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## **ARTICLE 1.**

### **General Provisions**

#### **1.1 Purpose**

- A. The zoning regulations and districts as herein set forth are designed to promote and protect the public health, safety, general welfare and to enhance the quality of life and promote the economic vitality of the community.
- B. They have been made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the community.

#### **1.2 Authority**

The provisions of this ordinance are adopted by the Board of Commissioners of Tryon, North Carolina, under authority granted by the General Assembly of the State of North Carolina, particularly General Statutes Chapter 160D, Article 19.

#### **1.3 Short Title**

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

#### **1.4 Jurisdiction**

The provisions of this ordinance shall apply within the corporate limits and the extraterritorial jurisdiction (ETJ) of the Town of Tryon as shown on the Official Zoning Map of the Town of Tryon.

#### **1.5 Separability**

Should any section or provision of this chapter, for any reason, be held to be invalid, such decision shall not affect the validity of the remaining portions of the chapter.

#### **1.6 Conflicting Ordinances Repealed**

Any other ordinances, regulations or resolutions or any portions thereof, which are inconsistent with the provisions herein contained, are hereby repealed.

## **1.7 Transitional Provisions**

Any violation of any previous ordinance of the Town of Tryon shall continue to be a violation under this chapter and shall be subject to the penalties set forth at the time of the violation, unless the use, development, construction or other activity is clearly consistent with the express terms of this chapter.

## **1.8 Completion of Development Plans**

- A. Any building or development for which a permit was issued prior to the effective date of this chapter or any amendment thereto, may be completed in conformance with the issued permit and other applicable permits and conditions.
- B. Any type of land development application which has been officially filed with the appropriate Town official prior to the effective date of this ordinance or any amendment thereto, may continue to be processed under the land use rules and regulations in effect prior to said date. The application process shall be complete within one (1) year of said date. If the application process is not completed within the specified time, then the application process may be completed only in strict compliance with the requirements of this ordinance.
- C. Applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property.

## **ARTICLE 2.**

### **Application: Permitting Procedures**

#### **2.1 Application of Regulations**

- A. No building or land shall hereafter be used or occupied, and no building or structure or part thereof shall be erected, moved, demolished, or structurally altered except in conformity with the regulations of this ordinance, or amendments thereto, for the district in which it is located.
- B. No building shall hereafter be erected or altered so as to exceed the density regulations of this ordinance for the district in which it is located.
- C. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in size so that the lot width or depth, front, side or rear yards, lot area per family, or other requirements of this ordinance are not maintained. This prohibition shall not be construed to prevent the condemnation of narrow strips of land for public utilities or street right-of-way purposes.
- D. No part of a yard or other open space required about any building for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other space similarly required for another building.

##### **2.1.1 Only One Principal Residential Building on One Lot**

Only one (1) principal residential building and its customary accessory buildings may hereafter be erected on one lot, except as provided in Section 4.6, SR2 of this ordinance.

##### **2.1.2 Street Access**

No building shall hereafter be erected on a lot, which does not abut a publicly dedicated, publicly approved, or publicly maintained street. However, buildings may be erected on lots platted prior to the effective date of this ordinance with access through a recorded easement.

### **2.1.3 Exemptions**

This ordinance shall not regulate or restrict activities related to official festivals and special events declared as such by the Tryon Board of Commissioners.

## **2.2 Permitting Procedures**

No building or other structure shall be erected, moved, added to, demolished, or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a Zoning Permit shall have been issued by the Zoning Administrator. No Zoning Permit shall be issued except in conformity with the provisions of this ordinance. Zoning Permits that require approval by the Planning Board are outlined in Section 2.2.2.

### **2.2.1 Zoning Permits & Site Plans**

- A. All applications for Zoning Permits shall be accompanied by a site plan showing the following:
  - 1. The actual dimensions of the plot to be built upon;
  - 2. The locations on the lot of the building or structure proposed to be erected or altered;
  - 3. The size of the building to be erected;
  - 4. The location of any existing structures;
  - 5. The number of dwelling units (if applicable);
  - 6. All setback lines;
  - 7. A description of the proposed use of land and structures;
  - 8. Building elevations (all sides) accurately depicting grade at the face of the building;
  - 9. Building materials;
  - 10. Landscape plan (if applicable);
  - 11. Lighting and sign type with dimensions (if applicable);
  - 12. Parking spaces, parking dimensions, and proposed surface material;
  - 13. Utility service screening depicted (if applicable); and
  - 14. Such other information as may be necessary to provide for the enforcement of the provisions of this ordinance.
  - 15. Grading information required in Section 4.7.3.
- B. Site plans subject to review by the Planning Board as required by Section 2.2.2 shall be professionally drawn by an architect, landscape architect, civil engineer, surveyor, or similar licensed professional.

- C. All applications for a Zoning Permit and/or Site Plan Review shall be accompanied with an application fee based on the fee schedule adopted by the Tryon Board of Commissioners.

### **2.2.2 Planning Board Approval**

- A. No Zoning Permit shall be issued until the Planning Board shall have reviewed and approved a site plan of the proposed development for the following types of development:
- 1) All new construction;
  - 2) Any additions that add heated floor space;
  - 3) Any development that requires or provides more than three (3) parking spaces; and
  - 4) Any development that involves the grading of 3,000 square feet or more.

This does not include single-family or two-family residential uses.  
(Ord. Am. 2013-03, passed 02-19-13)

- B. In reviewing the site plan the Planning Board shall consider the following:
- 1) The location and design of driveways for vehicular ingress and egress from the site in relation to streets giving access to the site and in relation to pedestrian traffic;
  - 2) The traffic circulation features within the site and location of automobile parking areas, and may make such requirements with respect to any matters that will assure:
    - Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets;
    - Satisfactory and harmonious relationships between the proposed development on the site and existing and prospective development of contiguous land and adjacent neighborhoods.
- C. Seven (7) copies of the site plan shall be submitted at least fifteen (15) days prior to the Planning Board meeting at which review is scheduled.
- D. Upon approval of the site plan and related documentation by the Planning

Board, the Zoning Administrator may issue a Zoning Permit to the applicant. The development approval will be provided in writing, either print or electronic forms. If electronic form is used, it will be protected from further editing. The construction must substantially match the information that was presented to the Planning Board. If, in the opinion of the approving authority, a major deviation from the information that was provided occurs, then the applicant shall reapply to the Planning Board for approval.

- E. When a decision is made on an application, written notice of the determination will be provided by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner.

### **2.2.3 Requirements Prior to Issuance of a Building Permit by Polk County**

- A. Prior to the issuance of a building permit, the applicant shall obtain the following approvals:
  - 1. If connection is to be made to the Tryon water or sewer systems, the applicant shall obtain written approval by the Public Works Director for a tap from the Tryon.
  - 2. If individual septic tanks and/or wells are to be used, the applicant shall obtain approval from the Polk County Health Department.
- B. Upon receiving a Zoning Permit, a building permit shall be obtained from the Polk County Building Inspections Office for the construction or alteration of any building, structure or manufactured home, pursuant to the procedures of the County Building inspections Office.

### **2.2.4 Permit Expiration**

If six (6) months elapse without the issuance of a building permit, the Zoning Permit shall expire. Resubmission of plans and an application for a new Zoning Permit, including applicable fees, shall be required for any approved project that did not commence construction within the six (6) month period. If construction ceases for twelve (12) months or longer, the Zoning Permit is considered expired and resubmission of plans is required.



### **2.2.5 Zoning Permit With Vested Rights**

In any case where the applicant for a Zoning Permit desires to obtain a vested right, as authorized by NCGS 160D, the applicant shall observe the following procedures:

A. Site Plan Required-The applicant shall submit to the Zoning Administrator seven (7) copies of a site-specific development plan drawn to scale describing with reasonable certainty the type and intensity of use for the specific parcel or parcels of land. Such plan shall include:

1. The boundaries of the site;
2. Significant topographical and other natural features affecting the development of the site;
3. The location on the site of the proposed buildings, structures, and other improvements;
4. The dimensions, including height, of the proposed buildings and other structures;
5. The location of all existing and proposed infrastructure on the site, including water, sewer, roads and walkways; and,
6. Such other information as the Zoning Administrator may determine to be necessary in order to determine the specifics of the plan.

B. Public Hearing; Notice Thereof

Upon receipt of a properly prepared site-specific development plan the Zoning Administrator shall arrange to bring such plan before the Planning Board in the manner of a public hearing. Completed plans shall be received a minimum of fifteen (15) days prior to the public hearing at which the proposed vested rights plan is scheduled to be considered by the Board. Notice of the public hearing shall be given as follows:

- Notice shall be sent by first class mail to all adjacent property owners describing the request at least 10 days prior to the public hearing.
- A notice shall be published once in a newspaper having general circulation in the Town at least 10 days but not more than 25 days prior to the public hearing.

C. Findings & Approval

In considering an application for a Zoning Permit With Vested Rights the

Planning Board shall give due regard that the purpose and intent of this Ordinance shall be served, public safety and welfare secured and substantial justice done. If the Board should find, after public hearing, that the proposed Permit should not be granted, such proposed Permit shall be denied. In granting such Permit, the Planning Board shall make the following affirmative findings:

1. The use requested is among those listed as a Permitted Use in the District in which the subject property is located or is to be located and complies with all the requirements of this Ordinance and other applicable ordinances.
2. The requested Permit will not impair the integrity or character of the surrounding or adjoining Districts, and will not be detrimental to the health, safety or welfare of the community.
3. Adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided.

In granting a Zoning Permit With Vested Rights, the Planning Board may impose such additional restrictions and requirements upon such Permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done. Approval of a site-specific development plan with the condition that a variance or modification be obtained shall not confer a vested right unless and until the necessary variance, or modification is obtained. If all requirements and conditions are accepted by the applicant, the Board shall authorize the issuance of the Permit, otherwise the Permit shall be denied. Any Permit so authorized shall remain vested for a period of two years from the date of the action granting the Permit. Multi-Phase Developments, i.e., long-term projects of at least 25 acres, are granted vested rights up to seven years, except for specified exceptions. Applicants will not be required to wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules.

#### D. Violations

Any violation of a term or condition involved in the granting of a Zoning Permit With Vested Rights shall be treated the same as a violation of this Ordinance and shall be subject to the same remedies and penalties as any such violation. In addition, the Planning Board may, after public hearing, revoke any such vested rights for failure to abide by any such term or

condition.

E. Other Ordinances Apply

The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity or use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation, including, but not limited to building, fire, mechanical, electrical and plumbing codes.

F. Changes or Amendments

No change or amendment to any Zoning Permit With Vested Rights shall be made except after public hearing and except as provided for in this Ordinance for the original issuance of such Permit. If, at the time of consideration of proposed change or amendment to an existing Permit, such Certificate or proposed change or amendment could not be lawfully made under Ordinance conditions existing at that time, such proposed change or amendment shall be denied. In addition, in no case shall there be an extension of the two-year time period for which such development right is vested. Nothing herein shall exempt plans related to such Permit from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approvals.

G. Status at Expiration of Term

A right which has been vested shall terminate at the end of the two-year vesting period with respect to buildings and uses for which no valid Building Permit applications have been filed. Upon issuance of a Building Permit, the provisions of G.S. 160D shall apply except that a Building Permit shall not expire or be revoked because of the running of time while a vested right under this Section is outstanding. Any development constructed pursuant to a Zoning Permit With Vested Rights for which the vested term has expired and which is not in conformance with all the terms of this Ordinance because of changes made in the provisions of this Ordinance, including the Zoning Map, after the issuance of such Permit shall be subject to the provisions of this Ordinance relating to non-conformities the same as any other non-conformity.

H. Annexation Declaration

Any landowner who signs an annexation petition to the Town pursuant to G.S. 160D shall, as part of that petition, file a signed statement declaring whether or not vested rights with respect to the property subject to the petition have been established under G.S. 160D. If the statement declares that such rights have been established, the Town may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established by law shall be binding on the landowner and any such vested right shall be terminated.

I. Runs With The Land

Vested rights run with the land under the permit. When property ownership changes, the new owner steps into the same role of the prior owner. The new owner has all the rights and obligations as the prior owner. The use of land for outdoor advertising governed by G.S. 136-131.1 and G.S. 136-131.2 is deemed a personal right that runs with the owner of the permit, not the owner of the land.

**2.2.6 Demolition of Older Buildings**

- A. Intent. It is intended to protect Tryon's architectural heritage by allowing for the preservation of any dwelling or non-residential building, which is within the districts subject to the Zoning Code of the Town of Tryon, and is 50 years of age or older (hereinafter "Protected Building"), by giving potential buyers an opportunity to purchase a Protected Building and move it to a new location with the present owner's permission.
- B. Demolition Permit. Before razing a Protected Building, the property owner shall obtain from the Town of Tryon a Zoning Permit for demolition. The property owner shall disclose in the application for said permit the estimated date of construction of the building or structure (e.g., 1923) and shall provide an address at which the property owner or his representative may be contacted.
- C. Publication Requirement. Upon the issuance of the permit required for the

demolition of a Protected Building, the Zoning Administrator shall cause to be published in a newspaper having general circulation in the Town of Tryon notice of the property owner's intention to raze a Protected Building, advising the public that they may contact the property owner or his representative about purchasing and moving the Protected Building. The notice shall state the owner's intention to raze the Protected Building, the street address of the Protected Building, the estimated date of construction of the Protected Building, the address at which the property owner or his representative may be contacted, and the date after which the owner intends for the demolition to occur. The notice shall be published at least two (2) times, each in a different week. The Town of Tryon shall pay the costs of publication of the notice. The Town shall also post a sign on the site marking it as a demolition within 10 days of the issuance of the demolition permit to remain until the expiration of the 60-day notice period as described in Subsection D below.

- D. Notice Period. No Protected Building shall be razed until the expiration of 60 days from the Town's issuance of a demolition permit concerning the proposed demolition.
- E. Unsafe Buildings. The requirements of this section shall not apply to any dwelling designated unfit for human habitation, or to any non-residential building designated unsafe by the Building Inspector.
- F. Penalty. Any person who razes or causes to be razed a Protected Building without complying with the provisions of this section:
  - 1. shall have suspended for a period of 60 days any zoning permit, or any application for a zoning permit, issued by the Town for the property where the Protected Building was razed, and
  - 2. shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of \$500.

## **ARTICLE 3.**

### **Zoning District Categories Created**

For the purposes of this Ordinance, three (3) categories of Zoning Districts are created.

#### **3.1 General Use Zoning Districts Created**

General Use Zoning Districts are created to provide comprehensive land use regulations throughout the jurisdiction of this Ordinance. There are twelve (12) General Use Zoning Districts that provide for a variety of uses that are appropriate to the character of the individual districts throughout the jurisdiction of this Ordinance. See Article 4.

#### **3.2 Conditional Use Zoning Districts Created**

Conditional Use Zoning Districts are created for the purpose of providing an optional rezoning choice where the owner of property proposes to rezone property and, in order to carry out the purposes of this Ordinance, proposes to impose special limitations and conditions on the use of the property proposed for rezoning. For each General Use Zoning District, there is a corresponding Conditional Use Zoning District. See Article 5.

### **3.3 Overlay Zoning Districts Created**

Overlay Zoning Districts are created to provide special additional development standards for specially identified areas. Overlay Zoning Districts combine with the regulatory provisions of the underlying General or Conditional Use Zoning Districts to provide additional or different standards. There are three (3) Overlay Zoning Districts. See Article 6.

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## **ARTICLE 4**

### **General Use Zoning Districts**

For the purpose of this ordinance, the Town of Tryon is hereby divided into the following zoning districts:

R-1	One-Family Residential District
R-2	One-Family Residential District
R-3	One-Family Residential District
R-4	One-Family Residential District
R-5	One-Family Residential District
RM	Multi-Family Residential District
PRD	Planned Adaptive Reuse District
CB	Central Business District
TBD	Transitional Business District
GB	General Business District



I-1	Industrial District
I-P	Institutional-Professional District
P-1	Open Space District

**A. R-1 through R-3 One-Family Residential District**

The R-1 through R-3 One Family Residential Districts as herein established are intended to be the most restrictive of the residential districts. The intent is to provide for an environment of low density one-family detached dwelling units along with other residentially related facilities which serve the residents in these districts.

**B. R-4 and R-5 One-Family Residential District**

The R-4 and R-5 One-Family Residential Districts as herein established are intended to maintain and protect existing neighborhoods which are characterized by predominantly one-family residences constructed on smaller lots and thus have greater residential densities than found in the R-1 through R-3 Districts. Multi-family developments are permitted at the same density as one-family dwellings.

**C. RM Multi-Family Residential District**

The RM Multi-Family Residential District as herein established is intended to provide sites for multi-family dwelling units which will serve as zones of transition between nonresidential uses and districts and one-family residential districts and are further provided to serve the needs of attached dwelling units and other similar forms of multi-family dwellings.

