Purpose and intent

153.126 Composition of Design Review Board and meeting procedure



- 153.127 Development subject to design review
- 153.128 Application required to be filed
- 153.129 Duties and powers of the Design Review Board
- 153.130 Submittal requirements

153.999 Penalty

Editor's note:

Legislative history for the sections in this zoning chapter include the initial zoning ordinance, passed 10-19-1983 and the latest amendment, passed 8-12-2013. The following is a list of all zoning amendments: Ord. passed 10-19-1983; Ord. passed 2-25-1986; Ord. passed 11-29-1994; Ord. passed 12-14-1999; Ord. passed 1-9-2001; Ord. passed 10-9-2001; Ord. passed 7-9-2002; Ord. passed 3-7-2003; Ord. passed 11-9-2004; Ord. passed 12-14-2004; Ord. passed 7-12-2005; Ord. passed 9-12-2006; Ord. passed 1-9-2007; Ord. passed 12-11-2007; Ord. passed 6-10-2008; Ord. passed 9-16-2008; Ord. passed 2-8-2011; Ord. passed 9-13-2011; Ord. passed 12-13-2011; Ord. passed 4-17-2012; Ord. passed 4-9-2013; Ord. passed 7-9-2013; and Ord. passed 8-12-2013; [and Ord. passed XXXXXXXXX](#)

## GENERAL PROVISIONS

### § 153.001 TITLE.

This chapter shall be known as the "Zoning Ordinance of the Town of Biltmore Forest, North Carolina".

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.002 AUTHORITY AND ENACTMENT.

The Town Board of Commissioners, in pursuant of the authority granted by ~~the~~ G.S. §§ ~~160A-381 through 160A-392~~ [160D](#), hereby ordains and enacts into law the following articles and sections for the purpose of promoting the health, safety, morals, and general welfare of the community.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.003 JURISDICTION.

The provisions of this chapter shall be applicable to all land within the corporate limits of town, as established on the map entitled "Official Zoning Map, Town of Biltmore Forest" with the exception of land owned by the town and land used by the town or entities contractually obligated to the town to provide fire protection and emergency medical services, but only during the period of time that such parties are contractually required to provide those services to the town.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

Editor's note:

This amendatory language was passed during a Board meeting, July 9, 2013

§ 153.004 INTERPRETATIONS AND DEFINITIONS.

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

(B) Definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building.

ACCESSORY STRUCTURES include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.<sup>1</sup>

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

APARTMENT. A part of a building consisting of a room or rooms intended, designed, or used as a residence by an individual or a single-family.

APARTMENT, GARAGE. A part of a garage consisting of a room or rooms intended, designed, or used as a residence by an individual or a single-family.

BOARD OF ADJUSTMENT. The Town of Biltmore Forest Board of Adjustment, and shall include both regular and alternate members.

BOARD OF COMMISSIONERS. The Town of Biltmore Forest Board of Commissioners.

BONA FIDE FARM. All land on which agricultural operations are conducted as the principal use, including the cultivation of crops, the husbandry of livestock and timber resources, and the management of open pasture land.

BUFFER STRIP. A buffer strip is a strip of land together with some form of screening such as existing vegetation, planted vegetation, a landscaped earth berm or grade change, or combination of the above. The purpose of the BUFFER STRIP is to minimize the potential conflicts between adjoining land uses.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. Two structures shall be deemed a single building only if connected by heated and enclosed living space.

BUILDING, ACCESSORY. A detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot.

BUILDING HEIGHT. The distance measured from the average ground level at the building foundation to the highest point of the roof, but in no event above 40 feet from the highest point in the foundation. A chimney that complies with the minimum the State

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<sup>1</sup> [BOC has previously discussed removing rocks and boulders from this requirement. Should we remove this as part of the recommended changes, and/or include language stating that rocks/boulders are not allowed within Town right of way?](#)

Building Code requirements for height of a chimney shall not be included in the calculations for height of the building; provided, that the chimney shall not extend more than five feet above the immediately adjoining ridge line of the roof.

**BUILDING, PRINCIPAL.** A building used for the same purpose as the principal use of the lot.

**BUILDING SETBACK LINE.** A line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the street line.

**CARETAKER.** A person that maintains grounds or structures on a lot or cares for the well-being of person(s) residing in the principal dwelling on a lot, and resides on the premises without being charged a rental fee.

**CLOTHING AND JEWELRY SALE.** The sale to the public of clothes and jewelry that have been brought to the home for that purpose.

**CLUSTERED HOUSING DEVELOPMENT.** Grouping or concentration of housing units on lots smaller than permitted by the existing zoning to preserve open space without increasing the allowable density of the development.

**COMMERCIAL SERVICE or PROFESSIONAL SERVICE.** Establishments or professions charging a fee for providing a service to the public.

~~CONDITIONAL~~-**SPECIAL USE.** A use which is permitted in specified zoning districts only after review by the Board of Adjustment and found to meet specific conditions and procedures as set forth in this chapter to maintain the safety and general welfare and orderly development of the community.

**CONSUMER SERVICES.** Businesses providing services to the public for profit, including dining and restaurant services (not to include fast food service restaurants), lodging and motel services, financial, real estate and insurance services, and other personal services. In addition to the above, CONSUMER SERVICES shall not include filling and gasoline service stations or auto repair shops as defined by this chapter.

**DAY NURSERY and PRIVATE KINDERGARTEN.** A use of land and buildings to provide group care for children.

**DISTRICT.** A section of the Town of Biltmore Forest in which zoning regulations are uniform.

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. For the purposes of NCGS 160D, Article 12, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.<sup>2</sup>

**DWELLING, MULTI-FAMILY.** A building or portion thereof used or designed as a residence for two or more families living independently.

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<sup>2</sup> New definition added within ordinance per 160D

DWELLING, SINGLE-FAMILY. A building arranged or designed to be occupied by one family.

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

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

ESTATE/AUCTION SALE. The one-time sale to the public of goods that is held at the home. The goods and items offered for sale at said auction must be personal property that has been owned by the resident(s) of said home. No goods or items to be sold shall be shipped or transported to the home from any other location. The sale shall be limited to no more than two consecutive days and the hours for said sale shall be between 10:00 a.m. and 8:00 p.m.

FAMILY. One or more persons occupying a single-dwelling unit; provided, that unless all members are related by blood or marriage or adoption, no such family shall contain over three persons, but further; provided, that domestic servants, caretakers, and security personnel employed or living on the premises may be housed on the premises without being counted as a FAMILY or FAMILIES.

GARAGE/YARD SALE. The sale to the public of typical household items that is held at the residence. The household items to be sold shall be items from the residence where the sale is to occur. Each residence is limited to one such sale per year. The sale shall not begin before 8:00 a.m. and shall end by 5:00 p.m.

GASOLINE SERVICE STATION/AUTO REPAIR SHOP. Buildings and premises where gasoline, automotive fuel, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where in addition the following services may be rendered and sales made and no other. Sales and servicing as follows: spark plugs, batteries, and distributors and distributor parts; tire servicing and repair, but not recapping or regrooving; replacement of mufflers and tail pipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like; radiator cleaning and flushing; washing and polishing, the sale of automotive washing and polishing materials; greasing and lubrication; providing and repairing fuel pumps, oil pumps, and lines; minor servicing and repair of carburetors; emergency wiring repairs; adjusting and repairing brakes, wheel balancing and alignment, minor motor adjustments not involving removal of the head or crankcase or racing the motor; sale of cold drinks, packaged foods, tobacco, and similar convenience goods for filling station customers, as accessory and incidental to principal operation; automobile body repair services; provision of road maps and other informational materials to customers; provision of restroom facilities.

GRADING. Any land-disturbing activity where the ground cover on or above the soil surface is removed and reconfigured, including trees, grasses, or pavements or other surfaces either natural or human-made.

HOME BUSINESS ACTIVITY. A business conducted from the home such as Internet enterprise, professional office, or the making of crafts or items where no one is employed that does not live in the home and no one comes to the home for a business transaction as part of the activity.

HOME OCCUPATION. An occupation providing a service carried on by the occupants of a dwelling; provided, that certain conditions are met as listed in § 153.008(C)(5).

HOME STAY. Rental of a part of a dwelling unit or accessory structure for consideration, including in kind compensation, to a transient person or persons for a period of less than 90 days. Advertising and renting a room or rooms in a dwelling unit of accessory structure on Airbnb or similar internet web sites would be an example of a HOME STAY. HOME STAYS are not allowed in any zoning district in Biltmore Forest.

IMPERVIOUS SURFACE. Any paved, hardened, or structural surface, including, but not limited to, buildings, driveways, walkways, parking areas, patios, decks, streets, swimming pools, tennis courts, and other structures and surfaces, that substantially reduces or prevents the infiltration of stormwater into the ground.

INCOMPATIBLE LAND USE. A land use requiring a ~~conditional~~ special use permit from the Board of Adjustment in property zoned R-4 or R-5 adjacent to land zoned R-1, R-2, R-3, Public Service, or land zoned R-4 or R-5 in residential use.

INDIVIDUAL SEWER SYSTEM. Any septic tank, ground absorption system, privy, or other facility serving a single source or connection and approved by the County Sanitarian.

INDIVIDUAL WATER SYSTEM. Any well, spring, stream, or other source used to supply a single connection.

LEGISLATIVE DECISION. The adoption, amendment, or repeal of a regulation under this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of NCGS Chapter 160D. Legislative decisions for development regulations shall be approved on first reading by simple majority vote.

LEGISLATIVE HEARING. A hearing to solicit public comment on a proposed legislative decision.

LIVING AREA. Includes the area inside the dwelling walls of each particular floor, but shall not include basements, utility rooms, laundry rooms, storage rooms (other than closets), pantries, garages, and attics. LIVING AREA shall, however, include living rooms, dens, studies, kitchens, bedrooms, breakfast rooms, bathrooms, and closets in any of said rooms, foyers, entrance ways, and hallways connecting any of these rooms.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. Includes the words PLOT or PARCEL.

LOT DEPTH. The mean horizontal distance between front and rear lot lines.

LOT OF RECORD. Any lot for which a plat has been recorded in the Register of Deeds Office of Buncombe County, or described by metes and bounds, the description of which has been so recorded.

LOT WIDTH. The distance between side lot lines measured at the front building line.

MAY. The word MAY is permissive.

MOBILE HOME. A factory assembled, movable dwelling designed and constructed to be towed on its own chassis, comprised of frame and wheels, to be used without permanent foundation and distinguishable from other types of dwellings in that the standards to which it is built include provisions for its mobility on that chassis as a vehicle.

**NONCONFORMING USE.** Any parcel of land, use of land, building, or structure existing at the time of adoption of this chapter, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

**ORDINANCE.** The Zoning Ordinance of the Town of Biltmore Forest.

**PARKING SPACE.** An area for parking a vehicle, plus the necessary access space. **PARKING SPACE(S)** shall always be located outside the dedicated street right-of-way and shall be provided with vehicular access to a street or alley.

**PARKS.** Includes those areas developed either for passive or active recreational activities. The development may include, but shall not be limited to, walkways, benches, open fields, multi-use courts, swimming and wading pools, amphitheaters, and the like. The term **PARK** shall not include zoos, travel trailer parks, amusement parks, or vehicle, equestrian, or dog racing facilities.

**PERSON or APPLICANT.** Includes a firm, association, organization, partnership, corporation, company, trust, and an individual or governmental unit.

**PLANNED UNIT DEVELOPMENT.** A development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six or more units or any building with a gross floor area of 50,000 square feet or more, shall be deemed a **PLANNED UNIT DEVELOPMENT (PUD)**. Multi-family structures shall have no less than three dwelling units per structure. Residential units within a planned unit development may include single-family detached or attached units, townhouse developments, condominiums, and other multi-family type residential units, excluding time sharing units, mobile homes, and mobile home parks.

**PLANNING COMMISSION.** The Town of Biltmore Forest Planning Commission.

**PROTECTIVE BARRIER.** A protective barrier is either:

- (a) A temporary fence which is at least three feet high and constructed in a post and rail configuration, using two by four posts and one by four rails;
- (b) A temporary fence with two by four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing; or
- (c) A temporary fence using an equivalent material.

**PUBLIC SEWER SYSTEM.** Any sewer system owned and operated by a local government in Buncombe County, or other sewage treatment facility serving two or more connections, or any wastewater treatment system having a discharge to surface waters when approved by the Division of Environmental Management of the Department of Natural Resources and Community Development, or a ground absorption system serving two or more connections when approved by the County Sanitarian.

**PUBLIC WATER SYSTEM.** Water systems serving 15 or more residential connections or serving more than 25-year round residents are classified as public water supplies, and plans and specifications must be approved by the State Department of Human Resources, Division of Health Services. Also, water supply systems serving from two to 14 connections shall be regulated by the County Board of Health and plans shall be approved by the Buncombe County Health Department, Environmental Health Section.

**RECREATION USER NONPROFIT.** An indoor or outdoor recreation facility operated on a nonprofit basis, according to the laws of North Carolina.

**RECREATION USER PROFIT.** An indoor or outdoor recreation facility operated on a profit basis.

**RESIDENTIAL DENSITY.** The number of dwelling units per acre devoted to residential buildings, accessory uses, and open spaces within the site, but excluding land for streets and street right-of-ways. **RESIDENTIAL DENSITY** shall be calculated by first subtracting the land area required for streets and rights-of-way from the total or gross land area of the tract to derive a net land area, and then dividing the number of dwelling units proposed to be built by the net land area.

**RETAIL BUSINESS.** Establishments selling commodities directly to the consumer. Fast food service restaurants, gasoline service stations/auto repair, or the dispensation of gasoline as an ancillary service to a retail use shall be prohibited.

**ROOF COVERAGE.** For the purposes of building construction and the calculation of maximum roof coverage pursuant to §§ 153.029(B)(1)(b) and 153.043 (and any other section of this chapter dealing with roof coverage), **ROOF COVERAGE** shall be the area contained under the roof of the primary building or any accessory structure/building and shall also include any impervious deck surface or any other above-grade impervious surface extending from or being attached to any primary building or accessory structure/building. Both heated and unheated enclosed spaces or any open space within, under or covered by the roof of the primary building or accessory structure/building or by any above-grade impervious surface (such as a deck, and the like), extending from the primary building or accessory structure/building shall be included in the calculation of **ROOF COVERAGE**.

**ROOT PROTECTIVE ZONE.** A circle encompassing an area around an existing tree or shrub that is the greater of the following two distances:

- (a) A one-foot radius for every one inch of tree or shrub trunk caliper (diameter); or
- (b) A measurement of the furthest or most outward branch or limb from the main trunk when that distance is then drawn as a circle around the remaining portion of the tree or shrub, commonly referred to as the 'drip line'. The minimum **ROOT PROTECTION ZONE** in any case is a radius of eight feet measured from the tree trunk.

**SHALL.** The word **SHALL** is mandatory.

**SHORT TERM RENTAL.** Rental of a dwelling unit or accessory structure for consideration, including in kind compensation, for a period of less than 90 days. **SHORT TERM RENTALS** are not allowed in any zoning district in Biltmore Forest.

**STREET (ROAD).** A right-of-way for vehicular traffic which affords the principal means of access to abutting properties. **STREET** also includes the words **ROAD** and **HIGHWAY**.

**STREET LINE.** The edge of the roadway pavement.

**STRUCTURE.** Anything constructed or erected, including, but not limited to, buildings, which requires location on the land or attachment to something having permanent location on the land.

**SUBSTANTIAL COMPLETION.** For the purpose of building construction; the completion of all exterior work on the building; the completion of all plumbing, electrical, and HVAC work; the completion of all window installation; the completion of all interior and exterior door installation, the completion of all wall construction, painting, and/or covering, the completion of all floor installation and/or covering; and the completion of all other work



necessary to receive a certificate of occupancy from the Buncombe County Inspections Department. Minor work typically noted on a punch list may be incomplete and the structure shall be deemed to be substantially completed.

**SUBSTANTIAL PROGRESS.** For the purpose of building construction, it is expected that construction of the building is continuous and that progress is obvious and observable with inspections as required under the State Building Code occurring on a regular basis.

**VARIANCE.** VARIANCE shall be as defined in G.S. § ~~160A-388(d)~~[160D-705\(d\)](#) together with any amendments thereto.

**WHOLESALE BUSINESS.** The sale of goods in large quantities usually for resale.

**YARD.** A space on the same lot with a principal building, open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted.

**YARD, FRONT.** An open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street or property line and the front line of the building, projected to the side lot lines of the lot. Driveways, to the extent possible, shall enter the property through the front yard.<sup>3</sup> In the case of a lot with frontage on more than one street, the side of the lot with the most street frontage shall be considered the FRONT YARD, however, in the consideration and determination of applications for ~~conditional~~[special](#) use or variance on such a lot, the Board of Adjustment shall take into account and consider the visibility of both the FRONT and SIDE YARDS to the street and adjoining properties in any determination.

**YARD, REAR.** An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

**YARD, SIDE.** An open, unoccupied space on the same lot with a principal building extending the full width of the lot and being situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard. Notwithstanding the above definition, for the purposes of determining compliance with minimum yard setback of § 153.007, the SIDE YARD shall be the entire length of each side lot line extending from the front lot line to the rear lot line and shall equally apply to lots with a principal building, lots without a principal building and vacant lots. Driveways shall not be located in the side yard setback.

**ZONING ADMINISTRATOR.** An official or designated person of the Town of Biltmore Forest charged with enforcing and administering the zoning ordinance.

**ZONING MAP or BILTMORE FOREST ZONING MAP.** The official zoning map of the Town of Biltmore Forest.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013; Ord. 2015-01, passed 8-11-2015)

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<sup>3</sup> [Should we consider moving this into a separate definition and/or section within the dimensional requirements?](#)



§ 153.005 ESTABLISHMENT OF ZONING DISTRICTS AND MAP.

