

**ZONING ORDINANCE**

**OF THE**

**TOWN OF BURNSVILLE, NORTH CAROLINA**

**Zoning Ordinance  
Of the  
Town of Burnsville, North Carolina**

Prepared for:

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## Table of Contents

Article		Page
Article 1	Title	8
Article 2	Authority and Enactment	8
Article 3	Jurisdiction	8
Article 4	Definitions	8
	Section 400	Word Interpretation 8
	Section 401	Definitions 9
Article 5	Establishment of Zoning Districts and Maps	19
	Section 500	Use Districts 19
	Section 501	Establishment of District Boundaries 19
	Section 502	Establishment of a Zoning Map 19
	Section 503	Rules Governing District Boundaries 20
	Section 504	Establishment of current Floodplain Maps 20
Article 6	Table of Uses and Table of Dimensional Requirements	21
	Section 600	Notes on Table of Uses 21
	Section 601	Table of Uses 21
	Section 602	Table of dimensional requirements 23
Article 7	Use Standards	24
	Section 700	Intent 24
	Section 701	Adult Establishment 24
	Section 702	Assembly Halls/ Coliseums/ Gymnasiums 24
	Section 703	Automobile services, repair 24
	Section 704	Bottling Plants 24
	Section 705	Cemeteries 24
	Section 706	Commercial Accessory Entertainment Structure 25
	Section 707	Child Care Center 25
	Section 708	Child Care Homes 25
	Section 709	Customary Accessory Uses or Structures 25
	Section 710	Customary Incidental Home Occupations 25
	Section 711	Dwelling - Multi-family (Four or less units) 26
	Section 712	Dwelling - Secondary 26
	Section 713	Dwelling – Single Family 26
	Section 714	Dwelling – Two-Family 26

Section 715	Electronic Gaming Operation	27
Section 716	Group Development	27
Section 717	Hospitals	27
Section 718	Libraries	27
Section 719	Mobile Food Vendors	27
Section 720	Manufactured Homes	28
Section 721	Modular Homes	28
Section 722	Nursing Home/ Group Care Facility	29
Section 723	Public Safety Facilities	29
Section 724	Recreational Facilities	29
Section 725	Schools	29
Section 726	Shopping Center (Less than 25,000 sq. ft.)	29
Section 727	Shopping Center (Greater than 25,000 sq. ft.)	29
Section 728	Short Term Rentals	29
Section 729	Storage Yards	30
Section 730	Tattoo Parlors	30
Section 731	Wholesale and Warehousing Establishments	30
Section 732	Special Uses	30
Section 800	Design Standards	32
Section 801	Building Lines and Arrangement	32
Section 802	Building Orientation	33
Section 803	Building Frontage	34
Section 804	Building Coverage	35
Section 805	Building Mass and Height Transitions	36
Section 806	Building Articulation	36
Section 807	Building Façades and Openings	37
Section 808	Building Rooflines	38
Section 809	Building Height	38
Section 810	Building Materials, Finishes, and Colors	38
Section 811	Awnings	39
Section 812	Exterior Lighting	40
Section 813	Parking	40
Section 814	Utilities, Trash Containment, Buffering and Fencing	41
Section 815	Landscaping	41
Section 816	Pedestrian and Bicycle Amenities	43
Section 817	Storm Water Drainage Plan	43

Article 8      Design Standards

	Section 818	Street Yard, Parking Lot Yard, and Buffer Yard Design	44
Article 9	Development Approval Process		48
	Section 900	Permits Required	48
	Section 901	Who May Submit Permit Applications	48
	Section 902	Applications to be Complete	48
	Section 903	Staff Consultation before Formal Application	49
	Section 904	Staff Consultation after Application Submitted	49
	Section 905	Application to be Processed Expeditiously	49
	Section 906	Effect of Permit on Successors and Assigns	49
	Section 907	Administrative Approvals	50
	Section 908	Quasi-Judicial Approvals	51
	Section 909	Legislative Approvals	54
	Section 910	Deviation from Approved Plans	54
	Section 911	Expiration of Permits	54
Article 10	Administration		56
	Section 1000	Zoning Administrator	56
	Section 1001	Duties of the Zoning Administrator	56
	Section 1002	Code Enforcement Officer	56
	Section 1003	Floodplain Administrator	57
	Section 1004	Conflicts of Interest	57
Article 11	Boards		58
	Section 1100	Types of Boards	58
	Section 1101	Oaths	58
	Section 1102	Minutes	58
	Section 1103	Conflicts of Interest	58
	Section 1104	Planning Board	59
	Section 1105	Design Review Committee	59
	Section 1106	Board of Adjustment	59
	Section 1107	Quasi-Judicial Process	60
Article 12	General Provisions		63
	Section 1200	Use	63
	Section 1201	Height and Density	63
	Section 1202	Lot Size	63
	Section 1203	Required Yards and Other Spaces	63
	Section 1204	One Principal Building on a Lot	63
	Section 1205	Necessary Repairs Permitted	63
	Section 1206	Street Access	63

	Section 1207	Visibility at Intersections	63
	Section 1208	Vacant Lots	64
	Section 1209	Travel Trailers and Recreational Vehicles	64
	Section 1210	Sedimentation Control	64
	Section 1211	Nonconformities	64
	Section 1212	Double Frontage Lots	66
	Section 1213	Off-Street Parking	66
	Section 1214	Off-Street Loading and Unloading Space	68
	Section 1215	Sign Compliance	68
Article 13	Exceptions and Modifications		70
	Section 1300	Changes to Development Approvals	70
	Section 1301	Front Yard Setback for Dwellings	70
	Section 1302	Completion of Buildings Under Construction	71
	Section 1303	Height Limitations	71
	Section 1304	Side Yard Setback for Dwellings	71
	Section 1305	Projections Into Required Open Space	71
	Section 1306	Right-of Way	71
Article 14	Amendments		72
	Section 1400	Initiation and Referral of Amendments	72
	Section 1401	Application	72
	Section 1402	Planning Board Action	72
	Section 1403	Town Council Action	72
	Section 1404	Down-Zoning	73
	Section 1405	Citizen Comments	74
Article 15	Enforcement, Appeals and Remedies		75
	Section 1500	Staff Inspections	75
	Section 1501	Enforcement	75
	Section 1502	Remedies	76
Article 16	Legal Status Provisions and Effective Date		77
	Section 1600	Severability	77
	Section 1601	Conflict with Other Laws	77
	Section 1602	Applicability to Governmental Buildings	77
	Section 1603	Reenactment and Repeal of Existing Zoning Ordinances	77
Article 17	Backyard Chickens		78
	Section 1700	General Provisions	78
	Section 1701	Coops	78
	Section 1702	Permits	78
	Section 1703	Effective Date	79
	Section 1704	Adoption	79

## **ARTICLE 1**

### **TITLE**

This ordinance shall be known and may be cited as "The Zoning Ordinance of the Town of Burnsville, North Carolina."

## **ARTICLE 2**

### **AUTHORITY AND ENACTMENT**

In pursuance of the authority conferred by the North Carolina General Statutes, particularly Chapter 160D-702(a) the Town Council of the Town of Burnsville, North Carolina, hereby ordain and enacts into law the following articles and sections for the purpose of: lessening congestion in the streets; securing safety from fire, panic and other dangers; promoting health and general welfare; providing adequate light and air; preventing the overcrowding of land; avoiding undue concentration of population; facilitating the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements; conserving the value of buildings; and encouraging the most appropriate use of land through the Town of Burnsville.

## **ARTICLE 3**

### **JURISDICTION**

The provisions of this ordinance shall apply within the corporate limits of the Town of Burnsville as specifically identified and delineated on the map entitled "The Official Zoning Map of the Town of Burnsville, North Carolina." Said map and all explanatory material thereon is hereby made a part of this ordinance. The zoning ordinance and zoning map shall be maintained on file in the office of the Town Clerk.

## **ARTICLE 4**

### **DEFINITIONS**

#### **Section 400. Word Interpretation**

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

1. 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.
2. The word "Town" shall mean the Town of Burnsville, North Carolina.
3. The words "Town Council" shall mean the Town Council of the Town of Burnsville, North Carolina. (Amended 6-26-14)
4. The words "Planning Board" shall mean the Planning Board of the Town of Burnsville, North Carolina.
5. The words "Board of Adjustment" or "Board" shall mean the Zoning Board of Adjustment of the Town of Burnsville, North Carolina.
6. The word "may" is permissive.
7. The word "shall" is mandatory.
8. The word "lot" includes the words "plot" or "parcel."
9. The word "structure" includes the word "building."

10. The words “used” or “occupied” as applied to any land or building shall be construed to include the meaning “intended, arranged or designed to be used or occupied.”
11. The words “person” or “applicant” include a firm, association, organization, partnership, corporation, company, trust, individual, or government unit.
12. The word “street” includes the words “road” or “highway.”
13. The word “ordinance” of “Zoning Ordinance” shall mean the Zoning Ordinance of the Town of Burnsville, North Carolina.
14. The words “Zoning Map” shall mean “The Official Zoning Map of the Town of Burnsville, North Carolina.”

**Section 401. Definitions**

1. Accessory Use or Structure. A use or structure customarily incidental and subordinate to the principal use or structure and located on the same lot with such principal use or structure.
2. Adult establishment. Any establishment, adult bookstore, adult motion picture theatre, adult mini motion picture theatre, adult live entertainment business, or massage business as defined in N.C.G.S. 14-202.10, or any successor thereto.
3. Administrative decision. - Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.
4. Administrative hearing. - A proceeding to gather facts needed to make an administrative decision.
5. Alley. A public way which affords only a secondary means of access to abutting property and which is not intended for general traffic circulation.
6. Apartment. A part of a building consisting of a room or rooms intended, designed or used as a residence by an individual or single family.
7. Apartment, Garage. A part of a garage consisting of a room or rooms intended, designed or used as a residence by an individual or single family.
8. Bakery. An establishment that produces and sells flour-based food baked in an oven such as bread, cookies, cakes, pastries, and pies.
9. Brewery. An establishment operating under a valid ABC permit that manufactures, sells or ships alcoholic beverages under the provisions of NCGS 18B-1104.
10. Buffer Strip. A planting strip at least eight (8) feet in width, composed of evergreen trees or shrubs which at maturity shall be not less than twelve (12) feet in height. The buffer strip shall be planted and maintained in a healthy growing conditions by the property owner who, under the terms of this ordinance, is required to provide the buffer strip.

Commented [CB1]: Added definition

Commented [CB2]: Added definition

Commented [CB3]: Added definition

11. Buildable Area. The portion of a lot remaining after required yards have been provided.
12. Building. Any structure having a roof supported by columns or walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such structures, with or without a roof, shall not be deemed to make them one building.
13. Building, (Customary Accessory). A building located on the same lot with a principal building, subordinate to the principal building on the lot, and used for purpose clearly incidental to those of the principal building on the lot.
14. Building Height. The vertical distance from the average grade elevation taken at the fronting street side of a structure to the top of any parapet structure or roofline of a flat roof, the midpoint from the eaves to the ridgeline of a pitched roof, or the top of a mansard roof. Towers, spires, steeples, and enclosed rooftop mechanical equipment are not counted in height measurements.
15. Building Line. A line fixed parallel to a lot line beyond which a building cannot extend under the terms of this ordinance. Included are front, side and rear building lines.
16. Building, Principal. A building in which is conducting the main or principal use of the lot on which said building is situated.
17. Commercial Accessory Entertainment Structure. A separate structure located on a lot occupied by a commercial business whose uses are subordinate and incidental to the principal use of the property and which uses are associated with an entertainment function of the primary business. Examples of this type of structure would be a performing stage, covered pavilion or covered dining area.
18. Child care center. An individual, agency, or organization providing supervision or care on a regular basis for children who are not legal wards or foster children of the supervising adults. Child day care centers are designed to accommodate six or more children at a time and are not an accessory to residential use. A child care center operating in conjunction with a religious institution or school shall be considered an accessory use of such a religious institution.
19. Child care home. Care or supervision provided on a regular basis, as an accessory use within a primary dwelling, by a resident of the dwelling for not more than six children who are not related, legal wards or foster children of the supervising adult.
20. Determination. A written, final, and binding order, requirement, or determination regarding an administrative decision.
21. Developer. A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.
22. Development. Unless the context clearly indicates otherwise, the term means any of the following:
  - a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
  - b. The excavation, grading, filling, clearing, or alteration of land.
  - c. The subdivision of land as defined in G.S. 160D-802.
  - d. The initiation or substantial change in the use of land or the intensity of use of land.

Commented [CB4]: Added definition

Commented [CB5]: Added definitions to replace kindergartens and day nurseries

- 23. Development Agreement. Contracts between the Town and a developer that vest rights to develop a specific project for an extended period of time subject to the terms and conditions specified in the agreement.
- 24. Development approval. An administrative or quasi-judicial approval made pursuant to a Town Ordinance that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning compliance permits, site plan approvals, building permits, special use permits, variances, and certificates of appropriateness.
- 25. Development regulation. A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, storm water control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to this Chapter, or a local act or charter that regulates land use or development.
- 26. District. Any section of the Town of Burnsville and its zoning jurisdiction in which regulations are uniform.
- 27. 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.
- 28. Dwelling, Single-Family. A building arranged or designed to be occupied by one (1) family.
- 29. Dwelling, Two-Family. A building arranged or designed to be occupied by two (2) families living independently of each other.
- 30. Dwelling. Multifamily (four or less units/building). A building containing more than one but less than five residential dwelling units. Each unit has a separate entrance from the outside or through a common vestibule. Multi-family dwellings include but are not limited to duplexes, triplexes, fourplexes, townhouses and condos.
- 31. Dwelling. Multifamily (more than four units/building). A building containing more than four residential dwelling units. Each unit has a separate entrance from the outside or through a common vestibule. These structures may include apartments, townhouses and condos.
- 32. Dwelling. Secondary. A dwelling unit not exceeding 800 square feet of gross floor space and located on a lot with an existing single-family dwelling. No more than one such dwelling shall be situated on any lot and shall not be considered as an accessory use herein defined.
- 33. Dwelling Unit. A building or portion thereof providing complete and permanent living facilities for one (1) family.
- 34. Easement. A grant by a property owner of a strip of land for a specified purpose and use by the public, a corporation, or persons.
- 35. Electronic Gaming Operation. Any business enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. This term includes, but is not limited to internet cafes, internet sweepstakes, beach sweepstakes or cybercafés. This does not include any lottery approved by the State of North Carolina.

**Commented [BB6]:** Added definition for compliance with NCGS 160D

**Commented [CB7]:** Added definitions to comply with NCGS 160D

**Commented [CB8]:** Changed language to comply with NCGS 160D

**Commented [CB9]:** Added definitions

**Commented [CB10]:** Added definition

36. Family. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain over five (5) persons.

37. Shooting Range. A specialized facility or venue designed specifically for firearm usage, qualifications, training, practice or competitions.

Commented [CB11]: Added definition

38. Flood. A temporary rise in water levels or an accumulation of water runoff resulting in inundation of areas not ordinarily covered by water.

39. Floodplain. Any land susceptible to inundation by water from any source including, at a minimum, that area subject to a one-percent or greater chance of flooding in any given year.

40. Floodway. The channel of the stream and those portions of the adjoining floodplain which carry and discharge waters of a particular flood event.

41. Flood Fringe. The area of a floodplain which is outside of the floodway.

42. Government services. This term includes federal, state, and local government agencies that administer, oversee, and manage public programs and have executive, legislative, and/or judicial authority. This term does not include public safety facilities as defined herein.

Commented [CB12]: Added definitions

43. Gross Residential Density. The number of dwelling units to be built divided by the area of the tract being developed.

44. Group Care Facility. An establishment qualified for a license by the State of North Carolina to provide residents services to individuals of whom one or more are unrelated. Such individuals are handicapped, aged, and/or disabled; are undergoing rehabilitation or extended care; and are provided services to meet their needs by the group care facility. Group care facilities include group homes for all ages, halfway houses, and foster and boarding homes.

45. Group Development. A group of two (2) or more principal structures built on a single lot, tract or parcel of land not subdivided into the customary streets and lots and which will not be so subdivided, and designed for occupancy by separate families, businesses or other enterprises. Examples would be: cluster-type subdivisions, row houses, apartment courts, housing projects, schools and hospital campuses, shopping centers and industrial parks.

46. Home Occupation, Customary Incidental. An occupation conducted entirely within a dwelling and carried on by the occupants thereof.

47. Hotel. An establishment that provides lodging and usually meals, entertainment, and various personal services for the public.

48. Ice Vending Establishment. A vending location, either fully or partially automated, for the retail sale of ice.

Commented [CB13]: Added definition

49. Junkyard. The use of six hundred (600) or more square feet of any lot or tract for the outdoor storage and/or sale of waste paper, rags, scrap, metal or other such materials, including storage or dismantling of motor vehicles or machinery.

50. Kennel. An establishment either offering lodging and boarding facilities for dogs, cats, and other domestic pets for a fee, or breeding five or more animals.

51. 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 9 of this Chapter.

52. Legislative hearing. A hearing to solicit public comment on a proposed legislative decision.

**Commented [CB14]:** Added definition

53. 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.

54. Lot, Corner. A lot which occupies the interior angle at the intersection of two (2) street lines. The street line forming the least frontage shall be deemed the front of the lot except where the two (2) street lines front equally, in which case the owner shall be required to specify the front of the lot when requesting a zoning compliance permit.

55. Lot, Depth of. The average distance between front and rear lot lines.

56. Lot Line. A line dividing one parcel of property from another parcel of property or from a street right-of-way.

57. Lot Line, Front. The street right-of-way boundary at the front of the lot, that is, the line which separates the lot from the street at the front of the lot.

58. Lot Line, Rear. That line of a lot which is opposite and farthest from the front lot line. Where a lot abuts a street along the rear of the lot, the rear lot line shall be deemed to coincide with the street right-of-way boundary.

59. Lot Line, Side. Any lot line which meets an end of a front lot line. Where a lot abuts a street along the side of the lot, the side lot line shall be deemed to coincide with the street right-of-way boundary.

60. Lot of Record. Any lot for which a plat has been recorded in the Registry of Deeds of Yancey County, or a lot described by metes and bounds, the description of which has been so recorded.

61. Lot, Width of. The distance between side lot lines measured at the front building line.

62. Manufactured Building. A building mass-produced in a factory either independently or as a module for combination with other elements to form a building on site, and designed and constructed for transportation to a site for installation and use when connected to required facilities.

63. Manufactured Home. A building mass-produced in a factory either independently or as a module for combination with other elements to form a building on site, and designed and constructed for transportation to a site for installation and use when connected to required facilities. Said unit must bear a valid metal HUD certification label permanently affixed to the outside of the unit.

64. Manufactured Home Park. A contiguous parcel of land under single ownership which has been developed for the placement of manufactured homes for rental and non-transient use. Excluded from this definition are manufactured home sales lots on which unoccupied manufactured homes are parked for purposes of inspection and sale.

65. Manufactured Home Site. A plot of ground within a manufactured home park designated as rental property for the accommodation and use of one (1) trailer or manufactured home and containing all improvements and utility connections required under this ordinance as well as all other applicable regulations.

66. **Manufactured Unit, Double Wide.** For the purpose of this ordinance, a double-wide manufactured unit shall include both manufactured homes and manufactured buildings. A double-wide manufactured unit consists of two (2) or more separate sections which are designed to be connected on a site to form a single structure for one or more residential or non-residential uses. The exterior dimensions of the double-wide manufactured unit when assembled for use shall be not less than 32' x 24'. Said unit must bear a valid metal HUD certification label permanently affixed to the outside of the unit.