**D. PRD Planned Adaptive Re-Use District**

The intent of this district is to provide options for the redevelopment of architecturally or locally significant structures such as textile mills, industrial buildings, schools, and other relatively large buildings that have ceased to be utilized for their originally intended use. The degree of intensity of development in this district will be governed by the development's geographic location and relationship to surrounding land uses. Based on the impact on surrounding land uses, and the flexible nature of this district, all requests for rezoning to a PRD shall be as Conditional Use Zoning Districts only.

**E. C-B Central Business District**

The C-B Central Business District is intended to permit those uses which provide for a variety of retail stores and related activities, and/or office uses and service establishments which occupy prime frontages in the business center of the community. This district, by its very compact nature, is intended to provide for establishments which are compatible with each other so as to create an uninterrupted pedestrian pattern.

**F. TB Transitional Business District**

The TB Transitional Business District is intended to provide a buffer between the primarily pedestrian uses of the CB Central Business District and the more automobile-oriented uses of the GB General Business District. Permitted uses are closely aligned with the CB Central Business District.

**G. G-B General Business District**

The G-B General Business District as herein established is intended to provide sites for automobile services and goods incompatible with the pedestrian patterns found in the C-B Central Business District. Further, the uses generally found in the G-B District are most often provided for in individual freestanding establishments not serving a pedestrian flow and are therefore intended for location along major traffic arteries so as to serve the automobile-oriented traffic pattern.

**H. I-1 Industrial District**

The I-1 Industrial 1 Districts are intended primarily to accommodate wholesale and warehouse activities and industrial operations whose external and physical effects are restricted to the area of the district and in no manner affect in a detrimental way any of the surrounding districts. The I-1 District is intended to permit, along with other specified uses, the manufacturing, compounding, processing, packaging, assembly or treatment of finished or semi-finished products from previously prepared material. The processing of raw material in an I-1 District for shipment, in bulk form, to be used in an industrial operation at another location, is prohibited.

**I. I-P Institutional/Professional District**

The I-P Institutional/Professional District as herein established is intended to provide sites for service-oriented professions, whereby very minimal retail sales occur on the site. Further, the uses generally found in the I-P District are most

often provided for in individual, freestanding establishments not conducive to higher volumes of traffic which might discourage adjacent property improvements that may be either residential, commercial or industrial developments.

## **J. P-1 Open Space District**

This district as herein established is intended to provide for public and private open space and recreational uses.

### **4.1 District Boundaries**

The boundaries of the general use districts are hereby established as shown on a map entitled "Official Zoning Map, Town of Tryon, North Carolina," adopted by the Board of Commissioners and certified by the Town Clerk. Said map and all explanatory matter thereon accompany and are hereby made part of this ordinance. Said map and prior editions shall be retained in the office of the Town Clerk and are available for public inspection. Any maps incorporated by reference into the zoning map will also be available for inspection.

### **4.2 Rules Governing Boundaries**

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

- A. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or railroad right-of-way lines or such lines extended, such center lines, street lines, or railroad right-of-way lines shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be said boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the zoning map. If no distance is given, such dimension shall be determined by use of the scale shown on said zoning map.
- D. Where a district boundary line divides a lot in 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 a lot more than thirty-five (35) feet beyond the district boundary line.

#### **4.3 General Use District Standards**

The General Use Districts as established by this Article shall comply with all of the general and specific requirements of this Ordinance and in particular shall comply with the following standards and requirements:

- A. Uses. See Section 4.4 entitled Table of Permitted Uses.
- B. Special Use Permits. See Section 4.5 entitled Special Use Permits.
- C. Special Requirements. See Section 4.6 entitled Special Requirements to the Table of Permitted Uses.
- D. Dimensional Requirements. See Section 4.7 entitled Dimensional and Density Table.
- E. Off-Street Parking and Loading. See Section 4.8 entitled Off-street Parking and Loading.
- F. Signs. See Section 4.9 entitled Sign Regulations.
- G. Landscaping. See Section 4.10 entitled Landscaping.
- H. Lighting. See Section 4.11 entitled Lighting.
- I. Soil Erosion. See Section 4.12 entitled Soil Erosion and Sedimentation Control.
- J. Building Design Requirements. See Section 4.13 entitled Building Design Requirements.

#### **4.4 Table of Permitted Uses**

The Table of Permitted Uses which follows contains a listing of uses which may be permitted in one or more of the various Zoning Districts established by this Ordinance. Uses are listed in alphabetical order in five functional categories. The categories in the order of listing are:

- Residential Uses
- Office/Business Services and Institutional/Governmental Facilities Uses
- Retail and Service Uses
- Manufacturing and Industrial Uses
- Miscellaneous Uses
- Mixed Uses in the Central Business District (MU)

A. Entries

The District or Districts in which a particular listed use may be permitted is indicated by an “X” in the District Column(s) opposite the listed use.

B. Meaning of Entries

The meanings of the entries in the Table are as follows:

1. “X” indicates the use is permitted by right and a Zoning Compliance Certificate may be obtained after approval of a site plan by the Planning Board.
2. “C” indicates the use is permitted with the issuance of a Special Use Permit by the Board of Adjustment in accordance with Section 4.5.
3. The column on the far right, labeled “SR” (Special Requirements) means there are special additional performance requirements that the use must comply with in its development. See Section 4.6.
4. The listing of a use in the Table of Permitted Uses in no way relieves that use of having to meet all local, State and Federal laws pertaining to the establishment and operation of that use.

<b>TABLE OF PERMITTED USES</b>														
<b>USE TYPES</b>	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Residential Uses</u></b>														
Accessory dwellings	X	X	X	X	X	X								14
Bed & Breakfast Inns				X	X	X	X					X		5
Cluster Development, Residential	C	C	C	C	C									1
Family care home & family day care home	X	X	X	X	X	X								7
Home occupation	X	X	X	X	X	X	X							6
Live/Work Units									X	X				15
Manufactured homes on individual lots					X									4
Multi-family dwellings				C	C	X	X							2
Second floor apartments								X	X	X		X		3
Single-family detached dwellings	X	X	X	X	X	X		C	C	C		C		27
Travel trailer parking area					X								C	25
Two-family dwellings on individual lot				X	X	X								

**TABLE OF PERMITTED USES**

USE TYPES	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Civic</u></b>														
Art centers, libraries and auditoriums							X	X	X	X		X	X	
Theaters, assembly halls, concert halls or similar places of assembly							X	X	X	X		X	X	
Governmental office or other governmental use							X		X	X		X		
Public utility substations	X	X	X	X	X	X	X			X	X	X	X	
Public utility lines	X	X	X	X	X	X	X	X	X	X	X	X	X	
School-public, elementary or high schools	X	X	X	X	X	X	X			X				

**TABLE OF PERMITTED USES**

USE TYPES	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Institutional</u></b>														
Childcare							X			X		X		
Clinics										X		X		
Convalescent and/or nursing homes, Assisted Living						X	X			X		X		
Colleges										X		X		
Funeral home										X		X		
Hospitals										X		X		
Religious Institutions (churches)	X	X	X	X	X	X	X			X		X		
School-private or parochial	X	X	X	X	X	X	X			X		X		
Adult Day Care Programs	X	X	X	X	X	X	X	X	X	X		X		7

**TABLE OF PERMITTED USES**

USE TYPES	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Recreational</u></b>														
Adult establishments										C				10
Electronic Gaming Operations										C				21
Equestrian Uses	X	X	X										X	11
Golf courses, country clubs and private rec. areas	X	X	X	X	X	X							X	8
Movie Theaters (indoor)								X	X	X				
Parks	X	X	X	X	X	X	X	X	X	X	X	X	X	
Recreational facilities (indoor)							X			X			X	
Recreational facilities (outdoor)										X			X	



**TABLE OF PERMITTED USES**

USE TYPES	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Office and Service</u></b>														
Animal Services (no outdoor kennels)										X	X			
Animal Services (with outdoor kennels)											C			16
Automotive/Boat Service Uses										X				
Banks, credit unions, savings and loan businesses							X	X	X	X				
Hotels, Motels, Inns and similar facilities							X			X		C		
Newspaper publishing								X	X	X				
Offices of an executive, administrative, sales or professional nature							X	X	X	X		X		
Outdoor Storage (excluding automotive & boat uses)										C	X			17
Personal Service Uses							X	X	X	X		X		
Service Uses (indoor)							X	X	X	X				
Tattoo parlors and body piercing parlors										C				12

**TABLE OF PERMITTED USES**

USE TYPES	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Retail</u></b>														
Automotive/Boat Sales										X				
Nurseries & Greenhouses										X	X			
Outdoor Markets & Farmers Markets, Produce Stands								X	X	X	X		X	18
Outdoor Storage (non-residential)										C	X			17
Restaurants and taverns							X	X	X	X		C		22
Retail Uses (less than 10,000sf)							X	X	X	X	C			24
Gas Stations										X				
Convenience Stores/Convenience Stores with Gas Sales										X				
Retail Uses (more than 10,000sf)											C			24
Outdoor Vending Machines/Info Dispensers									X	X	X			23

**TABLE OF PERMITTED USES**

USE TYPES	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Manufacturing and Industrial</u></b>														
Distilleries/Breweries								X	X	X	X			26
Distribution (accessory use)										X	X			
Distribution (principal use)											X			
Heavy Manufacturing											C			
Light Manufacturing										X	X			
Mini-storage/warehouse										C	X			
Outdoor Storage (industrial)										C	C			17
Public utility, yards and garages										X	X		X	
Warehousing (accessory use)										X	X			
Warehousing (principal use)											X			
Wholesale											X			

**TABLE OF PERMITTED USES**

USE TYPES	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Miscellaneous Uses</u></b>														
Accessory buildings and structures	X	X	X	X	X	X	X	X	X	X	X	X	X	9
Agricultural Uses	X	X	X	X	X	X	X			X	X	X	X	20
Satellite/shared/combined parking								X	X	X	X	X		
Temporary Uses	X	X	X	X	X	X	X	X	X	X	X	X	X	19
Wireless telecommunication towers													C	13

<b><u>TABLE OF PERMITTED USES</u></b>
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USE TYPES	R-1	R-2	R-3	R-4	R-5	RM	PRD	CB	TB	GB	I-1	IP	P-1	SR
<b><u>Mixed Uses</u></b>														
Commercial/Retail Mixed Uses								MU						28

## **4.5 Special Use Permits**

### **4.5.1 Purpose and Applicability**

This Ordinance provides for a number of uses to be located by right in each general zoning district subject to the use meeting certain area, height, yard and off-street parking and loading requirements. In addition to these uses, the Ordinance allows some uses on a conditional basis subject to the issuance of a Special Use Permit by the Board of Adjustment. The purpose of having such uses being "conditional" is to ensure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located. Those uses shown as Conditional in the Permitted Uses Table in Section 4.4 shall be subject the requirements and review process of in this Section.

### **4.5.2 Revoked 04-15-14**

### **4.5.3 Conditions, Evidence, & Findings-of-Fact**

- A. In approving an application for a Special Use Permit, the Board of Adjustment may attach fair and reasonable conditions to the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Adjustment. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular development found elsewhere in a similar zoning district.
- B. The applicant has the burden of producing competent, material, and substantial evidence to establish the facts and conditions. If any person submits evidence allegedly contrary to any of the facts or conditions, the burden of proof for overcoming such evidence shall rest with the applicant.
- C. The Board of Adjustment shall issue a Special Use Permit if it has evaluated an application and determined that:
  - 1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
  - 2. The use meets all required conditions and specifications, and

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the adopted land use plans and other plans for physical development of the Tryon area as adopted by the Town Board of Commissioners.

#### **4.5.4 Effect of Approval & Expiration of Approval**

- A. If an application for a Special Use Permit is approved by the Board of Adjustment, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the Special Use Permit or develop any other use listed as a "permitted use" for the general zoning district in which it is located. Any Special Use Permit so authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the Board of Adjustment.
- B. Unless the Board of Adjustment issues a Special Use Permit which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must secure a valid building permit or establish the use within a one (1) year period from date of issuance of the Special Use Permit. Otherwise, the Zoning Administrator shall notify the applicant of such finding, and within 60 days of said notification, the Board of Adjustment may rescind the Special Use Permit or renew the Special Use Permit for a specific period of time at the applicant's request.

#### **4.5.5 Alterations to Site & Amendments to Special Use Permit**

Minor changes in the detail of the approved site which:

- will not alter the basic relationship of the proposed development to adjacent property, and
- will not increase the gross floor area of any non-residential use by the smaller of 10 percent or 10,000 square feet, and
- will not decrease the off-street parking ratio or reduce the yards provided at the periphery of the site by greater than five (5) feet

may be made with the approval of the Zoning Administrator on a one-time basis only. Further changes to the development may only be made by the Board of Adjustment by amending the Special Use Permit. Any request to materially change the Special Use Permit once it has been issued shall be reviewed in entirety by the Board of Adjustment.

#### **4.5.6 Reapplication Following Denial**

If a request for Special Use Permit is denied by the Board of Adjustment, a similar application for the same property or any portion thereof shall not be filed until the expiration of a one (1) year period from the date of the most recent denial by the Board of Adjustment. This waiting period shall not be applicable where the application for a Special Use Permit is substantially different from the original application. The term "substantially different" as herein applied shall mean:

- The proposed principal use is different than the use contained in the original application; or
- The gross floor area of the proposed development is 50 percent or more smaller than contained in the original application.

#### **4.6 Special Requirements to the Table of Permitted Uses**

The Table of Permitted Uses contains a column on the far right labeled "SR" for Special Requirements. In any case where a use listed in the Table of Permitted Uses has a number in the SR column opposite the use, the use must comply with the additional "Special Requirements contained in this section corresponding to the Special Requirements number. For example, the use "Multi-Family Dwellings" has the number "2" in the SR column opposite the use, therefore, the development of a Mobile Home Park must meet the special requirements for SR "2" Multi-Family Dwellings of this section.

##### **SR 1. Cluster Development, Residential**

Cluster developments shall have a minimum of five (5) lots and shall be developed in accordance with the following standards:

- A. Uses shall be limited to the residential uses allowed in individual districts and their related accessory uses.
- B. The district dimensional requirements shall not apply to the interior of the

development. All buildings shall be set back a minimum of 20 feet from dedicated public right-of-way and a minimum of 50 feet from all exterior property lines.

- C. A minimum of 50 percent of the total development area shall be placed in open space and each lot shall have direct access or access by right-of-way or easement to such open space. Such open spaces shall be held in nonprofit, corporate ownership by the owners of lots within the development. In consideration of the purposes served by a cluster development, the title to such open space property shall be preserved to the perpetual benefit of the private properties in the development and shall be restricted against private ownership for any other purposes. If the corporation desires, improvements may be made within the open space provided that the maximum coverage of each type of improvement shall not exceed the following:

- 1) Aboveground improvements, three (3) percent of the open space.
- 2) Level or below ground improvements, twenty (20) percent of the open space.

As an option, where the Board of Commissioners agree, such open space may be dedicated to the Town for public benefit.

## **SR 2. Multi-Family Dwellings**

In the R-4, R-5, and RM districts:

- A. No multi-family dwellings or series of attached single-family, multi-family buildings or other such arrangements shall exceed a length of one hundred fifty (150) feet when measured along the longest axis of the building or series of attached units when placed in a theoretical straight alignment.
- B. An individual multi-family building, or a single series of attached dwelling units to be located on an individual lot shall be developed in accordance with the area, yard and height requirements of the district in which located the same as any other individual building on an individual lot. The conveyance of ground space for single-family attached units or for common area or similar purposes shall not preclude development under this subsection. Such conveyances however shall be subject to the requirements of the Subdivision Regulations



and may be subject to the North Carolina Unit Ownership Act.

C. In any case where more than one (1) multi-family building, or more than one (1) series of attached dwelling units, are proposed to be constructed on one lot, such development shall be in conformance with the following residential group development standards.

- 1) **Site Plan.** No Zoning Permit shall be issued for any construction in a multi-family residential development except in accordance with a site plan approved by the Planning Board, in accordance with the standards herein. In any case where land is to be dedicated in a group residential development, a Subdivision Plan may be required by the Subdivision Regulations. Developments that are proposed to be developed under the North Carolina Unit Ownership Act shall meet the requirements of that Act by recording the declaration and plan with the Register of Deeds. Where land is to be conveyed in accordance with such declaration and plan, the developer shall first comply with the Subdivision Regulations.
- 2) **Density.** The number of dwelling units per unit of land area shall not exceed the number of dwelling units per unit of land area permitted in the district in which the development is located.
- 3) **Yard Requirements.** The following yard requirements are hereby established:
  - a. Exterior. Along each exterior property line or public street, the minimum front, rear and side yard setback of the Zoning District shall be maintained.
  - b. Interior. For each building erected along a private street or access way, a minimum setback of twenty (20) feet shall be maintained from the nearest edge of street or access way pavement.
  - c. Distance Between Buildings. A distance of at least twenty (20) feet shall be maintained between all buildings within the development.
- 4) **Streets or Access ways.** All streets or access ways providing ingress and

egress from the development to an existing public street system shall comply with the current standards of the Subdivision Ordinance except that a pavement width of only 20 feet shall be required.