(A) Use districts. For the purpose of this chapter, the town is hereby divided into the following use districts:

- (1) R-1 Residential District;
- (2) R-2 Residential District;
- (3) R-3 Residential District;
- (4) R-4 Residential District;
- (5) R-5 Residential District; and
- (6) P-S Public Service District.

(B) Establishment of district boundaries. The boundaries of these districts are hereby established as shown on the official zoning map of the town.

(C) Establishment of zoning map. A zoning map, entitled the "Official Zoning Map of the Town of Biltmore Forest," depicts all approved use districts and their respective boundaries. Such map is hereby made a part of this chapter and shall be maintained by the Town Zoning Administrator and updated to reflect changes and amendments to this zoning ordinance. This map shall be available for inspection by interested persons during normal business hours of the Town Zoning Administrator. It shall be the duty of the Town Zoning Administrator to maintain the said map [in paper or digital](#)<sup>4</sup> and post any changes thereto as they may be made.

(D) Rules governing district boundaries. Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following shall apply:

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

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

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

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

(5) Where physical features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by divisions (D)(1) through (D)(4) above, the Board of Adjustment shall interpret the district boundaries.

(E) Statement of district intents.

- (1) R-1 Residential District.

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<sup>4</sup> [Allowed by GS160D-105](#)

(a) The R-1 Residential District encompasses most of the town's developed residential areas and contains residential structures of historical and architectural significance in a most unique residential environment. The intent of the R-1 District is to preserve and enhance the character of existing neighborhoods and generally to provide a pleasant living environment. These neighborhoods consist of single-family owner occupied detached dwelling units placed on relatively large lots with considerable open spaces between structures, thus creating a low-density residential environment.

(b) Nonresidential uses, including home occupations, have been limited in this District as a means of maintaining the character of these neighborhoods. Likewise, dimensional requirements pertaining to lot size, building setbacks, yard requirements, and height limitations have been established to promote the general welfare and preservation of the community.

(c) Future construction and alteration of existing structures should be oriented at maintaining and enhancing the existing character of the residential neighborhoods. Therefore, structures should be compatible in materials, height, siting, color, texture, scale, and proportion to the other structures in the neighborhood. The R-1 District also contains undeveloped areas to provide locations for future single-family subdivisions.

(d) Consistent with, and to protect the existing character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(2) R-2 Residential District.

(a) The R-2 Residential District is established to protect and maintain existing neighborhoods, which are characterized by single-family residences with smaller lots, and thus greater residential densities than found in the R-1 District.

(b) As in the R-1, nonresidential uses, including home occupations, have been limited in this District as a means of assuring a pleasant residential atmosphere.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(3) R-3 Residential District.

(a) The R-3 Residential District is intended to provide locations that will accommodate future residential growth south of the Blue Ridge Parkway. This District is intended to provide locations for future subdivisions and for planned unit residential developments as ~~conditional~~special uses when design plans show that such developments will be compatible with the surrounding development and available public services.

(b) This District is primarily a low-density residential district; however, to accommodate contemporary design and building practices, it includes residential planned unit developments as a ~~conditional~~special use at a maximum density of eight dwelling units per acre. Nonresidential uses, including home occupations will also be limited in the R-3 District in order to maintain the same quiet and pleasant living environment as found in the R-1 and R-2 Districts.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(4) R-4 Residential District.

(a) The R-4 Residential District provides areas for residential uses, and as ~~conditional~~special uses, professional offices and commercial services. Urban sprawl, strip

commercial development, and congestion will be discouraged by promoting good design and clustered development. These areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid traffic congestion and safety hazards.

(b) Land uses in this District, other than single-family detached dwelling units, will require a ~~conditional~~special use permit as a means of assuring and promoting safety and good design. The integrity of residential uses in this zone will be preserved by requiring a 20-foot wide buffer strip between residential and nonresidential uses.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(5) R-5 Residential District.

(a) The medium-density district is established as a district where both residential and business uses are accommodated. In addition, a wide range of community facilities and services are also available. It is intended that nonresidential uses, including business uses, shall be compatible with and exist in harmony with the community in which they are located and that adequate standards will be maintained pertaining to the public health, safety, and welfare.

(b) In addition, these areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid congestion and safety hazards. Most land use in this District will require a ~~conditional~~special use permit as a means of assuring and promoting safety and good design.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(6) P-S Public Service District.

(a) This District is designed to provide for open green spaces, including forestation and other natural vegetation throughout the jurisdiction.

(b) It is to be used to protect the ambiance of the community by providing a series of natural buffers between residential and nonresidential development.

(c) It is expressly intended that any structures and/or buildings shall be prohibited except as associated with a public park or recreational area. Any land-disturbing activity such as driveway connections or landscaping shall be approved by the Board of Adjustment.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013; Ord. 2015-01, passed 8-11-2015)

§ 153.006 PERMITTED USE TABLE.<sup>5</sup>

(A) Table. The following tables show the land uses permitted in each zoning district and the dimensional requirements for each zoning district, including minimum lot sizes, minimum lot widths, and minimum setback requirements.

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<sup>5</sup> Tables do not show up well in this Word format; will be reconfigured with "S" taking the place of "C" (special use for conditional use)

Zoning Districts

USE

R-1

R-2

R-3

R-4

R-5

Accessory buildings; structures and uses (does not include rental units by other than a family member)

C

C

C

C

C

Banks

C

C

Bone fide farms

C

C

C

P

Business or special schools (art, craft, dance, and the like)

C

C

Churches/religious assembly

C

C

Clothing and jewelry sales\*

P

P

P

P

P

Country, athletic and social clubs

C

C

C

C

C

Commercial business

C

Commercial services (excluding retail trade)

C

C

Day nurseries/day care

C

C

Estate auction sale\*\*

P

P

P

P

P

Fundraising events for nonprofits or political campaigns\*\*\*\*

P

P

P

P

P

Garage/yard sales\*\*\*

P

P

P

P

P

Home business activity\*\*\*\*\*

P

P

P

P

P

Home occupations

C

C

Libraries

C

C

Medical and dental services

C

C

Planned unit development\*\*\*\*\*

C

C

C

Professional and business offices

C

C

Public recreational facilities - nonprofit (parks, playgrounds, scenic parkways and open space)

P

P

P

P

P

Public utility station and substations

C

C

C

C

C

Retail business

C

Schools, public and private (or similar curriculum as public schools)

C

C

C

C

C

Single-family residential dwelling unit

P

P

P

P

P

P = permitted

C-S = allowed as a conditional special use

Blank space = not permitted

Use not listed = not permitted zoning districts

(B) General provisions. The following are general provisions applicable to the table in division (A).

(1) Only two clothing or jewelry sales maybe held per year at each dwelling, not to exceed five consecutive days for each sale. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted. See § 153.004.

(2) Only one estate auction sale may be held during a resident's ownership of the property. Property owners are required to contact the Zoning Administrator prior to holding the estate/auction sale so that the date of the sale may be noted. See § 153.004 for additional limitations.

(3) Only one garage/yard sale may be held per year at each dwelling. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted. See § 153.004.

(4) Only four fundraising events may be held per year at each dwelling. No such event shall last longer than five hours in a single day and any such event must end by 11:00 p.m. There shall be no sales of goods or services at any such event. Parking for such an event must not impede the normal flow of traffic and must not be upon any other property without permission from the other property owners

(5) No home business activity shall employ any person who does not live in the home. No person shall come to the home for a business transaction of any nature as part of the home business activity, including, but not limited to, retail or commercial sales or fee for service transactions. No shipping, via Fed Ex, UPS, or any other provider, shall be permitted from the dwelling. See § 153.004.

(6) Where there is proposed more than one principal building per lot or where there is proposed any building with a gross floor area of 50,000 square feet or more, a planned unit development must be sought. See § 153.004 for additional requirements.

(7) Home stays and short term rentals are not allowed in any district. There may be only two rentals of a dwelling unit or accessory structure in any calendar year. (Ord. passed 10-19-1983; Ord. passed 8-12-2013; Ord. 2015-01, passed 8-11-2015)

#### § 153.007 DIMENSIONAL REQUIREMENTS.

(A) Table. The following table sets out dimensional requirements.

Districts

Minimum Lot Area In Square

PUD Residential Density Maximum Number of Dwellings Per Acre (applicable to residential unites in PUDs which are ~~conditional~~special users)

Minimum Yard Setback

Requirement in Feet (FN5)

Minimum Lot Width At Building Line in

Front Yard From Street

Side

Rear

Maximum Height

Feet

Feet  
 Line  
 Yard  
 Yard  
 In Feet

R-1	43,560	0	150	60	20	25	40
R-2	20,000	0	100	50	15	20	40
R-3	20,000	8	100	50	15	20	40
R-4	20,000	2	100	50	15	20	40
R-5		8	100	50	15	20	40
PS	No Min.	0	No Min.	No Min.	No Min.	No Min.	Not App.

(B) General provisions. The following are footnotes applicable to the table in division (A).

(1) Footnote 1. The minimum lot area for lots not served by public water and/or sewer shall be subject to approval by the County Health Department to ensure the proper operation of septic tanks and wells. In no case, however, shall minimum lot area be less than those specified in the table in division (A).

(2) Footnote ~~26~~<sup>3</sup>. The minimum lot width at the street line shall be 125 feet in the R-1 District, and 80 feet in the R-2, R-3, and R-4 Districts.

(3) Footnote 43. On all corner lots, a 30-foot side yard setback is required.

(4) Footnote 54. Accessory structures, including driveways, shall meet all setback requirements. Notwithstanding the foregoing, setback requirements for driveway entrance columns or driveway entrance walls may be waived or modified by the Board of Adjustment with the granting of a ~~conditional~~special use permit in accordance with § 153.110(C), without the need for a variance pursuant to § 153.110(D).

(5) Footnote 65. Height requirements may be varied upon approval of the Board of Adjustment.

(6) Footnote 76. Whichever is greater, 20,000 square feet, or twice the gross floor area of the building.

(7) Footnote 87. An increase in the side and rear yard setbacks is required for homes (structures) that exceed 25 feet in height. Homes (structures) greater than 25 feet in height shall be setback from the side and rear property lines an additional one and one-half feet for each one foot, or portion thereof, that the home (structure) exceeds 25 feet in height.

(8) Footnote 98. Structures exceeding a roof coverage area of 7,000 square feet shall be set back from side and rear property lines an additional 20% of the required setback for each 500 square feet, or increment thereof, that the roof coverage areas exceeds 7,000 square feet.

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<sup>6</sup> Misnumbered – corrected subsequently.



Example: The rear setback for a single story 8,200 square foot house in the R-1 District would be calculated as follows:

$$8,200 - 7,000 = 1,200$$

$$1,200/500 = 2.4 \text{ (round to 3 to account for increment of change)}$$

$$3 \times 20\% = 60\%$$

$$60\% \times 20 = 12$$

$$25 + 12 = 37$$

Rear setback will be 37 feet

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.008 ~~CONDITIONAL~~SPECIAL USES.

(A) Purpose. The following ~~conditional~~special uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district as ~~conditional~~special uses if the provisions of this and all other sections of this chapter have been met.

(B) Development plan/site plan requirement.

(1) All applications for ~~conditional~~special use permits shall include a development plan or site plan.

(2) If the special use request is for a development, ~~The the~~ development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:<sup>7</sup>

- (a) Existing site conditions, including contours, watercourses, identified flood hazard areas, any unique natural or human-made features;
- (b) Boundary lines of the proposed development, proposed lot lines, and plot designs;
- (c) Proposed location and use of all existing and proposed structures;
- (d) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses;
- (e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private);
- (f) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved Sedimentation and Erosion Control Plan shall also be submitted where required. Provisions for stormwater drainage shall be shown;
- (g) Location and/or notation of existing and proposed easements and rights-of-way;

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<sup>7</sup> Think this should be broken out to clarify that developments requiring special uses have different standards/submission requirements than special uses on single residential lots.

(h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;

(i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features;

(j) Where applicable, the following written documentation shall be submitted:

1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;

2. The zoning district or districts in which the project is located;

3. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;

4. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;

5. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units/acre); and total amount of open space; and

6. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.

(k) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(C) ~~Conditional~~Special use standards.

(1) Generally, ~~The~~ ~~the~~ following standards are applied to specific ~~conditional~~special uses. Before issuing a ~~conditional~~special use permit, the Board of Adjustment shall find that all standards for specific uses listed in these sections as well as all standards or requirements listed in division (B) above and § 153.110(C)(1) have been met.

(2) Planned unit developments.

(a) Purpose. The purpose of this section is to encourage and provide for flexibility and innovation in the design and location of structures and land development, to provide for mixtures of housing types, to provide for the most efficient use of land resources, and to provide an opportunity to develop land areas in a manner different from the standard arrangement of one principal building on one lot. Residential densities are calculated on a project basis, thus allowing the clustering of buildings in each proposed planned unit development project in order to create useful open spaces and preserve natural site features. It is further intended that a planned unit development will be in harmony with the character of the district in which it is located.

(b) Planned unit development defined. In this chapter, a PLANNED UNIT DEVELOPMENT MEANS a development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six or more units or any building with a gross floor area of 50,000 square feet or more, shall be deemed a planned unit development (PUD). Multi-family structures shall have no less than three dwelling units per structure. Residential units within a planned unit development may include single-family detached or

attached units, townhouse developments, condominiums, and other multi-family type residential units, excluding time sharing units, mobile homes, and mobile home parks.

(c) Land development standards.

1. The following land development standards shall apply for all planned unit developments.

2. These planned unit developments may be located only in certain specified districts as ~~conditional~~special uses, subject to a finding by the Board of Adjustment that the following conditions be met.

a. Ownership control. The land in a planned unit development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

b. Land uses permitted and location of PUDs. The uses permitted within a planned unit development are limited to residential uses, including multi-family residential units, and those land uses normally allowed (as either permitted or ~~conditional~~special) in the zoning district within which the PUD is located. PUDs shall be permitted in the R-3, R-4, and R-5 Districts. All PUDs must be compatible with and not violate the intent of the zoning districts.

c. Density requirements. The proposed residential density of a planned unit development (dwelling units per acre as shown in § 153.007) shall conform to that permitted in the district in which the development is located. If the planned unit development lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate district and must be combined to determine the number of dwelling units allowable in the entire planned unit development.

d. Frontage requirements. Planned unit developments shall have access to a highway or road suitable for the scale and density of development being proposed.

e. Minimum requirements.

i. Waiver. The normal minimum lot size, setbacks, and frontage requirements are hereby waived for the planned unit development; provided, that the spirit and intent of this section are complied with in the total development plan, as determined by the Board of Adjustment. The Board of Adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

ii. Height limitations. No building or structure shall exceed the height limitations of the district in which it is located, except as approved by the Board of Adjustment.

iii. Required distance between buildings. The minimum distance between buildings shall be 20 feet or as otherwise specified by the Board of Adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.

iv. Streets. Every dwelling unit shall have access to a public or private street, walkway, or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties, in order to ensure acceptable levels of access for emergency vehicles.

f. Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walks, barriers, and landscaping shall be

used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants and adjacent properties for screening of objectionable views or uses, and for reduction of noise. Multi-level buildings shall be located in such a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings.

g. Perimeter requirements.

i. Structures located on the perimeter of the development must be set back from property lines and right-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district within which the property is situated.

ii. Structures other than single-family detached units, located on the perimeter of the development, may require buffer strip or screening in a manner which is approved by the Board of Adjustment.

h. Plans and documentation. Plans and accompanying documentation shall ensure that the water and sewer systems proposed for the planned unit development have been approved by the appropriate local and state agencies, and submitted as part of the application.

i. Preliminary plans. Preliminary plans shall include parking provisions for all proposed uses within the planned unit development in accordance with § 153.038.

j. Pedestrian and bicycle path circulation system. Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.

k. Parking areas, service areas, and the like. Layout of parking areas, service areas, entrances, exits, yards, courts, and landscaping, and control of signs, lighting, noise, or other potentially adverse influences shall be such as to protect the character of the district and desirable character in any adjoining district.

l. Open spaces, recreational areas, and the like. Where applicable, conveyance and maintenance of open space, recreational areas, and ~~communally-owned~~[communally owned](#) facilities shall be in accordance with the Unit Ownership Act (G.S. Ch. 47A) and/or any other appropriate mechanisms acceptable to the Board of Adjustment.

(3) Country, athletic and social clubs.

(a) Off-street parking shall be sufficient to meet the requirements found in § 153.038.

(b) The Board of Adjustment may require buffering along the side and rear lot lines that meet the requirements as outlined in § 153.063, "buffer strip and screen requirements". This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

(c) The proposed hours of operation shall not be detrimental to the surrounding property due to noise, lights, traffic, and the like.

(d) All developments shall be compatible with surrounding residential uses, therefore, no signs with flashing lights shall be allowed. The design of all proposed signs shall be submitted with the site plan, and all non-flashing illuminated signs shall be so placed so as not to cast light on nearby residential uses.

(4) Public utility stations and substations.

(a) Structures shall be enclosed by a woven wire fence at least eight feet high.

(b) The lot shall be suitably landscaped along the side and rear property lines with vegetation that meets the requirements as outlined in § 153.063, "buffer strip and screen requirements". This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

(c) Entrances and exits shall be designated and designed accordingly so as to promote public safety.

(5) Home occupation. An occupation providing a service carried on by the occupants of a dwelling; provided, that:

(a) The occupation is conducted entirely within the dwelling and not in an accessory building or out of doors;

(b) The use of the dwelling unit for the home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes;

(c) There shall be no display, no outside storage, no change in outside appearance of the building or premises, or other visible evidence of the conduct of such home occupations;

(d) Any need for parking generated by the conduct of such home occupation shall be met off the street and not in the front yard;

(e) No equipment or process shall be used in such home occupation that creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses;

(f) In the case of electrical interference, no equipment or process shall be used which creates a visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in the line voltage off the premises; and

(g) No retail sales shall be conducted as part of the home occupation.<sup>8</sup>

(6) All commercial services, professional office uses, consumer services, and retail businesses.