67. **Mobile food vendor.** Any mobile food unit, pushcart or motor vehicle, including all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle, which is purposed for the sale for consumption of food and beverages. The sale of alcoholic beverages shall not be permitted by any mobile food vender absent the issuance of the requisite special event permit.

**Commented [BB15]:** Added definition

68. ~~Mobile Home. A manufactured home built on a chassis. A mobile home shall be construed to remain a mobile home subject to all regulations applying thereto whether or not wheels, axles, hitches or other appurtenances of mobility are removed, and regardless of the nature of the foundation provided~~

**Commented [BB16]:** Replaced by manufactured home to keep consistency

69. **Modular Homes.** Modular home means a dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Off Frame Modular Homes are lifted by crane and placed on a required permanent foundation. On Frame Modular Homes consist of two or more sections transported to the site in a manner similar to manufactured homes or may consist of a series of panels or room sections transported on a truck and erected or joined together on the site. (amended 06/25/2020)

70. **Motel.** An establishment which provides lodging and parking and in which the rooms are rented on a short term basis and are usually accessible from an outdoor parking area.

71. **Nonconformity or Nonconforming Use.** Any parcel of land, use of land, building or structures, existing at the time of adoption or amendment of this ordinance, that does not conform to the use or dimensional requirements, of the district in which it is located.

72. **Noxious uses.** Any use that could be harmful to health or the environment if not properly regulated. Noxious uses include, but are not limited to, the following: power plants, water and sewage plants, landfills or recycling facilities, outdoor firing ranges, junk yards or salvage yards, rendering plants and slaughterhouses, asphalt or concrete plants or any extractive industry.

**Commented [CB17]:** Added definition

73. **Office park/complex.** A development on a tract of land that contains a number of separate businesses, offices, light manufacturing facilities, accessory and supporting uses, and common open space designed, planned, and constructed on an integrated and coordinated basis. (Amended 6-26-14)

74. **Office/professional.** Offices or studios of professional or service occupations or agencies generally classified as professionals, such as architects, engineers, attorneys, accountants, doctors, dentists, chiropractors, psychiatrists, psychologists, and the like. (Amended 6-26-14)

75. **Owner.** Any person, partnership, association, corporation or fiduciary having a legal or equitable title or any interest in any real property. No trustee in any deed of trust shall be considered an owner. The owner of record is the person or entity listed on a recorded deed, probated will or heir by intestacy.

**Commented [BB18]:** Added definition

76. **Parking Space.** An area for vehicular parking of not less than nine feet by 18 feet, exclusive of the necessary access space to reach such parking space

**Commented [BB19]:** Changed definition

77. **Pawnshop.** A business in which a pawnbroker, or one who engages in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders, whether licensed pursuant to Article 45 of Chapter 66 of the NC General Statutes or not, regularly conducts business which includes, but is not limited to making loans on pledges of tangible personal property; dealing in bullion stocks; purchasing merchandise for resale from dealers, traders and wholesale suppliers; and/or any other pawn or pawn transactions.

**Commented [CB20]:** Added definition

78. **Planning and development regulation jurisdiction.** The geographic area within which a city or county may undertake planning and apply the development regulations authorized by this Ordinance.

79. **Property.** All real property subject to land-use regulation by a local government. The term includes any improvements or structures customarily regarded as a part of real property.

80. **Public safety facility.** A facility operated for the purpose of providing public safety. This term includes, but is not limited to, fire stations and other fire prevention and firefighting facilities, police stations and sheriff substations and headquarters, emergency medical stations and substations. This term does not include government services as defined herein.

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

82. **Quasi-Judicial Evidentiary hearing.** A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under G.S 160D.

**Commented [CB21]:** Added definitions

83. **Recreation facilities, indoor.** Uses or structures for active recreation including but not limited to gymnasiums, natatoriums, athletic equipment, indoor running tracks, climbing facilities, court facilities and their customary accessory uses. This definition is inclusive of both non-profit and for-profit operations.

84. **Recreation facilities, outdoor.** Parks and other open space used for active or passive recreation such as ball fields, playgrounds, greenway trails, tennis courts, pools and golf courses, and their customary accessory uses including, but not limited to, maintenance sheds, clubhouses, restrooms, and picnic shelters. This definition is inclusive of both non-profit and for-profit operations.

**Commented [CB22]:** Added definitions

85. **Restaurant.** A retail business selling ready-to-eat food and/or beverages for on or off-premise consumption. Customers may be served from an ordering counter (i.e. cafeteria or limited service restaurant), at their tables (full-service restaurant), and at exclusively pedestrian-oriented facilities that serve from a walk-up ordering counter (snack and/or nonalcoholic bars). Mobile food vendors, as defined herein, shall not be considered a restaurant.

**Commented [CB23]:** Added definition

86. **Retail Business.** An establishment selling commodities and/or providing services directly to the consumer.

87. **Rezoning/Map Amendment.** The action or process of assigning land or property to a different zoning district and changing the Zoning Map of the Town of Burnsville to reflect the new zoning designations.

88. Rooming house. A building or group of buildings containing in combination three (3) to nine (9) lodging units intended primarily for rental or lease for periods of longer than one (1) week, with or without board. Emergency shelters for homeless persons and residential support facilities, as defined elsewhere in this appendix, are not included. A rooming house shall include a single-family dwelling, two-family dwelling including accessory apartment, or a two-family dwelling duplex if used in a manner described in the applicable definition sections so as to constitute a rooming house.

**Commented [CB24]:** Added definition

89. Service Stations. Any building or land used for the dispensing, sale, or offering for sale of any automobile fuels, lubricants, or tires, except that indoor car washing, minor motor adjustment, and tire repair may be performed only incidentally to the conduct of the facility.

**Commented [CB25]:** Added definition to replace Boarding House

90. Setback. The required distance between any structure and the applicable lot line(s) (front, side or rear) of the lot on which the structure is located.

91. Shopping Center. A single piece of real estate containing more than three commercial establishments and a total business space of more than 3,200 square feet planned, constructed, and managed as a total entity with customer and employee parking provided on site. (Amended 6-26-14)

a. ~~401.55.2 Shopping Center/ community. A shopping center with a total building area of greater than fifty thousand (50,000) square feet. (Amended 6-26-14)~~

b. ~~401.55.3 Shopping Center/convenience. A shopping center with a total building area of less than fifteen thousand (15,000) square feet. (Amended 6-26-14)~~

c. ~~401.55.4 Shopping Center/ neighborhood. A shopping center with a total building area of greater than fifteen thousand (15,000) square feet and less than fifty thousand (50,000) square feet. (Amended 6-26-14)~~

**Commented [CB26]:** Changed to Large and small shopping centers (Greater or smaller than 25,000 sq feet)

92. Short-term vacation rental. A dwelling unit with up to six guest rooms that is used and/or advertised through an online platform, or other media, for transient occupancy for a period of less than one month.

**Commented [CB27]:** Added definition

93. Sign. Any outdoor notice containing words, letters, figures, numerals, emblems, devices, trademarks, or trade names, or combinations thereof.

94. Sign Area. The surface area of a sign shall be computed as including the entire area within a regular geometric form or combinations of regular geometric forms comprising all of the display area of the sign and including all elements of the matter displayed. However, in computing sign area only (1) side of a double-faced sign structure shall be considered. Frames and structural members not bearing advertising matter shall not be included in computation of the surface area.

95. Sign, Advertising. Any sign, including a standard poster panel, either freestanding or attached to a structure which directs attention to a business commodity, service, entertainment or other activity conducted, sold, or offered at another place other than on the property on which the sign is located.

96. Sign, Business Identification. A sign which directs attention to a business commodity, service, entertainment, or other activity conducted, sold, or offered on the premises upon which the sign is located.

97. Site plan. A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building

areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and storm water control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

**Commented [CB28]:** Added definition

98. **Special use permit.** A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.

**Commented [CB29]:** Added to replace Conditional Use permit for NCGS 160D

99. **Street.** A public thoroughfare or right-of-way for vehicular traffic which affords a principal means of access to abutting properties.

100. **Street line.** The street right-of-way boundary, that is, the line which separates the street from the lot.

101. **Structure.** Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. The term "structure" includes, but is not limited to, buildings, fences, signs, sheds and towers.

102. **Studio.** Small facilities which provide individual and/or group instruction and training in the arts, including martial arts. This term also includes the processing of photographs produced only by users of the studio facilities, yoga and similar instruction, and aerobics and gymnastics studios with no other fitness facilities or equipment.

**Commented [CB30]:** Added definition

103. **Subdivision.** The division of land for the purpose of sale or development as specified in G.S. 160D-802.

104. **Subdivision regulation.** A subdivision regulation authorized by Article 8 of G.S. 160D.

105. **Temporary Use Structure.** A non-residential structure intended for temporary offices, headquarters or storage of materials on the same lot tract of land being used or developed for a directly related permanent use. A temporary use structure shall require a temporary certificate of zoning compliance from the Zoning Administrator, which shall extend for a maximum period of one year, with renewal extensions of six (6) months.

106. **Text Amendment.** A proposed change or revision in the text of any element of an ordinance.

**Commented [CB31]:** Added definition

107. **Theater.** A specialized facility designed for the interior showing of movies or motion pictures on a projection screen or the presentation of the performing arts.

**Commented [CB32]:** Added definition

a. ~~401.64 Tourist Home. A building where, for compensation, lodging and/or meals are provided for not more than ten (10) persons for terms of occupancy of less than one (1) week.~~

**Commented [CB33]:** Replaced by Short Term Rental

108. **Trade School.** A postsecondary educational institution designed to train students for a specific job in a skilled trade career.

**Commented [CB34]:** Added definition

109. **Travel Trailers.** A vehicle less than thirty-two (32) feet in length designed primarily as a temporary dwelling for travel, recreation or vacation uses.

110. **Travel Trailer Park.** A parcel of land designed and equipped to accommodate travel trailers and to serve as a campground.

- 111. Use. The purpose or activity for which a piece of land or its structures is designed, arranged, or intended, or for which it is occupied or maintained.
- 112. Use, Principal. The main use of land or structures on a lot, as distinguished from an accessory use.
- 113. Vacant. A property that has not been legally occupied for thirty (30) days. Legally occupied means occupancy by the owner or any business or individual whose presence therein in with the consent of the owner.
- 114. Variance. A relaxation of the terms of the zoning ordinance which will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in an unnecessary and undue hardship. A variance may be granted only by the Zoning Board of Adjustment.
- 115. Yard. A space on the same lot with a principal building which is open, unoccupied and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted
- 116. Yard, Front. A yard extending the full width of the lot on which a principal building is located and situated between the front lot line and a line parallel thereto passing through the nearest point of the building.
- 117. Yard, Rear. A yard extending the full width of the lot on which a principal building is located and situated between the rear lot line and a line parallel thereto passing through the nearest point of the building.
- 118. Yard, Side. A yard on the same lot as a principal building situated between the side lot line and a line parallel thereto passing through the nearest point of the building, and extending from the front yard to the rear yard.
- 119. Zoning Administrator. An official of or person designated by the Town of Burnsville charged with enforcing and administering the zoning ordinance.

**Commented [BB35]:** Added Definition

## ARTICLE 5

### ESTABLISHMENT OF ZONING DISTRICTS AND MAPS

#### Section 500. Use Districts

For the purpose of this ordinance, the Town of Burnsville, North Carolina, is hereby divided into the following use districts:

1. R-10 Residential District

This district is intended as a quiet, medium-density residential neighborhood district consisting primarily of single-family dwellings, along with two-family and multi-family dwellings. Limited home occupations as well as limited public and private community uses shall also be permitted within this district. The R-10 district is intended for uses which maintain access to both public water and sewer facilities.

2. C-1 Central Business District

This district is designed to provide (a) a concentrated central core of retailing and services, and (b) areas accommodating central administrative, business, financial, general and professional offices and related services. The district regulations are designed to promote convenient pedestrian shopping and the stability of retail development by encouraging continuous retail frontage in a concentrated area.

3. C-2 General Business District

The purpose of this district is to provide for commercial activity along major thoroughfares and at other convenient points in the area. Regulations are designed to preserve the traffic carrying capacity of the streets and thoroughfares and to provide sufficient off-street parking. It is not the intent of this district to encourage extensive strip commercial development, but to provide concentrations of general commercial activities.

4. C-3 East/West Main Street Business District

The purpose of this district is to provide for commercial activity along the transportation corridor of East/West Main Street, outside of the C-1 Central Business District. It is not the intent of this district to encourage extensive strip commercial development, but to provide concentrations of general commercial activities with development standards more conducive to Main Street than those allowed in the C-2 General Business District.

5. I-1 Industrial District

The I-1 district is intended to provide sites for existing and future uses involving manufacturing, storage and warehousing, wholesale trade, and other industrial or heavy commercial uses. These uses are, by their nature, not properly associated with residential or lighter commercial districts. Only those uses which meet all applicable local, state and federal environmental standards and which do not create injurious or obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazards or other objectionable conditions which would be detrimental to the public health, safety and general welfare of the community will be allowed in the I-1 district. Certain light commercial uses necessary to support industrial or heavy commercial uses (such as restaurants) shall also be permitted in this district.

**Commented [CB36]:** Combined the existing language for each individual district into a single section which defines the district and the zoning map

#### Section 501. Establishment of District Boundaries

The boundaries of the use districts are hereby established as shown on the "Official Zoning Map of the Town of Burnsville, North Carolina."

#### Section 502. Establishment of Zoning Map

A zoning map entitled the "Official Zoning Map of the Town of Burnsville" clearly setting forth all approved use districts and their respective boundaries is hereby made a part of this ordinance and shall be maintained in the office of the Town Clerk of the Town of Burnsville. This map shall be available for inspection by interested persons during normal

business hours of the Town Clerk. It shall be the duty of the Zoning Administrator of the Town of Burnsville to maintain the said map and post any changes thereto as they may be made.

**Section 503. 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 center lines of streets, highways, railroad rights-of-way, alleys, streams, rivers or other bodies of water, shall be construed to follow such lines.
2. Boundaries indicated as approximately following 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's boundaries are so indicated that they are approximately parallel to the center lines of streets, highways, or railroads, or rights-of-way of same, such different boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is given, such dimensions shall be determined by the use of the scale shown on said zoning map.
5. Where a district boundary line divides a lot of single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such lot more than thirty-five (35) feet beyond the district boundary lines.
6. 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 subsection 703.01 through 703.05, the Board of Adjustment shall interpret the district boundaries.

**Section 504. Establishment of current Floodplain Maps**

The applicable FIRMs are incorporated by reference automatically into the Town of Burnsville Zoning Map. The Clerk shall maintain a digital or paper copy of the applicable FIRMs for public inspection.

**Commented [CB37]:** Added language concerning establishing and maintaining flood maps

# ARTICLE 6

## TABLE OF USES AND TABLE OF DIMENSIONAL REQUIREMENTS

### Section 600. Notes on table of uses

If a proposed use can't be found on the table of uses herein established or is not specifically defined herein, then the regulations and restrictions governing the use which most closely resembles the proposed use shall apply. The factors to be considered are the type, density and intensity of the development, environmental effects, and the anticipated amount of traffic, light, noise, vibration, odor and other impacts within the community.

The abbreviations and symbols shown in the Table of Uses have the following meanings:

- "S" = Special Use
- "P" = Permitted
- "PS" = Permitted with Standards
- "NP" = Not Permitted

### Section 601. Table of Uses

Purposed Use	R-10	C-1	C-2	C-3	I-1
<b>Residential</b>					
Dwelling - Single Family	P	PS	PS	PS	NP
Dwelling - Two Family	P	PS	PS	PS	NP
Dwelling - Secondary	PS	NP	PS	PS	NP
Multi-Family Dwelling (4 or less Units)	P	PS	PS	PS	PS
Multi-Family Dwelling (More than 4 Units)	S	S	S	S	S
Manufactured Homes	PS	NP	PS	PS	NP
Modular Homes	PS	NP	PS	PS	NP
Group Development	PS	NP	PS	PS	PS
Hotels/ Motels	NP	P	P	P	NP
Rooming House	P	P	P	P	NP
Short Term Rentals	PS	PS	PS	PS	NP
Manufactured Home Parks	S	NP	S	S	S
Customary Accessory Uses or Structures	PS	NP	PS	PS	PS
Commercial Accessory Entertainment Structure	NP	PS	PS	PS	PS
Customary Incidental Home Occupations	PS	P	PS	PS	NP
<b>Office /Service</b>					
Offices	NP	P	P	P	P
Medical/ Dental Clinic	NP	P	P	P	P
Animal Hospitals/ Veterinary Clinics	NP	NP	P	P	P
Child Care Home	PS	NP	PS	PS	NP
Mortuary/ Funeral Parlor	NP	NP	P	P	P
Bicycle Sales and Repair	NP	P	P	P	P
Automotive Repair/ Paint	NP	NP	P	P	P
Studios	NP	P	P	P	P
Automobile Washing Establishment	NP	NP	P	P	P
Repair Services	NP	NP	P	P	P

**Commented [CB38]:** Expanded our permitted uses to include permitted with standards to alleviate the need for unnecessary quasi-judicial hearings. Also added designations for uses in zoning districts that were not present in the previous version.

**Commented [BB39]:** As required by NC Case Law uses not listed cannot be automatically prohibited but must be permitted as use which it most closely resembles

**Commented [BB40]:** Currently every allowance in C-2 zoning is also allowed in I-1

**Commented [BB41]:** Manufactured homes allowed with standards in R-10

**Commented [CB42]:** Added regulation

**Commented [CB43]:** Added regulation

Purposed Use	R-10	C-1	C-2	C-3	I-1
Professional Services	NP	NP	P	P	P
Child Care Center (more than 6)	NP	NP	PS	PS	NP
Banks, Credit Unions, Financial Services	NP	P	P	P	P
Check Cashing/ Payday Loan	NP	NP	NP	NP	NP
Laundries/Laundromat	NP	NP	P	P	NP
Tattoo/ Piercing Parlor	NP	NP	PS	PS	NP
Sign Painting and Fabrication	NP	NP	P	P	P
Cold Storage	NP	NP	P	P	P
<b>Civic/ Institutional</b>					
Religious Institutions	P	P	P	P	P
Public Buildings	P	P	P	P	P
Public Works Facilities	S	NP	P	P	P
Public Safety Facilities	PS	NP	PS	PS	PS
Schools	PS	NP	PS	PS	PS
Hospitals	PS	NP	PS	PS	PS
Libraries	PS	NP	PS	PS	PS
<b>Entertainment/ Recreation</b>					
Assembly Halls/ Coliseums/ Gymnasiums	PS	NP	PS	PS	PS
Recreational Facilities	PS	NP	PS	PS	PS
Theater	NP	P	P	P	P
Physical Fitness Facilities	NP	P	P	P	P
Adult Establishment	NP	NP	PS	NP	PS
Electronic Gaming Operation	NP	NP	PS	NP	NP
Shooting Range	NP	NP	NP	NP	NP
Miniature golf	NP	NP	P	NP	NP
<b>Retail/ Restaurants</b>					
Retail	NP	P	P	P	P
Restaurant	NP	P	P	P	P
Dairy Bar/ Ice Cream Parlor	NP	P	P	P	P
Shopping Center (Greater than 25,000 sq. ft.)	NP	NP	PS	NP	PS
Shopping Center (Less than 25,000 sq. ft.)	NP	NP	PS	PS	PS
Bakeries	NP	P	P	P	P
Building Supply/ Equipment Sales	NP	NP	P	P	P
Automobile Sales and Service	NP	NP	P	P	P
Farm Equipment Sales/ Repair/ Assembly	NP	NP	P	P	P
Industrial/ Agricultural Supply	NP	NP	P	P	P
Wholesaling/Warehousing	NP	NP	PS	PS	PS
Feed and Seed Stores	NP	NP	P	P	P
Ice Vending Establishment	NP	NP	P	P	P
Brewery	NP	NP	P	P	P
Sheet Metal/ Roofing/Plumbing/HVAC Shops	NP	NP	P	P	P
Glass and Mirror Shops	NP	NP	P	P	P
Greenhouses	NP	NP	P	P	P
Manufactured Home Sales	NP	NP	P	P	P
Pawn Shop	NP	NP	P	P	NP
Alcoholic Beverage Sales Store	NP	NP	P	P	NP
Mobile Food Vendor	NP	PS	PS	PS	PS

Commented [BB40]: Currently every allowance in C-2 zoning is also allowed in I-1

Commented [CB44]: Illegal in NC?