- 5) **Sidewalks.** Sidewalks shall be installed in the same manner and under the same criteria as that established in the Subdivision Ordinance.
- 6) **Storm Drainage Improvements.** Storm drainage improvements shall be made in the same manner and under the same criteria as that established in the Subdivision Ordinance.
- 7) **Sanitary Containers.** Stationary sanitary containers shall be located so as not to interfere with sight distance or the free movement of vehicles on streets or service drives and so as to allow collector trucks adequate maneuvering space to empty the containers and to leave the property without excessive backing. Concrete pads in conformance with the public works department's stationary container location standards shall be located beneath of and in the approach to each stationary sanitary container. All sanitary containers shall be completely screened from view of the street and adjacent properties with fencing and/or landscaping.

### **SR 3. Second Floor Apartments**

- A. No second-floor apartment shall be constructed or occupied prior to construction and occupancy of the principal use structure.
- B. Second floor apartments shall not exceed a one family each.
- C. All of the habitable dwelling area shall be located above the ground level floors.

### **SR 4. Manufactured Home on Individual Lot**

- A. The manufactured home shall have a length not exceeding four times its width.
- B. The manufactured home shall be at least 20 feet wide.
- C. The pitch of the manufactured home roof shall have minimum vertical rise of two and two tenths' feet for each twelve feet of horizontal run (2.2' in 12') and the roof shall be finished with a type of shingle that is commonly used in standard residential construction.

- D. The exterior siding shall consist predominantly of vinyl or aluminum horizontal lap siding (that does not exceed the reflectivity of gloss white paint), wood, or hardboard, comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction.
- E. A continuous, permanent masonry foundation, unpierced except for required ventilation and access, shall be installed under the manufactured home.
- F. The tongue, axles, transporting lights, and removable towing apparatus are removed subsequent to final placement.
- G. The manufactured home shall be listed and taxed as real property.
- H. The manufactured home shall be oriented so that the longest measurement shall be no more than twenty (20) degrees from parallel to the front property line, except on corner lots. The front of the manufactured home shall face the front property line. The front of the manufactured home is that side which has an entrance door leading to a living room, foyer, or hall and is the longer dimension of the manufactured home's sides.

**SR 5. Bed and Breakfast Inns**

- A. The maximum number of guest bedrooms shall be six (6).
- B. The inn shall be operated by a resident manager.
- C. The use shall be located in a structure which was originally constructed as a dwelling.
- D. The use shall contain only one (1) kitchen facility. Meals served on the premises shall be only for overnight guests and residents of the facility.
- E. The use of such a facility by any one patron shall be limited to no more than fifteen (15) days per sixty (60) day period.

**SR 6. Home Occupation**

Customary home occupations may be permitted within the dwelling unit in the

Zoning District indicated upon meeting the following requirements:

- A. Only one person other than those residing in the home shall be engaged in the occupation.
- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
- C. There shall be no changes in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation except one non-illuminated sign not exceeding four (4) square feet.
- D. 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.
- E. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. 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 which causes fluctuations in line voltage off the premises.

**SR 7. Family Care Homes, Family Day Care Homes and Adult Day Care Programs**

- A. A family care home with six (6) or fewer persons or a family day care home or adult day care program, may be operated as an accessory use to a principal dwelling.
- B. In zoning districts identified as “Residential Districts” in this Article 4, an adult day care program may only be operated as an accessory use to a principal dwelling or as an accessory use to a religious institution (church).
- C. No family care home may be located within one-half (1/2) mile radius of any other family care home as defined by NCGS 168-21.

- D. No family day care home or adult day care program shall be located within one (1) mile radius of any other family day care home or adult day care program.

**SR 8. Golf Courses, Country Clubs, Private Recreation Areas**

- A. There shall be a fifty (50) foot minimum setback between clubhouses, swimming pools, tennis courts, athletic fields, and other activity areas and adjacent residentially zoned property.
- B. Private recreation areas shall only be permitted in the R-3, R-4, R-M, and P-1 districts

**SR 9. Accessory Structures**

- A. Where the accessory structure is structurally attached to a main structure, it shall be subject to and must conform to all regulations of this chapter, applicable to main structures.
- B. Accessory structures shall not be erected in any front yard, except in the R-1, R-2, and R-3 districts on lots of greater than five (5) acres where the accessory structure is setback a minimum of 150 feet from the street right-of-way. Any accessory structure located in the front yard or side yard shall be constructed to substantially match the main structure.
- C. An accessory structure may occupy not more than 20 percent of any front, side, or rear yard, provided that in no instance shall the accessory structure exceed 1/2 of the total area of the main building.
- D. No detached accessory structure shall be located closer than 16 feet to any side or rear lot line.
- E. No detached accessory structure in the R-1, R-2, R-3, R-4, R-5 or RM districts shall exceed one (1) story or 14 feet in height, except that the accessory structure may be as tall as the main structure if the main structure setbacks for the district are met as set forth in Section 4.7. The more restrictive setback shall apply for accessory structures taller than one (1) story or 14 feet. Accessory structures in all other districts may be constructed to equal the maximum building height allowed in the district.

**SR 10. Adult Establishments (Conditional Use Only)**

- A. No person shall keep, maintain, or operate an adult bookstore, adult movie house, massage parlor, or topless dancing establishment:
  - 1) Within a minimum distance of five hundred (500) feet from any single-family residential district (R-1 through R-5);
  - 2) Within a minimum distance of fifteen hundred (1500) feet from any preschool, elementary, or secondary school;
  - 3) Within a minimum distance of one thousand (1000) feet from any other adult establishment; or
  - 4) Within any zoning district other than the GB, General Business District.
- B. All measurements shall be taken by drawing straight lines from the nearest point of the property line where the proposed adult establishment is to be located to the nearest point of the property line of the closest single family residential district, preschool, elementary or secondary school or adult establishment.

**SR 11. Equestrian Uses**

- A. Equestrian uses may include the boarding of horses and may include riding lessons and clinics.
- B. All stables, barns and related structures shall be set back at least three hundred (300) feet from abutting residentially zoned property.

**SR 12. Tattoo and Body Piercing Parlors (Conditional Use Only)**

- A. No person shall keep, maintain, or operate a business establishment which performs tattooing, body piercing or both:
  - 1) Within a minimum distance of one thousand (1000) feet from any preschool, elementary, or secondary school; or
  - 2) Within any zoning district other than the GB, General Business District.

All measurements shall be taken by drawing straight lines from the nearest

point of the property line where the proposed tattoo or body piercing parlor is to be located to the nearest point of the property line of the closest preschool, elementary or secondary school.

- B. Tattooing and body piercing rooms and tattooing and body piercing activity shall not be visible from the exterior area of the building and the public right-of-way.
- C. For the purpose of this chapter, tattoo and body piercing operations shall not be considered home occupations.
- D. For the purpose of this chapter, the term "tattoo" shall have the definition set forth in North Carolina General Statutes § 130A-283, and "body piercing" shall be that activity described in North Carolina General Statutes § 14-400(b), provided, however, that ear piercing as a principal or accessory use shall not be subject to this classification and these provisions.

### **SR 13. Wireless Telecommunication Towers**

No tower over fifty feet (50') tall shall be constructed, altered, reconstructed, or expanded until a Special Use Permit is issued by the Board of Adjustment. No building permit shall be issued for any tower subject to this ordinance that has not received a Special Use Permit.

If a building permit is not obtained within twelve (12) months after the special use permit is issued, the special use permit shall expire.

#### **A. Application Submission and Review Process**

- 1) A completed Special Use Permit application and ten (10) copies of all supporting documentation identified in Section B shall be submitted to the Zoning Administrator for review at least fifteen (15) working days prior to a scheduled Planning & Zoning Board meeting.
- 2) The Zoning Administrator shall review the completed Special Use Permit application for compliance with sections of the Zoning Ordinance applicable to special uses generally and Section B below. Any

application not containing all information required by Section B shall be returned to the applicant for correction and resubmission. If the Zoning Administrator deems it necessary, he or she may retain, at the permit applicant's expense, one or more professional engineers to assist in the reviewing of any technical requirements.

- 3) The Zoning Administrator shall be responsible for providing notice of the evidentiary hearing pursuant to N.C.G.S. 160D-406(b) and the provisions of Section 8.5(B) of this Ordinance.
- 4) The Zoning Administrator shall recommend to the Board of Adjustment either approval, approval with conditions or disapproval. In making his or her recommendation, the Zoning Administrator may include any appropriate conditions that he or she deems should be placed on issuing the permit as identified in Section B and Section 4.5 with regard to special uses generally.
- 5) The Board of Adjustment shall hold an evidentiary hearing to consider the special use application at its next regularly scheduled meeting after receiving the Zoning Administrator's recommendation.
- 6) The successful permittee or his or her agent shall record the Special Use Permit and the Site Development Plan in the Polk County Register of Deeds office before obtaining a building permit for the subject tower within thirty (30) days of receiving the written decision. Alternatively, the Zoning Administrator or Clerk to the Board may record the documents at the expense of the applicant(s).

#### **B. Requirements for Site Development and Preliminary Design Plans.**

The site development plan and preliminary design plan shall contain the following information and be part of the tower permit application:

- 1) The site development plan shall be approved by a NC Registered Land Surveyor and contain the following:
  - a. The tower applicant's name and property owner's name and



- their addresses, scale, north arrow, vicinity map, tax parcel identification number, and the tower's latitude and longitude coordinates.
  - b. The name, address, signature and seal of the surveyor preparing the site development plan.
  - c. The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall area.
  - d. The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.
  - e. All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
  - f. All existing towers on the property or any towers whose fall area encroaches onto the property.
  - g. The proposed tower's location, the proposed fall area and the location of all support structures and guy line anchors.
  - h. The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site benchmark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929.
  - i. All proposed access roads, easements or right-of-ways on or to the site, and any other improvements to the site.
- 2) A preliminary tower design plan shall be prepared by a North Carolina registered professional engineer and contain the following:
- a. The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.
  - b. The name, address, signature and seal of the engineer preparing the preliminary tower design plan.
  - c. A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings and any other proposed buildings and any other proposed improvements including access roads and utility connections within and to the proposed site.
  - d. A tower elevation showing the proposed lighting, all proposed antennas and other appendages.

- e. An elevation of each proposed set of guy line anchors.
- f. The proposed tower design loads.
- g. A map and description showing the service area(s) for the proposed tower's antenna(s) and/or other devices.
- h. The applicant shall provide written statements from the Federal Aviation Administration (FAA) and the Federal Communication Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations, and shall provide documentation certifying compliance with all other Federal and State regulations).
- i. The applicant shall identify all other possible alternatives considered within the service area for the proposed tower's antenna(s) and/or other devices and explain why the proposed tower is necessary and why existing towers and structures (e.g., Duke Power transmission towers) cannot accommodate the proposed antenna(s) and/or other devices.

3) Tower approval standards:

- a. Any proposed tower shall provide a needed service or benefit to the residents of Tryon and the surrounding area that cannot otherwise be met.
- b. Towers shall be sited to contain all ice-fall or debris from tower failure onsite. The minimum distance from the tower's base to the property line shall be one and one-half feet to each vertical foot of the tower's height unless a NC Registered Professional Engineer certifies the fall area of the tower and appurtenances will be within the setback area proposed.
- c. Towers shall only be constructed in the P-1 zoning district as defined on the Official Zoning Map for the Town of Tryon, or within any other town-owned property.
- d. A tower shall be set-back from other onsite and offsite towers and supporting structures, or other arrangements shall be made, such that one tower will not strike another tower or its support structure if it falls.

- e. Tower lighting shall not exceed the minimum standards of the Federal Aviation Administration (FAA) for a red obstruction lighting system contained in Advisory Circular No. 70/7460-IF dated September 37, 1978, as amended.
- f. To defeat unauthorized access, the base of the tower shall be surrounded by a fence or wall at least eight (8) feet in height unless the tower is constructed on a building over eight (8) feet in height.
- g. Any telecommunications tower shall be engineered and constructed to accommodate two (2) additional antennas that are at least as large as the largest proposed antenna identified in #2 of this section.
- h. Tower approval is conditional subject to the owner(s) agreeing to allow future collocation of other antenna(s) or transmitting devices. This agreement shall be submitted in writing and recorded in the Polk County Register of Deeds office.
- i. No tower shall exceed one hundred and ninety-nine feet (199') in height.
- j. Towers shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable Federal or State regulations.
- k. The tower and equipment shall be located, designed, and/or screened to blend with the existing material, or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.
- l. The Zoning Administrator or the Town Attorney shall cause the removal of any tower not in use for one hundred eighty (180) days within 60 days after the tower owner and the current property owner have received written notice. The written notice, mailed return receipt requested, shall be delivered to both the tower owner identified on the tower permit application and the current property owner.
- m. Property located with the tower's fall area shall not be subdivided as long as the tower is standing.
- n. A sign identifying the owner(s) and/or operator(s) of the

tower and an emergency telephone number shall be displayed in a clearly visible location on the tower's premises.

**SR 14. Accessory Dwellings**

Accessory dwellings may be located in a building separate from the principal dwelling subject to the following requirements:

- A. The accessory dwelling shall not exceed one-half ( $\frac{1}{2}$ ) of the total area of the principal dwelling.
- B. Accessory dwellings shall meet the setbacks of the principal structure as set forth for the zoning district in which it is located, where such setbacks are more restrictive than accessory structure setbacks as set forth in SR 9.

(Ord. Amended 2017-05; passed 11-21-17)

**SR 15. Live/Work Units**

- A. A live/work unit shall consist of one (1) dwelling component attached to one (1) business component that is operated by the occupant of the dwelling. The two components may be attached either vertically or horizontally.
- B. The appearance of the live/work unit shall be consistent with the surrounding properties.
- C. Parking shall be provided at a minimum for both the dwelling component and the business component as required by Section 4.7.
- D. Live/work units are subject to approval by the Planning Board in accordance with Section 2.2.2.

**SR 16. Animal Services (with outdoor kennels)**

- A. No outdoor kennels shall be located less than 250 feet from any residentially zoned property and 50 feet from any other adjacent property line.
- B. Kennel areas must be surrounded by an opaque fence not less than six (6) feet in height and enclosed as to prevent escape.
- C. Kennels shall be designed to effectively buffer noise audible to surrounding

properties.

**SR 17. Outdoor Storage (non-residential) (Conditional Use only)**

- A. All outdoor storage shall be located in the rear yard only.
- B. All outdoor storage shall be screened from view of the street with an opaque screen.

**SR 18. Outdoor Markets & Farmers Markets, Produce Stands**

- A. Outdoor Markets or Farmers Markets involve the sale of items on the same property or by the same organizer(s) more than six (6) days per calendar year. Temporary sales that do not take place more than six (6) days per calendar year shall not be regulated by this section (refer to SR 19 Temporary Uses). Town-sponsored special events shall not be regulated by this section.
- B. Site plans for proposed Outdoor Markets, Farmers Markets, and permanent Produce Stands shall be reviewed by the Planning Board in accordance with Section 2.2.
- C. Any proposed structure or tent shall be inspected for safety by the Polk County Building Inspector and/or Fire Marshal.
- D. Adequate restroom facilities shall be provided. These facilities shall not be located within 50 feet of the street right-of-way and shall be screened from view.
- E. Trailers for delivery or pick-up may be stored temporarily on-site for not more than three (3) days at a time and shall be parked a minimum of 50 feet from the street right-of-way and shall not be prominently placed on the site.
- F. When the market is not open for business all items shall be removed or screened from view of the street and any adjacent residentially zoned properties.

**SR 19. Temporary Uses**

Temporary structures and uses, when in compliance with all applicable provisions of this Ordinance, and all other ordinances of the Town of Tryon, shall be allowed. The following temporary structures and uses shall be permitted:

**A. Construction Trailers**

Construction trailers used in conjunction with construction projects provided that the following requirements are met:

1. Such construction trailers may be located at a building site where there is a valid building permit for the construction project, or, in the case of a residential subdivision, a valid building permit for at least one of the residential units being constructed.
2. All construction trailers shall be located at least 20 feet off any street right-of-way and not be placed in any required rear or side yard setback.