(a) Off-street parking shall be sufficient to meet the requirements found in § 153.038.

(b) A driveway permit as required by the State Department of Transportation shall be submitted along with the site plan, where applicable.

(c) Front setbacks along Hendersonville Road shall be considered on a case-by-case basis by the Board of Adjustment with input from the Zoning Administrator. The Board of Adjustment shall determine the setback upon consideration of the most suitable location for parking. Required parking shall be provided either at the side, rear, or front of the proposed development, based upon the location of adjacent and/or nearby residential dwellings, topography, existing or proposed screening, or other factors which may include noise or glare. When parking is designated to be at the rear of the proposed building, the front setback shall be determined on a case-by-case basis by the Board of Adjustment; when parking is designated to be at the front of the proposed building, then the front setback shall be 50 feet.

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<sup>8</sup> [If we do not allow home occupations within any district, should we include all these options/regulations for them?](#)

(7) Libraries, schools, and churches. Libraries, schools and churches shall provide a buffer that meets the requirements as outlined in § 153.063, "buffer strip and screen requirements".

(8) Accessory buildings.

(a) All accessory buildings shall meet the standards of the State Building Code where applicable.

(b) All accessory buildings shall be of a design compatible with the principal building on the lot and with the structures in the neighborhood.

(c) An additional parking space shall be required when an accessory building is permitted for use as a dwelling by a family member.

(d) Accessory buildings shall comply with the district's setback requirements.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.009 EXCEPTIONS AND MODIFICATIONS.

(A) Compliance. Compliance with the requirements of this chapter is mandatory; however, under the specific conditions enumerated in the following sections, the requirements may be waived or modified as so stated.

(B) Front yard setback for dwellings. The front yard setback requirements of this chapter for dwellings shall not apply on any lot where the average front yard setback of existing buildings located within 100 feet on each side of such lot is less than the minimum required front yard setback. In such cases, the setback may be less than the required setback, but not less than the average of the setback of the aforementioned existing buildings.

(C) Completion of buildings under construction. Nothing in this chapter shall require any change in the plans, construction, or designated use of a building under construction at the date of the passage of this chapter; provided, that construction of such building is diligently pursued and the entire building is completed within 18 months from the date of passage of this chapter. A building shall be deemed to be under construction upon the effective date of this chapter if a building permit has been issued.

(D) Temporary uses. Temporary uses such as real estate sales field offices or shelter for materials and equipment being used in the construction of a permanent structure may be permitted by the Zoning Administrator, provided, they do not create health, safety, or nuisance hazards.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.010 AMENDMENTS.

(A) Generally. This chapter, including the zoning map, may be amended by the Town Board of Commissioners in accordance with the provisions of this subchapter.

(B) Initiation of amendments. Proposed changes or amendments may be initiated by the Town Board of Commissioners, the Planning Commission, the Board of Adjustment, or one or more owners of property within the area proposed to be changed or affected. All proposed amendments shall be referred to the Planning Commission for their review and recommendation to the Town Board of Commissioners.

(C) Application. Before any action on a proposed change or amendment, an application shall be submitted to the office of the Zoning Administrator at least ten days prior to the Planning Commission's meeting at which the application is to be considered. The application 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 and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question. The Planning Commission and the Board of Commissioners will not consider an application for property denied within the preceding 12 months by the Board of Commissioners.

(D) Application fee. A fee, in an amount as set by the Board of Commissioners from time to time, shall be paid to the town for each application for an amendment to cover costs of advertising and other administrative expenses.

(E) Planning Commission action. Before taking any action on a proposed amendment to the ordinance, the Board of Commissioners shall consider the Planning Commission's recommendations on each proposed amendment. The Planning Commission shall have 32 days after the first consideration of the application within which to submit its recommendations to the Board of Commissioners. Failure of the Planning Commission to submit recommendations within the 32-day period shall constitute a favorable recommendation.

(F) Public hearing.

(1) Before enacting any amendment to this chapter, the Board of Commissioners shall hold a public hearing. A notice of such public hearing shall be published in a newspaper of general circulation in the county once a week for two successive weeks, the first publication shall not appear less than ten days or more than 25 days prior to the date fixed for the public hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included. The notice shall include the time, place, and date of the hearing and include a description of the property or the nature of the change or amendment to the ordinance and/or map.

(2) (a) Whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land ([including parcels abutting the subject property by street, railroad, or other transportation corridor](#))<sup>9</sup> as shown on the county tax listing, shall be mailed a notice by the Zoning Administrator of the proposed classification by first class mail at the last address listed for such owners on the county tax abstracts. [The Town may require the applicant to provide a fee equivalent to the cost of producing and mailing notifications to owners as specified above.](#)<sup>10</sup>

(b) The person mailing such notices shall certify to the Town Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud. This provision shall apply only when tax maps are available for the area to be zoned.

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<sup>9</sup> [Required by NCGS 160D-602](#)

<sup>10</sup> [Cost of notice charged to applicants allowed by NCGS160D-602\(e\)](#)



(G) Decision.

(1) The Town Board of Commissioners shall make a decision on the proposed amendment to this chapter initiated by owners of private property within the town within 60 days after the public hearing.

(2) There shall be no time limit after a public hearing for Board action concerning all proposed amendments initiated by the Town Board of Commissioners, the Planning Commission, or the Board of Adjustment.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.011 VIOLATIONS AND REMEDIES.

(A) Violations.

(1) Whenever, by the provisions of this chapter, the performance of any act is prohibited, or whenever any regulation, dimension, or limitation is imposed on the use of any land, or on the erection or alterations, or the use or change of use of a structure, or the uses within such structure, a failure to comply with such provisions of this chapter shall constitute a separate violation and a separate offense.

(2) Each day of violation and noncompliance shall be considered a separate offense.

(B) Remedies. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved, or maintained, or any building, structure, or land is used in violation of this chapter, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance, or use, to restrain, correct, or abate the violation, to prevent occupancy of the building, structure, or land, or to prevent any illegal act, conduct of business, or use in or about the premises.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013) Penalty, see § 153.999

§ 153.012 LEGAL STATUS PROVISIONS.

(A) Conflict with other laws.

(1) When provisions of this chapter require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, provisions of this chapter shall govern.

(2) When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the provisions made by this chapter, the provisions of that statute or local ordinance or regulation shall govern.

(B) Effective date. This chapter shall take effect and be in force on October 18, 1983.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)



§ 153.013 CONFLICTS OF INTEREST.<sup>11</sup>

Pursuant to §160D-109, the following regulations are set forth regarding conflicts of interest for legislative decisions regarding a development regulation adopted pursuant to this Chapter as follows.

(a) Governing Board. - A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) Appointed Boards. - Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) Administrative Staff. - No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) Quasi-Judicial Decisions. - A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not

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<sup>11</sup> Required for all elected and appointed boards per 160D-109. May need to move elsewhere within ordinance.

limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(e) Resolution of Objection. - If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(f) Familial Relationship. - For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

## GENERAL REGULATIONS

### § 153.025 AFFECT ON EVERY BUILDING AND LOT.

No building or land shall hereafter be used, and no building or part thereof shall be erected, moved, or altered except in conformity with the regulations herein specified for the district in which it is located, except as provided in this chapter.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013) Penalty, see § 153.999

### § 153.026 RELATIONSHIP OF BUILDING TO LOT.

Every building hereafter erected, moved, or structurally altered shall be located on a single lot and in no case shall there be more than one principal building and its customary accessory building on the lot, except in the case of a designed planned unit development.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.027 LOT FRONTAGE.

All lots shall front on a public street. It is suggested but not required that garage doors not face or be visible from the public street, that garage doors not be more than ten feet wide, and if there are multiple garage doors, that there be at least 18 inches of separation between them.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.028 REQUIRED YARDS AND OTHER SPACES.

No part of a yard or open space, or off-street parking or loading space required in §§ 153.038 and 153.039, or required in connection with any building for the purpose of complying with this chapter, shall be included as a part of a yard, open space, or off-street parking, or loading space similarly required for any other building.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(A) Accessory structures and/or ~~necessary~~ [accessory](#) <sup>12</sup> buildings shall not detract from nor interfere with adjacent properties. No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.

(B) (1) In addition, the following standards are established for accessory structures and accessory buildings:

(a) The maximum number of accessory buildings permitted on a lot shall be one;

(b) The maximum roof coverage area for accessory buildings shall be 750 square feet;

(c) The maximum height for accessory buildings shall be 25 feet;

(d) The accessory building must be screened by vegetation or other buffer as set forth in § 153.008;

(e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot;

(f) The accessory building must be designed in the same architectural style as the principal structure;

(g) Any accessory structure and/or accessory building shall be included in the calculation of allowable roof coverage and allowable impervious surface coverage on the lot pursuant to §§ 153.043 and 153.048; and

(h) Solar collectors shall be regulated in accordance with G.S. § ~~160A-201~~ [160D-914](#).

(2) For all satellite dishes less than 24 inches in diameter, an application for a zoning compliance certificate shall be made directly to the Zoning Administrator; the Zoning Administrator shall issue a zoning compliance certificate.

(3) Fences, gates, and walls shall be regulated in accordance with § 153.049 of this Zoning Ordinance.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013; Ord. passed -- ; Ord, passed 2-11-2020)

Editor's note:

This amendatory language was passed during a Board meeting, July 9, 2013

#### § 153.030 HOME OCCUPATIONS.

Standards pertaining to home occupations are contained within the ~~conditional~~ [special](#) use standards, specifically § 153.008(C)(5).

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.031 VISIBILITY AT INTERSECTION.

Sight distances at intersections must meet the standards for secondary roads established by the State Department of Transportation. On corner lots, no planting, structure, sign, fence, wall, or other obstruction shall be erected so as to interfere with said sight distance.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

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<sup>12</sup> [Think this should be accessory and not necessary.](#)

§ 153.032 VACANT STRUCTURES AND LOTS.

Vacant structures, lots, and open spaces shall be maintained consistent with the surrounding neighborhood. All structures shall remain structurally sound. Vegetation shall be neatly trimmed and the accumulation of unsightly debris shall be prohibited.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.033 SIGNS IN RESIDENTIAL DISTRICTS, R-1, R-2, R-3, R-4, AND R-5.

(A) A small sign showing the name of the owner or occupant or the street number of a lot shall be permitted on any lot. One real estate sign per lot not exceeding six square feet shall be permitted for advertising the sale of property.

(B) The design or layout of signs proposed for any ~~conditional~~special use shall be presented along with the development plan as specified in § 153.008(B).  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.034 LAND DISTURBANCE AND SEDIMENTATION CONTROL.

(A) Land disturbance becoming landscaping. Any land-disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of 20% or more of the land area of any lot shall submit a landscaping and grading plan for such activity to the Board of Adjustment for review and approval. ~~prior~~Prior<sup>13</sup> to commencing such activity in a public service district, any land-disturbing activity such as grading projects or removal of natural vegetation other than routine maintenance shall be subject to approval by the Town Board of Adjustment regardless of the area to be disturbed.

(B) Maintain as natural open space areas. The intent of this requirement is to ensure that these areas are to be maintained as natural open space areas, and that any disturbance such as the building of roads, public utilities, and other such activities be designed and constructed so as to maintain the natural scenic character of these districts. A landscape plan shall be submitted and approved by the Board of Adjustment prior to any land-disturbing activity.

(C) Compliance with G.S. § 113A-54. Where applicable, all proposed development projects or land-disturbing activities shall comply with G.S. § 113A-54, and Rules and Regulations for Erosion and Sediment Control as established by the State Sedimentation Control Commission, State Department of Natural Resources and Community Development.

(D) Landscaping plans. A specific landscaping plan prepared by an appropriate professional shall be submitted to the Board of Adjustment which shall detail all plantings or reforestation to take place as part of the land-disturbing activity.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.035 BUFFER STRIP REQUIRED.

From the time of the adoption of this chapter, all ~~conditional~~special use development projects in the R-4 District that abut a residential lot or the other residential districts, shall

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<sup>13</sup> [Changed for clarity](#)

provide a buffer strip that meets the requirements as outlined in § 153.063, “buffer strip and screen requirements”.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.036 NONCONFORMING LAND USES, OR STRUCTURES.

Any parcel of land, use of land, building, or structure existing at the time of the adoption of this chapter, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located, may be continued and maintained subject to the following provisions.

(A) Nonconforming vacant lots.

(1) This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the County Register of Deeds office, which at the time of adoption of this chapter or any amendment thereto fail to comply with the minimum area and width requirements of the districts in which they are located.

(2) Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located; provided, that:

(a) Where the lot area is not more than 20% below the minimum specified in this chapter, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a zoning compliance permit; and

(b) Where the lot area is more than 20% below the minimum specified in this chapter or other dimensional requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

(B) Nonconforming occupied lots. This category of nonconformance consists of lots, occupied by buildings or structures at the time of the adoption of this chapter or any amendment thereto, that fail to comply with the minimum requirements for area, width, yard, and setbacks for the district in which they are located. These lots may continue to be used.

(C) Nonconforming uses or structures.

(1) This category of nonconformance consists of buildings or structures used at the time of enactment of this chapter or any amendment thereto for purposes of use not permitted in the district in which they are located, or structures on conforming lots which do not comply with the dimensional requirements of this chapter such as size and height restrictions.

(2) Such uses except as provided in division (E) below may be continued as follows:

(a) 1. An existing nonconforming use may be changed to another nonconforming use of the same or higher use; provided, that the other conditions in this section are complied with.

2. For the purpose of this chapter, the rank order of uses from higher to lower shall be:

- a. Residential;
- b. Public; and
- c. Commercial services.

(b) When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.

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

1. Structural alterations as required by law or ordinance to secure the safety of the structure are permissible;
2. Maintenance and repair necessary to keep a nonconforming structure in sound condition are permissible;
3. At the time of adoption of this chapter, if an expansion of a nonconforming use is in progress, that is, if at least a building permit for the expansion has been issued, then such expansion may be completed as specified in the building permit; and
4. When any nonconforming use of a building or structure is discontinued for a period in excess of 60 days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

(D) Reconstruction of damaged buildings or structures. Any nonconforming use of a structure or nonconforming structure which has been damaged by fire, wind, flood, or other causes, may be repaired and used as before provided:

- (1) Repairs are initiated within 12 months and completed within two years of such damage;
- (2) The total amount of space devoted to a nonconforming use may not be increased; and
- (3) Reconstructed buildings may not be more nonconforming with respect to dimensional restrictions.

(E) Nonconforming home occupation. Any property owner whose home occupation was made nonconforming by the ordinance amendment adopted on July 9, 2002, shall have until July 8, 2005 to conform to the current terms of the ordinance.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.037 ACCESSORY STRUCTURES ~~OF~~<sup>OR</sup><sup>14</sup> BUILDINGS UTILIZED AS DWELLINGS.

(A) Upon adoption of this chapter, accessory buildings used as dwelling units and occupied by a “family” (see definition in § 153.004) member shall be a conforming use. Such units occupied by a non-family member shall be nonconforming uses.

(B) (1) The definitions and provisions of this chapter provide for this situation.

(2) Therefore, the following shall apply:

(a) An existing accessory structure occupied at the time of adoption of this chapter by a non-family member can continue to be used for such purpose. If the unit occupied by a non-family member becomes vacant for more than 60 days (see § 153.036(C)(2)(c)4.), then such unit could only be reoccupied by a family member.

(b) New accessory structures intended for use as dwellings shall only be occupied by a family member.

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<sup>14</sup> [Misspelling](#)

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.038 OFF-STREET PARKING.

(A) Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereafter established in all districts. The number of parking spaces provided shall be at least as great as the number specified below for various uses. When application of said provision results in a fractional space requirement, the next larger requirement shall prevail.

(B) Each lot abutting a major thoroughfare shall be provided with vehicular access thereto and shall be provided with adequate space for turning so that no vehicle shall be required to back into the street. A parking space shall consist of an area not less than ten feet by 20 feet, plus the necessary access space unless otherwise authorized by the Board of Adjustment.

(1) Minimum parking requirements. The required number of off-street parking spaces specified below for each use shall be provided.

Residential Uses	Required Parking
Business and Consumer Services of All Kinds	
Business and special schools	
1 space for each students	
Clubs and lodges	
1 space for each 3 members	
Day nursery and private space for each kindergartens	
1 space for each staff member, plus 1 space for each 5 students	
Business Uses	
Commercial services; retail space	
1 space for each 200 square feet of gross flood	
Doctors' and dentists' offices	
5 spaces per doctor or dentist	
Professional and business offices	
1 space for each 300 offices square feet of gross floor	
Public and Semi-Public Uses	
Churches	
1 space for each four seats in the principal assembly room	
Public building space	
1 space for each 200 square feet of gross floor	
Recreational facilities	
2 spaces for every tennis, squash, or racquetball court; health exercise facility—1 space per 50 square feet; golf or country clubs— 2 spaces per tee; places of recreation and assembly shall have 1 space for each 200 square feet of gross floor space	
Schools; public/private	

1 space for each classroom and administrative office, plus 1 space for each 20 seats or 1 space for each 400 square feet of area used for public assembly

#### Residential Uses

Residential dwellings in a residential planned unit development

1- 1/2 spaces for each dwelling unit

Residential dwellings, single-family

2 spaces for each dwelling unit<sup>15</sup>

#### (2) On-site parking of vehicles.

(a) All motorized vehicles (including, but not limited to, cars, trucks, motorcycles, mopeds/scooters, golf carts) must be parked entirely upon a prepared driveway/parking surface (asphalt/pavement, concrete, pavers, gravel, pebbles) located on the lot or tract, or located on any adjoining lots or tracts, of the principal residence or structure. Parking on grassed areas, dirt/soil areas, mulched areas, landscaped areas, or any other natural areas of a lot or tract is expressly prohibited. This provision is applicable to all zoning districts within the town.