Commented [CB45]: Added Regulation

Commented [CB46]: Added Regulation

Commented [CB47]: Removed due to same criteria and restrictions as restaurant

Commented [CB48]: Added Regulation

Commented [BB49]: Added Regulation

Purposed Use	R-10	C-1	C-2	C-3	I-1
<b>Miscellaneous</b>					
Indoor Storage/ Principal Use	NP	NP	P	P	P
Temporary Use Structures	P	NP	P	P	P
Transportation Terminals	NP	NP	P	NP	P
Monument Sales	NP	NP	P	P	P
Private Clubs/ Lodges	NP	NP	P	P	P
Nursing Home/ Group Care Facility	PS	NP	PS	PS	NP
Radio/ Television Station	NP	NP	P	P	P
Storage Yards	NP	NP	NP	NP	PS
Industrial/ Manufacturing Facilities	NP	NP	NP	NP	P
Commercial Parking Lot/ Parking Garage	NP	NP	P	P	P
Bottling Plants	NP	NP	P	PS	P
Fabricating Shops	NP	NP	P	P	P
Cemeteries	PS	NP	NP	NP	NP

**Commented [BB40]:** Currently every allowance in C-2 zoning is also allowed in I-1

Section 602. **Table of dimensional requirements**

Zoning District	R-10	C-1	C-2	C-3	I-1
Minimum Lot Area (Sq. Ft) <sup>1</sup>	10,000	None	10,000	10,000	40,000
Lot Area per Additional Dwelling Unit (Sq. Ft)	4,000	N/A	4,000	4,000	N/A
Minimum Lot Width at Building Line in Feet	80	20	80	80	100
Minimum Yard Requirements in Feet - Front	25	0	20	15	30
Minimum Yard Requirements in Feet - Side <sup>5</sup>	10 <sup>2</sup>	0 <sup>3</sup>	10	10	15
Minimum Yard Requirements in Feet - Rear	20	0 <sup>4</sup>	10	10	20
Minimum Yard Requirements in Feet – Build to	N/A	10	N/A	40	N/A
Maximum Height in Feet	35	50	50	50	50
Minimum Height in Feet	N/A	24	12	12	12

**Commented [BB50]:** Discussion concerning lot size/density incentive for development

<sup>1</sup>The minimum lot area for lots not served by either public water or sewer shall be subject to approval by the Yancey County Health Dept. to ensure proper operation of septic systems and/or wells. In no case however, shall minimum lot sizes be less than those specified.

<sup>2</sup> Side yard requirements for corner lots shall be increased to twenty feet along the side street.

<sup>3</sup>Side yards are not required in the C-1 district. If such a yard is provided, it must be a minimum of four (4) feet to allow for cleaning and access. Common wall construction is permitted in the C-1 district. On all corner lots in this district, a ten (10) foot setback from the side street line shall be required. Where a lot in the C-1 district abuts a lot zoned R-10, a side yard of at least ten (10) feet shall be required.

<sup>4</sup>Rear yards are not required in the C-1 district except in those cases where the C-1 district abuts an established residential district. In such cases, the rear yard requirement shall be a minimum of ten (10) feet.

<sup>5</sup>Subject to the provisions of Section 1308 of this ordinance.

**Commented [CB51]:** Removed due to Water/Sewer ordinance requires water/sewer connection.

**Commented [CB52]:** Moved existing table of requirements to this section for ease of access.

# ARTICLE 7

## USE STANDARDS

### Section 700. Intent

This article sets forth standards for those uses that have been identified as "Permitted with Standards" and "Special Uses" in the Table of Uses set forth in Article 6. All generally applicable regulations (including but not limited to Article 8: Design Standards etc.) shall apply to the uses set out in the sections of this article unless provided otherwise by the specific provisions within this article.

**Commented [CB53]:** Added this section of use standards to allow for additional permitted uses as long as the project meets these standards. All other applicable requirements such as design standards would also apply.

### Section 701. Adult Establishment

No adult establishment shall:

1. Be located closer than 1000 feet from any other like business.
2. No adult establishment shall be located within 1,000 feet of a church, public or private school, library, child day care center, residential district, residential development, public park, or an establishment with an on-premise North Carolina ABC license.
3. All windows, doors, openings, etc. shall be covered, screened, or located so that views into the interior are not possible from any public area.
4. Have stated hours of operation outside the following:
  - a. Monday through Saturday 12:00pm – 11:00pm
  - b. Sunday 1pm – 11:00pm
5. All signs for adult establishments shall be flat wall signs. The business may have only one (1) non-flashing business sign which may only indicate the name of the business and identify it as an adult establishment and which shall not be larger than four (4) feet by four (4) feet.

**Commented [BB54]:** Added regulation where there currently is none

### Section 702. Assembly Halls/ Coliseums/ Gymnasiums

1. Shall not be located less than thirty (30) feet from any property line in any residential district
2. A traffic impact study and report from a licensed engineer shall be required for developments that are primarily accessed from Town maintained city streets.
3. Where an Assembly Hall/ Coliseum/ Gymnasium lot abuts a lot in a residential district, there shall be provided and maintained (by the Assembly Halls/ Coliseums/ Gymnasium) along the abutting property line a continuous visual buffer strip as defined in Article 4.
4. The Design Review Committee shall review the project prior to approval from the Zoning Administrator.

**Commented [CB55]:** Added use restrictions

**Commented [BB56]:** Added Standard

### Section 703. Automobile services, repair

1. All buildings shall be located at least 40 feet from any street right-of-way line.
2. Gasoline pumps and other appliances, where permitted, shall be located at least 15 feet from any street right-of-way.
3. All service, storage or similar activities shall be conducted entirely on the premises.
4. All repair work, if any, shall be conducted within a completely enclosed building.
5. Open storage of wrecked or inoperable cars, discarded tires, auto parts, or similar material shall not be permitted.

### Section 704. Bottling Plants

Where a bottling plant lot abuts a lot in a residential district, there shall be provided and maintained (by the bottling plant) along the abutting property line a continuous visual buffer strip as defined in Article 4.

**Commented [CB57]:** Added use restrictions

### Section 705. Cemeteries

Cemetery buildings and gravesites shall be set back at least twenty (20) feet from any property line in any residential district.

**Section 706. Commercial Accessory Entertainment Structure**

1. Accessory structures shall not exceed the height of the primary structure and in no event exceed 25 feet.
2. Such uses or structures should be located in the rear yard whenever possible. If there is not sufficient space in the rear yard the Zoning Administrator may allow the structure to be placed in a side yard provided the structure meets all other zoning requirements.
3. Such uses are subordinate to the primary commercial business and as such should serve a complimentary entertainment function of that business. Some examples of this would be a performing stage, covered outdoor dining area or amphitheater.

**Commented [CB58]:** Added use restrictions

**Section 707. Child Care Center**

1. Child care centers shall provide no less than one hundred (100) square feet of outdoor play area for each child.
2. The outdoor play area shall be surrounded by a sturdy fence of not less than four feet in height.
3. The child care center shall meet all state requirements for day care centers.
4. Child care centers shall provide locations for pick-up and drop-off for safe access to the center for children, parents and which do not impede traffic on public or private streets.
5. The Design Review Committee shall review the project prior to approval from the Zoning Administrator.

**Section 708. Child Care Homes**

1. Child care homes shall provide location for pickup/drop-off area for safe access to the home for children and parents and which do not impede traffic on public or private roads.
2. Child care homes shall be clearly incidental to the residential use of the dwelling and shall not change the residential character of the dwelling or neighborhood.
3. Business or product identification signs shall not be permitted.
4. Any outdoor play area provided shall be surrounded by a sturdy fence of not less than four feet in height.

**Commented [CB59]:** Additional designations to replace Kindergarten and day nurseries language in existing ordinance

**Section 709. Customary accessory uses or structures**

The footprint of accessory structures within any residential zoning district shall not exceed the following maximum footprint(s).

Lot Size	One Structure	All Structures
Less than 1 acre	800 square feet	1,000 square feet
1 to 3 acres	1,200 square feet	1,600 square feet
More than 3 acres	No limit	No Limit

**Commented [CB60]:** Additional square footage maximum limits we thought would be appropriate for accessory buildings

1. Such uses or structures should be located in the rear yard whenever possible. If there is not sufficient space in the rear yard the Zoning Administrator may allow the structure to be placed in a side yard provided the structure meets all other zoning requirements.
2. Such uses or structures shall maintain a minimum setback of five (5) feet from rear lot lines and shall observe setback requirements from all other lot lines as specified in Section 602.
3. No accessory uses or structures situated on a corner lot shall extend beyond the front yard line required for abutting property on the side street.
4. No greenhouse heating plant shall be located within twenty-five (25) feet of any lot line.
5. Such uses or structures shall be located not less than ten (10) feet from the principal building.
6. Accessory structures shall not exceed the height of the primary structure and in no event exceed 25 feet.

**Commented [CB61]:** Added this language to allow for homes that, due to their existing arrangement on the lot, do not have sufficient space in the rear for an accessory building but have ample and appropriate space on the side

**Section 710. Customary incidental home occupations**

1. No external evidence of such occupation other than one (1) sign, not exceeding one (1) square foot in area, non-illuminated, and mounted flat against the wall of the principal building.
2. No home occupation shall be conducted in any accessory building.
3. 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, and such occupation shall be carried on solely within the main dwelling and shall not occupy more than twenty-five percent (25%) of the total floor space of the dwelling;
4. No more than two persons not in residence on the premises shall be employed in connection with the home occupation
5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard
6. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interferences detectable to the normal senses off the lot
7. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or caused fluctuations in line voltage off the premises

**Commented [CB62]:** Removed regulatory language from definition to use regulation

**Section 711. Dwelling-Multi-family (Four or less units)**

1. Height restrictions in R-10 district shall be 38 feet (3 Stories)
2. Mobile homes whether single or double-wide and whether located on temporary or permanent foundations, shall not be permitted.
3. Where a multi-family dwelling place abuts a lot in a residential district, there shall be provided and maintained (by the multi-family dwelling) along the abutting property line a continuous visual buffer strip as defined in Article 4.

**Commented [CB63]:** Added use restrictions

**Section 712. Dwelling - Secondary**

1. Secondary dwelling units shall be accessory and subordinate to the primary living quarters.
2. No more than one secondary dwelling unit is permitted on any lot.
3. A secondary dwelling unit may only be located within a side or rear yard and within the setback established by the applicable zoning district.
4. No secondary structure shall exceed two stories in height.
5. Secondary dwelling units may be created as an independent structure, an addition to an existing primary structure, or a second story within detached garages.
6. The gross floor space of a secondary dwelling unit shall not exceed 800 square feet. The ground floor area of an attached garage shall not be calculated as part of the total square footage of any secondary dwelling that is built as the second story of a detached garage; provided, such ground floor garage area shall not be converted into a dwelling space.
7. At least one off-street parking space shall be provided
8. Properties with multifamily dwellings as defined herein shall not be permitted a secondary dwelling.

**Commented [CB64]:** Added Use restrictions

**Section 713. Dwelling- Single Family**

~~Mobile homes whether single or double wide and whether located on temporary or permanent foundations, shall not be permitted.~~

**Commented [CB65]:** Removed mobile home language

Residential units in C-1, C-2 and C-3 Districts must located above commercial establishments. Modular homes as defined in Article 4 are also subject to the restrictions found in Section 721. Manufactured homes as defined in Article 4 are also subject to the restrictions found in Section 720.

**Commented [CB66]:** Added reference for Modular Homes

**Section 714. Dwelling- Two-family**

**Commented [CB67]:** Added Language for Manufactured homes

~~Mobile homes whether single or double wide and whether located on temporary or permanent foundations, shall not be permitted.~~

Residential units in C-1, C-2 and C-3 Districts must be located above commercial establishments. Modular homes as defined in Article 4 are also subject to the restrictions found in Section 721. Manufactured homes as defined in Article 4 are also subject to the restrictions found in Section 720.

**Commented [CB68]:** Removed mobile home language

#### Section 715. Electronic Gaming Operation

1. Shall not be located closer than 1000 feet from any other like business or adult establishment.
2. No Electronic Gaming Operation shall be located within 1,000 feet of a church, public or private school, library, child day care center, residential district, residential development, public park, or an establishment with an on-premise North Carolina ABC license.
3. May not have stated hours of operation outside the following:
  - a. Monday through Saturday 10:00am – 11:00pm
  - b. Sunday 12:00 noon – 11:00pm
4. No alcoholic beverages will be served or consumed on the premises of electronic gaming operations.

**Commented [CB69]:** Added standards for this type of business

#### Section 716. Group Development

In the case of two (2) or more buildings to be constructed on a plot of ground of at least two (2) acres not subdivided into the customary streets and lots and which will not be so subdivided:

1. Such uses are limited to those permitted within the zoning district in which the project is located.
2. The overall intensity of land use is no higher and the standard of open space is no lower than that permitted in the district in which the project is located.
3. The distance of every building from the nearest property line shall meet the front, rear and side yard requirements of the district in which the project is located.
4. Minimum lot widths shall be double those required in the district in which the project is located.
5. The building heights do not exceed the height limits permitted in the district in which the project is located.
6. In those cases where a group development is created which either lies within a residential district or abuts a residential district, there shall be provided and maintained (by the group development) a continuous visual buffer strip, as defined in Article 4, along the side and rear lot lines of the group development.
7. A site plan, showing the manner in which the requirements of this section will be met, is submitted along with the application for a group development.
8. The Design Review Committee shall review the project prior to approval from the Zoning Administrator.

**Commented [CB70]:** Removed this type of development from special use to permitted with standards

#### Section 717. Hospitals

1. Principal building shall not be located less than thirty (30) feet from any property line in any residential district
2. The Design Review Committee shall review the project prior to approval from the Zoning Administrator.

**Commented [CB71]:** Added Standard

#### Section 718. Libraries

Principal building shall not be located less than thirty (30) feet from any property line in any residential district

**Commented [CB72]:** Added standard

#### Section 719. Mobile Food Vendors

1. No waste, wastewater or grease shall be distributed into the sanitary sewer system, storm water system, or other public spaces.
2. Mobile food vendors:
  - a. Shall be situated at least ten feet from all property lines, excepting those separating contiguous parcels under common ownership, and
  - b. Shall not encroach onto any street or sidewalk, and
  - c. Shall not obstruct any loading zone or parking space made requisite by this ordinance
  - d. Shall not create a sight line obstruction.

3. Mobile food vendors shall be located at least 150 feet from any primary residential structure located within the R-10 Zoning District.
4. Mobile food vendors shall not be located within ten feet of any fire hydrant.
5. Hours on site shall be consistent with the hours of operation of the principal building or use of the property on which the mobile food vendor is located but in no instance shall such hours exceed 7:00 a.m. to 11:00 p.m.
6. Each mobile food vendor shall supply at least one receptacle for waste which must be emptied regularly and removed upon conclusion of hours of operation. Municipal waste receptacles shall not be used.
7. In addition to signage displayed directly on the vehicle, one sign attached to the ground, or menu board sign, which shall not exceed four feet in height or eight square feet of surface area, is permitted. Such a sign shall be placed within ten feet of the mobile food unit or vehicle and shall only be displayed during hours of operation.
8. The sale of alcoholic beverages shall not be permitted by any mobile food vendor absent the issuance of the requisite special event permit.
9. Mobile food vendors seeking to locate on property owned or controlled by the Town of Burnsville must enter into the Mobile Food Vendor Contract and comply with all applicable requirements.
10. Mobile food vendors are also subject to standards of the Yancey County Health Department as it relates to the permitting, inspection and grading of all regulated food service establishments.
11. In no instance shall a mobile food vendor be permitted to be the primary or principal use of a parcel of land.

**Commented [CB73]:** Language regulating Mobile Food Vendors. Our current ordinance does not have any.

**Section 720. Manufactured Homes**

Single wide manufactured homes shall not be permitted on individual lots outside of mobile home parks.

Manufactured homes on individual lots must meet the following design standards:

1. The home must be multi-sectional, such as a double or triple-wide. Singlewide homes are not permitted on individual lots.
2. Home must be placed on a permanent foundation
3. Wheels, tongues, and motor vehicle signals must be removed
4. Skirting is required and is limited to one the following types: rusticated block, brick, concrete, stone or other alternative materials reviewed on a case-by-case basis to comply with the Flood Ordinance.
  - a. Skirting may include openings for dryer vents, air inlets, ventilation, floodplain openings, and general access openings not to exceed 3’x3’ in size.
5. The home must bear a valid metal HUD Certification Label. The label must be permanently affixed to the outside of the home. Newly placed homes must be built after June 15, 1976
6. Roof pitch. - For homes with a single predominant roofline, the pitch of the roof shall be no less than five feet rise for every 12 feet of run.
7. Eave projection. - The eave projections of the roof shall be no less than 10 inches, which may not include a gutter around the perimeter of the home, unless the roof pitch is 8/12 or greater.
8. Exterior wall. - The minimum height of the exterior wall shall be at least seven feet six inches for the first story.
9. Siding and roofing materials. - The materials and texture for the exterior materials shall be compatible in composition, appearance, and durability to the exterior materials commonly used in standard residential construction.
10. Foundations. - The home shall be designed to require foundation supports around the perimeter. The supports may be in the form of piers, pier and curtain wall, piling foundations, a perimeter wall, or other approved perimeter supports.

**Commented [BB74]:** Added regulatory standards to allow double and triple wide homes to individual lots.

**Section 721. Modular Homes**

Homes constructed of closed construction at an off-site location, of any size, are permitted subject to the following special requirements:

1. The Home must be of off frame construction.
2. The Home must meet all requirements of any currently used addition of North Carolina State Building Residential Code and be permitted by the local building official having jurisdiction over the building site.