**B. Residential Sales Offices**

1. Structures, whether temporary or permanent, located in a subdivision containing 25 or more lots, and used as sales offices for the subdivision development are permitted.
2. Any temporary structure used as a sales office shall be located on a lot which is in compliance with the regulations of this Ordinance and shall meet all yard requirements for the applicable zoning district.
3. At least three (3) off-street parking spaces shall be provided on the lot to accommodate persons using the sales office.
4. If a permanent residential structure is used as the sales office, future use of said structure shall be for residential purposes.
5. A trailer may be used as a temporary sales office, provided that the following conditions are met:
  - (a) The trailer shall be provided with underpinning, from the bottom of the walls to the ground, made of masonry, vinyl, pre-painted aluminum material, or other similar material.
  - (b) Landscaping shall be provided around the base of the trailer.
  - (c) At the completion of the sales in a tract, or two (2) years from the date the temporary sales office began operation, whichever is sooner, said sales office shall cease operation unless the Zoning Administrator determines that substantial progress is being made in the selling and/or marketing of the lots and/or homes in the subdivision. In such case, one or more extensions (each not to exceed one year in duration) may be so authorized by the Zoning Administrator. If a temporary structure is used as the sales office, it shall be removed after its use as a sales office is terminated. Immediately after the structure is removed, the lot shall be returned to a natural state. Any paved or graveled driveway and/or parking area

associated with the sales office shall also be removed. All bare soil areas on the lot shall be returned to a natural vegetative state (reseeded or sodded) immediately after removal of the sales office and driveway/parking area.

### **C. Temporary Classrooms**

Manufactured units for public schools may be granted a zoning permit when they are needed for additional classroom space or are essential to the function of the school.

### **D. Temporary Seasonal Sales & Events**

Certain uses of a temporary nature may be permitted. The Zoning Administrator may grant a zoning permit for the following temporary uses within the CB, TB, GB, IP, P-1, PRD, and I-1 districts:

- Christmas Trees Sales & similar temporary seasonal sales
- Produce Stands (temporary)
- Civic organization events (located off-site without town sponsorship)

Such are subject to the following conditions:

1. Truck trailers and flat beds are not permitted except for short-term delivery services and as stages for permitted special events.
2. Temporary produce stands may be permitted for a maximum of 90 days per calendar year. All other temporary sales shall be permitted for a maximum of 60 days per calendar year.
3. No portion of the temporary use may be located within the public street right-of-way.
4. Temporary uses shall present proof of property owner approval prior to of a permit.
5. The proposed use will not materially endanger the public, health, welfare and safety.
6. The proposed use will not have a substantial negative effect on adjoining properties.

### **E. Produce Stands (temporary)**

1. Truck trailers and flat beds are not permitted except for short-term delivery services and as stages for permitted special events.

2. Temporary produce stands may be permitted for a maximum of 90 days per calendar year.
3. No portion of the produce stand may be located within the public street right-of-way.
4. Temporary uses shall present proof of property owner approval prior to the issuance of a permit.
5. The proposed use will not materially endanger the public, health, welfare and safety.
6. The proposed use will not have a substantial negative effect on adjoining properties.

#### **F. Yard Sales**

1. A yard sale may be conducted by civic or religious organization, an individual occupant of a residence, or in cooperation with neighbors for the purpose of selling surplus household items for profit or for charitable purposes.
2. Yard sales shall not be conducted at the same location or by the same organizer(s) more than six (6) days per calendar year.
3. Refer to Section 4.9.7 (I) (7) for yard sale sign requirements.

#### **SR 20. Agricultural Uses**

These requirements shall not apply to equestrian uses as defined by this ordinance and regulated by SR 11.

- A. Structures for the storage of farm equipment and supplies, maintenance equipment and supplies, livestock, and similar items associated with agricultural uses are permitted subject to the issuance of a zoning permit. Such structures are not subject to the requirements of SR 9 regarding accessory structures if the property is greater than one (1) acre, except that they are subject to the accessory structure setbacks for their respective zoning districts and they shall not cover more than 30 percent of the total lot area.
- B. No livestock shall be kept, maintained or stabled on any lot of less than two (2) acres.
- C. Not more than one (1) animal unit shall be kept, maintained or stabled per 5,445 square feet (1/8 acre). For the purposes of this section, one (1) animal unit shall mean a goat, sheep, donkey, mule, cow, bison, llama, alpaca, ostrich, or similar



animals. Five (5) chickens or similar fowl shall count as one (1) animal unit. The keeping of hogs (excluding potbellied pigs) is not permitted.

D. All livestock and fowl shall be fenced so that they are no closer than 150 feet from an adjacent dwelling unit. This shall not apply to residences constructed after the establishment of such livestock containment area. However, the containment area may not encroach further towards the newly established residence.

E. This section shall not apply to cats, dogs, potbellied pigs, or similar household pets.

### **SR. 21 Electronic Gaming Operations**

A. No person shall knowingly keep, maintain, or operate an electronic gaming operation:

1. Within a minimum distance of five hundred (500) feet from any single-family residential district (R-1 through R-5);
2. Within a minimum distance of seven hundred fifty (750) feet from any preschool, elementary, or secondary school;
3. Within a minimum distance of seven hundred fifty (750) feet from any other electronic gaming operation; or
4. Within any zoning district other than the GB, General Business District.

B. All measurements shall be taken by drawing straight lines from the nearest point of the property line where the proposed electronic gaming operation is to be located to the nearest point of the property line of the closest single family residential district, preschool, elementary or secondary school or electronic gaming operation.

### **SR. 22 Restaurants**

Drive through and Drive-In restaurants are not permitted in any zoning district.

### **SR 23. Outdoor Vending Machines and Information Dispensers.**

Outdoor vending machines, as well as brochure boxes and free information dispensers, shall not themselves be either the main structure on a lot or an accessory structure. They may be located under the roofline of the main structure, e.g., in a covered porch area of the main structure, except that a brochure box advertising only

the sale of the real property on which it is located may be located elsewhere on the property.

**SR 24. Retail Sales in I-1 District**

There exist in the I-1 District structures, such as textile mills and industrial buildings, which may have ceased to be utilized for their originally intended use. These existing buildings, regardless of size, may be utilized for indoor retail purposes. Retail uses shall not be permitted in the I-1 District in buildings which did not exist before April 17, 2012, or in buildings which are replaced for any reason including damage by any cause. No new construction shall be permitted to expand the size of buildings in the I-1 Industrial District being used for retail uses.

**SR 25. Travel Trailers and Recreational Vehicles**

- A. Recreational or travel trailers may be used as a temporary single-family dwelling in those districts that permit travel trailer parking areas, but only within such parking areas. Except as allowed in subsection B of this SR 25, below, recreational or travel trailers shall not be used as a single-family dwelling on an individual lot or in conjunction with a primary residence on an individual lot.
- B. Recreational or travel trailers may be used, only on privately owned property, in any residential district to host out-of-town visitors during temporary visits aggregating no more than thirty (30) days during any twelve (12) month period, and no more than fourteen (14) days consecutively. (Ord. Amended 2012-09, passed 6-19-12)
- C. Recreational travel trailers in the P-1 Open Space District shall only be used as a temporary single-family dwelling at the Town's Harmon Field property, and there only during the Blue Ridge BBQ & Music Festival, and such use shall be subject to such further restrictions as are determined by the Harmon Field Board of Supervisors. (Ord. Amended 2014-06; passed 04-15-14)

**SR 26. Distilleries/Breweries in CB District**

The manufacturing area of distilleries and breweries in the Central Business District shall not exceed 3,000 square feet. (Ord. Amended 2013-14; passed 09-19-13)

**SR 27. Single Family Dwellings in Commercial Districts (Conditional Use Only)**

It is recognized that there exist within the Town's commercial zoning districts certain structures which were originally constructed as single-family residences or which, from outward appearance, appear that they may now or once have been single family residences. This SR is intended to help promote the marketability and highest and best use of these structures, by providing flexibility for their use for either commercial or residential purposes or both. Thus, these structures might be used solely as a business, solely as a residence, as a home office, as a family guest house, or the like. These structures are not intended to be subject to the special requirements of this ordinance for "home occupations" or "live/work units." A Special Use Permit may be granted for the residential use of a structure which meets the following requirements:

- A. The structure was constructed prior to April 15, 2014;
- B. In the judgment of the Planning Board, the structure appears outwardly like a single-family residence;
- C. The commercial uses shall be limited to those otherwise allowed in the subject zoning district; and
- D. If the structure is used for both commercial and residential purposes, parking shall be provided at a minimum for both the dwelling use and the business use as required by Section 4.7. This shall be a continuing requirement and the Special Use Permit may be later withdrawn if this requirement is not satisfied. (Ord. Amended 2014-05; passed 04-15-14)

**SR 28.       Mixed Uses in the Central Business District**

- A. No more than 33% of the street level gross area shall be devoted to residential living.
- B. Residential living areas shall not be visible on street level on Trade and Pacolet Street. Window and door views from Trade and Pacolet Street shall be of Commercial and retail space only.
- C. Residential entrances shall be located on the back side of buildings. (Amended 2022-08)
- D. The combination of residential and commercial/retail or professional space shall comply with all NC Building Codes and State Fire Code. A floor plan must be submitted as part of the application for the Special Use Permit.  
(Ord. Amended 2017-06; passed 11-21-17)

## Section 4.7 Dimensional and Density Table

Each use shall as a minimum conform to the dimensional requirements of the district in which it is located. Minimum lot area shall exclude any area located within a right-of-way. In some cases, a specific use may be required to meet the Special Requirements a set forth in Section 4.6. The P-1 District has no dimensional or density regulations.

District	Minimum Lot Area (sq. ft.)	Land Area per Dwelling Unit (sq.ft.)	Lot Width (feet)	Minimum Yard Requirements			Max. Height (feet)
				Front (feet)	Side (feet)	Rear (feet)	
<b>R-1</b>	217,800 (5 acres)	217,800 (5 acres)	200 (a)	50	50 (b) (c)	100 (c)	35
<b>R-2</b>	43,560	43,560	150 (a)	40	20 (b) (c)	50 (c)	35
<b>R-3</b>	21,780	21,780	85 (a)	35	20 (b) (c)	30 (c)	30
<b>R-4</b>	10,000	10,000	75 (a)	25	10 (b) (c)	30 (c)	30
<b>R-5</b>	8,000	8,000	60 (a)	20	8 (b) (c)	24 (c)	30
<b>RM</b>							
Single-family	8,000	8,000	60 (a)	25	10 (b) (c)	30 (c)	30
Two-family	16,000	16,000	60 (a)	25	20 (b) (c)	30 (c)	30
Multi-family	n/a	5,445 (8 dua) (d)	60 (a)	50	50 (c)	24 (c)	30
Other	16,000	16,000	60 (a)	50	50 (c)	24 (c)	30
<b>PRD</b>	(e)	5,445 (8 dua) (d)	(e)	(e)	(e)	(e)	(e)
<b>CB</b>	--	--	--	--	--	--	30
<b>TB</b>	--	--	--	25	10	20	30
<b>GB</b>	--	--	--	25	10	20	30
<b>I-1</b>	--	--	--	50	30	50	40
<b>I-P</b>	15,000	--	80	30	20	25	35

- On those lots situated on a cul-de-sac or on a curve in the right-of-way the lot width may be measured at the front face of the building, the nearest point of which shall not be closer than the minimum setback establishment for each residential district.
- The width of a side yard abutting upon a street shall be no less than the minimum front yard depth required on the adjoining lot fronting upon such street, but this shall not reduce the buildable width of any lot of record at the time of passage of this chapter to less than 40 feet.
- All yards abutting on a street shall be considered as front yards for setback purposes.

- d. The Planning Board may approve a density level higher than specified. In order to gain approval of any density level higher than that previously listed, the applicant must provide a traffic impact analysis. Based on the results of the analysis, the Planning Board may permit a higher density. The Planning Board may approve an overall density up to one dwelling unit per 2,000 square feet of the heated floor area of the primary building, excluding any area(s) designated for non-residential purposes.
- e. (1) Because this district utilizes existing buildings, the lot width and setbacks will be subject to approval through the Conditional Use Rezoning Process. However, in no case shall a permit be issued for a development which encroaches onto an adjacent piece of property.  
  
(2) The minimum building size shall be 30,000 square feet, and in no case shall the allowed non-residential usage exceed 30% of the heated area of the primary building.

#### **4.7.1 Front Yard Setbacks for Dwellings**

The front yard setback requirements of this ordinance for dwellings shall not apply to any lot where the “average setback of existing buildings” located wholly or partially within one hundred (100) feet on either side of the proposed dwelling, and on the same side of the same block and use district, and fronting on the same street as such lot, is less than the minimum required front yard depth. In such case, the setback on such lots may be less than the required setback, but not less than the average of the existing setbacks on the aforementioned lots, or a distance of ten (10) feet from the street right-of-way line, whichever is greater. Exceptions to the setback requirements may also be granted where the terrain of the lot so dictates, with the approval of a variance by the Zoning Board of Adjustment.

#### **4.7.2 Allowable Encroachments into Required Yards**

The following may encroach into required setbacks:

- A. The ordinary projection of sills, belt course, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above-mentioned projections shall project into a minimum yard setback more than two (2) feet.
- B. Uncovered and unenclosed stairs and steps may encroach up to six (6) feet into any required setback but may not be closer than five (5) feet to any property line.

- C. Bay windows, balconies, open or enclosed fire escapes, fireproofed outside stairways, handicap accessibility ramps and similar features projecting into a minimum yard setback not more than three (3) feet, and the ordinary projections of chimneys and flues may be permitted by Zoning Administrator where same are so placed as not to obstruct the light and ventilation.
- D. Awnings may encroach into a required setback up to six (6) feet but shall not encroach into any street planting area or vertically inhibit pedestrian ways such as sidewalks.
- E. Fences and yard walls may encroach into required setback yards up to the property line but if higher than three (3) feet, may not be placed within, or obstruct, the site triangle of any public street, private street or driveway.
- F. Terraces of less than three (3) feet in height may encroach into any required setback yard.

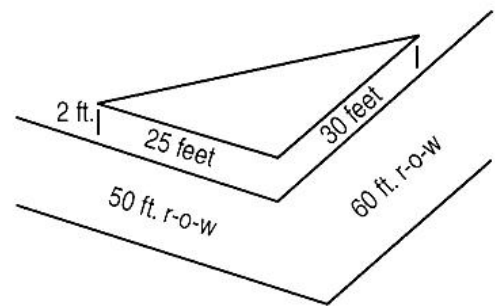
#### **4.7.3 Excavation and Removal of Earth Material**

Residential and commercial development requiring the off-site removal of more than 900 cubic yards of material is prohibited. Applications to the Board of Planning and Adjustment shall include a grading plan, showing existing and proposed contours (at a minimum 2' interval) and calculations indicating cut and fill, to verify compliance. These calculations shall be prepared by a registered architect, civil engineer, or other qualified design professional.

#### **4.7.4 Visibility at Intersections**

On a corner lot in any district other than the C-B Central Business District, no planting, structure, sign, fence, wall or obstruction to vision more than three (3) feet in height measured from the centerline of the street shall be placed or maintained within the sight triangle. The following are the distances used to establish a sight triangle as measured from an intersecting right-of-way:

Right-of-Way width	Distance (feet)
Driveway	10'
30'	15'
40'	20'
50'	25'
60' or greater	30'



#### **4.8 Off-Street Parking and Loading Requirements**

Subject to Sections 4.8.2(A) and 4.8.2(B), off-street automobile parking space shall be provided on every lot on which any of the uses set forth in Section 4.4 are hereafter established in all districts, provided that off-street parking shall not be required in the CB Central Business District.

##### **4.8.1 Certificate of Occupancy**

No certificate of occupancy shall be issued upon completion of any building or group of buildings unless all off-street parking and loading requirements, as required by this section, shall be in place and ready for use.

##### **4.8.2(A) Combined and Shared Parking.**

The required parking space or any portion thereof for any number of separate uses each of which is within 100 feet of the designated parking area may be combined in one lot, but the required parking space for any one use may not be assigned to another use at the same time. Two or more uses may share the same parking spaces provided the developer(s) can demonstrate that the uses will not overlap in hours of operation or in demand for the shared spaces. Any sharing of required parking spaces between uses located on different parcels shall be guaranteed by a written agreement between the owner of the parking area and the owner of any use located on a different parcel and served by the parking area.

##### **4.8.2(B) Location of Other Property (“Satellite Parking”).**

If the required automobile parking spaces cannot reasonably be provided on the same lot on which the principal use is conducted, such spaces may be provided on other off-street property provided such property lies within 100 feet of the main entrance to such principal use. Such automobile parking space shall be associated with the principal use and shall not thereafter be reduced or encroached upon in any manner, except to the extent the satellite parking is approved as combined or shared parking. (See 4.8.2(A)) The zoning designation of the lot(s) proposed as satellite parking must be identical to the zoning designation of the lot to be served by the satellite parking. This section 4.8.2(B) shall apply to both new developments desiring satellite parking as well as to existing uses which desire to expand available parking. In no case shall satellite parking to serve non-residential uses be allowed within any residentially

zoned district. (Amended 05/21/19)

#### **4.8.3 Parking Space and Aisle Dimensions**

Each automobile parking space shall conform to the following dimensions:

**Table 4.7A Parking Space and Aisle Dimensions**

<b>Parking Pattern</b>	<b>Maneuvering Lane Width</b>	<b>Parking Space Width</b>	<b>Parking Space Length</b>	<b>Total Width of One Tier of Spaces Plus Maneuvering Land</b>	<b>Total Width of Two Tiers of Spaces Plus Maneuvering Lane</b>
0 (parallel parking)	12	8	23	20	28
30° to 53°	12	8' 6"	20	32	52
54° to 74°	15	8' 6"	20	36' 6"	58
75° to 90°	20	9	20	40	60

#### **4.8.4 General Design Requirements**

Parking areas, whether required or not, shall be designed to accommodate the following criteria. Single-family residences and duplexes are exempt from this section.