(b) Excepted from the requirements of this section is the temporary parking (less than five hours in duration) of vehicles operated by persons who are visiting the owners or occupiers of the residence.

(c) Nothing herein shall be deemed to modify or impact, in any way, the requirements found under § 153.071, "recreational and commercial vehicle storage".

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.039 OFF-STREET LOADING AND UNLOADING SPACE.

Every lot, on which a business is hereafter established, shall provide space as indicated herein for the loading and unloading of vehicles off the street. For the purpose of this section, an off-street loading space shall have the minimum dimensions of 12 feet by 40 feet, and an overhead clearance of 14 feet in height. All businesses shall have at least one such space.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.040 NO LOT SUBDIVISION OF PLATTED AND RECORDED LOTS.

(A) It is the express intention and purpose of this chapter to preserve the town as primarily a low- density residential area. To this end, subject to § 153.042, the number of lots within the town shall be limited to those lots as shown on plats recorded in the County Register of Deeds. Therefore, upon adoption of this chapter, all lots in the town that have been previously platted and recorded with the County Register of Deeds shall be deemed and established as individual lots, and shall remain individual lots, and shall not be subdivided.

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<sup>15</sup> [Table did not show up appropriately; will be corrected](#)



(B) If an owner has acquired contiguous or adjoining lots, and the terminology of the deeds or other instruments of conveyance expresses intent that said lots shall be joined together as one residential lot, said lots shall thereafter be considered as one residential lot and shall not be subdivided into individual lots. If an owner of contiguous or adjoining lots develops said lots together, locating a residence on such lot or lots, and has landscaped the same or located other improvements, structures, or amenities on the lots so that from the standpoint of utility or appearance said lots seem to constitute one residential site, then said property shall not thereafter be subdivided, nor revert back to individual, separate lots.

(C) Nothing herein shall preclude property owners from subdividing unimproved previously platted and recorded lots, so as to enlarge existing residential lots or building sites. This subdivided lot shall not thereafter be reestablished as a separate residential lot. (Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.041 MINIMUM DWELLING UNIT SIZE.

(A) Each dwelling unit hereafter erected on any lot shall contain the following specified minimum living area floor space.

(B) Basement areas shall not be counted as a story and floor space contained in basement areas shall not be included in the minimum required living area floor space.

(1) Dwelling units consisting of a single or one primary story with living area as defined in this chapter shall contain a minimum of 2,250 square feet of living area.

(2) Dwelling units consisting of two or more primary stories with living area as defined in this chapter shall contain a minimum of 1,500 square feet of living area on the first story, and a minimum of 750 square feet of living area on the second story.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.042 SUBDIVISION OF TRACTS OF LAND.

(A) An owner of a tract of land which has not been subdivided and platted into residential lots, but desiring such subdivision and platting, shall prepare a plat and submit same for approval to the Planning Commission.

(B) Provisions shall be made for all utilities and access necessary to properly service said subdivision, subject to the provisions of Ch. 152. All other requirements of this chapter shall likewise be applicable to said subdivision before said owner shall be allowed to subdivide the tract of land.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.043 MAXIMUM ROOF COVERAGE.

(A) (1) (a) The MAXIMUM ROOF COVERAGE is defined as the total area(s) under roof of all structures (including detached garages and other accessory structures) on the lot.

(b) The maximum roof coverage standard assures that the size of structures is proportional to the lot size.

(2) The standards for the maximum roof coverage permitted are as follows:

Lot Size	Max Roof Coverage
Up to 0.5 acres	2,874 square feet
Up to 0.75 acres	3,520 square feet
Up to 1 acres	4,682 square feet
Up to 1.2 acres	5,060 square feet
Up to 1.5 acres	5,500 square feet
Up to 2 acres	6,100 square feet
Up to 2.5 acres	6,700 square feet
Up to 3 acres	7,500 square feet
Up to 3.5 acres	8,200 square feet
Up to 4 acres	8,700 square feet
Up to 4.5 acres	8,900 square feet
Up to 5 acres	9,100 square feet
Up to 5.5 acres	9,300 square feet
Up to 6 acres	9,647 square feet

(B) (1) Lots exceeding 6 acres in size: Multiply the lot size by 43,560; multiply this number by 3.25% (0.0325); provided, that the result is less than 9,647, structures on the lot may have maximum roof coverage of 9,647 square feet.

(2) If the result is greater than 9,647, structures on the lot may have maximum roof coverage equal to the result produced by the multiplication.

(C) All structures exceeding the maximum roof coverage for the lot on which they are located shall require approval of a variance by the Board of Adjustment in accordance with the procedures and standards set forth in § 153.110(D).

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.044 MATERIAL AND COLOR REQUIREMENTS FOR RESIDENTIAL DWELLING UNITS.

(A) The town is a unique community concerned with historic continuity. The town and its citizens are interested in the exterior appearance of residential structures, including the materials and color used in constructing and reconstructing such structures. To that end, those persons constructing new residences or renovating or expanding existing residences are encouraged to consider the provisions of this section regarding building materials.

(B) Regulation of exterior materials and colors of these structures will provide protection of the aesthetic and historic character and preserve the economic stability of the town.

(1) Materials.

(a) The intent of these provisions is to promote the exterior building materials which will blend with the majority of the existing residential structures and natural features of the town.

(b) As required in § 153.087, the application for the zoning compliance certificate shall be accompanied by the description of the materials to be used for the exterior siding and roofing materials.

1. Siding.

a. Suggested exterior siding materials. Painted or stained wood shingles or clapboards, stone and/or brick masonry, stucco, exterior insulation and finish system (EIFS), pre-painted aluminum, or heavy gauge vinyl to resemble clapboards, pre-cast concrete panels, fiber cement siding, cultured/cast stone, or as approved by the Design Review Board; and

b. The following exterior siding materials are discouraged. Exposed or painted concrete masonry units, light gauge vinyl siding, unpainted aluminum siding, exposed or painted concrete, paper or wood composition board, permastone or faux stone masonry, plywood (unless board and batten), asphalt shingles, ceramic tile (glazed wall tile, ceramic mosaic tile, natural clay tile, and the like), sheet glass, or glass block (not to include glass used for windows, sunrooms or conservatories), glazed brick.

2. Roofing visible from adjacent property.

a. Suggested roofing materials. Asphalt/fiberglass shingles, cedar shakes or shingles, clay or concrete tile, slate, copper, factory painted metal shingles or standing seam with concealed fasteners, or as approved by the Design Review Board; and

b. The following roofing materials are discouraged. Tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel, solar panels (unless integrated into new construction)<sup>16</sup>.

(2) Color. The intent of these provisions is to promote colors which blend with the existing structures and preserve the existing visual environment. It is further the intent of these regulations to prevent exterior paints or stains which are distracting and present inappropriate color contrast to the surrounding natural and built environment.

(a) Suggested exterior colors. Natural and weathered stone and wood, earth tones (subdued colors and stains), including bleached tones and stains, or other colors which conform to the intent expressed this division (B)(2). Dwellings which are painted in colors that are considered to be nonconforming at the time of the adoption of this chapter may not be repainted the same color; and

(b) The following exterior colors are discouraged. The use of day-glow or fluorescent colors is discouraged.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.045 SITE DESIGN AND BUILDING FORM AND MASS FOR RESIDENTIAL DWELLING UNITS.

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<sup>16</sup> [Consider removing this statement since generally allowable as special use?](#)

(A) (1) The town is a unique community and it is within the public interest and general welfare of the town to regulate the site design and building form and mass encompassing all residential structures.

(2) Site design shall include grading, surface water drainage, preservation and restoration of existing flora, all landscape features, including drives, walks, patios, freestanding walls, fencing, and plantings.

(B) Of particular concern is preservation of the streetscape, signs, lighting, trees, and bushes alongside the public thoroughfare. Form and mass shall refer to size and shape of the residential structures.

(1) Site materials and features. The intent of these provisions is to encourage site materials and features which blend with the existing visual environment, i.e., native flora and curvilinear roadways.

(a) Built of planted landscape elements.

1. Permitted. All native flora and materials, (i.e., trees, bushes, flowers, stone, asphalt or concrete pavement, concrete masonry paving units); and

2. Prohibited. Abrupt physical configurations, (i.e., site revisions causing excessive tree removal, land slope revisions greater than natural repose).

(b) Site lighting. Permitted; low-intensity security or decorative lighting, up to two street lamps in front yards not to exceed eight-feet in height and located a minimum of ten feet from the edge of the road.

(2) Prohibited.

(a) High-intensity flood or spot lighting either of the buildings or landscape features, neon. No flickering or flashing lights and all lighting shall be shielded such that light is not directed toward adjacent residential properties; and

(b) Examples of shielding should be as follows.

NO



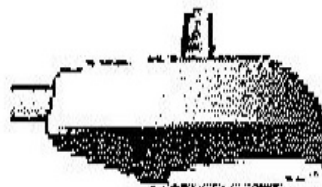
Without shield

YES



With a reflector shield

YES



Full Cutoff fixture

(3) Building forms and mass.

(a) Intent. The intent of these provisions is to encourage exterior building forms which blend with the majority of existing residential structures and natural features of the town.

(b) Roof form.

1. The following roof forms are encouraged. Gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, and arch; and

2. The following roof forms are discouraged as inconsistent with existing structures in the town. Trapezoidal, butterfly, complex curvilinear (screw, bullet, mushroom shape), conical, polygonal (except as roof of minor tower), A-frame, Quonset huts, geodesic domes, and roundettes.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.046 MATERIAL AND COLOR REQUIREMENTS FROM COMMERCIAL BUILDINGS.

(A) The town is a unique community which is dependent on historic continuity with its past. It is within the public interest and general welfare of the town to regulate the exterior appearance of commercial structures, including the exterior materials and color used in constructing and reconstructing and painting buildings.

(B) Regulation of exterior materials and colors of these structures will provide protection of the aesthetic and historic character and preserve the economic stability of the town.

(1) Materials. The intent of these provisions is to promote the use of exterior building materials which will blend with the existing commercial structures and natural features of the town. As required in § 153.087(B)(1), the application for the zoning compliance certificate shall be accompanied by the description of the materials to be used for the exterior siding and roofing materials.

(a) Siding.

1. Permitted exterior materials. Painted or stained wood shingles or clapboards, stone and/or brick masonry, stucco, exterior insulation and finish system (EIFS), pre-painted aluminum, or heavy gauge vinyl to resemble clapboards, precast concrete panels or siding, cultured/cast stone, or as approved by the Design Review Board; and

2. Prohibited exterior materials. Exposed or painted concrete masonry units, light gauge vinyl siding, unpainted aluminum siding, exposed or painted cast-in-place concrete, paper or wood composition board, permastone or faux stone masonry, plywood, (unless board and batten), asphalt shingles, ceramic tile, (glazed wall tile, ceramic mosaic tile, natural clay tile, and the like), glazed brick, unpainted, or pre-painted ferrous or aluminum metal siding.

(b) Roofing visible from on-site location or adjacent property.

1. Permitted roofing materials. Asphalt/fiberglass shingles, cedar shakes or shingles, clay or concrete tile, slate, copper, factory painted metal shingles or standing seam with concealed fasteners or roofing as approved by the Design Review Board; and

2. Prohibited roofing materials. Tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel, solar panels (unless integrated into new construction). Note that for commercial buildings, flat roofs not visible from residential dwellings may use the above-mentioned roofing materials.

(2) Color. The intent of these provisions is to promote colors which blend with the existing structures and preserve the existing visual environment. It is further the intent of these regulations to prevent exterior paints or stains which are distracting and present inappropriate color contrast to the surrounding natural and built environment.

(a) Permitted exterior colors. Natural and weathered stone and wood, earth tones (subdued colors and stains), including bleached tones and stains or other colors which conform to the intent expressed in this division (B)(2).

(b) Prohibited exterior colors. Day-glow or fluorescent.

(3) Mechanical/electrical equipment.

(a) All electric service equipment and sub-panels and all mechanical equipment, including, but not limited to, air-conditioning, pool equipment, fans and vents, utility transformers (except those owned and maintained by public utility companies), and solar panels, shall be painted to match the surrounding wall or roof color or painted or screened to blend with the surrounding natural terrain. Roof-mounted equipment and vents shall be painted to match the roof and/or adjacent wall color and shall be screened or integrated into the design of the structure.

(b) Roof-mounted equipment, including ventilators and satellite dishes, shall be completely screened from view (100% opacity) or isolated so as not to be visible from any public right-of-way or residential zoning district. Roof screens when used shall be coordinated with the building to maintain a unified appearance.

(c) 1. All electrical and mechanical equipment located at ground level shall be screened from view (100% opacity) or isolated so as not to be visible from the right-of-way of an arterial street or residential zoning district. Such screens and enclosures, when used, shall be coordinated with the buildings to maintain a unified appearance.

2. Acoustical buffering is required for all emergency generators to reduce the noise level as audible from the nearest residential dwelling to that of the standard commercial air conditioning compressor.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.047 SITE DESIGN AND BUILDING FORM AND MASS COMMERCIAL BUILDINGS.

(A) The town is a unique community and it is within the public interest and general welfare of the town to regulate the site design and building form and mass encompassing all commercial structures.

(B) Site design shall include grading, surface water drainage, preservation and restoration of existing flora, all landscape features, including drives, walks, patios, freestanding walls, fencing, and plantings. Of particular concern is preservation of the streetscape; signs, lighting, trees and bushes alongside the public thoroughfare. Form and mass shall refer to size and shape of the commercial structures.

(1) Site materials and features. The intent of these provisions is to encourage site materials and features which blend with the existing visual environment, (i.e., native flora and curvilinear roadways).

(a) Built or planted landscape elements.

1. Permitted. All native flora and materials, (i.e., trees, bushes, flowers, stone, asphalt or concrete pavement, concrete or brick masonry paving units). Refer to the §§ 93.30 through 93.40 for tree removal regulations.

2. Prohibited. Final grades that result in slopes greater than 1:1; retaining walls that exceed seven feet in height for property zoned (R-4) and exceed 12 feet in height for property zoned (R-5).

(b) Site lighting/exterior lighting. With the exception of Americans with Disabilities Act, being 42 U.S.C. § 12101, lighting requirements and street lighting, the following design standards shall apply when exterior lighting is proposed and/or required:

1. Shielding.

a. Exterior lighting shall be shielded and directed downward so that the light source (the actual bulb) is not visible from beyond the property line on which the structure is located.

b. Exterior lighting shall not project above the horizontal plane of the building.

2. Color. Warm lighting colors are required.

a. The blue-white colors of florescent and mercury vapor lamps are prohibited.

b. Lamps emitting a color temperature in excess of 5,000 degrees Kelvin are prohibited.

3. Parking area lighting. In parking lots, a foot candle as approved by the town's lighting consultant at the perimeter, and between light sources, and a maximum of 5.0 foot candles under light fixtures as required.

4. Light fixtures.

a. The height of light fixtures shall be in proportion to the building mass and no more than 14 feet high.

b. When all businesses are closed, only a minimum of security lighting shall be maintained. Shielded spotlights may be used when highlighting trees, artwork, or other special landscape features. Lighting fixtures affixed to structures for the purposes of lighting parking areas shall be prohibited.

5. Advertising. The operation of searchlights or similar sources for advertising, display or any other commercial purpose is prohibited.

(2) Building forms and mass.

(a) Intent. The intent of these provisions is to encourage exterior building forms which blend with the majority of existing commercial structures and natural features of the town.

(b) Roof form.

1. Permitted. Gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, arch, and flat; and

2. Prohibited. Trapezoidal, butterfly, complex curvilinear (screw, bullet, mushroom shape), conical, polygonal (except as roof of minor tower), A-frame, Quonsct huts, geodesic domes, and roundettes.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.048 IMPERVIOUS SURFACE COVERAGE.

(A) (1) A maximum percentage of a residential lot that can be devoted to impervious surfaces, as defined in § 153.004, is established to assure that the character of the town is preserved and to control stormwater and runoff being directed to streets and adjacent properties.

(2) The percentage of residential lots that can be devoted to impervious surfaces shall be as set forth below.

Lot Size	Impervious Surface	Sample Calculations 43,560 Square Feet - 1 Acre
Up to 1 acre	27.5% x lot area	E.g., 0.85 acre x 43,560 x 27.5%= 10,182 square feet
Over 1 acre to 3 acres	11,979 square feet or 25% x lot area	11,979 square feet (The maximum from the previous grade) or the product of the lot size calculation. E.g., 1.75-acre x 43,560 x 25% = 19,058 square feet
Over 3 acres to 6 acres	32,670 square feet or 20% x lot area	32,670 square feet (The maximum from the previous grade) or the product of the lot size calculation. E.g., 4.5-acres x 43,560 x 20% = 39,204 square feet

(B) Lots on which new construction and/or development activity would cause the amount of impervious surface on the lot to exceed the percentages set forth above shall proceed with the proposed construction and/or development activity only if a variance for the increased impervious surface coverage is granted by the Board of Adjustment in accordance with the procedures set forth in § 153.110(D).

(C) The Board of Adjustment reserves the right to limit impervious surface coverage to prevent the unreasonable diversion of stormwater or surface water onto another property or properties or to the town streets.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.049 FENCE, GATE AND WALL REGULATIONS.

The Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this section.

(A) New fences, gates or walls may be approved by the Board of Adjustment as a special use, so long as the gate, fence or wall meets the following requirements.



(1) The fence, gate, or wall is constructed entirely within the rear yard, is not located in any side or rear yard setbacks, and is constructed of materials deemed acceptable in § 153.049(D).

(2) Mature vegetation or other buffering sufficient to screen the fence, gate, or wall from neighboring properties shall be required to the extent necessary.

(B) A driveway gate and supporting columns may be approved by the Board of Adjustment as a special use so long as it meets the following requirements:

(1) The driveway gate and columns shall not be located in the front or side yard setback of a property.