3. The Home is constructed, inspected and certified under the North Carolina Modular Construction Program.
4. The Home must meet the minimum construction and design standards for modular homes pursuant to NCGS 143-139.1.
5. The Home must meet local zoning and set back requirements as set forth in the Zoning Ordinance for the Town of Burnsville.
6. The Home must meet community protective covenant requirements as applicable.
7. On Frame Modular Homes are permitted in mobile home parks subject to the provisions for mobile home parks in the Town of Burnsville Zoning Ordinance.
8. Structures constructed at an off-site location that do not meet the above requirements and were not originally constructed for use as dwellings are prohibited. (amended 06/25/2020)

**Section 722. Nursing Home/ Group Care Facility**

1. A traffic impact study and report from a licensed engineer shall be required for developments that are primarily accessed from a Town maintained city streets.
2. Height restrictions in R-10 district shall be 38 feet (3 Stories).
3. Where a Nursing Home/ Group Care Facility lot abuts a lot in a residential district, there shall be provided and maintained (by the multi-family dwelling) along the abutting property line a continuous visual buffer strip as defined in Article 4.
4. The Design Review Committee shall review the project prior to approval from the Zoning Administrator.

Commented [CB75]: Added use restrictions

Commented [BB76]: Added Standard

**Section 723. Public Safety Facilities**

Principal building shall not be located less than thirty (30) feet from any property line in any residential district.

**Section 724. Recreational Facilities**

1. Principal building shall not be located less than thirty (30) feet from any property line in any residential district.
2. A traffic impact study and report from a licensed engineer shall be required for developments that are primarily accessed from a Town maintained city streets.
3. Where a recreational facility lot abuts a lot in a residential district, there shall be provided and maintained (by the recreational facility) along the abutting property line a continuous visual buffer strip as defined in Article 4.

**Section 725. Schools**

1. Principal building shall not be located less than thirty (30) feet from any property line in any residential district.
2. A traffic impact study and report from a licensed engineer shall be required for developments that are primarily accessed from a Town maintained city streets.
3. Where a school lot abuts a lot in a residential district, there shall be provided and maintained (by the school) along the abutting property line a continuous visual buffer strip as defined in Article 4.
4. Trade schools as defined in Article 4 are not allowed in the R-10 and C-1 Zoning Districts.
5. The Design Review Committee shall review the project prior to approval from the Zoning Administrator.

Commented [CB77]: Added use restrictions

**Section 726. Shopping Center (Less than 25,000 sq. ft.)**

Where a shopping center lot abuts a lot in a residential district, there shall be provided and maintained (by the shopping center) along the abutting property line a continuous visual buffer strip as defined in Article 4.

**Section 727. Shopping Center (Greater than 25,000 sq. ft.)**

1. A traffic impact study and report from a licensed engineer shall be required for developments that are primarily accessed from Town maintained city streets.
2. Where a shopping center lot abuts a lot in a residential district, there shall be provided and maintained (by the shopping center) along the abutting property line a continuous visual buffer strip as defined in Article 4.
3. The Design Review Committee shall review the project prior to approval from the Zoning Administrator.

Commented [CB78]: Replaced current shopping center designations with these and added standards

Commented [BB79]: Added Standard

### Section 728. Short Term Rentals

1. Occupancy is limited to two persons per bedroom, plus two additional occupants. This occupancy cap shall be posted in online rental advertisements and within the unit.
2. The property owner must designate and notify Burnsville Town Hall of a local contact person who is available to respond to complaints or other issues that arise during the rental period.
3. All Short Term Rentals must adhere to the same use restrictions as single family dwellings in Section 713.

Commented [CB80]: Added use restrictions

### Section 729. Storage yards

Enclosed and screened from view by a fence, hedge, solid wall, or similar opaque partition at least six (6) feet in height.

### Section 730. Tattoo parlors

No tattooing/body piercing business shall:

1. Be located closer than 1000 feet from any other like business.
2. Have stated hours of operation outside the following:
  - a. Monday through Saturday 10:00am – 8:00pm
  - b. Sunday 12:00 noon – 8:00pm

### Section 731. Wholesale and Warehousing Establishments

1. No storage of dangerous or offensive items such as uncured hides, explosives, oils, gasoline, etc.
2. The Design Review Committee shall review the project prior to approval from the Zoning Administrator.

Commented [CB81]: Added Standard

### Section 732. Special Uses

The following uses shall be permitted by the Town Council as special uses subject to the provisions of Section 908.1 of this ordinance, and subject to a finding by the Town Council that the additional conditions listed below shall be met:

1. Manufactured home parks, provided that:
  - a. The lot area for a manufactured home park shall be at least three (3) acres. All areas to be included in said park shall be clearly shown on the plans required by (l.) below.
  - b. Each manufactured home in a manufactured home park shall occupy a designated space having at least four thousand (4,000) square feet, with a width of at least forty (40) feet, exclusive of common driveways.
  - c. Each manufactured home space shall abut a driveway within the park. Said driveways shall be graded and surfaced with not less than four (4) inches of crushed stone or other suitable material on a well compacted sub-base to a continuous width of twenty-five (25) feet, exclusive of required parking space.
  - d. One (1) off-street parking space with not less than four (4) inches of crushed stone or other suitable material on a well compacted sub-base shall be provided for each mobile home space. Required parking space shall be included within the four thousand (4,000) square feet required for each mobile home space.
  - e. The maximum density shall be ten (10) manufactured home sites per acres.
  - f. Not less than five (5) manufactured home sites shall be available at first occupancy.
  - g. A densely planted buffer strip, consisting of evergreen trees or shrubs shall be located along all sides of the mobile home park, but shall not extend beyond the established setback line along any street. Such buffer strip shall be not less than ten (10) feet in width and shall be composed of trees or shrubs of a type which at maturity shall be not less than twelve (12) feet in height. This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and /or terrain.
  - h. At least two hundred (200) square feet of recreation space for each mobile home space shall be reserved within each mobile home park as common recreation space for the residents of the park. Such areas shall, along with driveways and walkways, be adequately lighted for safety.

- i. No manufactured homes or other structures within a manufactured home park shall be closer to each other than twenty (20) feet, except that storage or other auxiliary structures for the exclusive use of the manufactured home may be closer to that manufactured home than twenty (20) feet.
  - j. No manufactured home shall be located closer than thirty (30) feet to the exterior boundary of the park or a bounding street right-of-way. Buildings used for laundry or recreation purposes shall be located no closer than forty (40) feet to the exterior boundary or the right-of-way of a bounding street.
  - k. Proposed water supply and waste disposal facilities for the manufactured home park shall be approved in writing by the Public Works Director or his representative.
  - l. Plans clearly indicating the developer's intention to comply with the provisions of this section shall be submitted to and approved by the Board of Adjustment. Such plans must show the area to be used for the proposed mobile home park; the ownership and use of neighboring properties; all proposed entrances, exits, driveways, walkways, and off-street parking spaces; the location of mobile home spaces, recreation areas and service buildings; the location of sanitary conveniences including toilets, laundries, and refuse receptacles; the proposed plan of water supply, sewage disposal and electric lighting.
  - m. Any expansion of manufactured home parks in existence on the effective date of this ordinance shall comply with the provisions of this section.
2. Public works and public utility facilities such as distribution lines, transmission lines and towers, electric substations, water tanks and towers, pumping stations, water treatment plants, sewage lagoons and plants, and telephone exchanges, provided:
- a. Plans clearly indicating the developer's intention to comply with the provisions of this section shall be submitted to and approved by the Board of Adjustment. Such plans must show the ownership and use of neighboring properties; all proposed entrances, exits, driveways, walkways, off-street parking spaces, and building location and dimensions.
  - b. All buildings and facilities shall be set back at least thirty (30) feet from all property lines and shall be designed and landscaped in such a way as to blend in with the surrounding area.
  - c. All dangerous apparatus shall be enclosed by a chain link fence at least eight (8) feet in height.

3. Multi-family dwellings (more than four units), provided:

- a. A detailed site plan meets all the requirements set forth in Article 8: Design Standards
- b. A traffic impact study and report from a licensed engineer shall be required for developments that are primarily accessed from Town maintained city streets.
- c. Height restrictions in R-10 district shall be 38 feet (3 Stories).
- d. Where a multi-family dwelling place abuts a lot in a residential district, there shall be provided and maintained (by the multi-family dwelling) along the abutting property line a continuous visual buffer strip as defined in Article 4.
- e. Manufactured homes whether single or double-wide and whether located on temporary or permanent foundations, shall not be permitted.

**Commented [BB82]:** Changed language for larger projects

**Commented [BB83]:** Added regulatory language

- i. ~~A site plan of the proposed project shall be submitted to the Town Council for review in accordance with the provisions of Article 8: Design Standards and the procedures set forth in Section 510 of this ordinance.~~

**Commented [CB84]:** Changed language to (a) above

~~Group or cluster housing projects or subdivisions subject to the provisions of Section 1107 of this ordinance.~~

**Commented [CB85]:** Allowed this type of development from special use to permitted with standards.

# ARTICLE 8

## DESIGN STANDARDS

### Section 800. Design Standards

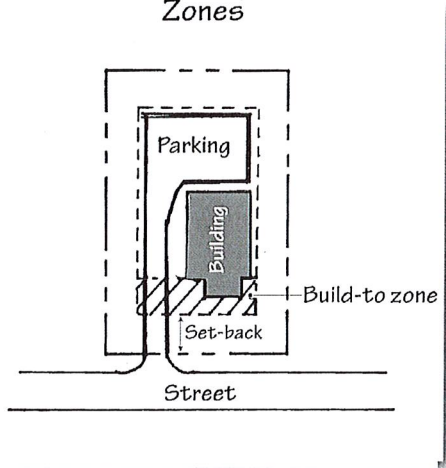
Design guidelines and the procedures for review and approval are consistent with adopted Town of Burnsville Comprehensive Land Use Plan 2021, and previously adopted plans. These plans have identified community appearance and quality design standards as being necessary and beneficial to the town's local economy and the overall quality of life within the community. These design standards and procedures are applicable only for multi-family, commercial, and business uses. Single family residential uses are exempt from the requirements of this Article. The adoption and enactment of these standards shall be construed to amend or repeal any other similar or previously existing provisions.

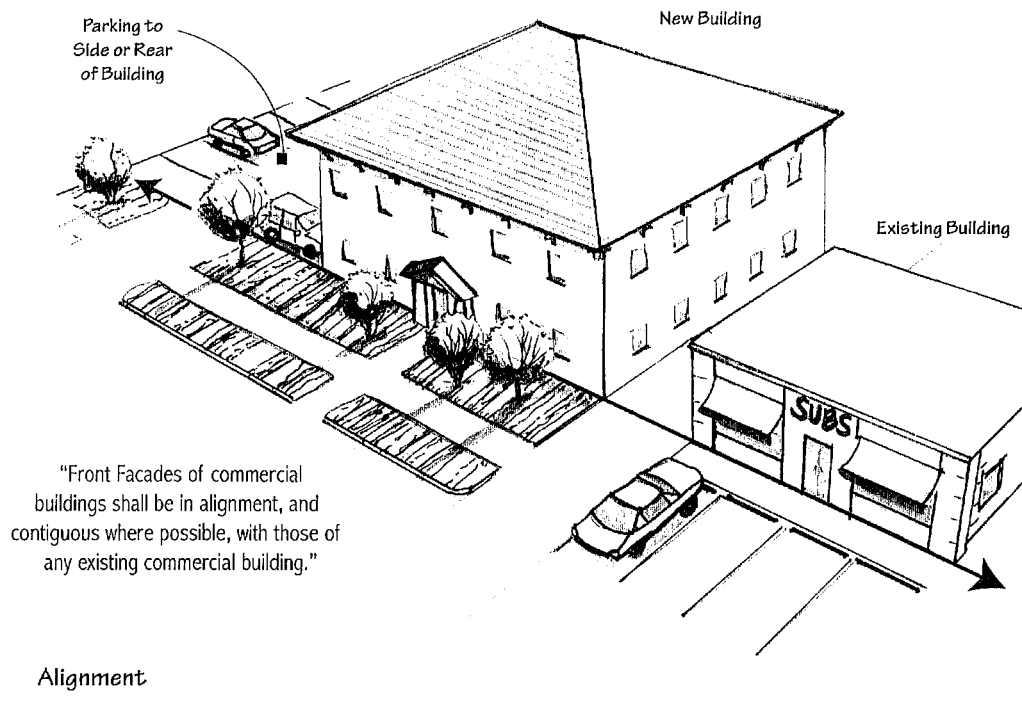
**Commented [BB86]:** changed to add Comprehensive Land Use Plan

### Section 801. Building Lines and Arrangement

Buildings shall observe the setback or "build-to" line requirements as specified. In the C-1 Central Business District, the front façade of buildings, exclusive of any appurtenances, shall be within a build-to zone that extends a maximum of ten feet from the front setback line. In the C-3 – E/W Corridor, the build-to zone extends a maximum of twenty-five feet from the front setback line, or forty feet from the property line. Front facades of commercial buildings shall be in alignment, and contiguous where possible, with those of any existing commercial buildings adjacent to the development (see Building Frontage). If such an alignment would cause a nonconforming situation to occur, or is otherwise not practicable, this requirement may be waived, unless the development is situated on a corner lot. In the C-2 – 19E commercial district, there is no build-to zone requirement.

Build-to & Set Back Zones

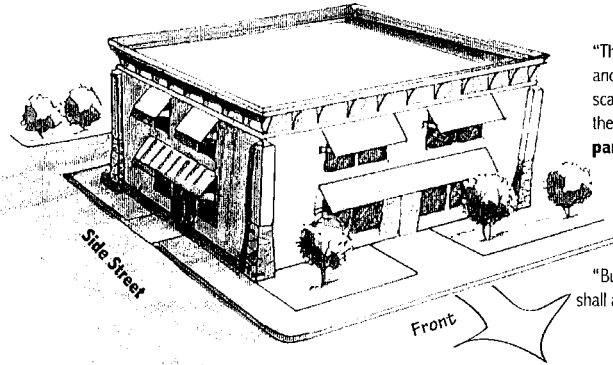




**Section 802. Building Orientation**

The primary orientation of new structures shall be toward the adjacent street. Buildings on sites that adjoin two or more streets shall address all adjacent streets using doors, windows, or other architectural elements. On any such site, all new developments shall have similar building orientations as existing development. In no case in the C-2 or C-3 zoning districts shall the rear of new development be oriented toward any street. New construction that is oriented toward the interior of a site, or to the rear of existing development is prohibited. Service areas of any proposed development shall not be oriented toward the primary elevation, or entrance of adjacent developments.

**Corner Buildings**



"The appearance of a flat roof is prohibited and monolithic expanses of roof on large scale buildings shall be avoided through the use of elements such as gables and parapets."

"Buildings, if fronting two or more streets, shall address all adjacent streets using doors, windows or other elements."

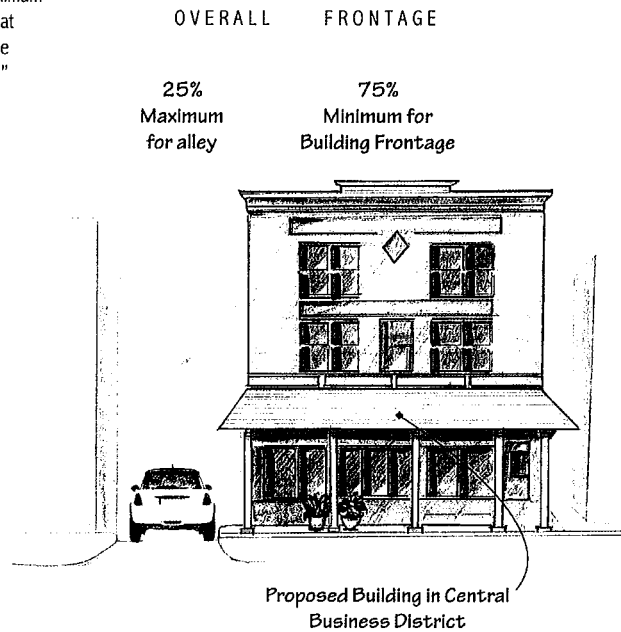
**Section 803. Building Frontage**

For all new development in the Central Business District, the minimum percentage of street frontage that must be occupied by one or more principal buildings shall be seventy-five percent.

Zoning District	Building Frontage Required
C-1 - CBD	75 %
C-2 – 19E	N/A
C-3 – E/W Main	N/A

## Frontage

"For all new developments in the Central Business District, the minimum percentage of street frontage that must be occupied by one or more principal buildings shall be 75%."

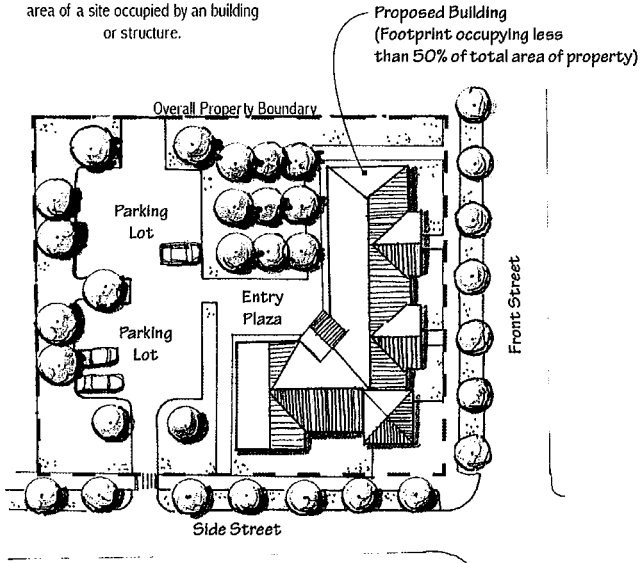


## Section 804. Building Coverage

The building coverage on any development site shall not exceed 50 percent in the C-2 (19E) zoning district and 75 percent in the C-3 E/W Main Street district. "Building coverage" means the total ground area of a site occupied by any building or structure as measured from the outside of its surrounding external walls or supporting members. Building coverage includes exterior structures such as stairs, arcades, bridges, and permanent structural elements protruding from buildings such as overhanging balconies, stories which overhang a ground level story, garages and covered carports. Excluded from building coverage are roof eaves extending less than thirty inches from the face of any building, awnings, open parking areas, and masonry walls not greater than six feet in height such as planter walls or retaining walls.

**Coverage**

"Building Coverage" is the total ground area of a site occupied by a building or structure.



"The building coverage on any development site shall not exceed 50% in the C-2 (19E) zoning district and 75% in the C-3 E/W Main Street district"

Zoning District	Maximum Building Coverage
C-1 - CBD	N/A
C-2 – 19E	50%
C-3 – E/W Main	75%

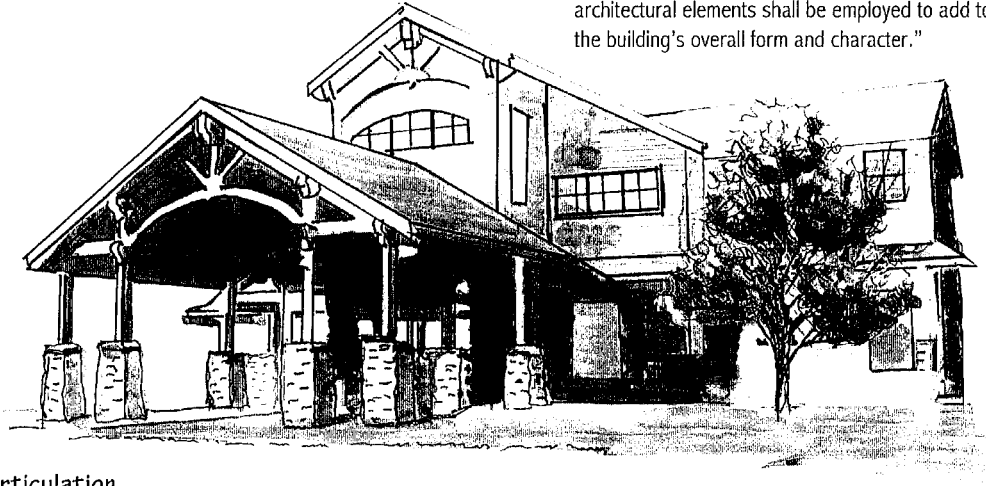
**Section 805. Building Mass and Height Transitions**

Building heights shall be greatest near the center of building sites and gradually transition to lower heights at the edges of the development. Upper stories of new developments shall be stepped back from lower stories and shall use varied heights, facades, and wall surfaces to avoid monotony.