- A. Parking areas shall be designed so that vehicles may exit such areas without backing onto a public street.
- B. Parking areas of all developments shall be designed so that sanitation, emergency and other public service vehicles can serve such developments without the necessity of backing unreasonable distances or making other dangerous or hazardous turning movements.
- C. Parking area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties, public rights-of-way, sidewalk or landscaped areas.
- D. Parking areas shall be graded and improved with asphalt, concrete, or pavement blocks to provide a surface that is stable and minimizes dust. Paving is required for new or expanded:



1. Front yard parking areas
2. Side yard parking areas
3. All off-street parking areas of greater than 15 spaces
4. Driveways

Off-street rear yard parking areas for parking areas of less than 15 spaces and with a slope of less than five (5) percent may use gravel in lieu of a paving material provided that handicap parking meets ADA standards and gravel is contained to the parking area using landscaping timbers or other containment device.

- E. Paved parking areas shall have lines demarcating each parking space.
- F. Storm water runoff shall be directed to grass catchment areas and allowed to percolate into the soil to the maximum extent practicable.
- G. Parking spaces shall be appropriately demarcated with painted lines to reflect dimensions as provided in Table 4.8.A.
- H. Parking spaces designated for use by a handicapped person shall meet the minimum standards and requirements of the North Carolina State Building Code for handicapped parking spaces.

#### **4.8.5 Parking Space Requirements**

Specific uses, as outlined in Table 4.8-B below, shall provide the minimum number of parking spaces required and shall not exceed the maximum number of parking spaces. The minimum number of parking spaces may be decreased or the maximum number of parking spaces may be increased upon the following affirmative findings by the Planning Board:

- A. That the applicant can prove that peak demand for parking will be met by the proposed new number of spaces,
- B. That the required number of handicap parking spaces will not be decreased,
- C. That at least one additional canopy or two additional ornamental trees are provided for each six (6) parking spaces, or fraction thereof, by which the original number is decreased, and

D. That adequate parking is provided, or can be provided, for any future expansion to the use of the property.

**Table 4.8B Parking Space Requirements**

USE CLASSIFICATION	PARKING SPACE REQUIREMENT	
	Minimum	Maximum
Automobile/Boat sales and repair	One space for each two employees at maximum employment on a single shift, plus two spaces for each 300 square feet of repair or maintenance space.	n/a
Convenience stores <i>With gas sales</i>	Two spaces for each gas pump plus three spaces for each vehicle bay or similar facility.	Two spaces for each gas pump plus three spaces for each vehicle bay or similar facility.
<i>Without gas sales</i>	One space for each 400 square feet of store gross floor area.	One space for each 300 square feet of store gross floor area.
Hospitals	One space for each 400 square feet of gross floor area.	One space for each 200 square feet of gross floor area.
Hotel/Motel	One per room plus 1 per 800 sf of public meeting and restaurant space.	One per room plus 1 per 400 sf of public meeting and restaurant space.
Bed and Breakfast Inns	One parking space per guest room and two parking spaces for staff.	n/a
Offices – professional, business or public, including banks	One space for each 300 square feet of gross floor area.	One space for each 200 square feet of gross floor area.
Medical and dental offices and clinics	One space for each 300 square feet of gross floor area.	One space for each 200 square feet of gross floor

		area.
Parks, athletic fields, & pools (excluding neighborhood parks which are intended to serve walk-up users)	Twenty spaces per athletic field.	n/a
Places of public assembly, including private clubs and lodges, auditoriums, dance halls, theaters, gymnasiums, community centers, and all similar places of public assembly	One space for each 6 seats provided for patron use, plus one space for each 100 square feet of floor or ground area used for amusement or assembly but not containing fixed seats.	One space for each 4 seats provided for patron use, plus one space for each 50 square feet of floor or ground area used for amusement or assembly but not containing fixed seats.
Religious institutions	One space for each 8 seats.	One space per 3 seats.
Residential dwellings	Two spaces for each dwelling unit, plus an additional space for each additional vehicle domiciled at said dwelling unit.	n/a
Restaurants (carry out, delivery)	One space for each 300 square feet of gross floor area, plus one for each delivery vehicle.	One space for each 200 square feet of gross floor area, plus one for each delivery vehicle.
Restaurants (sit down)	One space for each 3 seats.	One space for each 50 square feet of gross floor area.
Residential care facilities, rest and convalescent homes, homes for the aged, and similar institutions	0.3 spaces per room	One space per room
Retail, General	One space for each 300 square feet of gross floor area.	One space for each 200 square feet of gross floor area.
Service, General	One space for each 300 square feet of gross floor area.	One space for each 200 square feet of gross floor area.
Schools, Elementary & Middle/Junior High (both	One space for each classroom and administrative office.	One and one-half spaces for each classroom and

public and private)		administrative office.
Schools, High Schools and colleges (both public and private)	One space for each 10 students for which the school was designed, plus one space for each classroom and administrative office.	n/a
Wholesaling, Distribution, Warehousing, and Industrial uses	One space for each two employees at maximum employment on a single shift.	n/a

#### **4.8.6 Off-Street Loading and Unloading Space**

Every building or structure used for business, trade or industry hereafter erected shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley, or if there is no alley, to a street. For the purposes of this section, an off-street loading space shall have minimum dimensions of twelve (12) feet by sixty (60) feet, and an overhead clearance of fourteen (14) feet in height above the alley or street grade.

- A. Office and retail business: One (1) space for each 5,000 square feet of floor area.
- B. Wholesale and industry: One (1) space for each 10,000 square feet of floor space.

#### **4.8.7 Ingress and Egress Visibility**

All new driveway locations, excluding those exclusively intended for single-family or two-family residential development, shall be designed in a way to maximize sight distance, minimize traffic hazards and eliminate off-set intersections. Driveway review shall be coordinated with the Town of Tryon's Public Works Department and/or the North Carolina Department of Transportation. This shall occur before a site plan is submitted to the Planning Board. Recommendations from these respective agencies shall be included in the deliberation and decision of the Planning Board.

### **4.9 SIGN REGULATIONS**

#### **4.9.1 General Requirements.**

A sign may be erected, placed, established, painted, created, or maintained in the jurisdiction of this Ordinance only in conformance with the standards, procedures, exemptions, and other requirements of this section.

#### **4.9.2 Alteration of the Sign Face.**

Notwithstanding the restrictions set forth in section 4.9.10, maintenance or repair of a sign does not require a sign permit. However, any physical alteration of the sign frame or supporting structure or a change of the sign face shall be considered the same as construction of a new sign and shall require a sign permit and conformance with the standards established in this Section. Except for signs that are specifically exempt from having a permit, a sign permit shall be required to be issued by the Zoning Administrator.

#### **4.9.3 Measurement of Sign Area and Height.**

The following guidelines shall control the computation of the sign area and height:

- A. In measuring the copy area of a sign permitted under this Article, the entire face of the sign shall be included. Where both sides of a double-faced sign contain lettering or other allowable display, one side only shall be used to compute the allowable copy area of the sign. Where the sign consists of individual letters, numbers, characters, figures or displays attached in some manner to a building or a sign face of irregular shape, the sign copy area shall include the area of the smallest circle, square or rectangle that can encompass the total sign area composed of letters, numbers, characters, figures or displays or the irregular shaped sign face. Where signs have appendages or additions, such as "pop-ups" or "cutouts" that extend beyond the main sign copy area, the area of such appendages or additions shall be measured separately, but included in the total sign copy area. Also to be included in the total sign copy area shall be any area designed for changeable copy.
- B. The height of a sign erected within 20 feet of a street right-of-way line shall be the distance from the grade level of the nearest edge of the street to the top of the sign or sign structure, whichever is greater. The height of all signs farther than 20 feet from a street right-of-way line shall be the distance from the grade level where the sign is erected to the top of the sign or sign structure, whichever is greater.

#### **4.9.4 Sign Location**

- A. No sign may be located in any public right-of-way, sight triangle, or extend beyond

any street line. In pedestrian areas, all signs shall be at least six (6) feet, eight (8) inches above the level of any walkway it may overhang. The Zoning Administrator or his designee may remove and destroy or otherwise dispose of any sign placed on public property or within any right-of-way of any public or private street. Penalties may be levied for each such sign as outlined in Article 10 of this Ordinance.

- B. A sign permitted in any business district, but prohibited in any residential district, shall be displayed only on that side of a structure or property facing upon a street which legally provides access to the property, or upon the property line of an abutting lot which is zoned for business purposes, unless such a sign is located at least two hundred (200) feet from any residential district, and unless such a sign has an area of less than 32 square feet.

#### **4.9.5 Design, Construction and Maintenance**

- A. All signs shall be designed, constructed, and maintained in accordance with the following standards:
- B. All signs shall comply with and be maintained in good structural condition according to applicable provisions of the North Carolina State Building Code, all applicable electrical codes and this ordinance.
- C. Except for banners, flags, temporary signs, and window signs conforming in all respects with the requirements of this ordinance, all signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or another structure by direct attachment.
- D. All signs, conforming and nonconforming, shall be maintained in a good state of repair. The Zoning Administrator shall provide notice to any owner of a deteriorating or dilapidated sign stating that said sign shall be properly maintained or removed within 30-days of said notice. If the sign is not properly maintained or removed within the 30-day period, the Town may remove the sign and send the removal cost to the sign owner in the form of a bill.
- E. All signs, unless otherwise stated or implied, shall have no more than two faces, displayed on opposite sides and without a space or angled projection to one another. Said signs shall have the same message and general design on both faces.

- F. The immediate premises around a sign shall be kept free from litter and debris. However, no person other than persons authorized by the Town shall damage, trim, destroy, or remove trees, shrubs, or other vegetation located within the public right-of-way of any street for the purpose of increasing or enhancing the visibility of a sign; nor shall such work be performed on property that is not under the ownership or control of the person performing or responsible for such work, unless done pursuant to the express authorization of the person owning the property where such trees or shrubs are located.
- G. Unless expressly permitted, signs shall not be illuminated. Those signs that are externally illuminated shall be by a shielded indirect white or amber light of reasonable intensity directed solely at the sign face.

#### **4.9.6 Prohibited Signs**

The following signs are prohibited within the jurisdiction of this Ordinance:

- A. Signs that are similar, or mimic, official highway signs, warning signs, or regulatory devices;
- B. Signs displaying blinking, flashing, or intermittent lights, animation and moving parts or electronically displayed messages;
- C. Portable signs except those expressly permitted herein;
- D. Off-premise signs except those expressly permitted herein;
- E. Outdoor advertising signs or billboards;
- F. Facsimile signs;
- G. Signs attached to or painted on utility poles, telephone poles, trees, parking meters, bridges and overpasses, rocks, other signs, benches and refuse containers;
- H. Roof signs;
- I. Pavement markings for purposes other than traffic control;
- J. Signs placed within or extending into the right-of-way of Town and state-

maintained streets and roads, except those erected by a duly constituted government body and those signs permitted by this Ordinance to project over the right-of-way in the Central Business District;

- K. Signs that contain language and/or pictures obscene to the general public in accordance with NCGS 14-190.1;
- L. Signs that advertise an activity or business no longer conducted on the property on which the sign is located;
- M. Indirect illumination, such as floodlights, erected in such a manner as to cause glare that impairs driver vision on streets or roadways or that causes a nuisance to the occupants of adjoining property;
- N. Signs that obstruct fire escapes, windows, doors or other openings used as a means of egress or as required legal ventilation;
- O. Signs containing or consisting of pennants, ribbons, streamers, festoon lighting, balloons (or inflatable signs) or spinners;
- P. Internally illuminated signs in any residential district;
- Q. Signs painted on buildings;
- R. Temporary signs except as allowed by Section 4.9.7 (I).
- S. Signs that do not conform to the provisions of these regulations.
- T. Signs placed on or within 10 feet of the Morris the Horse structure at the corner of Trade St. and Pacolet St. (Ord. Amended 01/19/16; 2016-01)

#### **4.9.7 Signs Permitted without a Zoning Permit**

The following signs do not require a permit; all other signs require a permit issued by the Zoning Administrator:

- A. **Building Marker Signs.** A sign etched into masonry, bronze or similar material on a building that identifies the name of the building, designer, year constructed,



or provides similar information.

- MAXIMUM SIZE: 8 SQUARE FEET
- MAXIMUM NUMBER: 1 PER BUILDING

B. **Construction/Contractor's and Subdivision Project Signs.** Such signs shall be non-illuminated and may be located in any district to identify future tenants, home builders, contractors, and architectural or engineering designers during the period of construction. These signs shall be removed no later than seven days after the completion of the project.

- MAXIMUM SIZE: 6 SQUARE FEET PER CONTRACTOR AND 18 SQUARE FEET PER SITE
- MAXIMUM HEIGHT: 6 FEET TALL
- MAXIMUM NUMBER: 1 PER CONTRACTOR

C. **Directional Signs (on-premises).** Signs that are located on the premise/property to provide directions. Such signs contain no copy (i.e. company name or logo) other than directional information.

- MAXIMUM SIZE: 4 SQUARE FEET
- MAXIMUM HEIGHT: 3 FEET TALL
- MAXIMUM NUMBER: 2 PER ENTRANCE/EXIT

D. **Flags.** Flags or insignia of any nation, organization of nations, state, county or municipality, any religious, civic or fraternal organization, or any educational or cultural facility and/or any one corporate flag per lot.

- MAXIMUM SIZE: 45 SQUARE FEET
- MAXIMUM HEIGHT: MAXIMUM DISTRICT HEIGHT
- MAXIMUM NUMBER: 4 PER LOT OF RECORD

E. **Government Signs.** Signs posted or authorized by various local, state, and federal agencies in the performance of their duties including providing community information and facilitating economic development. Such signs include regulatory signs, traffic signs, welcome signs, bulletin board, and directory signs.

F. **Directory Signs (town sponsored).** Town sponsored directory signs shall be posted at not more than five (5) locations within the zoning jurisdiction of Tryon to include Highway 108, Highway 176 (Trade Street), and the Central Business

District. Such signs shall direct travelers and tourists to points of interest including the Central Business District, government facilities, cultural arts facilities, galleries, accommodations, restaurants, and shops (i.e. antiques). Text on directory signs shall be generic in nature and not list the name of any specific business. These directory signs shall meet the design requirements of town sponsored signage as directed by the Town Board of Commissioners including the “horse logo” and approved colors. The Town shall install and maintain the signs and shall have discretion over the text posted on the signs. This shall not apply to directory signs installed and maintained by NCDOT.

- MAXIMUM SIZE: 16 SQUARE FEET
- MAXIMUM HEIGHT: 6 FEET TALL
- MAXIMUM NUMBER: 5 LOCATIONS IN TRYON ZONING JURISDICTION

G. **Legal and Warning Signs.** Signs erected to warn of danger or hazardous conditions such as signs erected by public utility companies or construction companies; signs required for or specifically authorized for a public purpose by any law, statute or ordinance.

H. **Occupant/Street Number Signs.** Signs affixed to structures, mailboxes, decorative light posts, driveway entrances, etc., which serve to identify the address of the structure or occupant. All such signs shall be placed in such a manner as to be visible from the street.

I. **Temporary Signs.**

Temporary signs shall not be located within a public street right-of-way or sight triangle and shall not be attached to trees or utility poles or on publicly-owned property. Temporary signs shall not be illuminated except for temporary holiday decorations. Temporary signs that do not fit into one of the following categories are not permitted.

1) ***Political Signs.*** Signs may be displayed during a period beginning 30 days prior to an election and concluding 48 hours after the election. In the event of a runoff election, political signs for the candidates involved may remain on display until 48-hours after the runoff election.