(2) The driveway gate shall not be more than eight feet in height.

(3) The driveway gate must provide access for emergency services and first responders. This may be done via a lockbox code, strobe or siren activation switch, or other method with demonstrated reliability.

(4) The driveway gate must open wide enough to provide for ingress and egress of emergency vehicles. The minimum acceptable standard is for the gate access to be 14 feet wide with a 14 foot minimum height clearance.

(C) Replacement of existing fences, gates, and walls shall be approved by the Board of Adjustment as a special use so long as the replacement fence is constructed of materials deemed acceptable in § 153.049(D) and meets the requirements below. A special use permit application to replace an existing fence, gate, or wall shall include a photograph of the existing fence or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.

(1) Existing chain link fences or gates shall not be replaced with new chain link fences or gates.

(2) Existing fences, gates, or walls in the front yard shall not be replaced. No new fences, gates, or walls shall be allowed in the front yard.

(3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this section.

(D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.

(1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.

(2) Non-wooden fencing and gates shall be black, dark green or brown and shall blend with surrounding trees or vegetation.

(3) No new chain link fencing or gates shall be allowed.

(4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven Wire Fencing" and "Permanent Solid-Wire Fencing." Copies of these standards are available at the Town Hall or at the following web

address (<https://www.nrcwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>).<sup>17</sup>

(5) Walls should be constructed of stone or similar material, and shall be compatible with the construction materials of the house located on the same property.

(6) When a fence, gate or wall is not properly maintained or fails to comply with condition(s) imposed by the Board of Adjustment, the town shall require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails to repair or remove the fence, gate, or wall, the town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.

(Ord. passed 2-11-2020)

## BUFFERS, SCREENING, AND LANDSCAPE<sup>18</sup>

### § 153.060 PURPOSE AND INTENT.

(A) The town has an abundant and diverse tree and vegetative cover that is essential to the aesthetic value of the town and provides numerous ecological and economic benefits.

(B) The landscape and buffering standards set forth below require buffers and landscaping between dissimilar land uses, along public rights-of-way, and within parking lots, in order to:

(1) Encourage the preservation of existing trees and vegetation and replenish removed vegetation;

(2) Protect and improve the visual quality of the town and minimize the negative impacts of development such as noise, dust, litter, glare of lights, traffic, heat, overcrowding, odor, and views of unsightly parking lots, utilities, and mechanical systems and buildings;

(3) Provide environmental benefits such as climate modification, decreased energy consumption, reduced stormwater runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;

(4) Provide a transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and to preserve the character and value of property and to provide a sense of privacy; and

(5) Improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of the town while allowing flexibility to promote well-designed and creative landscape plantings.

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<sup>17</sup> [Misspelling](#)

<sup>18</sup> [After reviewing this entire section, this seems to be geared almost exclusively to non-residential development. Should there be a specific reference to this within the purpose and intent section?](#)

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.061 GENERAL INFORMATION.

(A) Applicability.

(1) Buffer strip plantings, street trees, and parking lot trees and shrubs are required for developments <sup>19</sup>within the town limits.

(2) The following developments shall bring the entire site into full compliance with this section:

(a) New nonresidential development, including ~~conditional~~special uses; and

(b) Renovations with a total cost exceeding 50% of the assessed value of the building, excluding single-family dwellings, according to the county tax records.

(3) New parking spaces or lots are not required to comply with the provisions of this section.

(B) Landscape and grading plan required. Applicants are advised to meet with town staff in order to review all ordinance requirements and procedures and receive a copy of the plan checklists. As required in § 153.034, a landscape and grading plan shall be reviewed and approved by the Board of Adjustment prior to any grading.

(C) Alternative compliance.

(1) The landscape requirements are intended to set minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. Site conditions or other reasons may justify the need to request an alternate method of compliance with the landscape requirements. The Board of Adjustment, in consultation with the Design Review Board, may alter the requirements of this section as long as the existing or added landscape features of the development site comply with the intent of this chapter.

(2) Requests for alternative compliance shall be accepted if one or more of the following conditions are met:

(a) Topography, geologic features, drainage channels or streams, existing natural vegetation, overhead or underground utilities, or other conditions make it unreasonable or meaningless to plant a buffer or meet other landscape requirements;

(b) Space limitations, unusually shaped lots, unique relationships to other properties, and/or prevailing practices in the surrounding neighborhood (such as use of a specific type of vegetation) may justify alternative compliance when changing the use type of an existing building in an established mature neighborhood; or

(c) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the intent of the ordinance, and exhibits superior design quality.

(4) The property owner must submit a plan of the area for which alternative compliance is requested to the Town Manager 14 days prior to the meeting of the Design

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<sup>19</sup> I think development is defined in 2(a-b) below, and does NOT include single family residential lots. Perhaps this should be made more clear to say the following regulations are applicable to zones R-4 and R-5?

Review Board at which the request will be considered. The site plan shall show existing site features and any additional material the property owner will plant or construct to meet the intent of the buffer, street tree, and parking lot tree requirements.

(5) In addition, the applicant must submit a written statement explaining and justifying the need for alternative compliance. The Design Review Board shall make a recommendation of approval, approval with conditions, or denial within ten working days of reviewing the request for alternative compliance. The Design Review Board's recommendation shall then be considered by the Board of Adjustment. Alternative compliance shall be limited to the specific project being reviewed and shall not establish a precedent for acceptance in other cases.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.062 EXISTING VEGETATION.<sup>20</sup>

(A) Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, and mitigate the impacts of development on the community. It is recommended that groups of trees be preserved, as well as individual trees. Existing trees and shrubs designated for preservation may be credited towards required buffer trees, street trees, and parking lot trees.

(B) As required in § 93.32, no person shall remove or in any way damage any protected trees without first filing an application for said removal and receiving a permit from the Town Manager. Special attention shall be given to protected trees located within 20 feet of the of the rear or side property line of property meeting the definition of an incompatible land use.

(1) Credits and other incentives to preserve vegetation.

(a) Vegetation located in the buffer strip.

2. One existing evergreen shrub over four feet high located in the buffer strip may be credited for two new shrubs, also on a case-by-case basis by the Board of Adjustment.

(b) Vegetation located elsewhere on the property.

1. Trees designated for preservation may be credited at the rate of the following.

2-inch to 6-inch caliper tree = 1 tree

7-inch to 12-inch caliper tree = 2 trees

13-inch to 18-inch caliper tree = 3 trees

19-inch to 24-inch caliper tree = 4 trees

25-inch and greater = 5 trees

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<sup>20</sup> [For this entire section, there is reference made to the tree protection ordinance \(which covers all lots within the Town – residential or not – but all statements from section B\(1\) below seem to be directed to non-residential development. Should this be clarified?](#)

2. One existing shrub over four feet high may be credited for two new shrubs. In order to receive credit, vegetation designated for preservation shall be in good health and condition. Trees and shrubs designated to be preserved shall be indicated on the landscape and grading plan, as well as all protective barriers. If a tree or shrub designated for preservation dies within five years of the project's completion, it must be replaced with the total number of trees or shrubs which were credited to the existing tree or shrub.

(2) Protection of existing trees and shrubs during construction.

(a) 1. No grading or other land-disturbing activity shall occur on a site with existing trees or shrubs which are designated to be preserved in order to meet the landscaping requirements until the landscape and grading plan has been approved by the Board of Adjustment and protective barriers are installed by the developer and approved by the Zoning Administrator. Trees designated for preservation which are counted toward the landscape and buffering requirements shall be protected by barriers, while trees designated for preservation which do not count toward the landscape and buffering requirements are encouraged to be protected by barriers. The diameter of the trees designated for preservation and the location of protective barriers shall be shown on the landscape and grading and site plans with the dimensions between the tree trunk and barrier indicated.

2. Protective barriers shall be placed around the root protection zone of trees designated for preservation that are within 50 feet of any grading or construction activity. Protected ground areas for shrubs shall consist of an area twice the diameter of the shrub. All protective barriers shall be maintained throughout the building construction process.

(b) 1. All contractors shall be made aware of the areas designated for protection.

2. No disturbance shall occur within the protective barriers, including:

a. Grading;

b. Filling, unless an aeration system which is certified by a registered landscape architect, certified arborist, or state cooperative extension specialist is installed to protect the tree from suffocation;

c. Temporary or permanent parking;

d. Storage of debris or materials, including topsoil;

e. Disposal of hazardous wastes or concrete washout; and

f. Attaching of nails, ropes, cables, signs, or fencing to any tree designated for preservation.

3. If any area within the root protection zone will be disturbed for any reason, a registered landscape architect, certified arborist, or state cooperative extension specialist shall recommend measures to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.

4. The developer shall coordinate with the utility companies early in the design process to resolve potential conflicts about the placement of utilities and buffer and screening requirements in § 153.063(B)(5). The Zoning Administrator shall approve the placement of the utilities either outside of the root protection zone or tunneled at least two feet directly below the tree roots to minimize root damage.

5. If silt fencing is required to control sedimentation, the fencing must be placed along the uphill edge of a tree protection zone in order to prevent sediment from accumulating in the drip line area.

(c) Tree protection zone signs shall be installed on the tree protection barriers visible on all sides of the protection area (minimum one on each side and/or every 300 linear feet). The size of each sign shall be a minimum of two feet by two feet and shall contain the following language: "TREE PROTECTION ZONE, KEEP OUT" or "TREE SAVE AREA, KEEP OUT".

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.063 BUFFER STRIP AND SCREEN REQUIREMENTS.

(A) Certain land uses are defined in this chapter as being an incompatible land use when developed adjacent to other less intensive land uses. A buffer strip can serve to lessen adverse impacts when development occurs.

(B) The installation of the applicable buffer strip shall be the responsibility of the owner of the developing land use. Buffer strips shall be located on the property of the developing land use between the property line and any vehicular use areas, buildings, storage, service areas, or other area of activity. The buffer strip shall extend along the entire rear and/or side property line which abuts an incompatible land use, up to any required street tree planting strip.

(1) Use of buffer strips. Required buffers shall not be disturbed for any reason except for approved driveway openings and other passive or accessory uses compatible with the general separation of land uses and; provided, that the total number of required plantings are still met. Approval from the Town Manager is required prior to initiating any disturbance of the buffer.

(2) Placement of buffer plantings. The exact placement of the required plants shall be the decision of the developer or designer, but shall be reviewed by the Town Manager and approved by the Board of Adjustment. Plants shall be placed in a manner to serve as an effective screen year-round when viewed from any area accessible to the public or from adjacent properties. Trees or shrubs should be planted at least five feet away from the property line to ensure maintenance access and to avoid encroaching upon neighboring property.

(3) Composition of buffer plantings. A buffer consisting of two staggered rows of evergreen shrubs or sheared evergreen trees, planted 48 inches apart (as measured from the central stem) in a 20-foot wide strip shall be installed to screen the nonresidential use from neighboring residential properties. The trees or shrubs shall be between four and five feet high at time of planting. During times of extended dry weather, the applicant may petition the Board of Adjustment to reduce the required size of vegetation to be planted in order to better ensure its survival. It is suggested that a mixture of two to three shrubs selected from the recommended species list be planted to encourage healthier plants.

(4) Coordination with stormwater drainage provisions. If the buffer strip is to be used as part of the area for required stormwater runoff absorption as outlined in Ch. 52, then the shrubs and trees within the buffer shall be water tolerant.

(5) Coordination with utility easements. In circumstances when the property to be developed is adjacent to a utility easement, the buffer requirement of division (C) above maybe altered to be only ten feet wide at the discretion of the Board of Adjustment, based on the factors of space, feasibility, and other considerations which may make it difficult to provide a 20-foot buffer.

(6) Additional buffering. The Board of Adjustment has the authority to require that a wall or fence be constructed next to property used for residential purposes when the Board determines that the buffer strip alone does not provide adequate buffering. The fence or wall shall be constructed in a durable fashion of wood, stone, masonry materials, or other materials if deemed appropriate and shall be built of material compatible with the principal building. When concrete block is utilized, it shall be finished with stucco on both sides. The materials and design shall be approved by the Board of Adjustment on a case-by-case basis. The finished side of the fence or wall shall face the abutting property. A chain link fence may not be used to satisfy the requirements of this section. Shrubs shall be planted on the applicant's side of the property at the rate of 25 per 100 linear feet; their placing and arrangement shall be the decision of the applicant.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.064 PARKING LOT LANDSCAPING REQUIREMENTS.

Trees and shrubs are required in and around parking lots with more than five spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, help absorb runoff, reduce glare from parking lots, and to help filter exhaust from vehicles.

(A) There shall be a continuously-maintained growing strip planted with grass or similar low-growing vegetation, measured from the back of the curb and extending ten feet perpendicular to the road. The purpose of this growing strip is to provide a clear line of sight for motorists, pedestrians, and cyclists entering and leaving commercial properties.

(B) (1) Where parking areas with more than five spaces adjoin a public right-of-way, a landscaped planting strip ten feet wide shall be established and continuously maintained between the growing strip and parking area(s).

(2) Street trees shall be planted within the landscaped planting strip in accordance with § 153.066 and parking areas within 50 feet of the right-of-way shall have a visually modifying screen or barrier that meets one of these standards:

(a) Evergreen shrubs shall be planted 36 inches apart as measured from the center and attain a height of at least 48 inches within four years of installation;

(b) There shall be a fence or wall three feet high constructed of the same material as the principal building; or

(c) There is an earthen berm at least two feet high, with a minimum crown width of two feet and a width to height ratio of no greater than 2:1; shrubs shall be planted on top of the berm that will attain a height of at least 36 inches within four years of installation and shall be planted 36 inches apart.

(3) No screen is required at parking lot entrances or exits, and no screen shall obstruct vision within 50 feet of an entrance, exit, or intersection. The landscaped planting strip

shall be covered with living material, including groundcover and/or shrubs, except for mulched areas directly around the trees, so that no soil is exposed.

(C) (1) (a) Parking areas with more than five spaces shall have at least one large-maturing deciduous tree for every three parking spaces, with some appropriate clustering of trees permitted, and six-foot by 18-foot projecting landscaped islands generally between ten and 12 parking spaces.

(b) Whenever possible, interior parking spaces should have a continuous planter strip six feet wide between rows of parking.

(2) Where appropriate, provisions shall be made to ensure that adequate pedestrian paths are provided throughout the landscaped areas. In all cases, at least one large maturing deciduous tree shall be provided for a parking lot regardless of the number of spaces provided. No parking space shall be located more than 50 feet from the trunk of a large-maturing deciduous tree. When calculating the number of trees required, the applicant shall round up to the nearest whole number.

(D) All landscaped areas shall be bordered by a concrete curb that is at least six inches above the pavement and six inches wide or a granite curb that is at least six inches above the pavement and four inches wide.

(E) To increase the parking lot landscaped area, a maximum of two feet of the parking stall depth may be landscaped with low-growth, hearty materials in lieu of asphalt, allowing a bumper overhang while maintaining the required parking dimensions.

(F) When more than the required number of parking spaces is provided, the applicant shall provide two times the required number of trees for the spaces provided above the ordinance requirement.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.065 SCREENING OF DUMPSTERS, LOADING DOCKS, OUTDOOR STORAGE AREAS, AND UTILITY STRUCTURES.

(A) All dumpsters, loading docks, outdoor storage areas, or utility structures visible from a public street or adjacent property line shall be screened unless already screened by an intervening building or buffer strip. Landscaping shall not interfere with the access and operation of any such structure or facility. Trash and storage areas shall be well-maintained, including prompt repair and replacement of damaged gates, fences, and plants.

(B) Openings of trash enclosures shall be oriented away from public view or screened with sturdy gates wide enough to allow easy access for trash collection, where practical. The consolidation of trash areas between businesses and the use of modern disposal techniques is encouraged. All dumpsters shall be located a minimum of 50 feet from a residential dwelling. All unenclosed outdoor storage areas greater than 25 square feet shall also be screened from adjacent properties and streets.

(C) Screen types include:

(1) A continuous hedge of evergreen shrubs planted in a five-foot strip spaced a maximum of 36 inches apart; and

(2) A wall or fence six feet high, with the finished side of the fence or wall facing the abutting property or street. Fences longer than 25 linear feet shall be landscaped with trees



and/or shrubs planted in a minimum five-foot planting area, except around access areas, spaced no farther than eight feet apart in order to screen at least 50% of the fence or wall. (Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.066 STREET TREES.

(A) (1) Street trees are required for all developments meeting the applicability requirements of § 153.061(A). Street trees shall be required at the rate of one large-maturing tree (over 35 feet in height) for every 40 linear feet of property abutting a street.

(2) In the event that overhead utility lines are present, then one small-maturing tree (less than 35 feet in height) may be planted for every 30 feet of property abutting a street.

(3) This does not imply that trees must be spaced exactly 30 or 40 feet apart.

(4) The exact placement of the required tree or trees may be established with input from the reviewing boards in order to fit in with sign placement and other building issues.

(B) Trees shall be planted within a landscaped planting strip adjacent to the growing strip as outlined in § 153.064(A) and also according to regulations from the State Department of Transportation.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.067 CERTIFICATION OF COMPLETION.

(A) Landscaping shall be installed and inspected prior to receiving a certificate of completion. Vegetation shall be planted to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant materials. If the season or weather conditions prohibit planting the materials, the developer may provide an irrevocable letter of credit, or other financial surety in an amount equal to 110% of the cost of installing the required landscaping to guarantee the completion of the required planting.

(B) Upon approval of the financial surety, the certificate of completion shall be issued. The financial surety shall be canceled and/or returned upon completion.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.068 MAINTENANCE.

(A) The owner or lessee of the property where landscaping is required shall be responsible for the maintenance and protection of all plant and screening material. Landscaped areas shall be maintained in good condition and kept free of debris. Failure to maintain or replace dead, damaged, or diseased material or to repair a broken fence or wall shall constitute a zoning violation and shall be subject to the penalty provisions in § 153.999 if not replaced within 30 days of notification.