**Section 806. Building Articulation**

New developments shall make use of building articulation to emphasize strategic breaks in large expanses on building surfaces. Assorted architectural elements shall be employed to add to the overall form and character of the building.

"New developments shall make use of building articulation to emphasize strategic breaks in large expanses on building surfaces. Assorted architectural elements shall be employed to add to the building's overall form and character."



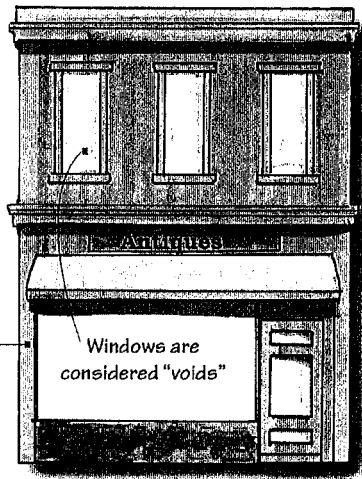
Articulation

**Section 807. Building Façades and Openings**

Continuous flat façades are prohibited. Front façades on all commercial buildings shall have a front porch, stoop, colonnade, awning, balcony, or bay window for a length of between 50 percent (50%) and 100 percent (100%) of the building frontage, reference- see Section 902 (Building Orientation and Picture). The openings on a front façade shall have a void-to-solid ratio of no less than 50 percent. The void-to-solid ratio of the façade includes clear glass windows/doors, balconies, colonnades, loggias, and the like. (Amended 8-20-15)

**Void-to-Solid Ratio**

"Front façades on buildings in the central business district shall have a front porch, stoop, colonnade, **awning**, balcony, or bay window for a length of between 50 percent (50%) and 100 percent (100%) of the building frontage. The openings on a front façade shall have a void-to-solid ratio of no less than 50 percent. The void-to-solid ratio of the façade includes **clear glass windows/doors**, balconies, colonnades, loggias, and the like."



**Section 808. Building Rooflines**

In order to create visual continuity within commercial districts, roofs shall be compatible with neighboring buildings' architectural styles. Roof planes shall be varied and contain dormers or other architectural elements to provide buildings with visual interest. The appearance of a flat roof is prohibited and monolithic expanses of roof on large scale buildings shall be avoided through the use of elements such as gables and parapets. Rooftop mechanical and electrical equipment shall be screened from public view. See graphic, Section 902

**Section 809. Building Height**

The vertical distance from the average grade elevation taken at the fronting street side of a structure to the top of any parapet structure or roofline of a flat roof, the midpoint from the eaves to the ridgeline of a pitched roof, or the top of a mansard roof. Towers, spires, steeples, and enclosed rooftop mechanical equipment are not counted in height measurements.

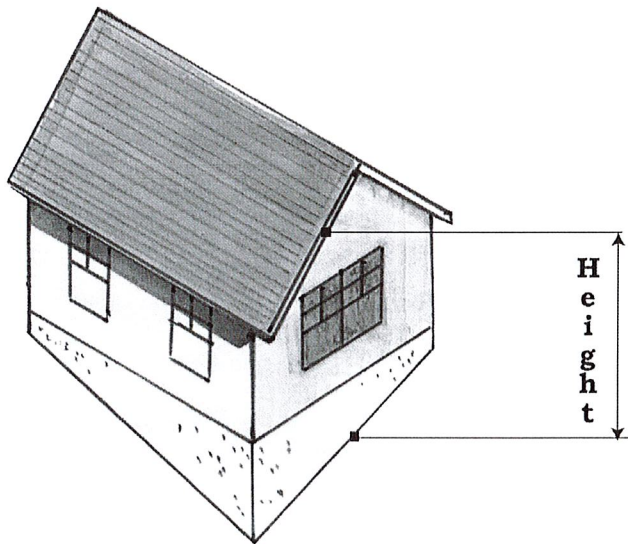
The height of buildings shall meet the following specifications:

Zoning District	Maximum Height	Minimum Height
C-1 - CBD	50 feet (4 stories)	24 feet (2 stories)
C-2 – 19E	50 feet (4 stories)	12 feet (1 story)
C-3 – E/W Main	50 feet (4 stories)	12 feet (1 story)
R-10	38 feet (3 stories)	12 feet (1 story)

**Commented [BB87]:** Added regulation for R-10 district

**Building Height**

“Building height is defined as the vertical distance from the average grade elevation taken at the fronting street side of a structure to the midpoint from the eaves to the ridgeline of a pitched roof.”



**Section 810. Building Materials, Finishes, and Colors**

1. All sides of a building have an impact on its surroundings and should be considered for treatment with an architectural finish of primary materials (i.e., brick, wood and stone), unless other materials demonstrating

equal or greater quality are used. As a general rule, front facades in the C-1 district should be at least 80 percent brick and stone. Side facades should be at least 50 percent brick and stone. Rear facades do not have a minimum requirement for primary materials and where appropriate may consist entirely of secondary materials (e.g., stucco). Tertiary materials (i.e., wood and metal) should be used for decorative elements and trim only.

2. Exterior building materials on the primary structure shall not include smooth-faced concrete block, tilt-up concrete panels, or prefabricated steel panels.
3. The following types of building materials shall not be used: highly reflective, shiny, or mirror-like materials; mill-finish (non-colored) aluminum metal windows or door frames; exposed, unfinished foundation walls; exposed plywood or particle board; and un-plastered, exposed concrete masonry blocks.
4. Material or color changes generally should occur at a change of plane. Piecemeal embellishment and frequent changes in material should be avoided.
5. A horizontal accent stripe (e.g., a foot wide stripe of different color) may be used to help reduce the appearance of monotonous colors and break up the appearance of large building walls.
6. Facade colors shall be low reflectance, and subtle, neutral, or earth-tone colors. High-intensity colors, metallic colors, black, or fluorescent colors shall not be used. Building trim and accent areas may feature brighter colors, provided that the width of the trim shall not exceed four feet.
7. Building colors shall be carefully chosen so that each building color complements that of its neighbors. Colors are classified as the "base" color (used on the majority of the building surface), "trim" color (used on the window trim, fascia, balustrades, and posts), and "accent" color (used on signs, awnings, and doors). The base color should consist of more subdued earth tones or brick shades. Trim colors should have contrasting lighter or darker shade than the base color. If natural brick is used, it should not be painted.

#### **Section 811. Awnings**

1. The use of awnings on buildings is recommended to provide protection from sun, wind, and rain, and to improve the aesthetics of building exteriors.
2. It is recommended that awnings be constructed with a durable frame, covered by a canvas material. Awnings that are backlit through translucent materials may be acceptable but are not particularly encouraged. Aluminum and other metal canopies are acceptable in most instances, particularly when integrated into shopping center designs. Flameproof vinyl, canvas or metal awnings and canopies may be permitted.
3. Solid colors are preferred over striped awnings, but striping may be permitted if colors complement the character of the structure or group of buildings.
4. Awnings are encouraged for first floor retail uses to provide architectural interest and to encourage pedestrian activity. Where awnings are used, they should be designed to coordinate with the design of the building and any other awnings along the same block.

**Section 812. Exterior Lighting**

1. Exterior lighting should be architecturally compatible with the building style, material, and colors. Galleria style and shoebox styles (cutoff fixtures) shall be used rather than cobra type light fixtures and directional floodlights.
2. Exterior lighting of the building and site should be designed so that light is not directed off the site, and the light source is shielded from direct offsite viewing. All outdoor light fixtures should be fully shielded or be designed or provided with light angle cut-offs, so as to eliminate up-lighting, spill light, and glare.
3. Excessive illumination of signage, building, or site shall be prohibited. Roof lighting, down-lighting washing the building walls, and illuminated awnings are all prohibited.
4. Fixture mounting height should be appropriate for the project and the setting. The mounting height of fixtures in parking lots or service areas shall not exceed 20 feet, and lower mounting heights are encouraged, particularly where adjacent to residential areas or other sensitive land uses. Uses of low, bollard-type fixtures three to four feet in height, are encouraged as pedestrian area lighting.

**Section 813. Parking**

1. Parking Plan Required

Before any building permit is issued; the proposed parking lot layout and area must be found to be in compliance with all requirements of this Ordinance. A parking plan, for all but detached single-family uses, shall be submitted for approval by the Zoning Administrator. Occupancy of the land or use of a building shall not occur until the Zoning Administrator determines that parking facilities are available in accordance with the approved plan.

**Commented [BB88]:** Added Zoning Administrator

All new or newly expanded developments subject to design review shall comply with the minimum parking requirements of this Ordinance. Additionally, developments not in the C-1 Zoning District are subject to the requirements Section 1213 of this ordinance

**Commented [CB89]:** Removed the mini chart from this section and referred to the main parking chart in general provisions section.

2. Location of Off-Street Parking Areas

All parking spaces required by this ordinance shall be provided on the same lot with the main building or use that it serves, and to the sides and rear of the primary building wherever practical, with the following exceptions:

- a. Upon demonstration that the parking spaces required are not available and cannot reasonably be provided on the same lot as the building, structure or use it serves, the required parking spaces may be provided on a lot of which a substantial portion is within 400 feet of such building, structure, or use. This provision shall require submittal of evidence of ownership or valid agreement to lease the off-site parking area that is intended to be used to comply with this article.
- b. A property owner may provide a portion of the required off-street parking spaces on a parcel directly adjacent to the subject parcel provided the peak usage times for such parking do not coincide, and provided a legally-binding agreement for such shared parking exists between the adjacent property owners.
- c. Off-street parking is not required in the C-1 Zoning district.

3. Parking Spaces

The standard parking space (stall) size for 90-degree parking lots is 9’x18’, with 24’ wide driving aisles. Four percent (4%) of all spaces provided shall meet Federal ADA standards for disabled parking. Up to fifteen percent (15%) of all parking spaces may be sized for compact car parking, with a minimum stall dimension of 8’x 16’.

All parking spaces shall be marked or designated by painted lines or the equivalent in paved parking lots, and by permanent, fixed markers in unpaved lots.

**Section 814. Utilities, Trash Containment, Buffering and Fencing**

It is the intent of this section to provide for visual screens and/or buffers between trash container and dumpster locations and all street rights-of-way and adjoining properties.

1. Fencing facing street corridors shall consist of natural materials such as wood and/or stone and complemented by appropriate landscaping to break up the length and mass of the fencing. Metal fencing of any type is not permissible except where chain link is deemed necessary for security purposes and/or dumpster screening. Such metal fencing must be completely concealed by evergreen plant material.
2. Trash containers and dumpsters shall not be located in the front yard of any property and shall be screened from view on all sides. Chain link fencing with plastic insets of natural earth tone color is acceptable for the screening of dumpsters.
3. On double frontage or through lots, a vegetative buffer and/or berm must be used to provide the required screening.

**Section 815. Landscaping**

Landscaping for any new development requiring six (6) or more parking spaces shall be designed to meet the requirements of this section utilizing the criteria set forth in Section 817 of this article. Single family residential uses are exempt from the landscaping requirements.

A detailed landscaping plan (see graphic next page) shall be submitted with an application for any use subject to the provisions of this Section. The landscaping plan shall be reviewed during the design review process and approved by the Zoning Administrator for the Town of Burnsville.

**Commented [BB90]:** changed language to reflect the process

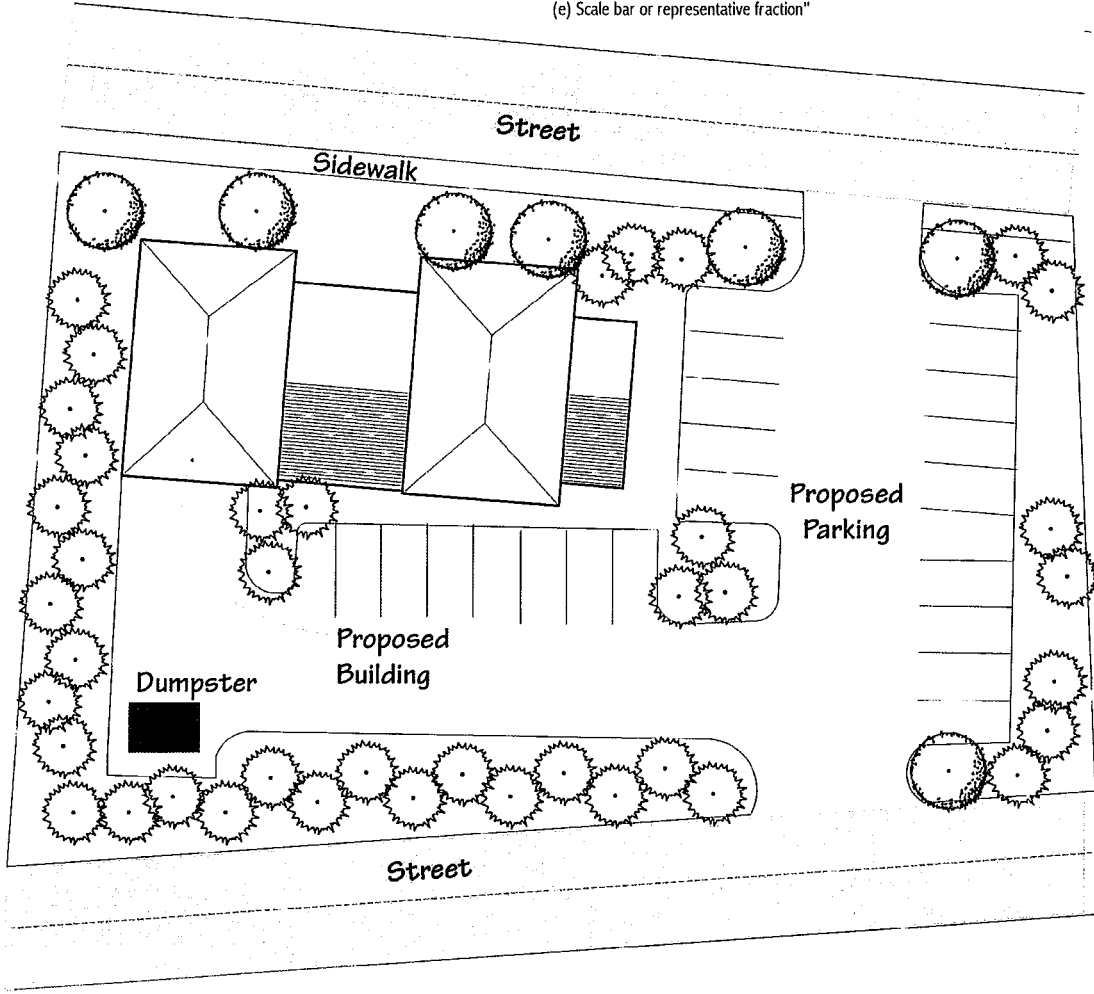
The landscaping plan, shall be submitted separately and in addition to all other site plan requirements, shall include the following:

1. Existing and proposed landscaping, including but not limited to,
  - a. The location, species, and height of new trees and shrubbery
  - b. The location and dimensions of planting areas
  - c. The dimensions of the entire parking or paved area
  - d. The location and height of fences or walls
  - e. Scale bar or representative fraction
2. The number, location, species and size of existing trees between the principal building and the public street right-of-way which are to be maintained and preserved; the size is to be measured by taking the circumference of the tree at approximately four and one-half (4 ½) feet above the grade.
3. The location and description of any barriers intended to be used to protect vegetation from damage both during and after construction. Every reasonable effort shall be made to preserve existing vegetation.
4. The location and description of distinct and resilient edging that shall be provided between landscaped areas and pedestrian/vehicle areas.

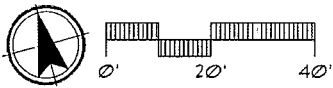
"A detailed landscaping plan shall be submitted with an application for any use subject to the provisions of this Section.

The landscaping plan, shall be submitted separately and in addition to all other site plan requirements, shall include the following:

- (a) Existing and proposed landscaping, including but not limited to
  - (a) The location, species, and height of new trees and shrubs;
  - (b) The location and dimensions of planting areas;
  - (c) The dimensions of the entire parking or paved area;
  - (d) The location and height of fences or walls
  - (e) Scale bar or representative fraction"



"To avoid long monotonous rows of parking, bays shall be interspersed with landscaped islands or medians and no more than ten (10) contiguous spaces shall be located in one row."



**Section 816. Pedestrian and Bicycle Amenities**

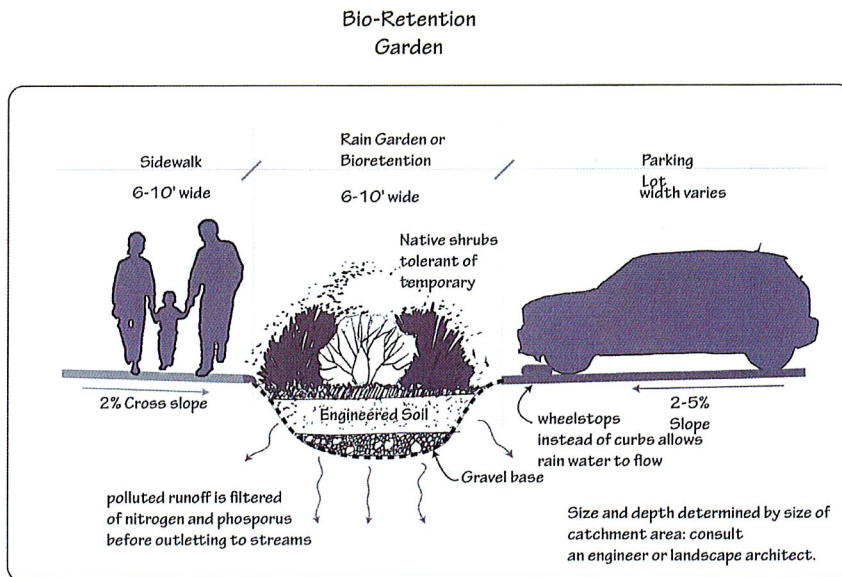
All developments subject to the provisions of this section shall provide sidewalks meeting the construction standards of the Town of Burnsville and be ADA compliant. All developments with building coverage of 40,000 square feet or more shall provide bicycle racks adequate to serve the proposal, as determined during the review process.

**Section 817. Storm water Drainage Plan**

Drainage systems shall be designed utilizing low impact design to limit disruption of natural water flows by decreasing storm water runoff, increasing onsite infiltration and reducing contaminants.

System design shall be rendered in a storm water drainage plan, which may be a written or graphic concept plan of the proposed post development storm water management system. The drainage plan shall, at a minimum, include the following:

1. Preliminary selection and location of proposed structural storm water controls
2. Low impact design elements
3. Location of existing and proposed conveyance systems such as grass channels, swales, and storm drains
4. Flow paths
5. Location of flood plain/floodway limits
6. Relationship of site to upstream and downstream properties and drainages; and
7. Preliminary location of any proposed stream channel modifications, such as for bridge or culvert crossings.