- MAXIMUM SIZE: 3 SQUARE FEET
- MAXIMUM HEIGHT: 3 FEET TALL

- MAXIMUM NUMBER: 1 PER CANDIDATE PER LOT OF RECORD
- 2) ***Real Estate Signs (On-premises).*** On-premises real-estate signs advertise the sale or lease of the property on which said sign is located. Signs shall be removed within seven (7) days of the sale or lease of the property. Signs advertising lots for sale within an approved subdivision may be posted at the entrance to the subdivision and shall be allowed until 75 percent of the lots are sold within the subdivision.
- MAXIMUM SIZE: 6 SQUARE FEET FOR INDIVIDUAL RESIDENTIAL PROPERTIES AND 16 SQUARE FEET FOR MULTI-FAMILY RESIDENTIAL, NON-RESIDENTIAL PROPERTIES, VACANT PROPERTIES, & SUBDIVISIONS
  - MAXIMUM HEIGHT: 4 FEET TALL
  - MAXIMUM NUMBER: 1 PER STREET FRONTAGE PER LOT OF RECORD
- 3) ***Real Estate Signs (Off-premise).*** Off-premise signs that advertise the sale of residential property. Signs shall only be displayed on weekends and shall not be erected before 5pm on Friday and shall be removed by 7am on Monday.
- MAXIMUM SIZE: 6 SQUARE FEET
  - MAXIMUM HEIGHT: 3 FEET TALL
  - MAXIMUM NUMBER: 3 OFF-PREMISES SIGNS
- 4) ***Temporary Holiday Decorations.*** Temporary decorations or displays, when such are clearly incidental to and are customarily and commonly associated with any national, local or religious holiday/celebration.
- 5) ***Special Event Signs.*** Signs may be erected by public or non-profit organizations such as schools and churches for promoting public events such as fund drives, fairs, festivals, sporting events, etc. Signs may be displayed in the G-B, I-P, I-1, or P-1 zoning districts during a period beginning 30 days prior to the event and concluding 48 hours after the event.
- MAXIMUM SIZE: 16 SQUARE FEET
  - MAXIMUM HEIGHT: 6 FEET TALL
  - MAXIMUM NUMBER: 1 ON-PREMISES SIGN & 3 OFF-PREMISES

## SIGNS

- 6) ***Single-Day Event Signs.*** Any organization having federally recognized tax exempt status may apply to the Town Manager for permission to place single-day event signs. Such signs may be erected in all zoning districts for events to take place within 24 hours. Signs shall be placed no more than 24 hours before the event, and shall be removed immediately following the event.
- 7) ***Yard Sale Signs.*** Signs shall only be displayed on weekends and shall not be erected before 5pm on Friday and shall be removed by 7am on Monday.
  - MAXIMUM SIZE: 4 SQUARE FEET
  - MAXIMUM HEIGHT: 3 FEET TALL
  - MAXIMUM NUMBER: 1 ON-PREMISES SIGN PER STREET FRONTAGE & 2 OFF-PREMISES SIGNS
- 8) ***Window Signs (temporary).*** Signs temporarily attached or temporarily painted to a window or door, announcing sale or special features, provided they do not exceed 50% of the area of said window or door. Signs that exceed 50% of the area of said window shall be treated as wall signs. Signs shall be removed within 2-days after the termination of such sale or special event.
  - MAXIMUM COVERAGE: 50% OF WINDOW AREA
- 9) ***Banners.*** Banners advertising a special sale or feature may be hung against a wall face only for a 30-day period of time, no more than twice annually.
  - MAXIMUM SIZE: 25 SQUARE FEET
  - MAXIMUM NUMBER: 1 PER BUSINESS UP TO TWICE ANNUALLY
- 10) **Window Displays.** Merchandise, pictures or models of products or services that are incorporated as an integral part of a window display.
- 11) Sandwich board signs are allowed in the Central Business District provided that they shall not exceed 6 square feet on any individual face or 12 square feet in the aggregate of all faces, and their placement must leave at least 4 feet of sidewalk clearance for pedestrian traffic. (Ord. 2016-04; passed 06-21-16)

#### **4.9.8 Signs Permitted with a Zoning Permit in All Zoning Districts**

The following signs are permitted in all zoning districts upon issuance of a Zoning Permit, provided that stated specific requirements, conditions and stipulations are met. All freestanding signs permitted by this Section in all zoning districts shall have a maximum height limit of six (6) feet and shall have a minimum setback of five (5) feet from any public right-of-way.

- A. Neighborhood Identification Signs.** On-premises signs identifying a single-family residential subdivision; apartment, townhouse, condominium or other multi-family residential complex; recreational facility or manufactured home park not exceeding 12 square feet in area and four (4) feet in height. There shall be a limit of one (1) double-faced sign or two (2) single-faced signs for each road or driveway entrance to the development named on the sign. Such signs shall be limited to the name and the address of the neighborhood or complex and the on-site address and phone number of the resident agent and may be indirectly illuminated. In addition one (1) identifying sign for an accessory management or rental office not exceeding six (6) square feet in area or four (4) feet in height shall be permitted.
- B. Public Interest Identification Signs.** One (1) on-premises identification sign or bulletin board for each lot of record indicating the name and/or address of the premises, schedule of services or activities, hours of operation, name of person(s) in authority, founding date of the organization or other information relevant to the operation of a school, college, park, public swimming pool, place of worship, hospital, sanitarium, art gallery, museum, library, YMCA, YWCA, community building, recreation center, coliseum or convention center, private country clubs, golf courses, swimming/tennis clubs, equestrian centers, lakes, cemeteries and similar facilities operated on a profit or non-profit basis not to exceed twelve (12) square feet in area to be located on private property where the use occurs. Such signs may be indirectly illuminated.
- C. Signs for Non-conforming Uses in Residential Districts.** One (1) on-premises ground or wall sign not exceeding twelve (12) square feet in area for a legal non-conforming use in a residential zoning district in which it is located. Illumination of such signs shall be permitted only between sunrise and 10:00 pm.
- D. Civic Directional Signs.** Signs which the denote the location of religious,

charitable, fraternal, military or service organizations may be freestanding and may be located off-site, provided, however, that no one (1) individually chartered organization may have more than one (1) off-premises sign, which sign shall not be illuminated. A sign denoting a single chartered organization shall not exceed four (4) square feet in area. A number of such signs may be placed on one structure, provided, however, the copy area of each individual sign does not exceed three (3) square feet in copy area and the structure does not exceed sixteen (16) square feet in copy area.

- E. Noncommercial Messages.** Any sign, display or device allowed under this ordinance may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit or to a commodity or service for sale. Such signs shall be limited to three (3) square feet in size. There shall be no more than one such sign per lot of record. Noncommercial message signs may be displayed for a period of 30 days. The applicant may reapply every 30 days to continue displaying the sign for a maximum of 6 months per calendar year.

#### **4.9.9 Signs Permitted by Zoning District**

For signs that are not permitted in all zoning districts as indicated in Section 4.9.8 above, the following regulations apply:

<b>Sign Type</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>	<b>RM</b>	<b>PRD</b>	<b>CB</b>	<b>TB</b>	<b>GB</b>	<b>I-P</b>	<b>I-1</b>	<b>P-1</b>
Freestanding	C	C	C	C	C	C	XL*		XL	XL	XL**	XL*	XL*
Projecting									XL*	XL*	XL*	XL*	
Wall							XL*	XL*	XL*	XL*	XL*	XL*	XL*
Window							X	XL	XL	XL	XL	X	
Canopy or Awning							X	X	X	X	X	X	
Business Identification Signs								X					
Historic Plaque	X	X	X	X	X	X	X	X	X	X	X	X	X
Movie Theater (Marquee)								XL					
Gas Station Signs									X	X			

X: Sign Allowed

C: Sign allowed for civic uses only

L: Illumination Allowed

\*: External Illumination Only

\*\*.: External Illumination Only, provided, however, that internal illumination is allowed for parcels with more than 250 linear feet of primary road frontage.

**A. Freestanding Signs.**

On premises freestanding signs may be erected and displayed on a zoning lot provided:

- 1) Freestanding signs shall be limited to one sign per street frontage for each lot of record.
- 2) No freestanding sign shall be located closer than twenty (20') feet to a projecting sign;
- 3) Freestanding sign surface area shall be limited to thirty-two square feet (32 sf), provided, however, that parcels in the IP District with more than 250 linear feet of primary road frontage shall be allowed an additional twenty-five percent (25%) in area. Changeable copy may comprise a maximum of fifty percent (50%) of the total sign area. (Ord. Amended 10/20/15; 2015-03)
- 4) Freestanding sign height shall be limited to nine (9) feet.
- 5) Notwithstanding the standards for multi-tenant signage below, where a development contains more than one principal establishment, in one or more principal buildings, the provisions of this section shall apply to the development as a whole, and the owner(s) of the development shall be responsible for allocating permitted signs and display areas among the individual uses or establishments.
- 6) Multi-tenant signs shall be required for buildings or lots of record with more than one tenant or business. Multi-tenant signs may exceed the maximum copy area for freestanding signs by the following percentages:
  - 2-10 establishments – up to 25%
  - 11-20 establishments – up to 50%
  - 21-30 establishments – up to 75%

- 31-40 establishments – up to 100%
- 41-50 establishments – up to 125%
- 51 or more establishments – up to 150%

## **B. Projecting Signs**

On premise projecting signs may be erected and displayed on a zoning lot in compliance with the maximum area per display surface limitations for the district and provided:

- 1) The building to which a projecting sign is attached shall be twenty feet (20') or more in width;
- 2) Projecting signs shall be limited to one per business entrance per street frontage, and shall not be located closer than twenty feet (20') to any other projecting sign; if building width does not permit this distance, projecting signs shall be centered evenly distributed on the building façade. Single signs may contain multiple businesses. Projecting signs may not be attached onto second floor or higher building facades.
- 3) No projecting sign shall be located closer than twenty feet (20') to a freestanding sign;
- 4) Projecting signs shall clear sidewalks and pedestrian paths by a height of at least eight feet (8') and shall project no more than one additional foot than the sign's width from the building to which they are attached; shall not extend beyond the inner edge of the curb line; and shall not extend closer than five feet (5') to any public street travel way. No new projecting sign frames shall be higher than the roof line or parapet.
- 5) No projecting sign shall be located at the intersection of building corners except at right angles to a building façade.
- 6) Projecting signs shall be limited to eight square feet (8 sf).
- 7) Projecting signs are not permitted if a wall sign is used.

## **C. Wall Signs**

On premises wall signs may be erected and displayed on a zoning lot in compliance with the requirements below:

- 1) Wall signs placed in the space between windows on different stories of a building shall not exceed in height two-thirds ( $2/3$ ) of the distance between the top of a window and the sill of the window above.
- 2) Wall signs or portions thereof, placed between window spandrels shall not exceed two-thirds ( $2/3$ ) the height of the spandrel.



- 3) Wall signs are not permitted if a projecting sign is used.
- 4) A wall sign shall not protrude more than six inches (6") from the wall to which it is attached and shall not exceed 32 square feet or twenty percent (20%) of the wall area, whichever is the lesser. Any permanent window signs shall be included in this calculation. The thirty-two square foot (32 sf) requirement shall apply to the total area of an applied sign panel, or shall be the area within the perimeter drawn around individual signage letters and logos or symbols.
- 5) No wall sign shall extend above the soffit, parapet, or eave line, as appropriate, of the building to which it is attached.
- 6) Wall signs on the sides of buildings may only be applied to a corner building and only on the wall that parallels the street. The sign may not exceed thirty two square feet (32 sf) per street side elevation. Wall signs on the sides of buildings adjacent to lots zoned Residential are permitted only when the building is at least fifty feet (50') from the side lot of the residential lot.
- 7) Wall signs on the side of buildings in the I-P district are not permitted.

#### **D. Window Signs**

- 1) Two permanent first floor window signs shall be permitted to a maximum of twenty percent (20%) of the total, not individual, first floor window square footage. The twenty percent (20%) requirement shall apply to the total area of an applied sign panel, or shall be the area within the perimeter drawn around individual signage letters and logos or symbols.
- 2) The maximum letter size for a window sign shall not exceed a height of six inches (6").
- 3) Window signs shall be considered wall signs and their total area (not to exceed twenty percent (20%) of total first floor window square footage) shall be subtracted from the overall wall sign surface allowance of thirty two square feet (32 sf) .
- 4) Notwithstanding the language of subsections C.3. and D.3., above, window signs may be used when projecting signs are present. If a projecting sign is used, window signs shall not reduce the allowable area (6 sf) of the projecting sign.

(Am. Ord. 2014-10 (B-D), passed 10-21-14)

#### **E. Canopy or Awning Signs.**

- 1) Signs hung below a canopy or awning shall be no more than ten (10") inches high and three (3') feet long. Signs mounted on a canopy or awning shall not

exceed twenty (20) percent of the vertical surface of the face of the canopy or awning upon which the sign is mounted.

- 2) Signs below a canopy or awning shall not be less than nine (9') feet above the ground or sidewalk
- 3) Canopy or awning signs may project over the sidewalk provided that:
  - a. The Town approves an encroachment agreement if over a public right-of-way.
  - b. The canopy or awning does not extend beyond the inner edge of the curb line.
  - c. Signs mounted on a canopy or awning shall not exceed twenty (20) percent of the vertical surface of the face of the canopy or awning upon which the sign is mounted.
- 4) If a wall sign is not used, a business is permitted to use up to one (1) additional canopy or awning sign. Said sign may be of either of the following types of canopy or awning signs:
  - a. A canopy or awning sign along a canopy or awning edge (fringe or drip-flap) for fabric canopies or awnings or vertical fascia surface (in the case of a rigid canopy or awning) provided the message does not exceed ten (10) inches in height nor extend in any direction above, below, or beyond the canopy edge.
  - b. A canopy or awning sign above the edge of the canopy or awning on the surface of the canopy or awning covering provided the signing is within the parallel edges of the canopy or awning covering and is an integral part of the canopy or awning covering.
  - c. Signage on the canopy or awning sign shall be limited to no greater than twenty percent (20%) of the area bounded by the edges of the canopy or awning not including any drip flap or vertical fascia surface. If signage is only found in fringe drip-flap portion of the canopy, the entire portion

of said area may be utilized for signage.

**F. Business Identification Signs.**

- 1) On-Premise. A pedestrian oriented sign attached to a building to identify the tenant within. Such sign shall contain no advertising other than trade name, logo type, and a directional feature such as an arrow. One sign is permitted per entrance. MAXIMUM SIZE: 4 SQUARE FEET (this number shall apply to the allowable square footage for wall signs).
- 2) Off-Premise. A pedestrian oriented sign attached to a building to identify a business located elsewhere, but with an entrance on the same street as the location of the sign. Such sign shall contain no advertising other than trade name, logo type, and a directional feature such as an arrow. One sign is permitted per building and each sign must be located within two city blocks of the subject business. MAXIMUM SIZE: 4 SQUARE FEET (this number shall apply to the allowable square footage for wall signs)."

**G. Historical Plaques.**

- 1) One (1) historical plaque shall be permitted.
- 2) The maximum area is four (4) square feet
- 3) The maximum placement height is six (6) feet above the sidewalk.
- 4) Historical plaques shall not count against the overall wall sign surface area allowance.

**H. Movie Theater Signs (Marquee).**

A Special Use Permit for the operation of marquee lights may be obtained if the following conditions are met:

- 1) Lighting does not endanger the public health or safety;
- 2) Any illumination must be compatible with the downtown character and preserve the historical nature of the building;

- 3) Lighting would not substantially injure the value of surrounding property;
- 4) Lights are only to flash or operate intermittently one hour before show time, and the flashing or intermittent lighting must cease ½ hour after the movie ends;
- 5) Adherence to any other conditions and/or specifications required by the Board of Commissioners in the issuance of the permit.

### **I) Gas Station Signs**

1) Signage displayed on or affixed to structures covering fuel islands shall only be on the vertical face of the canopy part of the structure. Colors and stripes may take up 100% of the surface on all sides and a brand name or logo shall cover no more than 33% of one of the surfaces. Fuel island signage shall not extend above or below the surface area.

#### **4.9.10 Nonconforming Signs**

A nonconforming sign may be replaced with a new sign of the same height, square footage of total sign surface area, and in substantially the same location so long as the new sign does not increase the existing non-conforming condition(s) or create any new non-conforming conditions. Nonconforming signs shall not be: a) expanded, (b) reestablished after discontinuance for ninety (90) days, or (c) reestablished after damage or destruction if estimated expense of reconstruction exceeds fifty percent (50%) of the appraised replacement cost. Additionally, all non-conforming signs must come into compliance with the standards of this ordinance upon a change in the name or business which is being advertised.