(B) If an act of God or other catastrophic event occurs which destroys a large quantity of vegetation, the owner or lessee shall have 120 days to replant. Replaced plant material shall be in compliance with the minimum size, spacing, and quantity standards of the ordinance requirements in effect at the time of project approval.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.069 RESIDENTIAL SCREENING OF UTILITY STRUCTURES.

It is required that all new utility structures, whether they are part of a new dwelling or are being added to an existing dwelling, located out of doors, including, but not limited to, heat pumps, air conditioning units (with the exception of window units), and generators shall be screened on all sides except the side closest to the dwelling. The screening shall consist of evergreen shrubs planted a maximum of 36 inches apart, with a height of 18 to 24 inches at time of planting. The shrubs may be planted three feet away from the utility structures so they do not interfere with proper functioning.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.070 PLANT SPECIFICATIONS.

(A) Recommended plant species. Plants may be chosen from the recommended plant species list available from the Town Manager. The list encourages the use of plant materials which are indigenous to this region and are readily available from local nurseries. Plant materials which are not on the list may be used following approval from the Board of Adjustment.

(B) Minimum plant size requirements.

(1) Large-maturing deciduous tree. Greater than 35 feet at maturity. Minimum size at planting shall be 12 to 14 feet in height and two inches caliper (diameter);

(2) Small-maturing deciduous tree. Smaller than 35 feet at maturity. The tree shall be at least one and one-half inch caliper and eight to ten feet high at time of planting;

(3) Evergreen tree. Minimum height of four to five feet at time of planting; and

(4) Evergreen shrub. Minimum three gallon container or ten-inch root ball with a height of 18 to 24 inches at time of planting.

(C) Plant standards.

(1) All plants shall meet the requirements of the most recent edition of the American Standards for Nursery Stock, ANSI 260.1.

(2) Plants shall be healthy, well-branched, and free of disease and insect infestation.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.071 RECREATIONAL AND COMMERCIAL VEHICLE STORAGE.<sup>21</sup>

(A) (1) Commercial vehicles and recreational vehicles, including, but not limited to, motor-powered recreational vehicles, recreational trailers, campers, boats and other water craft and the trailers used to tow or transport any such boat or vehicle, shall not be parked or stored outside on any lot or tract of land.

(2) Further, nor shall any such vehicle be parked or stored in or under an open garage/carport or in or under any other type of open accessory structure/building.

(3) However, such vehicles may be parked or stored in an enclosed accessory structure/building (said accessory structure/building is to comply with all size and height requirements of this chapter) or in an enclosed garage such that the vehicle is not visible.

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<sup>21</sup> [This section does not seem to belong within the buffer/buffer strip section of the Ordinance.](#)

(B) Exceptions to this rule would be those residents who have already received certificate of zoning compliance from the Board of Adjustment.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

## ADMINISTRATION, ENFORCEMENT, AND APPEALS

### § 153.085 GENERAL PROCESS; DUTIES OF THE ZONING ADMINISTRATOR, BOARD OF ADJUSTMENT, PLANNING COMMISSION, BOARD OF COMMISSIONERS, AND COURTS ON MATTERS OF ADMINISTRATION.

(A) All questions arising in connection with this chapter shall be presented first to the Zoning Administrator, who shall be responsible for the day-to-day administration of this chapter. The Board of Adjustment shall have the authority to rule on matters of interpretation of this chapter, consider appeals from decisions of the Zoning Administrator, issue ~~conditional~~special use permits, and grant variances. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law. The duties of the Town Board of Commissioners in connection with this chapter shall not include the hearing and passing upon of disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as prescribed in this chapter.

(B) The duties of the Board of Commissioners in connection with this chapter shall be the duty of considering and passing upon the initial ordinance and any proposed amendments or repeal of this chapter as provided by law. The Town Planning Commission shall serve in an advisory capacity to the Board of Commissioners and shall provide recommendations to the Board, including recommendations pertaining to zoning amendments and other matters as designated in G.S. § 160A-361.

(C) Any Board, including the Board of Commissioners, Board of Adjustment, Planning Commission, and Design Review Board, shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.

(D) Pursuant to NCGS §160D-309, all members appointed to the Board of Commissioners, Board of Adjustment, Planning Commission, and Design Review Board shall, before entering their duties, qualify by taking an oath of office.<sup>22</sup>

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.086 ZONING ADMINISTRATOR.

(A) The town shall appoint a Zoning Administrator. It shall be the duty of the duly appointed Zoning Administrator, or their designee, to administer and enforce the provisions of this chapter.

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<sup>22</sup> Newly required for ALL boards per NCGS160D-309

(B) The Zoning Administrator shall issue certificates of zoning compliance and certificates of occupancy as prescribed herein. The Zoning Administrator shall serve as clerk to the Board of Adjustment, and all applications for variances and ~~conditional~~special use permits shall first be presented to the Zoning Administrator who in turn shall refer the applications to the Board of Adjustment.

(C) (1) If the Zoning Administrator finds that any of the provisions of this chapter are being violated, ~~he or she~~the person responsible for such violation shall be notified in writing ~~the person responsible~~ for such violation, indicating the nature of the violation and ordering the action necessary to correct it.

(2) ~~He or she~~The Zoning Administrator shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. If a ruling of the Zoning Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.087 CERTIFICATE OF ZONING COMPLIANCE REQUIRED.

(A) (1) No building or other structure shall be erected, moved, added to or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a certificate of zoning compliance shall have been issued by the Zoning Administrator.

(2) No certification of zoning compliance shall be issued except in conformity with the provisions of this chapter.

(B) Upon approval of a ~~conditional~~special use permit or variance by the Board of Adjustment, the Zoning Administrator shall issue a certificate of zoning compliance.

(1) Applications for zoning compliance certificate.

(a) All applications for zoning compliance certificates shall be accompanied by plans ~~in duplicate and~~ drawn to scale showing the actual dimensions of the lot to be built upon, accurate dimensions and the use of the proposed building, the location on the lot of the building or structure proposed to be erected or altered, required screening of residential utility structures as outlined in § 153.069 and such other information as may be necessary to provide for the enforcement of the provisions of this chapter, including the architectural or building plans of the structure proposed to be erected or altered, and the description of the materials to be used for the exterior siding and roofing materials, and the colors or stains that will be used on the residential or commercial structure.

(b) Refer to § 153.130 for the complete submittal requirements. Prior to issuance of a certificate of zoning compliance, the Zoning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.

(2) Zoning compliance certificate fee.

(a) All applications for a certificate of zoning compliance shall be accompanied with an application fee based upon construction cost. [Additional fees for special use, variance, or](#)

[other land development applications may be authorized by the Board of Commissioners annually within the Fee Schedule for the Town of Biltmore Forest.](#)<sup>23</sup>

~~(b) The fee shall be \$12 for the first \$2,000 estimated construction cost, plus \$2 for each additional \$1,000 estimated construction cost.~~

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.088 REQUIREMENTS PRIOR TO ISSUANCE OF A BUILDING PERMIT.

Upon approval of a certificate of zoning compliance and prior to the issuance of a building permit, where applicable, the applicant shall obtain the following approvals.

(A) If connection is to be made to the town water or sewer systems, the applicant shall obtain approval for a tap from the town.

(B) If individual septic tanks and/or wells are to be used, the applicant shall obtain preliminary approvals from the County Health Department.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.089 BUILDING PERMIT REQUIRED.

Upon receiving a certificate of zoning compliance, a building permit shall be obtained from the County Building Inspections office for the construction or alteration of any building or structure pursuant to the procedures of the County Building Inspections office.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.090 CERTIFICATE OF OCCUPANCY REQUIRED.

(A) A certificate of occupancy issued by the Zoning Administrator is required in advance of:

- (1) Occupancy or use of a building hereafter erected, altered, or moved; and
- (2) Change of use of any building or land.

(B) (1) (a) In conjunction with the final building inspection, the Zoning Administrator shall certify that all requirements of this chapter have been met.

(b) The applicant shall call for such certification coincident with the final building inspection or within ten days following completion.

(c) A certificate of occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a certificate of zoning compliance and shall be issued within ten days after the erection or structural alterations or change in use of the building, or part, shall have been completed in conformity with the provisions of this chapter.

(2) (a) A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this chapter.

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<sup>23</sup> [Currently doing this, but specifically outlines where these fees are to be found and how they are set.](#)

(b) If the certificate of occupancy is denied, the Zoning Administrator shall state in writing the reasons for refusal and the applicant shall be notified of the refusal.

(c) A record of all certificates shall be kept on file in the office of the Zoning Administrator, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.091 CONSTRUCTION ~~OF~~ PROGRESS.

If no substantial construction progress has been made within six months of the date of the issuance of the building permit, [the Town shall contact the County Building Inspections and inquire as to whether the building permit is still valid. If the building permit is no longer valid, then the certificate of zoning compliance issued by the Town will be considered expired.](#) ~~the building permit becomes invalid.~~

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.092 CONSTRUCTION COMPLETION.

(A) Following approval of plans for construction of a structure or major remodeling of an existing structure and issuance of a building permit for the construction or remodeling, work on the structure shall be initiated within 60 days of issuance of the building permit.

(B) The construction or remodeling shall be substantially complete within two years of the date of issuance of the building permit for the construction.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013) Penalty, see § 153.999

#### § 153.093 COMPLIANCE.

In case any building is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building or land is used in violation of this chapter, the Zoning Administrator or any other appropriate town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### [§ 153.094 NOTICE OF VIOLATIONS AND INSPECTIONS.](#)

[\(A\) When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this Chapter or other local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the](#)

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<sup>24</sup> [May need to change verbiage, but this is to clarify that Buncombe County building inspections issues permits and the Town's zoning compliance permit is in line with the County permitting/inspections.](#)

development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

(B) Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured. <sup>25</sup>

#### § 153.094<sup>5</sup> APPEAL FROM THE ZONING ADMINISTRATOR.

(A) All questions arising in connection with this chapter shall be presented first to the Zoning Administrator, and such questions shall be presented to the Board of Adjustment only on appeal from a ruling of the Zoning Administrator.

(B) Any order, requirement, decision, or determination made by the Zoning Administrator may be appealed to the Board of Adjustment pursuant to the procedure found in § 153.111.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.096. REVOCATION OF DEVELOPMENT APPROVAL.

In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a

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<sup>25</sup> Mandatory changes.



[development regulation adopted by a local government pursuant to this Chapter, the provisions of G.S. 160D-405\(e\) regarding stays apply.](#)<sup>26</sup>

## BOARD OF ADJUSTMENT

### § 153.105 ESTABLISHMENT OF BOARD OF ADJUSTMENT.

(A) A Board of Adjustment is hereby established. The Board shall consist of five members appointed by the Town Board of Commissioners. The members of the Board of Adjustment who have served as members of the Board of Adjustment under a zoning ordinance which was in effect prior to the adoption of this chapter shall serve the balance of the term to which said members were appointed.

(B) Upon completion of these terms of office, additional appointments shall be made on a staggered- term basis with one member appointed for a term of one year; two members appointed for a term of two years and two members appointed for a term of three years. All additional appointments to the Board shall be for three-year terms.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.106 SELECTION OF ALTERNATE MEMBERS.

The Board of Commissioners shall also appoint one alternate member to serve on the Board of Adjustment in the absence, for any cause, of any regular member. Such alternate member shall be appointed for a three-year term. Such alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. The alternate member shall be subject to the provisions of § 153.107.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.107 RULES OF CONDUCT FOR MEMBERS.

(A) Members of the Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below.

(B) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

(C) No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested.

(D) No Board member shall vote on any specific matter unless he or she shall have attended a majority of the hearings on that matter.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

### § 153.108 GENERAL PROCEEDINGS OF THE BOARD OF ADJUSTMENT.

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<sup>26</sup> [Note, this is for a revoked permit, not an expired permit.](#)



The Board shall annually elect a Chairperson and a Vice-Chairperson from among its members. The Chairperson in turn will appoint a Secretary, which may be an employee of the town, and such other subordinates as may be authorized by the Town Board of Commissioners. The Chairperson, or in his or her absence the Vice-Chairperson, may administer oaths and request the attendance of witnesses in accordance with G.S. § ~~160A-388~~160D-406. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.  
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.109 MEETINGS.

(A) Board meetings. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. All Board meetings are to be held in accordance with G.S. Ch. 143, Art. 33C, commonly referred to as the Open Meeting Law.

(B) Quorum. A quorum shall consist of three members of the Board, but the Board shall not pass upon any questions relating to an appeal from a decision or determination of the Zoning Administrator, or an application for a variance or ~~conditional~~special use permit when there are less than four members present.

(C) Voting. All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in § 153.107. The required vote to decide appeals and applications shall be as provided in § 153.111(D), and shall not be reduced by any disqualification. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.110 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

The powers and duties of the Board of Adjustment shall be as follows:

(A) Interpretation. To interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and any other questions of interpretation that may arise in the administration of this chapter;

(B) Administrative review.

(1) The Board of Adjustment shall hear and decide requests for ~~conditional~~special use permits, variances, and appeal of decisions of the Town Manager. The term DECISION includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for ~~conditional~~special uses and variances. The Board of Adjustment may hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development in the town.

(2) Notice of hearings conducted pursuant to this division (B) shall be mailed 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 provide by the zoning or unified development ordinance. In the absence of evidence to the contrary, the town may

rely on the county tax listings to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. [If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.](#)<sup>27</sup>

(3) The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. [The Board of Adjustment must allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments. The Board may allow parties without standing to present competent, material, and substantial evidence that is not repetitive. If an objection arises at the hearing as to the inclusion or exclusion of administrative materials, the Board Chair must rule on this objection at the hearing. An appeal of this ruling may be considered by the full Board pursuant to NCGS 160D-406\(d\).](#)<sup>28</sup> Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Town Manager. The decision shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant or property owner as may be applicable, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The Town Manager shall certify that proper notice has been made.

(4) Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari (G.S. § ~~160A-393~~ [160D-406\(k\)](#)). A petition for review shall be filed with the Clerk of Superior Court within ~~30 days after the decision is effective or after a written copy is served in accordance with division (B)(3) above~~ [the time frame specified by NCGS 160D-1405\(d\)](#).<sup>29</sup>

(5) Members of the Board of Adjustment exercising quasi-judicial functions shall not have a fixed opinion on a matter prior to hearing; shall not have undisclosed ex-parte communication with an applicant, a close familial, business, or other associational relationship with an applicant or a financial interest in the outcome. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

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<sup>27</sup> [Allowable under NCGS160D-406 – all other notice standards are included.](#)

<sup>28</sup> [Standing and evidentiary portions included for specific compliance; and administrative materials decision included within new statute](#)

<sup>29</sup> [This is how it is stated within 160D](#)

(6) The Chair of the Board of Adjustment or any member acting as Chair and the Town Manager are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class I misdemeanor.

(7) The Chair of the Board of Adjustment or anyone acting as Chair, may subpoena witnesses and compel the production of evidence. Any person with standing under G.S. § ~~160A-393(d)~~[160D-406\(g\)](#) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair or person acting as the Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person subpoenaed fails to obey the subpoena, the Board of Adjustment or the party that requested the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed.

(C) ~~Conditional~~[Special](#) uses.

(1) Upon application, the Board of Adjustment may grant in particular cases and subject to appropriate conditions and safeguards, permits for ~~conditional~~[special](#) uses as authorized by this chapter, and set forth as ~~conditional~~[special](#) uses under the various use districts.

(2) A ~~conditional~~[special](#) use permit may be granted by the Board of Adjustment only after making the following findings:

(a) An application for the ~~conditional~~[special](#) use has been submitted as prescribed by this chapter;

(b) 1. If the Board of Adjustment finds, in the particular case in question, that the use, including any proposed structures:

a. Will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

b. Meets all required conditions and specifications of this chapter and other applicable rules, regulations, and standards;

c. Will not substantially injure the value of adjoining or abutting property;

d. Will be in general conformity with the plan of development of the town and its environs;

e. Will be reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and structure design;

f. Will be in harmony with scale, bulk, height, coverage, density, and character of the area or neighborhood in which it is located; or

g. Is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities, and will not cause undue traffic congestion or create a traffic hazard.

2. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter. [However, the Board of Adjustment shall not](#)

[impose conditions on special use permits that the Town is not statutorily allowed to impose.](#)<sup>30</sup>

(c) Before any [conditional special](#) use permit is issued, the Board shall make written findings certifying compliance with the specific rules governing the individual [conditional special](#) use (see § 153.008), and that satisfactory provision and arrangement has been made for at least the following, where applicable:

1. Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow, and control;
2. Provision of off-street parking and loading areas where required, with particular attention to the items in division (C)(2)(c)1. above, and the economic, noise, and odor effects of the [conditional special](#) use on adjoining properties in the area;
3. Adequate and proper utilities, with reference to locations, availability, and compatibility;
4. Buffering, with reference to type, location, and dimensions;
5. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
6. Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size, and suitability;
7. Buildings and structures, with reference to location, size, and use;
8. Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood;
9. With the exception of Americans with Disabilities Act, being 42 U.S.C. § 12101, lighting requirements and street lighting, the design standards as outlined in § 153.047, “site design and building form and mass for commercial buildings”, shall apply when exterior lighting is proposed and/or required; and
10. A site plan has been submitted as required in § 153.008.

[11. The applicant/landowner must provide written consent to conditions placed on a special use permit by the Board of Adjustment.](#)<sup>31</sup>

(d) 1. The Zoning Administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this chapter have been met. The Zoning Administrator shall report his or her findings to the Board of Adjustment.

2. If at any time after a [conditional special](#) use permit has been issued, the Board of Adjustment determines that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a [conditional special](#) use permit, the permit shall be terminated and the operation of such use discontinued.