"The drainage plan must include Low Impact Development Elements."

## Section 818. Street Yard, Parking Lot Yard, and Buffer Yard Design

### 1. Street Yard Required

A planting yard, comprised of a strip of land containing landscaping materials, shall be located along and parallel to any adjacent public street, or streets. The street yard shall be located on private property and not within the street right-of-way. Street yards may have a varying minimum width as specified in this section; however, no tree planted more than 35 feet from the edge of the right-of-way will count as a street tree.

- a. The minimum width of the street yard cannot be less than seven feet and the average width shall be at least ten feet.
- b. For street yards, one (1) large shade tree (expected height of 20-35 feet at maturity) is required for every fifty (50) feet of linear street frontage of the lot minus the width of driveways and access points.
- c. Ornamental trees (expected height of 15-25 feet upon maturity) may be used in place of shade trees at the rate of one (1) for every thirty (30) feet. The use of ornamental trees in place of large shade trees may be required where overhead utilities may become an obstruction to growth or otherwise pose a hazard.
- d. Trees do not need to be spaced evenly.
- e. Trees may be clustered with a minimum spacing of 15 feet and a maximum spacing of 75 feet.
- f. Inclusion of existing trees in the landscape design is encouraged. Shrubbery, ground cover, and other planting materials shall be used to complement the tree plantings.
- g. No area of the street yard may be exposed soil, and shall be covered with vegetation. Vegetation shall consist of grass, shrubbery, or a mulched planting bed.
- h. The only area that may remain not vegetated is a six-foot radius surrounding the trunk of any tree, provided however, that this non-vegetated area is mulched.

### 2. Parking Lot Yard Required

This section applies to parking lots with six (6) or more parking spaces. The purpose of parking lot yards is to provide for attractive views from roadways and adjacent properties; to provide shade and reduce glare from parking lots; and to help improve ambient air quality.

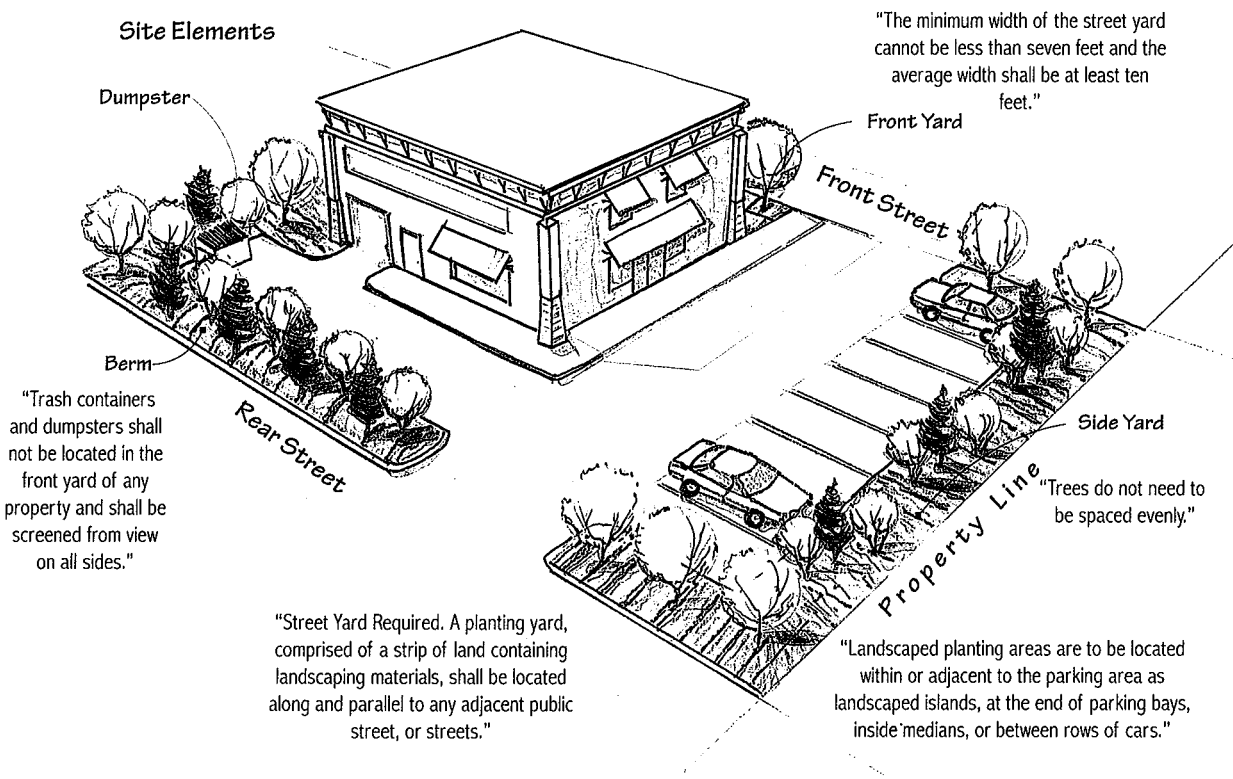
- a. Parking areas shall be interspersed with landscaping and screened by hedges, trees, planted berms, shrubs, or walls.
- b. Parking lots shall accommodate a minimum 10% net area of landscaping/green space on the interior of parking lots.
- c. All parking shall provide and maintain landscaped planting areas within the interior of or adjacent to the parking area or both.
- d. Landscaped planting areas are to be located within or adjacent to the parking area as landscaped islands, at the end of parking bays, inside medians, or between rows of cars.

- e. There shall be one large shade tree within 60 feet of every parking space.
- f. For every three-hundred (300) square feet of total parking area there shall be one shrub, reaching a minimum height of thirty (30) inches.
- g. Evergreen trees for screening shall be a minimum of 5 feet in height at planting.
- h. Large deciduous trees shall be a minimum caliper of 2.5 inches or greater when planted. Medium deciduous trees shall be a minimum caliper of 1 inch.
- i. All trees and shrubs are to be planted within a landscaped planting area not less than 200 square feet in area.
- j. To avoid long monotonous rows of parking, bays shall be interspersed with landscaped islands or medians and no more than ten (10) contiguous spaces shall be located in one row.

### 3. Buffer Yard Required

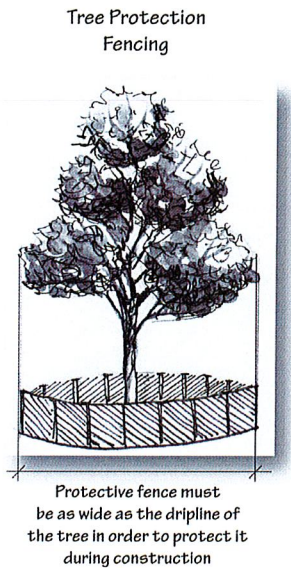
The purpose of the buffer yard is to provide a transitional area between different uses, development intensities, and densities. No buildings or parking areas may encroach within the buffer yard.

- a. The buffer yard between nonresidential and residential uses shall be at least 8 feet in width.
- b. Where a proposed nonresidential use abuts an existing residential use or residential zoning district, the developer is required to provide a buffer yard between the residential and proposed use.
- c. The buffer shall be established through the use of densely planted landscaping that will provide complete visual separation of the uses. At the developer's choice, a combination of shrubs and a six foot fence constructed of masonry or pressure-treated lumber may be substituted for this requirement.
- d. No such buffer shall extend nearer to a street right-of-way line than the established building line of the adjoining residential lot.



4. Existing Vegetation

If it is properly protected during development and helps to further the purpose of this section, existing vegetation in good health and physical condition (other than exotic, non-native species) may count toward meeting the requirements of this section. Existing vegetation that is used to meet the standards of this section shall be replaced if it dies.



"Existing Vegetation If it is properly protected during development may count toward meeting the requirements of this section."

5. New Plant Material

All new plant material shall be chosen from either the Approved Plant Species List (Appendix A) or the Preferred Plant Species List (Appendix B). Regionally grown and native species of plants are strongly encouraged. New plant material shall complement existing site vegetation and be integrated with all other natural site features. Plantings should be grouped together or clustered as opposed to being placed in unnatural linear patterns. Vegetation that is used to meet the standards of this section shall be replaced if it dies.

See Appendix A for Approved and Preferred Plant Species.

## ARTICLE 9

### DEVELOPMENT APPROVAL PROCESS

**Commented [CB91]:** changed language of process to comply with NCGS 160D

#### Section 900. Permits Required

The use made of property may not be substantially changed, substantial clearing, grading or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to the appropriate permit.

For purposes of this Section, buildings or other substantial structures within any Business District shall be deemed “substantially altered”, thereby requiring the issuance of either a zoning or special use permit, if the applicant proposes to change in any significant manner the exterior appearance of said building or other substantial structure or makes structural repairs or modifications of fifty percent (50%) or more of the structure’s tax value.

#### Section 901. Who May Submit Permit Applications

Applications development approval will be accepted only from persons having the legal authority to take action in accordance with the permit. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this ordinance, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees).

**Commented [BB92]:** changed permit language from zoning permits to development approvals

The Administrator may require an applicant to submit evidence of his authority to submit the application in accordance with this section whenever there appears to be a reasonable basis for questioning this authority.

#### Section 902. Applications to be Complete

All applications for development approval must be complete before the permit issuing authority is required to consider the application.

**Commented [BB93]:** changed permit language from zoning permits to development approvals

Detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more illustrations contained in this ordinance. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these illustrations, so long as the plans provide sufficient information to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in the text of this ordinance. However, whenever this ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these illustrations, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the Administrator. Failure to observe this requirement may result in permit revocation or other penalty as provided in this ordinance.

An application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this ordinance.

The presumption established is that all of the information set forth in this ordinance is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Town Council or Design Review Committee, the applicant may rely in the first instance on the recommendations of the Zoning Administrator as to whether more or less information should be submitted.

The Zoning Administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In cases where a minimal amount of information is necessary to enable the Zoning Administrator to determine compliance with this ordinance the Zoning Administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

### Section 903. Staff Consultation before Formal Application

To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this ordinance, pre-application consultation between the developer and the Zoning Administrator is encouraged and required as provided in this section.

Before submitting an application for any permit, developers are strongly encouraged to consult with the Zoning Administrator concerning the application of this ordinance to the proposed development.

### Section 904. Staff Consultation after Application Submitted

Upon receipt of a formal application for a development approval the Zoning Administrator shall review the application and confer with the applicant to ensure that he understands the Zoning Administrator's interpretation of the applicable requirements of this ordinance, that he has submitted all of the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.

If the Zoning Administrator believes that the application is incomplete, he shall recommend to the appropriate board that the application be denied on that basis.

Commented [BB94]: Changed permit language from zoning permits to development approvals

### Section 905. Application to be Processed Expeditiously

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary cost on the appellant or applicant, the Town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this ordinance.

### Section 906. Effect of Permit on Successors and Assigns

Unless provided otherwise by law all rights, privileges, benefits, burdens, and obligations created by a development approval pursuant to this ordinance attach to and run with the land.

Development approvals authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

1. No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit
2. The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued. All issued permits run with the land.

Commented [BB95]: Changed permit language from zoning permits to development approvals

### Section 907. Administrative Approvals

1. Zoning Compliance Permits

All applications for certificates of zoning compliance shall be accompanied by plans showing the actual dimensions of the plot to be built upon, and the location on the lot of the building or structure proposed to be erected or altered, and such other information as may be necessary to provide for the enforcement of the provisions of this ordinance.

- a. A completed application for a zoning compliance permit shall be submitted by filing a copy of the application with the Zoning Administrator.
- b. The Zoning Administrator shall refer those development applications subject to Article:8 Design Standards to the Design Review Committee as required by the provisions of this ordinance. The Design Review committee shall have 30 days from receipt of the application to make written recommendations regarding the project. All such proposals must meet or exceed the provisions of Article 8: Design Standards.
- c. The Zoning Administrator shall issue the zoning compliance permit unless he finds, after reviewing the application and consulting with the applicant, and when required, the Design Review Committee, that:
  - i. The requested permit is not within his jurisdiction; or
  - ii. The application is incomplete; or
  - iii. If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance.
- d. Zoning Compliance permits are issued under this ordinance only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued in reliance thereon, all development shall occur strictly in accordance with such approved plans and applications.
- e. A Zoning Compliance permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit issuing authority. All such permits issued with respect to variances or special uses shall be recorded in the Yancey County Register of Deeds office, as appropriate after execution by the record owner.

**Commented [CB96]:** Changed to reflect the new Article number for Design Standards

## 2. Building Permits

Upon receiving a development approval, a building permit shall be obtained pursuant to the requirements of the North Carolina State Building Code.

- a. No development shall occur except pursuant to a building permit, when one is required. A building permit is generally required for the activities below. Other building activities may also require a permit.
  - i. The addition, repair, or replacement of load bearing structures.
  - ii. An addition or change in the design of plumbing.
  - iii. The addition, replacement, or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment.
  - iv. The addition of roofing.
  - v. Commercial work of any value.
  - vi. Work on single-family residential or farm buildings exceeding \$5,000.
  - vii. The following work, even if not in excess of \$5,000:
    - viii. construction of deck, fireplace, pier, or storage building;
    - ix. installation or replacement of insulation, wood stove, or hot water heater; moving a building;

**Commented [BB97]:** Added new regulatory language for building permits.

- x. demolition of a building.

3. Certificate of Occupancy

- a. A certificate of occupancy issued by the Zoning Administrator is required in advance of:
  - i. Occupancy or use of a building hereafter erected, altered or moved.
  - ii. Change of use of any building, land owner or tenant.
  
- b. A certificate of occupancy, either for the whole or part of a building, shall be applied for at the same time the application for a certificate of zoning compliance is submitted. The certificate of occupancy shall be issued within ten (10) days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this ordinance. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this ordinance. If the certificate of occupancy is denied, the Zoning Administrator shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the Zoning Administrator and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved. In addition to the requirements of this section, a certificate of compliance is also required to be issued under the provisions of the North Carolina State Building Code.
  
- c. No Occupancy or Use until Requirements Fulfilled
  - i. Issuance of a zoning compliance permit authorizes the recipient to commence the allowed activity resulting in a change in use of the land or (subject to obtaining a building permit) to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures. However, the intended use may not be commenced and no building may be occupied until all of the requirements of this ordinance imposed pursuant to the issuance of a zoning compliance permit have been complied with.

4. Floodplain Development Permit

A floodplain development permit shall be required prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of the Floodplain Prevention Ordinance for the Town of Burnsville.

Issuance of Approvals

- 1. A copy of the fully executed permit is delivered to the permit recipient; (delivery is accomplished when the permit is hand delivered or mailed or electronically transmitted to the permit applicant); or
- 2. The Zoning Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded with the Register of Deeds, when required.

**Commented [BB98]:** Added language for Floodplain Development

**Commented [BB99]:** Moved language under this section from separate section.

Section 908. Quasi-Judicial Approvals

1. Special Use Permits

The Town Council may, in particular cases and subject to appropriate conditions and safeguards, grant permits for special uses as authorized by this ordinance and allow special uses for the various use districts. (Amended 6-26-14)

- a. When a Special Use Permit is required by the terms of this ordinance, application for such a permit shall accompany the application for a zoning compliance permit. The application shall be transmitted immediately to the Town Council. (Amended 6-26-14)

**Commented [CB100]:** Changed the language from "Conditional" Use to "Special" Use here and throughout the ordinance to comply with NCGS 160D

**Commented [BB101]:** Added procedures as required by Design Review Ordinance

- b. When considering Special Use Permits, the Town Council shall follow quasi-judicial procedures as set forth in Section 1107 (NCGS 160D-406) or any subsequent amendments thereto.
- c. All Special Use Permits issued will be recorded in the Yancey County Register of Deeds.
- d. The Town Council, shall authorize the Zoning Administrator to issue the requested permit unless it concludes, based upon the evidence submitted at the hearing, that the permit should be denied because:
  - i. The requested permit is not within its jurisdiction; or
  - ii. The application is incomplete; or
  - iii. If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance.
- e. Burden of Presenting Evidence; Burden of Persuasion  
The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this ordinance remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down rests on the party or parties urging that the requested permit should be denied.
- f. Additional Requirements on Special Use Permits  
Subject to Section 908.1 (b), in granting a Special use permit, the Town Council, may attach to the permit such reasonable requirements in addition to those specified in this ordinance as will ensure that the development in its proposed location:
  - i. Will not endanger the public health or safety;
  - ii. Will minimize any injury to the value of adjoining or abutting property;
  - iii. Will be in harmony with the area in which it is located; and
  - iv. Will be in conformity with the Town of Burnsville Comprehensive Land Use Plan, or any other plan officially adopted by the Town.

**Commented [CB102]:**  
eferenced the subsection for quasi-judicial process rather than duplicating it here

The Council may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements. The applicant/landowner must consent in writing to additional conditions related to issuance of special use permit.

Without limiting the foregoing, The Council may attach to a permit a condition limiting the permit to a specified duration.

All additional conditions or requirements shall be entered on the permit.  
All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this ordinance.

A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in this Section.

- g. Even if the Town Council finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- i. Will materially endanger the public health or safety; or
- ii. Will substantially injure the value of adjoining or abutting property and such loss in property values is not outweighed by the benefit of the community from the proposed development; or
- iii. Will not be in harmony with the area in which it is to be located; or
- iv. Will not be in general conformity with the Town of Burnsville Comprehensive Land Use Plan, or with any other plan officially adopted by the Town.

**Commented [BB103]:**  
changed to Comprehensive Land Use Plan

h. Revocation

A revocation of a special use permit must follow the same quasi-judicial procedures and notices required for the issuance of the permit.

i. Reconsideration of Board Action

Whenever the Town Council disapproves a Special use permit application, or the Board of Adjustment disapproves an application for a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board at a later time unless the applicant clearly demonstrates that:

- i. Circumstances affecting the property that is the subject of the application have substantially changed; or
- ii. The application is changed in some substantial way; or
- iii. New information is available that could not with reasonable diligence have been presented at a previous hearing.

2. Variances

When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- a. Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- c. 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 is not a self-created hardship.
- d. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection.
- e. Variances are heard by the Board of Adjustment in a Quasi-Judicial Hearing pursuant to the process set forth in Section 1107.
- f. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

**Commented [CB104]:**  
oved variances to this section as they are quasi-judicial approvals. Amended language to comply with NCGS 160D-705d

**Section 909. Legislative Approvals**

1. Text Amendments  
Any amendment to the text of this ordinance shall be made by the Town Council as a legislative decision pursuant to the procedures set forth in Article 14 of this ordinance.
2. Rezoning/Map Amendments  
Any amendment to the official zoning map of the Town of Burnsville shall be made by the Town Council as a legislative decision pursuant to the procedures set forth in Article 14 of this ordinance.
3. Development Agreements  
Pursuant to Article 10 of NCGS 160D the Town of Burnsville may enter into development agreements for multi-phased projects requiring a long-term commitment of both public and private resources. The Town and Developer shall follow the procedures of Article 10 of NCGS 160D. The Town must be a party to any development agreement for property development within its jurisdiction. The approval of a development agreement shall be a legislative decision made by the governing board and may be heard concurrently with a rezoning application.