#### **4.10 Landscaping**

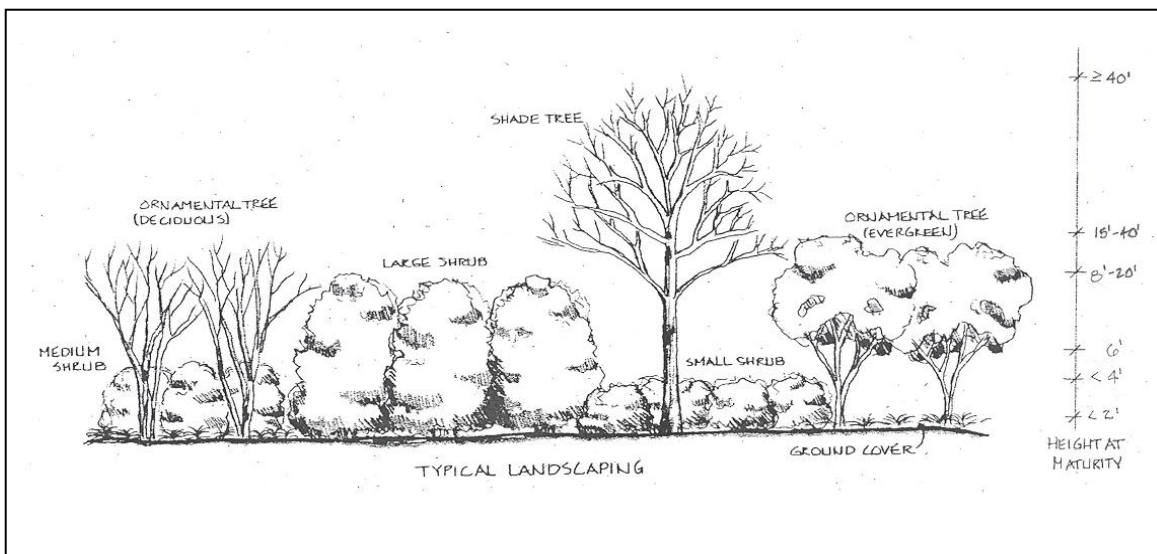
The following landscape treatments shall be provided as set forth in this Article. The Planning Board may modify the landscaping requirements where conditions exist in the Board's opinion that would make literal application not feasible. In such instances the Board may permit other landscaping schemes which in its opinion would result in equal or better performance.

#### **4.10.1 Screening Requirements**

Any non-residential use located in either the CB, TB, GB, I-1, or I-P Districts and located on property abutting any R-1, R-2, R-3, R-4, R-5 or RM Residential District, unless separated by a public street or railroad right-of-way, shall provide a screening device as described below.

- A. Such screening device shall be provided along the full length of any common property line and shall be maintained as long as the conditions requiring the original installation exists, even if active operations cease.
- B. The requirement for the installation of a screening device shall be initiated by the occurrence of any one or more of the following activities on the non-residential property.
  - 1) The initial use, development or occupancy of the non-residential property.
  - 2) Any change in use or occupancy of the non-residential property which results from a change in the zoning classification of the non-residential property; and/or
  - 3) Any building expansion that increases the floor area of the non-residential use or any addition of parking that provides five (5) or more spaces, whether required or not.
- C. The screening device shall be provided by the non-residential use even if the abutting residentially zoned land is vacant.
- D. Screening Device - A screen that is at least ninety (90) percent opaque from the ground to a height of at least six (6) feet. The screen is intended to block visual contact between uses and to create a strong impression of spatial separation. The screen may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative screens or natural vegetation will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. In any case where vegetation, either existing or proposed, is to be used as the required screening device, if the vegetation is to be less than ten (10) feet in width

(thickness), a fence, wall or similar device at least fifty (50) percent opaque and six (6) feet in height shall be used in combination with the vegetation. In all cases, the screen must be at least ninety (90) percent opaque in all seasons of the year. Planted vegetation must be a minimum of four (4) feet high and one (1) inch in caliper, measured six (6) inches above grade, when planted. Existing vegetation must be equivalent. In no case shall the screening device required by this Section interfere with visibility at intersections as set forth in Section 4.6.4 or with visibility at entrances and exits at public streets.



#### **4.10.2 Parking Lot Landscaping**

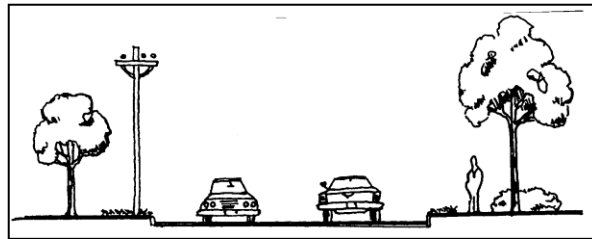
- A. In any Zoning District where parking spaces for ten (10) or more cars are required or provided for a use or uses on a site, the parking lot shall be landscaped with canopy and ornamental trees as required by this Section at the rate shown below. This requirement shall be initiated by the initial use or development of the property. In addition, in any case where four (4) parking spaces are added, whether required or not, the entire parking lot including existing parking areas shall be landscaped if the total on the site then equals ten (10) or more.
- B. Canopy trees shall be provided at a rate of one canopy tree for each ten (10) spaces. After the first two trees, any fractional remaining number of spaces over four (4) shall require one (1) additional tree. Required canopy trees shall be

distributed throughout the parking area and shall be located within or adjacent to parking lots as tree islands, at the end of parking bays, inside medians or between rows of parking spaces. Canopy trees must be a minimum of eight (8) feet high and two (2) inches in diameter, measured six (6) inches above grade at planting. When mature, a canopy tree should be at least forty (40) feet high and have a minimum crown width of thirty (30) feet.

#### **4.10.3 Landscaping Requirements in the Roadway Protection Overlay District**

- A. Landscaped Roadway Yard A landscaped roadway yard shall be provided by each use subject to the requirements of Section 6.2 of this ordinance. A landscaped roadway yard is a landscaped area generally parallel to the public roadway designed to provide continuity of vegetation along the right-of-way and a pleasing view from the road. The landscaped area shall be penetrated only by driveways and crosswalks.
- 1) The minimum width of the roadway yard shall be ten (10) feet and shall be located within the twenty (20) foot section of the lot closest to the public right-of-way.
  - 2) It shall be landscaped and maintained with a vegetative cover and shall be planted with small and/or medium shrubs at a rate of ten (10) shrubs per one hundred (100) linear feet of street yard not counting driveway and crosswalk area.
  - 3) In addition, the roadway yard shall contain at least one (1) canopy (shade) tree or two (2) ornamental trees for every fifty (50) linear feet of street frontage, or fraction thereof.
  - 4) The presence of overhead power lines requires street yard trees to be ornamental trees. Larger shade tree varieties are encouraged where overhead power lines are not present. (see Fig. 4.9.3-1)
  - 5) If the trees required in this section are adjacent to the primary parking area on the property, the trees required for the roadway yard may be counted toward the total number required for parking lot landscaping.
  - 6) The Zoning Administrator may approve a different vegetative landscape type when in his opinion equal or better performance will result.

Figure 4.9.3-1.



B. Landscaping.

- 1) Any chain link or similar fencing visible from the street must be screened at least ninety (90) percent opaque from the ground to a height of at least six (6) feet.
- 2) Commercial Parking lots must be screened from the roadway at least ninety (90) percent opaque from the ground to a height of at least four (4) feet. This provision may be omitted if it is accomplished by A. above.

#### 4.10.4 Sample List of Vegetation.

The following is a sample list of plant species that includes shade trees, ornamental trees and shrubs which are acceptable for use under this section.

##### ***Shade Trees***

<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
Acer rubrum	Red maple
Acer saccharum	Sugar maple
Amelanchier canadensis	Serviceberry
Betula nigra	River birch
Carya illinoensis	Pecan
Carya ovata	Shagbark hickory
Carya glabra	Pignut hickory
Carya cordiformis	Bitternut hickory
Cedrus deodara	Deodar cedar
Celtis occidentalis	Hackberry
Cupressocyparis leylandii	Leyland cypress
Diospyros virginiana	Persimmon
Fagus grandiflora	American beech
Fraxinus americana	White ash
Fraxinus pennsylvanica	Green ash
Ginkgo biloba	Ginkgo



Juniperus virginiana	Eastern red cedar
Liquidambar styraciflua	Sweetgum
Liriodendron tulipifera	Tulip poplar
Magnolia grandiflora	Southern magnolia
Nyssa sylvatica	Black gum
Pinus echinata	Short leaf pine
Pinus nigra	Austrian pine
Pinus thunbergi	Japanese black pine
Pinus taeda	Loblolly pine
Pinus virginiana	Virginia pine
Platanus acerifolia	London planetree
Quercus acutissima	Sawtooth oak
Quercus alba	White oak
Quercus bicolor	Swamp white oak
Quercus coccinea	Scarlet oak
Quercus falcata	Southern red oak
Quercus laurifolia	Laurel oak
Quercus nigra	Water oak
Quercus phellos	Willow oak
Quercus borealis	Northern red oak
Quercus shumardi	Shumard oak
Quercus velutina	Black oak
Quercus virginiana	Live oak
Sophora japonica regent	Japanese pagoda tree
Taxodium distichum	Bald cypress
Ulmus parvifolia	Lacebark elm
Ulmus alata	Winged elm
Zelkova serrata	Japanese zelkova

### ***Ornamental Trees***

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<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
Acer buergeranum	Trident maple
Acer campestre	Hedge maple
Acer palmatum	Japanese maple
Carpinus betulus	European hornbeam
Carpinus caroliniana	American hornbeam
Cercis canadensis	Eastern redbud
Cornus florida	Flowering dogwood
Cornus kousa	Kousa dogwood
Crataegus phaenopyrum	Washington hawthorne
Elegans angustifolia	Russian olive
Halesia carolina	Carolina silverbell
Hammamelis mollis	Chinese witch-hazel

Ilex fosteri	Foster holly
Ilex opaca	American holly
Ilex opaca hume	Hume holly
Ilex x attenuata savannah	Savannah holly
Koelreutaria paniculata	Golden rain-tree
Lagerstroemia indica	Crape Myrtle
Magnolia soulangeana	Saucer magnolia
Magnolia stellata	Star magnolia
Malus hybrids	Flowering crabapple
Ostrya virginiana	Ironwood
Oxydendrum arboreum	Sourwood
Prunus cerasifera pissardii	Purpleleaf plum
Prunus serrulata kwanzan	Kwanzan cherry
Prunus subhirtella pendula	Weeping cherry
Prunus yedoensis	Yoshino cherry
Prunus caroliniana	Carolina cherry laurel
Pyrus calleryana 'Redspire'	Redspire pear
Pyrus calleryana 'Capital'	Capital pear

### ***Shrubs***

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<b><i>Botanical Name</i></b>	<b><i>Common Name</i></b>
Abelia grandiflora	Glossy abelia
Aucuba japonica	Japanese aucuba
Azalea hybrida	Glenn dale azalea
Azalea indica	Indian azalea
Azalea obtusum Kaempferi	Kaempferi azalea
Bambusa multiplex	Hedge bamboo
Berberis julianae	Wintergreen barberry
Berberis thunbergii	Japanese barberry
Camellia japonica	Camellia
Camellia sasanqua	Sasanqua Camellia
Chaenomeles speciosa	Flowering quince
Cleyera japonica	Cleyera
Euonymus alatus	Winged euonymus
Euonymus japonicus	Evergreen euonymus
Eleagnus pungens	Eleagnus
Forsythia intermedia	Forsythia
Hammamelis virginiana	Witch-hazel
Hydrangea quercifolia	Oakleaf hydrangea
Ilex aquifolium	English holly
Ilex cornuta	Chinese holly
Ilex cornuta burfordi	Burford holly
Ilex cornuta burfordi nana	Dward burford holy

<i>Ilex crenata</i> 'convexa'	Convex japanese holly
<i>Ilex crenata</i> 'hetzi'	Hetzi japanese holly
<i>Ilex crenata</i> 'rotundifolis'	Roundleaf japanese holly
<i>Ilex</i> "Emily Brunner"	Emily brunner holly
<i>Ilex glabra</i>	Inkberry holly
<i>Ilex latifolia</i>	Lusterleaf holly
<i>Ilex pernyi</i>	Perny holly
<i>Ilex vomitoria</i>	Yaupon holly
<i>Juniperus chinensis</i> pfitzeriana	Pfitzer juniper
<i>Juniperus chinensis</i> hetzi	Hetzi juniper
<i>Laurus nobilis</i>	Laurel
<i>Ligustrum japonicum</i>	Japanese privet
<i>Ligustrum lucidum</i>	Glossy privet
<i>Ligustrum vicaryi</i>	Vicary golden privet
<i>Loropetalum chinense</i>	Lotopetalum
<i>Mahonia bealei</i>	Leatherleaf mahonia
<i>Myrica cerifera</i>	Wax myrtle
<i>Nandina domestica</i>	Nandina
<i>Osmanthus fortunei</i>	Fortune tea olive
<i>Osmanthus fragrans</i>	Fragrant tea olive
<i>Osmanthus heterophyllus</i>	Holly osmanthus
<i>Osmanthus heterophyllus rotundifolius</i>	Curly leaf tea olive
<i>Pieris floribunda</i>	Mountain andromeda
<i>Pieris japonica</i>	Japanese andromeda
<i>Pittosporum tobira</i>	Pittosporum
<i>Prunus laurocerasus</i>	English laurel
<i>Prunus laurocerasus</i> "Zabel"	"Zabel" Skip laurel
<i>Podocarpus macrophyllus</i> maki	Podocarpus
<i>Prunus laurocerasus angustifolia</i>	Narrow leafed english laurel
<i>Pyracantha coccinea</i>	Scarlet firethorn
<i>Raphiolepis umbellata</i>	Yeddo-hawthorn
<i>Raphiolepis indica</i>	India hawthorn
<i>Spirea cantoniensis</i>	Reves spirea
<i>Spirea thunbergi</i>	Thunberg spirea
<i>Spirea prunifolia plena</i>	Bridalwreath spirea
<i>Spirea vanhouttei</i>	Vanhoutte spirea
<i>Taxus cuspidata</i>	Japanese yew
<i>Viburnum rhytidophyllum</i>	Leatherleaf viburnum
<i>Viburnum tinus</i>	Laurestinus viburnum

#### **4.11 Lighting**

All lighting, including signage lighting, shall be beamed down and away from adjoining property. To the extent practicable, all light produced onsite shall be

contained with the perimeter of the site by design, orientation or shielding of the light source. The following lighting shall be prohibited:

- A. No fixture shall be erected which is an imitation of an official highway or traffic control light or sign.
- B. No fixture shall be in a direct line of vision with any traffic control sign or light.
- C. No fixture shall have a flashing or intermittent pattern of illumination.
- D. No fixture shall be located within a public right-of-way.
- E. No fixture shall be erected which because of the design of the light source, orientation or intensity causes direct glare onto adjacent property or streets, creating a nuisance or a hazard or causing confusion to drivers.
- F. Search lights are prohibited except when used by Federal, State or local authority.
- G. No fixture shall violate any law of the State of North Carolina relative to outdoor lighting.

#### **4.12 Soil Erosion and Sedimentation Control**

- A. All development shall be conducted in conformance with the standards and procedures for the control of sedimentation and soil erosion as set forth in North Carolina General Statute, Chapter 113A, Article 4 (Sedimentation Pollution Control).
- B. No Zoning Compliance Permit shall be issued for development that involves land-disturbing activity if more than one (1) acre is to be uncovered, unless an erosion control plan has been approved by the Division of Land Resources of the North Carolina Department Division of Environmental Management.
- C. No Zoning Compliance Permit shall be issued for development that involves land-disturbing activity if less than one (1) acre is to be uncovered, unless the person to whom the permit is to be issued affirms on the permit application that the land-disturbing activity will be conducted in conformance with the standards and

procedures for the control of sedimentation and soil erosion as set forth in North Carolina General Statute, Chapter 113A, Article 4.

- D. Failure of the permit holder to perform land-disturbing activity in accordance with the standards and procedures for the control of sedimentation and soil erosion as set forth in North Carolina General Statute 113A, Article 4 shall result in the permit holder being in violation of the terms of this Ordinance and may result in the revocation of the Zoning Compliance Permit.

#### **4.13 Building Design Requirements**

##### **4.13.1 Purpose and Applicability**

The purpose of this Section is to ensure architectural compatibility and the establishment and preservation of architectural character throughout the Town. Enumerated in the sections below are general requirements of all buildings, as well as requirements specific to building use and typology. All new construction shall conform to the architectural requirements of this chapter.

##### **4.13.2 General Requirements for All Buildings**

- A. Adjacent buildings shall be compatible in regards to spacing, setbacks, proportions, materials, and scale.
- B. The primary building entrance shall be functionally accessible and visually apparent from the front façade facing the primary public street. For example, a lot with a steep slope down from the public street should utilize a second story (street level) primary entrance.
- C. Ground mounted mechanical equipment shall be located to the rear or side yard and screened from view. Roof-mounted mechanical equipment visible at street level shall be screened from view by a parapet wall or screen wall matching the primary building materials.
- D. Fences or walls are permitted in all districts subject to the following regulations. Agricultural uses are exempt from the following fence and wall standards. Where a lot's rear or side yard is adjacent to a front yard of an adjoining lot or street, the fence along that line shall meet the "Front Yard" requirements listed below.