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<sup>30</sup> [Mandated by S.L. 2019-1111 Pt. 1](#)

<sup>31</sup> [Mandated by S.L. 2019-1111 Pt. 1](#)

3. If a ~~conditional~~special use permit is terminated for any reason, it may be reinstated only after reapplying for a ~~conditional~~special use permit.

(D) Variances. Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance;

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

(4) 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.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

Editor's note:

This amendatory language was passed during a Board meeting, May 14, 2014

#### § 153.111 APPEALS AND APPLICATIONS.

(A) Types of appeals and applications.

(1) Appeals. The Board shall hear and decide all appeals from any decision or determination made by the Zoning Administrator.

(2) Applications. All applications for variances and ~~conditional~~special use permits shall first be presented to the Zoning Administrator, who in turn shall refer the application to the Board of Adjustment. Applications for variances and special use permits must be made by a person with a property interest in the property or a contract to purchase the property.<sup>32</sup>

(B) Appeals.

(1) The Board of Adjustment shall hear and decide appeals from decisions of the Town Manager.

(2) The following apply to all appeals heard by the Board of Adjustment:

(a) Any person who has standing under G.S. § ~~160A-393(d)~~160D-406(d) or the town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Manager. The notice of appeal shall state the grounds for the appeal.

(b) The Town Manager shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owners. The written notice shall be delivered by personal delivery, first-class mail, or other

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<sup>32</sup> GS160D-403

electronic ~~mail forms, or by first-class mail.~~ [If provided via electronic form, the file must be protected from further editing.](#) <sup>33</sup>

(c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from the receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words “zoning decision” or “subdivision decision” in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided, the sign remains on the property for at least ten days. Posting of signs is not the only 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 official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(e) The Town Manager shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from are taken. The Town Manager shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) 1. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Town Manager certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance.

2. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Town Manager a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed.

3. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(g) Subject to the provisions of division (B)(2)(f) above, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

(h) 1. During the conduct of a hearing, any party may appear in person or by agent or by attorney at the hearing.

2. The order of business for the hearing shall be as follows:

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<sup>33</sup> [GS160D-403](#)



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

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

c. Persons opposed to granting the appeal or the application shall present their argument against the application;

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

e. The Chair or such person as he or she shall direct shall summarize the evidence which has been presented, giving the parties the opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to only consideration of only such evidence as would be admissible in a court of law. The Board may place parties and witnesses under oath and the opposing party may cross examine them. The Town Manager, [or other Town official who filed the notice of violation<sup>34</sup>](#), shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Town Manager.

(i) When hearing an appeal pursuant to G.S. § 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. § 160A-393(k).

(j) The parties to an appeal that has been made under this division (B)(2)(j) may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(C) Hearings.

(1) Time. After receipt of notice of an appeal or an application, the Board Chairperson shall schedule a time for a hearing which shall be within 36 days from the filing of such notice of appeal or application. Any additional appeal or application shall be received not less than two weeks prior to a scheduled meeting.

(2) Notice. In any application for projects involving planned unit developments, the Board shall give notice of the hearing in a newspaper having general circulation in the county five days prior to the date of the hearing. For all other applications and appeals, the Board shall send by first class mail notices of the hearing to the affected parties and to such other persons as the Zoning Administrator shall direct, at least ten days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal or application, and the time and place of the hearing.

(3) Re-hearings. An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be

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<sup>34</sup> [Per GS160D-406](#)

limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions of the case. The application for rehearing shall be denied by the Board if from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other appeal or application.

(D) Decisions.

(1) Time. A decision by the Board shall be made within 30 days from the time of hearing.

(2) Form.

(a) Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the Secretary as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property and to other persons who have made written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary and the Chairperson upon approval of the minutes by the Board.

(b) 1. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. The decision on an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Zoning Administrator. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the application for the variance was based and which the Board finds to exist.

2. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance.

3. Where a ~~conditional~~-special use permit is granted, the record shall indicate, by reference to the appropriate sections of the ordinance, that all requirements and standards for the particular ~~conditional~~-special use have been met.

(3) Expiration of permits. Unless otherwise specified, any order or decision of the Board in granting a variance or a ~~conditional~~-special use permit shall expire if a building permit for such use is not obtained by the applicant within six months from the date of the decision.

(4) Voting. The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any decision or determination of the Zoning Administrator, or to grant a variance or to approve a ~~conditional~~-special use permit.

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

[\(6\) Variance and special use approvals run with the land.](#)<sup>35</sup>

[\(7\) Revocations of previously approved variance and special use approvals must follow the same process as used for the approval.](#)<sup>36</sup>

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<sup>35</sup> [GS 160D-104](#)

<sup>36</sup> [GS 160D-104](#)



(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

Editor's note:

This amendatory language was passed during a Board meeting, May 14, 2014

#### § 153.112 APPEALS FROM THE BOARD OF ADJUSTMENT.

Appeals from the Board of Adjustment may be taken to the courts pursuant to G.S. § [160D-406\(k\)](#).~~160A-388.~~

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### DESIGN REVIEW BOARD

#### § 153.125 PURPOSE AND INTENT.

(A) The Town Board of Commissioners finds that new development has a substantial impact on the character of the area in which it is located. Some harmful effects of one land use upon another can be prevented through zoning, subdivision controls, and building codes. Other aspects of development are more subtle. Among these are the general form of the land before and after development and the spatial relationships of the structures and open spaces as they contribute to an area as it is being developed. Such matters require the timely exercise of judgment in the public interest by people qualified to evaluate the design of new development.

(B) The design review process is intended to encourage residential and commercial developments which exemplify the best professional design practices and to promote the historic character of the town. The procedure is established to encourage individual identity for specific uses and structures; to enhance property values in the town and adjoining neighborhoods; to respect each individual site and its environmental qualities; and to minimize visual disharmony resulting from unrelated and poorly designed development.

(C) The purpose of this subchapter is to establish minimum standards for the exterior design of commercial, office, and residential structures, and to ensure high quality of development, redevelopment, and compatibility with evolving architecture or planning themes that contribute to a community image of quality, visual aesthetics, permanence, and stability which are in the best interest of the citizens of the town. These standards are intended to prevent use of materials that are unsightly, rapidly deteriorate, contribute to depreciation of area property values, or cause urban blight.

(D) These standards are further intended to ensure coordinated design of building exteriors, additions and accessory structures' exteriors in order to prevent visual disharmony; minimize adverse impacts on adjacent properties from buildings which are or may become unsightly, and buildings that detract from the character and appearance of the area. It is not the intent of this subchapter to unduly restrict design freedom when reviewing and approving project architecture in relationship to the proposed land use, site characteristics, and interior building layout.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.126 COMPOSITION OF DESIGN REVIEW BOARD AND MEETING PROCEDURE.

(A) The Town Board of Commissioners hereby establishes a Design Review Board.

(B) The Town Board of Commissioners shall appoint five resident members. A minimum of two members shall come from the disciplines of architecture, landscape architecture, landscape contractor, licensed general contractor, or like disciplines.

(C) Members of the Design Review Board shall serve for terms of three years, and may be reappointed. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.

(D) The Board shall meet when it has business to discuss, and otherwise has no set meeting schedule.

(E) The Board of Commissioners shall also appoint one alternate member to serve on the Design Review Board in the absence, for any cause, of any regular member. Such alternate member, while attending any regular and or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all powers and duties of such regular member so absent.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.127 DEVELOPMENT SUBJECT TO DESIGN REVIEW.

The following types of development shall be subject to review by the Design Review Board:

(A) All new commercial buildings and new accessory and/or appurtenant buildings;

(B) All exterior expansions, additions, alterations, and modifications of existing commercial buildings and their accessory and/or appurtenant buildings;

(C) All new single- and multi-family dwellings and new accessory and/or appurtenant buildings;

(D) All exterior additions, alterations, and modifications to existing single- or multi-family dwellings and accessory and/or appurtenant buildings;

(E) All new accessory and appurtenant buildings on the premises of existing dwellings;

(F) Driveway redesign or realignment for new and existing residential and commercial buildings; and

(G) Any mechanical equipment when it is installed as part of a new commercial building.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.128 APPLICATION REQUIRED TO BE FILED.

(A) The property owner or authorized agent shall supply all required information and fill out an application form available in the Town Hall. Completed applications shall be considered by the Design Review Board within 30 days and sooner if possible.

(B) Applications shall be submitted at least two weeks prior to the meeting in order to give the Board members adequate time for study.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.129 DUTIES AND POWERS OF THE DESIGN REVIEW BOARD.

(A) The Design Review Board shall review all applications for the following elements: harmony of proposed building with adjacent buildings and overall town historic character, site design, building form and mass, building materials, and color as set forth in §§ 153.044 through 153.047.

(B) (1) The Design Review Board has the authority to review plans and recommend redesign of a building or driveway.

(2) The Board's comments on an application are intended to assist property owners and developers in building structures that are in harmony with the town's aesthetic and historic character, which will lead to increased property values and aesthetically pleasing structures and environments.

(C) Review shall take into account compliance with other town ordinances that effect design, such as this chapter and §§ 93.30 through 93.40.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

#### § 153.130 SUBMITTAL REQUIREMENTS.

(A) The applicant shall submit the following information for all residential structures:

- (1) Site plan;
- (2) Floor plans; and
- (3) Exterior elevations, including type and color of all exterior building materials, awnings, exterior lighting, and fencing.

(B) In addition to division (A) above, applicants for commercial structures shall submit the following information:

- (1) Elevations and dimensions of all sides of existing and proposed buildings, including roof mechanical equipment, vents, chimneys, or other projecting items above the roof line;
- (2) Elevations and dimensions of all existing or proposed solid waste and recycling containment areas;
- (3) Type and color of all mechanical screening material, metal flashing, and the like;
- (4) In order to aid in evaluating the exterior design, the applicant shall submit schematic floor plans showing, if applicable, window locations, doors, loading docks, projected interior layouts, seating, bar areas, waiting areas, vestibules, storage areas, food preparation areas, interior trash, or recycling space and the like;
- (5) The height, location, and screening materials for heating, air conditioning, and ventilating and electrical equipment;
- (6) Colored exterior building elevations, exterior building, and finish material samples and color pallets; and
- (7) Other information as required.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.131. DEVELOPMENT AGREEMENTS<sup>37</sup>

Pursuant to NCGS Chapter 160D, Article 12, the Town of Biltmore Forest may enter into a development agreement with developers, subject to the procedures outlined below.

(A) Before entering into a development agreement, a local government shall conduct a legislative hearing on the proposed agreement. The notice provisions of G.S. 160D-602 applicable to zoning map amendments shall be followed for this hearing. The notice for the hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 25, 51(a), (b), (d).)

(B). Content and modification.

A development agreement shall, at a minimum, include all of the following:

(1) A description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.

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<sup>37</sup> Entirety of this section added as a result of GS160D-105. No prior development agreement standards within Zoning Ordinance.

(6) A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.

(7) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(C) A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period of time. If required by ordinance or in the agreement, the development agreement shall provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date does not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160D-1008 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as set forth in the agreement.

(D) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.

(E) The development agreement also may cover any other matter, including defined performance standards, not inconsistent with this Chapter. The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.

(F) Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement. What changes constitute a major modification may be determined by ordinance adopted pursuant to G.S. 160D-1003 or as provided for in the development agreement.

(G) Any performance guarantees under the development agreement shall comply with G.S. 160D-804.1. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 26, 51(a), (b), (d).)

§ 153.132. Vesting.

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 160D-108(c) or G.S. 160D-108.1(f), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement.

(d) This section does not abrogate any vested rights otherwise preserved by law. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 27, 51(a), (b), (d).)

#### § 153.133. Breach and cure.

(a) Procedures established pursuant to G.S. 160D-1003 may include a provision requiring periodic review by the zoning administrator or other appropriate officer of the local government, at which time the developer shall demonstrate good-faith compliance with the terms of the development agreement.

(b) If the local government finds and determines that the developer has committed a material breach of the agreement, the local government shall notify the developer in writing setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement, provided the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160D-405.

(d) An ordinance adopted pursuant to G.S. 160D-1003 or the development agreement may specify other penalties for breach in lieu of termination, including, but not limited to, penalties allowed for violation of a development regulation. Nothing in this Article shall be construed to abrogate or impair the power of the local government to enforce applicable law.

(e) A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of a development agreement. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### § 153.134. DEVELOPMENT AGREEMENTS

Subject to the provisions of G.S. 160D-1006(e), a development agreement may be amended or terminated by mutual consent of the parties. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### § 153.135. Change of jurisdiction.

(a) Except as otherwise provided by this Article, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement or the residents of the local government, or both, in a condition dangerous to their health or safety, or both. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### § 153.136. Recordation.

The developer shall record the agreement with the register of deeds in the county where the property is located within 14 days after the local government and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

§ 153.999 PENALTY.

(A) Any person, firm, or corporation who violates the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding \$50 and/or imprisoned for a period of time not exceeding 30 days. Each day of violation shall be considered a separate offense.

(B) Unless extraordinary and reasonably unforeseeable delaying factors not resulting from the owner's action or inaction can be clearly demonstrated and proven, failure to have the construction or remodeling substantially complete at the end of the two-year time period shall subject the property owner to a fine of \$250 per day.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)





# G.S. Chapter 160D Checklist of Changes to Local Ordinances, Policies, and Practices

This checklist outlines provisions in the new Chapter 160D of the North Carolina General Statutes (hereinafter G.S.) as well as related statutory changes that will be incorporated into Chapter 160D. The changes to the statutes affect the language of local ordinances, the options for local decision processes, and the administrative practices related to development regulations.

This checklist is one piece of a larger set of resources and training materials, including an explanatory book, *Chapter 160D: A New Land Use Law for North Carolina*. Each item on this checklist is described more thoroughly in those additional resources. Section headers in this checklist note the corresponding chapter and section of the Chapter 160D book [in brackets]. Check [nc160D.sog.unc.edu](http://nc160D.sog.unc.edu) for additional resources and training.

The checklist has specific notations, which are accompanied by specific icons, as follows:

- ☐ Denotes **legislative changes** for which local governments *must* take action (statutory citations are in parentheses)
- Denotes **permissive legislative changes** for which local governments *may* take action
- △ Denotes **notable legislative changes** that do not require local action but of which local governments must *be aware*

\*For items noted with an asterisk, local governments do not have authority for the change until January 1, 2021, unless legislation authorizes earlier effectiveness. Noted changes may be incorporated into ordinances and policies, but they must not be effective until 2021. All other changes may be adopted and effective immediately.

## I. Terminology and Citations [Chapter 1, Section III]

- ☐ **Must** update any references to provisions in G.S. Chapter 160A or 153A to indicate relevant provisions in Chapter 160D. (See appendixes B and C in the Chapter 160D book.)
- ☐ **Must** align ordinance terminology with Chapter 160D terminology for *conditional zoning* and *special use permits*; must delete use of the terms *conditional use permit*, *special exception*, *conditional use district zoning*, and *special use district zoning*. (See G.S. 160D-102.)
- ☐ **Must** ensure that ordinance definitions for the following terms are not inconsistent with definitions provided in state law and regulation: *building*, *dwelling*, *dwelling unit*, *bedroom*, and *sleeping unit*. (S.L. 2019-111, § 1.17.)
- **May** align ordinance terminology with Chapter 160D terminology, including for the following terms: *administrative decision*, *administrative hearing*, *determination*, *developer*, *development*, *development approval*, *development regulation*, *dwelling*, *evidentiary hearing*, *legislative*

*decision, legislative hearing, planning and development regulation jurisdiction, and quasi-judicial decision.* (G.S. 160D-102.)

## II. Geographic Jurisdiction [Chapter 2, Section I]

- \*For extension of extraterritorial jurisdiction (ETJ), a municipality **must** provide mailed notice thirty days prior to ETJ hearing; municipality **may** hold one hearing (with single mailed notice) regarding ETJ and initial zoning amendment. (G.S. 160D-202(d))
- Municipality **may** hold hearings in anticipation of change in jurisdiction. (G.S. 160D-204.)
- \*For a parcel in two jurisdictions, the owner and the jurisdictions **may** agree for development regulations from one jurisdiction to apply to the entire parcel. (G.S. 160D-203.)
- \*In ETJ, the county **may** elect to exercise development regulations that the municipality is not exercising. (G.S. 160D-202(b).)

## III. Boards [Chapter 2, Section II]

### A. In General

- Must** adopt broadened conflict-of-interest standards for governing and advisory boards. (G.S. 160D-109.)
- Must** keep minutes of proceedings of each board. (G.S. 160D-308.)
- Must** have each board member take an oath of office before starting his or her duties. (G.S. 160D-309.)
- Must** update ETJ population estimate, at least with each decennial census (also calculation for proportional representation is simplified and process for appointment is clarified). (G.S. 160D-307.)
- Must** provide proportional representation for ETJ on preservation commission if any districts or landmarks are designated in the ETJ. (G.S. 160D-307.)
- May** have detailed rules of procedure for each board; **may** be adopted by governing board; if not, then **may** be adopted by individual board; if adopted, **must** maintain board rules of procedure (by clerk or other officer as set by ordinance) and **must** post board rules of procedure to website, if the jurisdiction has a website. (G.S. 160D-308.)
- May** establish reasonable procedures to solicit, review, and make appointments; governing board typically makes appointments but may delegate that appointment-making authority. (G.S. 160D-310.)
- May** establish additional advisory boards related to development regulations. (G.S. 160D-306.)

## B. Planning Board

- May** assign to planning board the coordination of citizen engagement for planning. (G.S. 160D-301.)
- May** assign planning board to serve as preliminary forum for review and comment on quasi-judicial decisions, provided that no part of the preliminary forum or recommendation may be used as a basis for the deciding board. (G.S. 160D-301.)

## C. Board of Adjustment

- May** assign board of adjustment to hear and decide matters under any development regulation, not just zoning. (G.S. 160D-302.)
- May** assign duties of housing appeals board to board of adjustment. (G.S. 160D-305.)