**Commented [BB105]:**  
Added section to explain Legislative Approvals.

**Section 910. Deviation from Approved Plans**

Development approvals issued on the basis of plans and applications approved by the Zoning Administrator or authorized Board in a quasi-judicial decision authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction that deviates from authorized plans, except as provided for in Section 1300, shall be deemed a violation of this ordinance, and punishable by the provisions set forth in Article 15 of this ordinance.

**Commented [BB106]:**  
Changed permit language from zoning permits to development approvals

**Commented [BB107]:**  
Added language to reflect approvals made by quasi-judicial decisions

**Section 911. Expiration of Permits**

1. Table of Permit Expiration and Applicability

Type of Permit	Period of Validity	Summary of Applicability
Permit Choice	18 Months from initial approval	Right for development applicant to choose for application to be reviewed under the regulations applicable at the time of initial application; applies to initial permit application and subsequent related development permits.
Development Permits	12 Months	Valid for 12 months unless altered by other statutes.
Building Permit	6 Months	Work under a building permit must begin within 6 months. Permit expires after discontinuance of work for 12 months
Development Agreement	Per agreement	Negotiated agreement between developer and local government specifying a range of development topics, including period of vesting
Multi-Phased Development	7 years from first site plan approval	Qualifying development enjoys extended vesting. Must be at least 25 acres in size, subject to master development plan with committed elements, to be permitted and built in phases. GS160D-108

**Commented [BB108]:**  
Changed the reference to the location of the Article for enforcement

**Commented [CB109]:**  
Changed to deviation from approved plans.

**Commented [BB110]:**  
Added table per 160D guidelines

2. Extensions to Development Permits
  - a. The Zoning Administrator may extend for a period up to six months the date when a permit would otherwise expire pursuant to subsections (a) or (b) if it concludes that:

- i. The permit has not yet expired;
  - ii. The permit recipient has proceeded with due diligence and in good faith; and
  - iii. Conditions have not changed so substantially as to warrant a new application.
- b. Successive extensions may be granted for periods of up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

# ARTICLE 10

## ADMINISTRATION

### Section 1000. Zoning Administrator

Primary responsibility for administering and enforcing this Ordinance may be assigned to one (1) or more individuals by the Town Council. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the "Zoning Administrator." Any function or responsibility assigned by this Ordinance to the Administrator may be delegated by such person to another employee or agent acting under the Administrator's control or at his direction, unless such delegation is prohibited by the Town Council

### Section 1001. Duties of the Zoning Administrator

1. 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 Adjustments, and all applications for variances and special use permits shall first be presented to the Zoning Administrator who in turn shall refer the applications to the Board of Adjustments.
2. If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it.
3. 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 ordinance 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 in accordance with the provisions of Section 1106.2 of this ordinance. (Amended 6-26-14)
4. Maintenance of Zoning Maps  
The boundaries of zoning districts are effective at the same time this chapter is effective by the adoption by the Burnsville Town Council of a map entitled "Town of Burnsville, North Carolina Official Zoning Map," (hereinafter "zoning map"). This zoning map, together with all amendments adopted by the Burnsville Town Council, is incorporated herein by reference as if fully set forth herein. This zoning map shall be retained permanently in the office of the Zoning Administrator of the Town of Burnsville.

**Commented [CB111]:**  
Clarified the roles and duties of the Zoning Administrator under this section.

### Section 1002. Code Enforcement Officer

Primary responsibility for administering and enforcing the Town of Burnsville Code Enforcement Program may be assigned to one (1) or more individuals by the Town Council. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the "Code Enforcement Officer." The Code Enforcement Officer shall be responsible for:

**Commented [CB112]:**  
Added language about maintenance of official zoning map to comply with NCGS 160D

1. Receive and respond to citizen complaints and reports from other agencies and departments on alleged violations of Town Ordinances;
2. Conduct field investigations to inspect properties for violations and attempt to make contact at the residence or business in order to resolve violation;
3. Issue and posting warning notices, notices of violation, corrective notices, orders to comply, and related documentation for code violations
4. Issue administrative citations and notices of violation as necessary.

**Commented [CB113]:**  
Added Language for Code Enforcement Officer

**Section 1003. Floodplain Administrator**

The use of land within floodplains shall comply with the Flood Damage Prevention Ordinance of the Town of Burnsville, this zoning ordinance, and all other applicable regulations.

1. Primary responsibility for administering and enforcing the Flood Prevention Ordinance for the Town of Burnsville may be assigned to one (1) or more individuals by the Town Council. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the "Floodplain Administrator." The floodplain administrator shall be responsible for:
  - a. Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this chapter have been satisfied.
  - b. Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received.
  - c. Issue stop work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the floodplain administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the person doing or in charge of the work. The stop work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop work order constitutes a misdemeanor.
  - d. Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection.
  
2. Incorporation of Flood Insurance Rate Maps (FIRM) by reference  
 The standards in this section shall apply to all property within the special flood hazard area, as shown on the most recently adopted Flood Insurance Rate Maps (FIRMs) for the Town of Burnsville. The applicable FIRMs are incorporated by reference automatically into the Town of Burnsville zoning map. The Clerk shall maintain a digital or paper copy of the applicable FIRMs for public inspection.

**Commented [CB114]:**  
dded language for  
Floodplain Administrator

**Section 1004. Conflicts of Interest**

No staff member shall make a final decision on an administrative decision required by this Ordinance 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.

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.

**Commented [CB115]:**  
dded Conflict of Interest  
language for  
Administrative Staff to  
comply with NCGS 160D

## ARTICLE 11 BOARDS

### Section 1100. Types of Boards

The Town of Burnsville utilizes the appointment of individual boards to assist with various aspects of the administration of the Zoning Ordinance. These boards include the Planning Board, Board of Adjustment, and the Design Review Committee.

### Section 1101. Oaths

Any individual serving on an appointed board for the Town of Burnsville shall be administered an oath of office in compliance with State Law

### Section 1102. Minutes

Pursuant to NCGS 160D-308 each board must keep minutes of all proceedings.

**Commented [CB116]:**  
dded Oaths and minutes  
language to comply with  
NCGS 160D

### Section 1103. Conflicts of Interest (160D- 109)

#### 1. Governing Board

A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Ordinance 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.

#### 2. Appointed Boards

Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Ordinance 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.

#### 3. Quasi-Judicial Decisions

A member of any board exercising quasi-judicial functions pursuant to this Ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

#### 4. 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.

#### 5. 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.

**Commented [CB117]:**  
dded Conflict of Interest  
language for each type of  
Board

**Section 1104. Planning Board**

As required by state law the Town Council established a planning board to review and make recommendations pursuant to the provisions of NCGS 160D and this ordinance. A copy of this establishing ordinance and any amendments thereto is on file with the Clerk of the Town.

**Section 1105. Design Review Committee**

The Burnsville Planning board also serves as the Design Review Committee for the Town of Burnsville. The committee is authorized to review plans and designs as specified in this ordinance.

**Commented [CB118]:**  
dded language  
establishing the role of  
the Planning Board and  
Design Review Committee

**Section 1106. Board of Adjustment**

A Zoning Board of Adjustment is hereby established. The Zoning Board of Adjustment (the "BOA") shall consist of the five (5) duly elected members of Town Council for the Town of Burnsville. The terms of the members of the BOA shall be the same as those of the Town Council. Members, for purposes of sitting as the BOA shall serve without pay for being a member of the BOA, but may be reimbursed for any expense incurred while representing the BOA. (Amended 9-2015)

1. Rules of Procedure

The Board of Adjustment shall adopt rules of procedure separate from this ordinance which shall, at a minimum, provided for:

- a. general rules
- b. officers and duties
- c. alternate members
- d. rules of conduct for members
- e. meetings
- f. zoning appeals and applications
- g. amendments

Such rules of procedure shall accompany but shall not be made part of this zoning ordinance. Such rules shall be consistent both with this ordinance and the provisions of Chapter 160D of the North Carolina General Statutes. All meetings of the Board shall be open to the public and minutes shall be kept of all meetings.

2. Administrative Appeals

Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or this ordinance. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a storm water control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision.

a. Standing

Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board of adjustment. An appeal is taken by filing a written notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.

b. Time to Appeal

The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

c. Record of Decision

The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

d. Stays

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.

Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

e. Alternative Dispute Resolution

The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

f. No Estoppel

G.S. 160D-1403.2, limiting a local government's use of the defense of estoppel, applies to proceedings under this section.

**Commented [CB119]:**  
Clarified the Administrative  
appeals language to  
match NCGS 160D

3. Variances

A request for a variance from a provision of this ordinance shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or this ordinance. Variances are heard by the Board of Adjustment in a Quasi-Judicial Hearing pursuant to the process set forth in Section 1107.

**Section 1107. Quasi-Judicial Process**

Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

1. Notice of Hearing

Notice of evidentiary hearings conducted pursuant to this Chapter 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 provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the

county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government 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. The board may continue an evidentiary hearing that has been convened without further advertisement. 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.

2. Administrative Materials

The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

3. Presentation of Evidence

The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

4. Appearance of Official New Issues

The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

5. Oaths

The chair of the board or any member acting as chair and the clerk to the board 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 determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

6. Subpoenas

The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. 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 immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena

may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

7. Appeals in Nature of Certiorari

When hearing an appeal pursuant to G.S. 160D-947(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. 160D-1402(j).

8. Voting

The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

9. Decisions

The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and 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 clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

10. Judicial Review

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

**Commented [CB120]:**  
ombined the language  
and procedures for all  
quasi-judicial proceedings  
into one section.

## ARTICLE 12

### GENERAL PROVISIONS

#### Section 1200. Use

No building or land shall hereafter be used or occupied, and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this ordinance for the district in which it is located.

#### Section 1201. Height and Density

No building shall hereafter be erected or altered so as to exceed the height limit or to exceed the density regulations of this ordinance for the district in which it is located.

#### Section 1202. Lot Size

No lot, even though it may consist of one or more adjacent lots of record in single ownership, shall be reduced in size so that the lot width and depth, front, side or rear yards, lot area per dwelling unit, or other requirements of this ordinance are not maintained. This prohibition shall not be construed to prevent the purchase or condemnation of narrow strips of land for public utilities or street right-of-way purposes.

#### Section 1203. Required Yards and Other Spaces

No part of a yard or open space, or off-street parking or loading space required in Section 1213 and 1214, or required in connection with any building for the purpose of complying with this ordinance, shall be included as a part of the yard, open space, or off-street parking or loading space similarly required for any other building.

#### Section 1204. One Principal Building on a Lot

Every building hereafter erected, moved or structurally altered shall be located on a lot, and in no case shall there be more than one (1) principal building or structure and its customary accessory buildings on the lot, except in the case of mobile home parks and group projects pursuant to the provisions of Sections 707 and 719.1 of this ordinance.

With any principal building, more than one use may exist provided all such uses comply with the regulations applicable to the district in which the principal building is located. The requirements of Section 1213 and 1214 of this ordinance shall be observed strictly with respect to each use which exists within a principal building. Where more than one dwelling exists within a principal building, such uses shall be combined for the purpose of determining the status of the use as either a single-family, two-family, or multi-family dwelling pursuant to Section 401.

#### Section 1205. Necessary Repairs Permitted

Nothing in this ordinance shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building or structure declared to be unsafe or unlawful.

#### Section 1206. Street Access

No building shall hereafter be erected on a lot which does not abut or be within forty (40) feet of a publicly-dedicated, publicly-approved or publicly-maintained street.

**Commented [BB121]:**  
clarified awkward  
language

#### Section 1207. Visibility at Intersections

Sight distances at intersections must meet the standards for secondary roads established by the North Carolina 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.

**Section 1208. Vacant Lots**

Vacant lots and open spaces located adjacent to major thoroughfares shall be maintained. Vegetation shall be neatly trimmed, and the accumulation of unsightly debris shall be prohibited.

**Section 1209. Travel Trailers and Recreational Vehicles**

Travel trailers and/or recreational vehicles may be used as a temporary single family dwelling only in those districts that may now or hereafter permit travel trailers parks, and only within such parks. In no case shall a travel trailer or recreational vehicle be used as a single family dwelling on an individual lot or in conjunction with a primary residence on an individual lot.

**Section 1210. Sedimentation Control**

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 North Carolina Sedimentation Control Commission, North Carolina Department of Natural Resources and Community Development.

**Section 1211. Nonconformities**

Any parcel of land, use of land, building structure existing at the time of the adoption of this ordinance, 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:

1. Nonconforming Vacant Lots

This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Yancey County, which at the time of adoption of this ordinance fail to comply with the minimum area and/or width requirements of the districts in which they are located. Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located provided that:

- a. Where the lot area is not more than twenty (20) percent below the minimum specified in this ordinance, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a zoning compliance permit.
- b. Notwithstanding the foregoing, whenever two (2) or more adjoining vacant lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as a single lot or several lots which meet the minimum requirements of this ordinance for the district in which such lots are located.

~~c. Where the lot area is more than twenty (20) percent below the minimum specified in this ordinance 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.~~

**Commented [CB122]:**  
not Conforming with Law

2. Nonconforming Occupied Lots

This category of nonconformance consists of lots, occupied by buildings or structures at the time of the adoption of this ordinance, 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.

3. Nonconforming Open Uses of Land

This category of nonconformance consists of lots used for storage yards, used car lots, auto wrecking, junkyards, and similar open spaces where the only buildings on the lot are incidental and accessory to the open use of the lot and where such use of the land is not permitted to be established hereafter, under this ordinance, in the district in which it is located. A legally established nonconforming open use of land may be continued except as follows:

- a. When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.
- b. Nonconforming open uses of land shall be changed only to conforming uses.
- c. A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.
- d. When any nonconforming open use of land is discontinued for a period in excess of one hundred eighty (180) days, any future use of the land shall be limited to those uses permitted in the district in which the land is located. Vacancy and/or non-use of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

4. Nonconforming Uses of Structures

This category of nonconformance consists of buildings or structures used at the time of enactment of this ordinance for purposes of use not permitted in the district in which they are located. Such uses may be continued as follows:

- a. An existing nonconforming use may be changed to another nonconforming use of the same or higher classification, provided that the other conditions in this section are complied with. For the purpose of this ordinance, the rank order of uses from higher to lower shall be:
  - i. Residential
  - ii. Public
  - iii. Commercial
  - iv. Industrial.
- 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 structure containing a nonconforming use be altered except as follows:
  - i. Structural alterations as required by law or ordinance to secure the safety of the structure are permissible.
  - ii. Maintenance and repair necessary to keep a structure containing a nonconforming use in sound condition are permissible.
  - iii. Expansion of a nonconforming use of a building or structure into portions of the structure which, at the use became nonconforming, were already erected and arranged or designed for such nonconforming use is permissible.
- d. When any nonconforming use of a building or structure is discontinued for a period in excess of one hundred eighty (180) days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

5. Reconstruction of Damaged Buildings or Structures

Any nonconforming use, which has been damaged by fire, wind, flood or other causes, may be repaired and used as before provided:

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

6. Continuation of Manufactured Home Parks

Manufactured home parks that become nonconforming uses shall be permitted to continue operation, and existing spaces within the manufactured home park may continue to be occupied by manufactured homes even after a space has been vacated; however, these manufactured home parks shall not be expanded or increased in size and no additional spaces designed for occupancy by a manufactured home shall be added to the site after the adoption of this ordinance. A manufactured home park that is discontinued for 180 days shall not be reestablished.

7. Continuation of Manufactured Homes on Individual Lots

Manufactured homes located on individual lots which become nonconforming uses may be continued and may be either a) replaced by another manufactured home, provided the replacement unit is not more nonconforming than the original unit; or b) relocated within the boundaries of the same lot, provided that all area and dimensional requirements of this ordinance are observed. If a lot upon which a nonconforming manufactured home is located is subsequently abandoned for a period of more than 180 days, the reestablishment of a single-wide manufactured home on the lot shall not be permitted.

**Commented [BB123]:**  
hanged to conform with other sections regarding manufactured housing

**Section 1212. Double Frontage Lots**

In the event that a lot abuts a street at both the front and rear of the lot, the owner shall be required to specify the front of the lot when requesting a zoning compliance permit.

**Section 1213. Off-Street Parking**

Off-street automobile parking or storage space shall be provided on every lot at the time any principal building is enlarged or increased in capacity or at the time one type of use is converted to another, or whenever any of the following uses are hereafter established, except within the C-1 Central Business District. Such space shall be provided with vehicular access to a street or alley and shall not be provided in a yard required by the provisions of Article 8: Design Standards.

When application of the provisions of the section results in a fractional space requirement, the next larger requirement shall prevail. Each lot abutting a major thoroughfare, as determined by the Zoning Administrator, shall be provided with a vehicular access thereto in accordance with all applicable federal, state or local laws and/or regulations, and shall be provided with adequate space for turning so that no vehicle shall be required to back into the thoroughfare.

No certificate of occupancy (as provided in Section 907.2) shall be issued unless all required off-street parking and loading requirements shall be in place, ready for use, and conform to the requirements of this ordinance. The number of spaces shall be equal in number to at least the minimum requirements for the uses below:

Use Classification	Required Parking
Adult Establishment	One (1) space for each 200 square feet of gross floor space
Alcoholic Beverage Sales Store	One (1) space for each 200 square feet of gross floor space
Animal hospitals and veterinary clinics	One (1) space for each 200 square feet of gross floor area
Athletic fields and playgrounds	Ten (10) spaces per field or playground
Automobile washing establishments	One (1) space for each two (2) employees on the shift with the largest employment. Reserve spaces equal to five (5) times the capacity of the facility at the location of both ingress and egress
Automotive Repair/ Paint	Five spaces for each service bay
Bakeries	One (1) space for each 200 square feet of gross floor space
Banks and other financial institutions	One (1) space for each 150 square feet of gross floor space
Bicycle Sales and Repair	One (1) space for each 333 square feet of gross floor area
Brewery	One (1) space for each 200 square feet of gross floor space
Building Supply/ Equipment Sales	Three (3) parking spaces for each 1000 square feet of gross floor area
Child Care Center	One (1) space for each staff member plus one (1) space for each five (5) students
Child Care Home	Two (2) spaces plus one (1) space for each four (4) students
Cold Storage	One (1) space for each 333 square feet of gross floor area
Commercial Accessory Entertainment Structure	One (1) space per 200 square feet in addition to parking requirements for principal structure

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hanged from Day Care

Customary incidental home occupations	One (1) space in addition to other applicable parking requirements
Dwellings, Single-family	Two (2) spaces
Dwellings, Two Family	Two (2) spaces per dwelling unit
Dwellings, Multi-Family (4 or Less Units)	Two (2) spaces per dwelling unit
Dwellings, Multi-Family (More than 4 Units)	One and one-half (1 ½) spaces for each dwelling unit
Dwelling, Secondary	One (1) Space
Electronic Gaming Operation	One (1) space for each 200 square feet of gross floor space
Firing Range, Indoor	One (1) space per target area
Golf courses or country clubs	Two (2) spaces per tee
Group Development	One and one-half (1 ½) spaces for each dwelling unit
Hospitals; nursing homes; convalescent homes; and group care facilities	One (1) space for each two (2) beds (exclusive of bassinets), plus one (1) space for each staff or visiting doctor, plus one (1) space for each two (2) employees on shift of greatest employment
Hotels/Motels	One (1) space for each guest room, plus one (1) space for every two (2) employees.
Industrial/ Agricultural Supply	
Kennels	One (1) space for each four (4) pens
Laundries/Laundromat	One (1) space for each 200 square feet of gross floor space
Libraries	One (1) space for each four (4) seats provided for patron use
Manufactured homes	Two (2) spaces for each manufactured home
Manufacturing, industrial and wholesaling establishments, except those otherwise specified	One (1) space for each two (2) employees on the shift with the largest employment
Medical and dental offices	Three and one half (3 ½) spaces for each 1000 square feet of gross floor area
Miniature golf	One (1) space per 50 square feet of course area
Mobile home parks	Two (2) spaces for each mobile home space
Mortuaries and funeral parlors	One (1) space for each four (4) seats in the assembly room or chapel
Religious Institutions; community centers; fraternal organizations; public associations; clubs; lodges; stadiums; assembly halls; auditoriums; coliseums; gymnasiums; indoor theaters; and similar places of public assembly	One (1) space for each two (2) seats in the main assembly room
Repair Services	One (1) space for each 200 square feet of gross floor space
Museums and art galleries	One (1) space for each 200 square feet of gross floor space
Offices: business and professional	One (1) space for each 300 square feet of gross floor space
Physical fitness facilities	One (1) space per 50 square feet
Professional Services	One (1) space for each 200 square feet of gross floor space
Public buildings (not otherwise specified)	One (1) space for each 200 square feet of gross floor area
Public Safety Facilities	One (1) space for each 300 square feet of gross floor space
Public Works Facilities	One (1) space for each 300 square feet of gross floor space
Recreation or Assembly facilities without fixed seats	One (1) space per 200 square feet
Restaurants: drive-in/takeout	One space (1) for each two seats or one space for each 80 square feet of gross floor space
Restaurants: indoor	One space for each three seats or one space for each 100 square feet of gross floor space
Retail	One (1) space for each 333 square feet of gross floor area

Rooming houses	One (1) space for each guest room, plus one (1) space for every two (2) employees.
Sales establishments: automobiles, trailers, farm equipment, outdoor equipment, machinery, mobile homes, and similar items; commercial nurseries; greenhouses; monument works and sales	Four (4) spaces for each salesperson, plus one (1) space for each two (2) employees
Service Stations for motor vehicles	Three (3) spaces for each grease rack or similar facility, plus two (2) spaces for each gas pump
Schools: public or private, elementary, middle and junior high; public kindergarten	One (1) space for each classroom and administrative office
Schools: public or private, high	One (1) space for each ten (10) students for whom the school was designed, plus one (1) space for each classroom and administrative office
Shopping centers	Three (3) parking spaces for each 1000 square feet of gross floor area
Short Term Rental	Two (2) spaces per unit
Sign Painting and Fabrication	One (1) space for each 200 square feet of gross floor space
Studios	One (1) space for each 200 square feet of gross floor space
Skating rinks and bowling alleys	One (1) space for each 200 square feet of gross floor space
Swimming pools	One (1) space per 140 square feet of pool
Tattoo/ Piercing Parlor	One (1) space for each 200 square feet of gross floor space
Tennis, squash, racquetball and handball courts, or similar facilities	Two (2) spaces per court
Theater	One (1) space for each four (4) seats
Trade schools (including business, vocational and special schools)	One (1) space for each three (3) students

1. Combined Parking Spaces. The required parking space for any number of separate uses may be combined in one lot, but the required space for one use may not be assigned to another use, except that one-half of the parking spaces required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night or Sundays.
2. Location on Other Property. If the off-street parking space required cannot be reasonably provided on the same lot on which the principal use is located, such space may be provided within four hundred (400) feet of the main entrance to such principal use, provided such land is in the same ownership as the principal use. Said land shall be used for no other purpose so long as no other adequate provisions for parking space meeting the requirements of this ordinance have been made for the principal use. In such case, the applicant for a certificate of zoning compliance for the principal use shall submit with his application an instrument duly executed and acknowledged, which subjects said land to parking use in connection with the principal use or for which it is made available. Upon the payment of the necessary fee and the issuance of a building permit, the Town Clerk shall cause the said instrument to be registered with the Register of Deeds of Yancey County.

**Section 1214. Off-Street Loading and Unloading Space**

Except in the C-1 zoning district every lot on which a business, trade or industry use is hereafter established shall provide space as indicated herein for the loading and unloading of vehicles off the street. Such space shall have access to a

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o parking requirements in  
C- 1 Zoning District

street or alley. For the purpose of this section, an off-street loading space shall have minimum dimensions of twelve (12) feet by forty (40) feet and an overhead clearance of fourteen (14) feet in height above the alley or street grade.

1. Retail Business: One (1) space for each five thousand (5,000) square feet of gross area.
2. Wholesale and Industry: One (1) space for each fifty thousand (50,000) square feet of gross floor area.
3. Truck Terminals: Sufficient space to accommodate the maximum number of trucks to be stored or to be loaded or unloaded at the terminal at any one time.

**Section 1215. Sign Compliance**

No type of exterior sign may be erected, posted, reposted, placed, replaced, hung, painted, or repainted in any district except in compliance with the Town of Burnsville Sign Ordinance. (Amended 6-26-14)

## ARTICLE 13

### EXCEPTIONS AND MODIFICATIONS

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

#### Section 1300. Changes to Development Approvals (*modifications*)

After any development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. The zoning administrator may authorize minor modifications to any development approval including approved plans. The Town has defined minor modifications to development approvals that can be exempted or administratively approved. The Town shall follow the same development review and approval process required for issuance of the development approval in the review and approval of any MAJOR modification of that approval.

##### 1. General Limitations.

The minor modification:

- a. Does not involve a change in uses permitted or the density of overall development permitted.
- b. Does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval; and
- c. Meets all other ordinance requirements.

##### 2. Site Design.

Site design minor modifications are limited adjustments to the terms or design of an approved development plan or plat, including a site plan attached as a condition to a special use permit. In addition to the general limitations for minor modifications, a site design minor modification must:

- a. Comply with underlying zoning standards and other applicable conditions of the approval;
- b. Be limited to a minor change such as, without limitation, a minor adjustment to road configuration or internal circulation, a minor adjustment to building location, or a minor adjustment utility alignment.

##### 3. Dimensional Standards.

Dimensional standard minor modifications are adjustments to the dimensional standards of the zoning ordinance. Dimensional standards may only be modified upon a finding by the zoning administrator, based on evidence from the permit holder, that the modification is needed to address a site characteristic or technical design consideration not known at the time of initial approval.

- a. In addition to the general limitations for minor modifications, dimensional standard minor modifications are limited to:
  - i. An adjustment to parking requirements up to the greater of 2 spaces or 10 percent.
  - ii. An adjustment to setback requirements up to greater of 3 feet or 10 percent of the standard setback.
  - iii. An adjustment to landscape standards up to 15 percent of required landscaping.

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ew language regarding minor modifications to dimensional standards

##### 4. Appeals

A decision on minor modification may be appealed to the Board of Adjustment as an administrative determination. An application for a minor modification does not preclude an applicant from seeking a variance from the Board of Adjustment through a separate application.

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hanged our minor modification language to meet NCGS 160D standards for minor modifications.

#### Section 1301. Front Yard Setback for Dwellings

The front yard setback requirements of this ordinance for dwellings shall not apply on any lot where the average setback of existing buildings located wholly or in part within one hundred (100) feet on each side of such lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required setback. In such cases, the setback may be less than the required setback, but not less than the average of the setback of the aforementioned existing buildings.

**Section 1302. Completion of Buildings Under Construction**

Nothing in this ordinance shall require any change in the plans, construction or designated use of a building which is both under construction at the date of the passage of this ordinance, and in compliance with all applicable development regulations in effect in the Town of Burnsville at the time of issuance of the building permit, provided that construction of such building is diligently pursued and the entire building is completed within eighteen (18) months from the date of passage of this ordinance. A building shall be deemed to be under construction upon the effective date of this ordinance if a building permit has been issued.

**Section 1303. Height Limitations**

The height limitations of this ordinance shall not apply to church spires, belfries, cupolas and domes not intended for human occupancy; monuments, water towers, observation towers, transmission towers, chimneys, smokestacks, conveyors, flag poles, radio towers, television towers, masts, aerials and similar structures.

~~**Section 1308. 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. Decisions of the Zoning Administrator regarding temporary uses shall be subject to review by the Zoning Board of Adjustment on appeal.~~

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**Section 1304. Side Yard Setback for Dwellings**

Where a side yard abuts a street, said side yard requirements shall be the same as the front yard requirements for abutting property on the side street. In no case, however, shall said side yard requirements be less than those specified in Section 602.

**Section 1305. Projections Into Required Open Space**

Every part of a required yard shall be open from its lowest point to the sky unobstructed, except as follows:

1. The ordinary projection of sills, belt courses, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above shall project into a minimum side yard more than twenty-four (24) inches.
2. Open or enclosed fire escapes, fireproof outside stairways and balconies projecting into a minimum yard not more than three and one-half (3 ½) feet, and the ordinary projections of chimneys and flues may be permitted by the Zoning Administrator where same are so placed as not to obstruct the light and ventilation.

**Section 1306. Right-of Way**

Street and highway right-of-way shall not constitute a part of a lot or any required yard or open space.

## **ARTICLE 14**

### **AMENDMENTS**

#### **Section 1400. Initiation and Referral of Amendments**

Proposed changes or amendments may be initiated by the Town Council, the Planning Board, 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 Board for its review and recommendation to the Town Council in accordance with the provisions of Section 1401 of this Ordinance. (Amended 6-26-14)

#### **Section 1401. Application**

Before any action on a proposed change or amendment, an application for an amendment shall be submitted to the office of the Zoning Administrator at least ten (10) days prior to the Planning Board'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 as shown on the application forms supplied by the town. All applications requesting a change in the zoning map shall include a description of the property in question. The Planning Board and the Town Council will not consider an application for property for which an amendment was denied within the preceding twelve (12) months by the Town Council. (Amended 6-26-14)

#### **Section 1402. Planning Board Action**

All proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment.

1. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Council and the Town Council is not bound by the recommendations, if any, of the Planning Board.
2. If no written report is received from the Planning Board within 30 days of referral of the amendment to that board, the Town Council may proceed in its consideration of the amendment without the Planning Board report. Failure of the Planning Board to submit recommendations within thirty (30) day period shall constitute a favorable recommendation. (Amended 6-26-14)

#### **Section 1403. Town Council Action**

1. Hearing with Published Notice

Before adopting, amending, or repealing any ordinance or development regulation authorized by this Chapter, the Town Council shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Whenever there is a proposed repeal or amendment to the Zoning Ordinance of the Town of Burnsville the procedures and notice requirements set forth in NCGS 160D-601 shall be followed. The provisions of NCGS 160D-601 are hereby incorporated by reference into this zoning ordinance as if set forth fully herein.

Whenever there is a proposed amendment to the Official Zoning Map of the Town of Burnsville the procedures and notice requirements set forth in NCGS 160D-602 shall be followed. The provisions of NCGS 160D-602 are hereby incorporated by reference into this zoning ordinance as if set forth fully herein.

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Added to comply with  
NCGS 160D

2. Notification of Affected Parties

When a zoning map amendment is proposed, the Town shall provide notice to the owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing. The Town shall post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. (Amended 6-26-14)

3. Notice to Military Bases

If the adoption or modification would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the hearing. If the commander of the military base provides comments or analysis regarding the compatibility of the proposed development regulation or amendment with military operations at the base, the governing board of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance.

4. Ordinance Required

A development regulation adopted pursuant to this Chapter shall be adopted by ordinance.

5. Decision.

The Town Council shall make a decision on the proposed amendment within sixty (60) days after the public hearing.

6. Consistency Statement

Prior to adopting or rejecting any zoning text or map amendment, the Town Council shall adopt a brief statement describing whether its action is consistent or inconsistent with the adopted Comprehensive Land Use Plan and explaining why the Council considers the action taken to be reasonable and in the public interest. (Amended 6-26-14)

The adoption of an amendment to the Official Zoning Map that is inconsistent with the Future Land Use Map shall amend the Future Land Use Map.

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Added to reflect changes  
with NCGS 160D

**Section 1404. Down-Zoning**

No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the local government. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

1. By decreasing the development density of the land to be less dense than was allowed under its previous usage.

2. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

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added to comply with  
NCGS 160D

**Section 1405. Citizen Comments**

Subject to the limitations of NCGS 160D, zoning regulations may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the local government submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in G.S. 160D-601, to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the governing board. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

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replaced the Protest  
portion of this section in  
NCGS 160D

## ARTICLE 15

### ENFORCEMENT, APPEALS AND REMEDIES

#### Section 1500. Staff Inspections

The Town's Zoning Administrator and/or other designated Town 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.

#### Section 1501. Enforcement

##### 1. Notices of Violation

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.

- a. The notice of violation shall be delivered to the holder of the 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.
- b. 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.

##### 2. Stop Work Orders

Whenever any work or activity subject to regulation pursuant to this Chapter or other applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped.

- a. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail.
- b. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

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hanged to comply with  
NCGS 160D

**Section 1502. Remedies**

Subject to the provisions of the development regulation, any development regulation adopted pursuant to authority conferred by NCGS 160D may be enforced by any remedy provided by G.S. 160A-175. The maximum fine for a violation of this ordinance shall be \$500.00. A violation of this ordinance shall subject the offender to a civil penalty in the amount of \$100.00 each day the violation continues, to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within 30 days after they have been cited for violation of the ordinance.

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of NCGS 160D or of any development regulation or other regulation made under authority of NCGS 160D, the Town Council, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

In case any building, structure, site, area, or object designated as a historic landmark or located within a historic district designated pursuant to NCGS 160D is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, except in compliance with the development regulation or other provisions of NCGS 160D, the local government, the historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct, or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area, or object. Such remedies shall be in addition to any others authorized by NCGS 160D for violation of an ordinance.

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Added language to comply with 160D

## **ARTICLE 16**

### **LEGAL STATUS PROVISIONS AND EFFECTIVE DATE**

#### **Section 1600. Severability**

It is the legislative intent of the Burnsville Town Council in adopting this ordinance that all provisions and sections thereof shall be liberally construed to protect and preserve the health, safety and general welfare of the inhabitants of the Town of Burnsville, and, further, that should any provisions, portion, section or subsection of this ordinance be held to be invalid by a court of competent jurisdiction such ruling shall not be construed as affecting the validity of any of the remaining provisions, portions, sections or subsections; it being the intent of the Burnsville Town Council that this ordinance shall stand, notwithstanding the invalidity of any provisions, or section or part thereof.

#### **Section 1601. Conflict with Other Laws**

When the provisions of this ordinance require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, 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, the provisions of this ordinance shall govern.

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

#### **Section 1602. Applicability to Governmental Buildings**

The provisions of this ordinance are applicable to the erection, construction and use of buildings by the State of North Carolina and its political subdivisions.

#### **Section 1603. Reenactment and Repeal of Existing Zoning Ordinances**

This ordinance in part carries forward by reenactment some of the provisions of the Zoning Ordinance of the Town of Burnsville, adopted on November 12, 1969 and amended February 6, 2014, including all subsequent amendments since February 6, 2014, and it is not the intention to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the zoning ordinance, which are not reenacted herein are hereby repealed.

All suits of law or in equity and/or all prosecutions resulting from the violation of any zoning ordinance heretofore in effect, which are now pending in any of the courts of this State or of the United States, shall not be abated or abandoned by reason of the adoption of this ordinance, but shall be prosecuted to their finality the same as if this ordinance had not been adopted; and any and all violations of the existing ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this ordinance shall be so construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

## ARTICLE 17

### BACKYARD CHICKENS

#### Section 1700. General Provisions

Backyard chickens shall be allowed in single family detached dwellings located in the R-10, C-2 and C-3 zones of the Town of Burnsville under the following conditions:

1. NO chickens may be kept in the C-1 zone of the Town of Burnsville.
2. NO more than 5 chickens per single family dwelling.
3. NO roosters shall be allowed.
4. The chickens may be kept for private consumption by the family living on the premises only. Individuals may not raise chickens for sale or for other's use or consumption.
5. NO slaughter of chickens may take place on the premises.
6. All chickens must be housed within the Coop at night and never are allowed to run free outside of the specified enclosure.
7. No chickens may be left without proper care and control and must be maintained and cared for on a regular daily basis. Failure to care for or control said chickens on a regular daily basis shall be grounds for the revocation of a permit to keep chickens within the Town of Burnsville.

#### Section 1701. Coops

A separate coop must be provided for the chickens with the following requirements:

1. Coops must be located in the backyard of the property and at least 20 feet from all property lines.
2. Coops must have an interior floor space of 5 square feet per hen.
3. The maximum height of a coop at its highest point shall be no higher than 6 feet.
4. Coops must be fenced in with an enclosed run of 10 square feet per hen.
5. Coops must have proper ventilation, be covered and maintained in such a way as not to attract rodents.
6. All coops must be kept in a manner as may be necessary to protect the public health and the value of adjacent properties.
7. Portable Coops will be allowed as long as they meet all criteria in the ordinance.
8. NO portion of the dwelling house may be used for a Coop; no garage, outbuilding, or utility shed, attached or detached from the dwelling house may be used for a Coop to satisfy the criteria set forth in this ordinance.

#### Section 1702. Permits

1. ALL chickens must be registered and permitted through the Town of Burnsville. Individuals shall apply with the Zoning Administrator, or his designee, for a permit from the Town and submit drawings of the premises and proposed Coop structure and fenced enclosure at the time application is made. All drawings should indicate the distance from property lines to the structure and enclosure.
2. An application fee of \$ 25.00 shall be paid at the time application and structural drawings are submitted.
3. Upon approval of application and proposed drawings, applicants will receive a preliminary permit to construct the Coop and fenced run area.
4. Upon final inspection of the project by the Zoning Administrator or their designee, the applicant must have leg bands with the permit number showing placed on the chickens. At such time as the inspection is complete and all requirements met the Zoning Administrator or their designee shall issue a final permit.
5. An annual inspection of the premises will be conducted by the Town and updated permits issued upon completion and a finding of a compliant inspection.
6. Permits may be revoked should the Coop and/or surrounding run area become non-compliant with the ordinance or should sanitary conditions and/or odors become hazardous in the opinion of the Town employee given authority to conduct inspections.

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changed in this section to  
Zoning Administrator

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dded fee

7. Revocation of a permit will result in the immediate removal of the hens from the premises at the expense of the owner and said removal and permit revocation shall remain in effect until the Town inspector deems the site to be in compliance.
8. Failure to bring the site into compliance within 30 days from the revocation of the permit will result in permanent revocation of the permit.
9. No permit may be transferred to another individual, corporation or entity of any kind. Upon transfer or leasing of the premises where a Coop is constructed the new owner or lessee must make application for a permit to the Town before he/she begins keeping chickens upon the premises. All new permits will require a structural inspection of the proposed site.
10. The Zoning Administrator or his designee shall keep a record of all issued permits and make those permits available for public review.

This ordinance shall supersede and take precedent over any and all other provisions regarding the keeping of chickens within the Town of Burnsville, whether said provisions be located within the Zoning Ordinance for the Town of Burnsville or the General Code of Ordinances for the Town of Burnsville under the Article 90 Animal Control ordinance. Any conflicting provisions are hereby revoked and repealed so as to make this Ordinance the governing and controlling law within the Town.

**Section 1703. Effective Date**

This ordinance shall take effect and be in force from and after April 27, 2015

**Section 1704. Adoption**

Duly adopted by the Town Council of the Town of Burnsville, North Carolina, this the 27th\_day of April, 2015