# IV. Land Use Administration [Chapter 2, Section III]

## A. In General

- Must** incorporate new staff conflict-of-interest standards into ordinance or policy. (G.S. 160D-109.)
- Must** maintain in paper or digital format current and prior zoning maps for public inspection. (G.S. 160D-105.)
- Must** maintain in paper or digital format any state or federal agency maps incorporated by reference into the zoning map. (G.S. 160D-105.)
- May** enact ordinances, procedures, and fee schedules relating to administration and enforcement of development regulations. (G.S. 160D-402(b).)
- May** charge reasonable fees for support, administration, and implementation of development regulation; **must** use any such fees for that purpose, not for other purposes. (G.S. 160D-402(d).)

## B. Enforcement

- Must** issue notices of violation (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different; may deliver to occupant or person undertaking the activity; delivery by hand, email, or first-class mail; may be posted onsite; administrator to certify NOV for the file.) (G.S. 160D-404(a).)
- If inspecting, **must** enter the premises during reasonable hours and upon presenting credentials; **must** have consent of premises owner or an administrative search warrant to inspect areas not open to the public. (G.S. 160D-403(e).)
- For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)
- May** perform inspections for other development approvals to ensure compliance with state law, local law, and the terms of the approval; **must** perform (or contract for) inspections for building permits. (G.S. 160D-1113; -403(e).)

- **May** perform inspections for general code compliance and enforcement (inspections unrelated to a development approval). (G.S. 160D-402(b).)
- **May** require a certificate of compliance or occupancy to confirm that permitted work complies with applicable laws and terms of the permit; still **must** require certificate of occupancy for work requiring a building permit. (G.S. 160D-403(g).)
- **May** issue stop-work orders for illegal or dangerous work or activity, whether related to a permit or not. (G.S. 160D-404(b).)
- **May** continue to use general enforcement methods, including civil penalties, fines, court-ordered actions, and criminal prosecution. (G.S. 160D-404(c).)
- △ Be aware that a local government must bring a court action in advance of the applicable five- and seven-year statutes of limitation. (G.S. 1-51 and -49; established prior to Chapter 160D.)

## V. Substance of Zoning Ordinance [Chapter 3, Section I]

- **Must** maintain current and prior zoning maps for public inspection (local government clerk or other office may be the responsible office); **may** adopt and maintain in paper or digital format. (G.S. 160D-105.)
- **Must** eliminate conditional-use-district zoning; existing conditional-use-district zoning converts to conditional district on January 1, 2021. (G.S. 160D-703; S.L. 2019-111, § 2.9(b).)
- **\*May** incorporate maps officially adopted by state or federal agencies (such as flood-insurance rate maps (FIRMs)) into the zoning map; **may** incorporate *the most recent officially adopted version* of such maps so that there is no need for ordinance amendment for subsequent map updates; **must** maintain current effective map for public inspection; **may** maintain in paper or digital format. (G.S. 160D-105.)
- **\*May** require certain dedications and performance guarantees for zoning approvals to the same extent as for subdivision approvals. (G.S. 160D-702.)
- **May** use form-based codes. (G.S. 160D-703(a)(3).)
- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define “minor modification” by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)
- **May** apply zoning standards jurisdiction-wide, not just on a zoning-district-by-zoning-district basis. (G.S. 160D-703(d).)
- **\*May** regulate development over navigable waters, including floating homes. (G.S. 160D-702(a).)

## VI. Substance of Other Development Ordinances [Chapter 3, Section II]

- Must** conform subdivision performance guarantee requirements with statutory standards. (S.L. 2019-79 (S.B. 313), to be incorporated into G.S. Chapter 160D.)
- Must** conform subdivision procedures for expedited review of certain minor subdivisions. (G.S. 160D-802, established prior to G.S. Chapter 160D.)
- Must** exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)
- Must** not exclude manufactured homes based on the age of the home. (G.S. 160D-910.)
- \*Must** follow standardized process for housing-code enforcement to determine owner's abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)
- May** adopt moratoria for development regulations (subject to limitation on residential uses); moratoria do not affect rights established by permit choice rule. (G.S. 160D-107.)

### A. Historic Preservation

- Must** follow standard quasi-judicial procedures for preservation certificates of appropriateness. (G.S. 160D-947(c).)
- Must** frame preservation district provisions as "standards" rather than "guidelines." (G.S. 160D-947(c).)
- \*May** choose for appeals of preservation commission decisions to go directly to superior court rather than to board of adjustment. (G.S. 160D-947(e).)

### B. Development Agreements

- Must** process a development agreement as a legislative decision. (G.S. 160D-105.)
- Must** have a local government as a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently). (G.S. 160D-1001(b).)
- May** consider a development agreement concurrently with a rezoning, subdivision, or site plan; **may** consider a development agreement in conjunction with a conditional zoning that incorporates the development agreement. (G.S. 160D-1001(d).)
- \*May** address fewer topics in development agreement content (list of mandated topics is shortened). (G.S. 160D-1006.)
- May** mutually agree with a developer for the developer to provide public improvements beyond what could have been required, provided such conditions are included in the development agreement. (G.S. 160D-1006(d).)
- May** include penalties for breach of a development agreement in the agreement or in the ordinance setting the procedures for development agreements; either party may bring legal action seeking an injunction to enforce a development agreement. (G.S. 160D-1008.)

## VII. Comprehensive Plan [Chapter 4, Section I]

- Must** adopt a comprehensive plan by July 1, 2022, to maintain zoning (no need to re-adopt a reasonably recent plan). (G.S. 160D-501(a).)
- Must** adopt a plan or a plan update following the procedures used for a legislative decision. (G.S. 160D-501(c).)
- Must** reasonably maintain a plan. (G.S. 160D-501(a).)
- May** coordinate a comprehensive plan with other required plans, such as Coastal Area Management Act (CAMA) plans. (G.S. 160D-501(a).)
- May** coordinate with other local governments, state agencies, or regional agencies on planning processes. (G.S. 160D-503(a).)

## VIII. Legislative Decisions [Chapter 4, Section II]

### A. Notice

- Must** follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; **must** adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)
- For zoning-map amendments, **must** provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)
- For zoning-map amendments, **must** provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)
- For extension of ETJ, **may** use single mailed notice for ETJ and zoning-map amendment pursuant to statutory procedures. (G.S. 160D-202.)
- For zoning-map amendments, **may** require applicant to notify neighbors and hold a community meeting and **may** require report on the neighborhood communication as part of the application materials. (G.S. 160D-602(e).)

### B. Planning Board Comment

- Must** refer zoning amendments to the planning board for review and comment; **must** not have governing board handle planning board duty to review and comment on zoning amendments. (G.S. 160D-604(c), (e).)
- Must** have planning board consider any plan adopted according to G.S. 160D-501 when making a comment on plan consistency. (G.S. 160D-604(d).)
- May** refer development regulation amendments (other than zoning) to the planning board for review and comment. (G.S. 160D-604(c).)



### C. Plan Consistency

- When adopting an amendment to the zoning ordinance, **must** adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. (G.S. 160D-605(a).) (*\*This eliminates the 2017 requirement that statements take one of three particular forms.*)
- May** adopt plan-consistency statement when acting upon the zoning amendment or as a separate motion. (G.S. 160D-605(a).)
- \*May** meet the requirement for plan consistency even without formal adoption of a written statement if the minutes of the governing board meeting reflect that the board was fully aware of and considered the plan. (G.S. 160D-605(a).)
- May** concurrently consider a comprehensive plan amendment and a zoning amendment; must not require a separate application or fee for plan amendment. (G.S. 160D-605(a).)
- Must** note on the applicable future land use map when a zoning-map amendment is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved. (G.S. 160D-605(a).) (*This clarifies that a rezoning inconsistent with a plan does not amend the text of the plan, but it does amend the future land use map.*)
- \*For** a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan-amendment process. (G.S. 160D-501.)
- Must** adopt a statement of reasonableness for zoning-*map* amendments; for such statements, **may** consider factors noted in the statutes; **\*may** adopt a statement of reasonableness for zoning-*text* amendments. (G.S. 160D-605(b).)
- May** consider and approve a statement of reasonableness and a plan-consistency statement as a single, combined statement. (G.S. 160D-605(c).)

### D. Voting

- \*Must** permit adoption of a legislative decision for development regulation on first reading by simple majority; no need for two-thirds majority on first reading, as was required for cities under prior law. (G.S. 160A-75; S.L. 2019-111, § 2.5(n).)

### E. Certain Legislative Decisions

- Must** prohibit third-party down-zonings; **may** process local government–initiated down-zonings (S.L. 2019-111, Pt. I.)
- Must** obtain applicant’s/landowner’s written consent to conditions related to a conditional-zoning approval to ensure enforceability. (S.L. 2019-111, Pt. I.)
- May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional-use-district zoning. (G.S. 160D-102.)



- With applicant’s written consent, **may** agree to conditional-zoning conditions that go beyond the basic zoning authority to address additional fees, design requirements, and other development considerations. (S.L. 2019-111, Pt. I.)
- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define “minor modification” by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

## IX. Quasi-Judicial Decisions [Chapter 4, Section III]

### A. Procedures

- **Must** follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)
- **Must** hold an evidentiary hearing to gather competent, material, and substantial evidence to establish the facts of the case; the evidentiary hearing **must** have testimony under oath; **must** establish written findings of fact and conclusions of law. (G.S. 160D-406.)
- Board chair **must** rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling **may** be appealed to the full board. (G.S. 160D-406(d).)
- **Must** allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; **may** allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)
- **May** continue an evidentiary hearing without additional notice if the time, date, and place of the continued hearing is announced at a duly noticed hearing that has been convened; if quorum is not present at a meeting, the evidentiary hearing is automatically continued to the next regular meeting of the board with no notice. (G.S. 160D-406(b).)
- **May** distribute meeting packet to board members in advance of the evidentiary hearing; if this is done, then **must** distribute the same materials to the applicant and landowner at the same time; **must** present such administrative materials at the hearing and make them part of the hearing record. (G.S. 160D-406(c).)
- **May** have the planning board serve as a preliminary forum for review in quasi-judicial decisions; if this is done, the planning board must not conduct a formal evidentiary hearing but must conduct an informal preliminary discussion of the application; the forum and recommendation must not be used as the basis for the decision by the board—the decision must still be based on evidence presented at the evidentiary hearing. (G.S. 160D-301.)
- **May** require recordation of special use permits with the register of deeds. (G.S. 160D-705(c).)
- △ **Be aware** that the definition of *close family relationship* as used for conflicts of interest includes spouse, parent, child, brother, sister, grandparent, or grandchild (including step, half, and in-law relationships). (G.S. 160D-109(f).)

- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (S.L. 2019-111, § 1.9.)

## B. Certain Quasi-Judicial Decisions

- Must** not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. (S.L. 2019-111, Pt. I.)
- Must** obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability. (S.L. 2019-111, Pt. I.)
- Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; **must** presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- \*May** adjust variance standards to provide for reasonable accommodation under the federal Fair Housing Act. (G.S. 160D-705(c).)
- May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional-use-district zoning. (G.S. 160D-102.)
- May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification" by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

## X. Administrative Decisions [Chapter 4, Section IV]

### A. Development Approvals

- Must** provide development approvals in writing; **may** provide in print or electronic form; if electronic form is used, then it **must** be protected from further editing. (G.S. 160D-403(a).)
- Must** provide that applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property. (G.S. 160D-403(a).)
- Must** provide that development approvals run with the land. (G.S. 160D-104.)
- For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)
- May** require community notice or informational meetings as part of the decision-making process for administrative development approvals (quasi-judicial and legislative decisions already had notice and hearing requirements). (G.S. 160D-403(h).)
- May** set expiration of development approvals if work is not substantially commenced; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).) **Be aware** that legislation will clarify the provisions on duration of development approvals. (G.S. 160D-403(c); S.L. 2019-111, § 1.3.)

- **May** set expiration of development approvals if work is discontinued; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).)
- **May** authorize administrative staff to approve minor modifications of development approvals and conditional-zoning approvals; if this is done, then **must** define “minor modifications” by ordinance and **must** not include modification of permitted use or density of development; major modifications **must** go through full applicable approval process. (G.S. 160D-403(d); -703(b); -705(c).)

## B. Determinations

- **Must** provide written notice of determination by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner. (G.S. 160D-403(b).)
- **May** designate an official to make determinations for a particular development regulation. (G.S. 160D-403(b).)
- **May** require owner to post notice of determination on the site for ten days; if such is not required, then owner has option to post on the site to establish constructive notice. (G.S. 160D-403(b).)

## C. Appeals of Administrative Decisions

- **Must** allow administrative decisions of any development regulations (not just zoning) to be appealed to the board of adjustment, unless provided otherwise by statute or ordinance. (Appeals relating to erosion and sedimentation control, stormwater control, or building-code and housing-code violations are not made to the board of adjustment unless specified by local ordinance.) (G.S. 160D-405.)
- **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- **Must** require the official who made the decision (or his or her successor if the official is no longer employed) to appear as a witness in the appeal. (G.S. 160D-406.)
- **Must** pause enforcement actions, including fines, during the appeal. (G.S. 160D-405.)
- **May** assign the duty of hearing appeals to another board; if this is done, such board must follow quasi-judicial procedures. (G.S. 160D-405.)
- **May** designate that appeals be filed with the local government clerk *or* another official. (G.S. 160D-405.)

## XI. Vested Rights and Permit Choice [Chapter 5, Section I]

### A. Vested Rights

- Must** recognize that building permits are valid for six months, as under prior law. (G.S. 160D-108(d)(1).)
- Must** recognize the default rule that development approvals are valid for twelve months, unless adjusted by statute or local rule. (G.S. 160D-108(d)(2).)
- Must** identify site-specific vesting plans (formerly site-specific development plans) with vesting for two to five years, as under prior law, except for specified exceptions. (G.S. 160D-108(d)(3); -108(f).)
- Must** recognize multi-phase developments—long-term projects of at least 25 acres—with vesting up to seven years, except for specified exceptions (160D-108(d)(4); -108(f).) (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)
- May** provide for administrative determination of vested rights and for appeal to the board of adjustment. (G.S. 160D-108(c), -405.)
- Be aware** that a person claiming vested rights may bring an original civil action in court, skipping administrative determination and board of adjustment consideration. (G.S. 160D-405(c).)
- Be aware** that vested rights run with the land, except for state-permitted outdoor advertising permits that run with the owner of the permit. (G.S. 160D-108(g); S.L. 2019-111, Pt. I.)

### B. Permit Choice

- Must** not make an applicant wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules. (G.S. 160D-108(b).)
- Be aware** that if a local development regulation changes after an application is submitted, the applicant may choose the version of the rule that applies; but **may** require the applicant to comply with new rules if the applicant delays the application for six months. (G.S. 160D-108(b); S.L. 2019-111, Pt. I.)
- Be aware** that an application for one development permit triggers permit choice for permits under any development regulation; such permit choice is valid for eighteen months after approval of the initial application. (S.L. 2019-111, Pt. I.)

## XII. Judicial Review [Chapter 5, Section II]

### A. Declaratory Judgments

- △ **Be aware** that an individual may bring a declaratory judgment action to challenge legislative zoning decisions, vested rights claims, and challenges to land use authority related to administrative decisions, subject to specified procedures. (G.S. 160D-1401.)
- △ **Be aware** that other civil actions may be authorized—Chapter 160D does not limit availability of other actions. (G.S. 160D-1404.)

### B. Appeals of Quasi-Judicial Decisions

- **\*Must** update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts; default rule is that such appeals go straight to court; local government may opt for such appeals to go to the board of adjustment, as under prior statutes. (G.S. 160D-947.)
- **Must** provide that appeals of certificates of appropriateness must be filed within thirty days after the decision is effective or written notice is provided, the same as for appeals of other quasi-judicial decisions. (G.S. 160D-947; -1405.)
- △ **Be aware** that on appeal a party may request a stay of the approval or enforcement action. (G.S. 160D-1402(e).)
- △ **Be aware** that a local government may seek a stay in favor of itself (to prevent development under an approval). (G.S. 160D-1402(e).)
- △ **Be aware** that if, in the absence of a stay, an applicant proceeds with development, the person does so at his or her own risk. (G.S. 160D-1402(l).)
- △ **Be aware** that on appeal, the superior court now must allow for supplementing the record on questions of standing, conflicts of interest, constitutional violations, or actions in excess of statutory authority. (S.L. 2019-111, § 1.9.)
- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (S.L. 2019-111, § 1.9.)
- △ **Be aware** of specific judicial instructions for decisions of appeals of quasi-judicial decisions. (S.L. 2019-111, § 1.9.)

### C. Subdivision Decisions

- **May** establish a rule that administrative subdivision decisions are appealed to the board of adjustment. (G.S. 160D-1405.)
- △ **Be aware** that appeals of administrative subdivision decisions may be appealed directly to superior court. (G.S. 160D-1403.)
- △ **Be aware** that quasi-judicial subdivision decisions are appealed to superior court in the nature of certiorari. (G.S. 160D-1402.)

## D. Attorneys' Fees

- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a city or county violated a statute or case law setting forth unambiguous limits on its authority. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a local government took action inconsistent with, or in violation of, the permit choice and vested rights statutes. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court may award attorneys' fees in other matters of local government litigation. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)

## E. Additional Judicial Rules

- △ **Be aware** that a court may join a civil action challenging an ordinance with an appeal in the nature of certiorari. (G.S. 160D-1402(m).)
- △ **Be aware** that a local government **must** not assert the defense of estoppel to enforce conditions to which an applicant did not consent in writing. (S.L. 2019-111, Pt. I.)
- △ **Be aware** that an action is not rendered moot if the party loses the relevant property interest as a result of the local government action being appealed, subject to applicable case law limits. (S.L. 2019-111, Pt. I.)