- 1) All fences shall be constructed with the finished side facing the adjacent property or street.
- 2) Front Yard Fences:
  - Maximum Height: 4 feet
  - Materials: Wood, brick, stone, wrought iron, stucco, vinyl, or combinations. No chain link.
- 3) Side & Rear Yard Fences:
  - Maximum Height: 8 feet
  - Materials: Chain link, wrought iron, wood, stucco, brick, stone, vinyl or combinations. Barbed wire or razor wire is permitted for commercial & industrial uses rear yard fences not visible from a street.

E. Elevations shall be provided by the applicant and approved prior to the issuance of a Zoning Permit. The elevations shall specify the exterior materials of the building.

#### **4.13.3 Residential Buildings**

##### **A. Single-Family Detached Residential Buildings (including modular homes)\***

- 1) Exterior materials shall be durable and residential in character. Suggested materials include wood siding, wood shingles, fiber cement siding, brick, stone, stucco, vinyl, or similar materials. Suggested roof materials include asphalt shingles, standing seam metal, slate, or similar materials.
- 2) Pitched roofs shall have a pitch between 4:12 and 12:12. Eaves shall be a minimum of nine (9) inches in depth.
- 3) Front-loaded garages shall not have visual prominence on the front façade and shall not compose more than 50 percent of the total length of the front elevation. Front-loaded two-car and multiple-car garages shall utilize separated individual doors.
- 4) Accessory structures located in the front or side yard as allowed by Section 4.6 SR9 shall be constructed to substantially match the principal structure.

##### **B. Multi-Family and Single-Family Attached Residential Buildings**

- 1) Exterior materials shall be durable and residential in character. Suggested materials include wood siding, wood shingles, fiber cement siding, brick, stone, stucco, vinyl, or similar materials. Suggested pitched roof materials include asphalt shingles, standing seam metal, slate, or similar materials.

- 2) Two-car garages on the front façade of any single-family attached or multi-family dwelling unit shall utilize separated individual doors.

#### **4.13.4 Commercial and Mixed Use Buildings**

##### **A. Materials & Color**

- 1) Exterior walls visible from a public street shall be brick, split-face concrete block, stucco, stone, wood siding, fiber cement siding, or other materials similar in appearance and durability.
- 2) Vinyl siding, regular concrete block, cast concrete, and metal siding shall not be used on building walls visible from a public street or Residential District.
- 3) Two (2) wall materials may be combined horizontally on one façade. The heavier material should be below.
- 4) Pitched roofs should be clad in wood shingles, standing seam metal, slate, asphalt shingles or similar material.
- 5) Facade colors shall be of low reflectance earth tone, muted, subtle, or neutral colors. Building trim may feature brighter colors. Neon, or similar gas tubing, is not allowed as an accent material. The use of high-intensity or metallic colors is not allowed except for accent purposes. Fluorescent, day glow, or neon colors shall be prohibited. Variations in color schemes are encouraged in order to articulate entryways and public amenities so as to give greater recognition to these features.
- 6) All accessory buildings shall be clad in materials similar in appearance to the principal structure.
- 7) Pre-engineered metal buildings shall be prohibited in CB and TB districts. Where allowed in GB district, exterior materials shall comply with Section 4.13.4.

##### **B. Configuration**

- 1) A pitched roof shall be profiled by eaves and gable overhangs a minimum of nine (9) inches from the building face.
- 2) Flat roofs shall incorporate parapet walls to conceal the flat portions of the roof. Mechanical equipment that is visible on the front and side elevations at street level on the fronting street shall be screened with materials matching the primary wall material.

- 3) At least 40 percent of the length of the first floor on street fronting facades shall be in windows or doorways. Street level windows shall be visually permeable. Mirrorized glass is not permitted in any location. Faux or display casements are not permitted in lieu of exterior window treatments for the frontage elevation. A window shall be measured as follows:
  - Maximum Sill Height (first floor): 42 inches
  - Minimum Area: 16 square feet
  - Minimum Width: 3 feet
  - Minimum Height: 4 feet
- 4) No frontage wall shall have more than 20 linear feet without a transparent window or door or a significant architectural element.
- 5) When used, awnings and canopies shall be placed at the top of window or doorway openings. Awnings shall be made of metal (non-corrugated), canvas, treated canvas, or similar material. Vinyl (or plastic) awnings are prohibited. No awning shall extend more than the width of the sidewalk or ten (10) feet, whichever is less. Awnings must be self-supporting from the wall. No supports shall rest on or interfere with the use of pedestrian walkways or streets. In no case shall any awning extend beyond the street curb or interfere with street trees or public utilities.
- 6) Canopies shall be of solid material and complement the color of the building to which they are affixed or associated. Gas station canopies shall be located in the side or rear yard only and must be set back from the property and right-of-way lines a minimum of the required setback of accessory buildings, as required in the zoning district where located, and must not interfere with street trees or public utilities.

#### **4.13.5 Civic Buildings**

- A. Civic buildings should create visual anchors for the community.
- B. Civic building walls that are visible from a public street shall primarily be clad in decorative concrete block, stone, stucco, brick, or similar material. Vinyl siding, regular concrete block, cast concrete, and metal may be used as a minority element (maximum of 25 percent) on facades visible from the street.
- C. Vinyl siding, regular concrete block, cast concrete, and metal may be used as the primary wall material on building walls not visible from a public street. These



materials may also be used on a side or rear elevation that is visible from a public street if the wall is screened with landscaping that at a minimum meets the requirements of Section 4.10.1 (D) along said elevation.

- D. Pitched roofs shall be clad in standing seam metal, slate, asphalt shingles or similar material. Long span metal panels may be used on pitched roofs that are not visible from the street.
- E. Flat roofs shall incorporate parapet walls to conceal the flat portions of the roof. Mechanical equipment that is visible on the front and side elevations at street level of the fronting street shall be screened with materials matching the primary wall material.

#### **4.13.6 Industrial Buildings**

- A. Front facades of industrial buildings shall be primarily brick, stucco, stone, decorative concrete block, or other materials similar in appearance and durability. Standard concrete block, cast concrete, and metal may be used as minority elements (maximum of 50 percent) on the front facade. All accessory buildings shall be clad in materials similar in appearance to the principal structure.
- B. Pitched roofs shall be clad in standing seam metal, long span metal panels, slate, asphalt shingles, or similar material.
- C. Flat roofs shall incorporate parapet walls to conceal the flat portions of the roof. Mechanical equipment that is visible on the front and side elevations at street level on the fronting street shall be screened with materials matching the primary wall material.

#### **4.13.7 Alternative Methods of Compliance**

##### **A. Use of Alternate Plan, Material, or Methods**

Alternate design plans, building materials or construction techniques may be used when unreasonable or impractical situations would result from the application of architectural design standards. Such situations may result from unique site conditions, innovative design applications, design context, and/or unified development design.

##### **B. Approval of Alternate Design**

The Planning Board may approve an alternate plan which proposes different design standards, building materials, or construction methods provided that quality, effectiveness, durability and performance are equivalent to that required by this ordinance. The performance of alternate design standards shall be evaluated by the Planning Board to determine if the alternate design meets the intent and purpose of this ordinance. This determination shall take into account the land use of adjacent property, the orientation of the building to public streets, the building typology, the intended use of the structure, attention to architectural detail, scale and mass.

#### **4.13.8 Appeal**

Decisions of the Planning Board regarding alternate methods of compliance may be appealed to the Board of Adjustment.

## **ARTICLE 5**

### **Conditional Districts**

For each general use district established in Article 4, there is also established a corresponding conditional district as follows:

- CU-R-1 Conditional Use R-1 District
- CU-R-2 Conditional Use R-2 District
- CU-R-3 Conditional Use R-3 District
- CU-R-4 Conditional Use R-4 District
- CU-R-5 Conditional Use R-5 District
- CU-R-M Conditional Use R-M District
- CU-PRD Conditional Use PRD District
- CU-C-B Conditional Use C-B District
- CU-G-B Conditional Use G-B District
- CU-I-1 Conditional Use I-1 District
- CU-I-P Conditional Use I-P District
- CU-P-1 Conditional Use P-1 District

- A. It is recognized that certain types of zoning districts would be inappropriate at certain locations in the absence of special conditions. Where the applicant for rezoning desires property to be rezoned to such a district in such situations, the Conditional District is a means by which such special conditions can be imposed in the furtherance of the purposes of this Ordinance. The Conditional District zoning decision shall be wholly legislative in nature. The Conditional District classification will be considered for rezoning only upon request of a property owner. If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid or if the applicant should fail to accept any condition, it is the intent of this Ordinance that the authorization of such Conditional District shall be null and void and of no effect, and that proceedings shall be instituted to rezone the property to its previous zoning classification.

- B. Within a CUD, only those uses authorized as either permitted or special uses in the zoning district with which the CUD corresponds shall be permitted, and all other requirements of the corresponding district shall be met as minimum standards. In addition, with a CUD no use shall be permitted except pursuant to approval by the Board of Commissioners, which shall specify the use or uses authorized. Such approval may further specify the location on the property of the proposed use or uses, the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways and access streets, the location and extent of buffer areas, and other special purpose areas, the timing of development, the location and extent of right-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request, but not to include conditions not generally a part of land development controls. In granting a request for conditional district zoning, the Board of Commissioners may impose such additional reasonable and appropriate safeguards upon such permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured, and substantial justice done.

## **ARTICLE 6**

### **Overlay Districts**

#### **6.1 Historic Area Overlay District**

##### **6.1.1 Purpose and Intent**

Historic Areas are some of the most valued and important assets of the Town of Tryon, having local and state importance. The establishment of Historic Preservation Districts is for the purpose of preserving that heritage; for the purpose of safeguarding the character and heritage of the districts by creating design standards for the purpose of preserving the districts as a whole and any property therein that embodies important elements of their social, economic, cultural, political, or architectural history; for the purpose of promoting the conservation of such districts for the education, pleasure and enrichment of residents of the districts, the Town, and others; for the purpose of fostering civic beauty; and for the purpose of stabilizing and enhancing property values throughout the districts as a whole, thus contributing to the improvement of the general health and welfare of the Town and the residents of the districts.

##### **6.1.2 Historic Districts Established**

Historic districts, as provided for in this section, may from time-to-time be designated, amended, or repealed, provided; however, that no district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, pre-historical, architectural, or cultural importance. Such districts must also possess integrity of design, setting, workmanship, material, feeling, and/or association. No district shall be designated, amended, or repealed until the following has been carried out:

- A. An investigation and report initiated by the Historic Preservation Commission describing the significance of buildings, structures, features, sites, or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared;

- B. The Department of Cultural Resources, acting through the State Historical Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the Department to submit its written analysis and recommendations to the Town Board of Commissioners within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the Town Board of Commissioners of any responsibility for awaiting such analysis, and the Town Board of Commissioners may at any time thereafter take any necessary action to adopt or amend this Zoning Ordinance with respect to Historic Districts;
- C. The Town Board of Commissioners shall also refer the report and the proposed boundaries to the Planning Board for its recommendations prior to taking action to amend the Zoning Ordinance;
- D. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by this Section shall be prepared by the Historic Preservation Commission and shall be referred to the Planning Board for its review and comment according to the procedures set forth in the Zoning Ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall be submitted to the Department of Cultural Resources in accordance with the provisions of this Section;
- E. Upon receipt of these reports and recommendations, the Town Board of Commissioners may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate Zoning Ordinance provision.

### **6.1.3 Certificate of Appropriateness Required**

- A. From and after the designation of a historic district and the adoption of Review Criteria and Design Guidelines by the Historic Preservation Commission, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps, or other appurtenant features), no above-ground utility structure, nor any type of outdoor advertising sign or business

identification sign shall be erected, altered, restored, moved or demolished within the historic district until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission. Such a certificate shall be issued by the Commission prior to the issuance of a development permit. Such certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Section. A Certificate of Appropriateness shall be required whether or not a building permit is required.

- B. The Town and all public utility companies shall be required to obtain a Certificate of Appropriateness prior to initiating any changes in the character of street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements, or streets owned or franchised by the Town, NCDOT, or public utility companies.

#### **6.1.4 Certificate of Appropriateness Procedure**

- A. An application for a Certificate of Appropriateness shall be obtained from and, when completed, filed with the Zoning Administrator. Applications for Certificates shall be considered by the Historic Preservation Commission at its next regular meeting, provided they have been filed, complete in form and content, at least 28 days prior to the regularly scheduled meeting of the Commission; otherwise, considerations shall be deferred until the following meeting.
- B. The Commission shall, by uniform rule in its Rules of Procedure, require data as are reasonably necessary to determine the nature of the application. An application for a Certificate of Appropriateness shall not be considered complete until all required data have been submitted. Nothing shall prevent the applicant from filing, along with the application, additional relevant information bearing on the application.
- C. Upon receipt of an application, the Zoning Administrator shall notify the Historic Preservation Commission at least seven calendar days before its regularly scheduled meeting.
- D. Prior to issuance or denial of a Certificate of Appropriateness, the Commission shall conduct a public hearing in accordance with this Ordinance. The Zoning

Administrator shall be responsible for notifying the affected parties in accordance with this Ordinance.

- E. The Commission shall take action on the application and in doing so, shall apply the Review Criteria contained in this section.
- F. The Commission's action on the application shall be approval, approval with modifications, or disapproval.
- G. Prior to the final action on an application, the Commission, using the Review Criteria, shall make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the district.
- H. The Commission shall cause to be entered into the minutes of its meeting the reasons for its action, whether it be approval, approval with modifications, or denial.
- I. If the Commission fails to take final action upon any application within 60 days after the complete application is submitted to the Zoning Administrator, the application shall be deemed to be approved.
- J. If the Commission determines that a Certificate of Appropriateness should not be issued, a new application affecting the same property may be submitted only if substantial change is made in the plans for the proposed construction, reconstruction, alternation, restoration or moving.

#### **6.1.5 Review Criteria**

##### **A. Intent**

- 1) It is the intention of these regulations to insure, insofar as possible, that construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district shall be harmonious with the special character of the district. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of the same or to impose architectural styles from particular historical periods. In considering new construction, the Commission



shall encourage contemporary design that is harmonious with the character of the district.

- 2) In granting a Certificate of Appropriateness, the Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure as well as the effect of such change or additions upon other structures in the vicinity.
- 3) The Commission shall take no action under this ordinance except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features that would be incongruous with the special character of the historic district.

#### B. Exterior Form and Appearance

- 1) The following criteria shall be considered, when relevant by the Commission reviewing applications for a Certificate of Appropriateness. All applications for Certificates of Appropriateness shall be subject to review based upon the Design Guidelines then in effect. These guidelines are set forth in a manual prepared and adopted by the Commission:
  - i) Lot coverage, defined as the percentage of the lot area covered by primary structures;
  - ii) Setback, defined as the distance from the lot lines to the building(s);
  - iii) Building height;
  - iv) Spacing of building, defined as the distance between adjacent buildings;
  - v) Exterior building materials;

- vi) Proportion, shape, positioning, location, pattern and sizes of any elements of fenestration;
- vii) Surface textures;
- viii) Roof shapes, forms and materials;
- ix) Use of local or regional architectural traditions;
- x) General form and proportions of buildings and structure, and relationship of any additions to the main structure.
- xi) Expression of architectural detailing, such as lintels, cornices, brick bond, and foundation materials;
- xii) Orientation of the building to the street;
- xiii) Scale, determined by the size of the units of construction and architectural detail in relation to the size of man and also by the relationship of the building mass to adjoining open space and nearby buildings and structures;
- xiv) Proportion of width to height of the total building facade;
- xv) Archaeological sites and resources associated with standing structures;
- xvi) Appurtenant fixtures and other features such as lighting;
- xvii) Structural condition and soundness;
- xviii) Walls - physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape mass, building facades, or combinations of these;
- xix) Ground cover or paving;
- xx) Maintenance of pedestrian scale and orientation, as well as

provision for safe pedestrian movement;

xxi) Color (new construction only and not for existing residences); and

xxii) Effect of trees and other landscape elements.

2) The Secretary of the Interior's "Standard for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for Certificates of Appropriateness.

3) Interior arrangement or design shall be exempt from review by the Historic Preservation Commission. Interior construction and/or reconstruction shall not require a Certificate of Appropriateness.

#### **6.1.6 Certain Changes Not Prohibited**

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district that does not involve a substantial change in design, material, or outer appearance thereof nor to prevent the construction, alteration, restoration, or demolition of any such feature that the Building Inspector, Zoning Enforcement Officer or similar official shall certify in writing to the Commission is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent (a) the maintenance, or (b) in the event of an emergency, the immediate restoration, of any existing, aboveground utility structure without approval by the Commission.

#### **6.1.7 Delay in Demolition**

A. An application for a Certificate of Appropriateness authorizing the demolition, removal, or destruction of a building structure or site within a historic district may not be denied. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The Commission shall reduce the period of delay if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During the delay period, the Commission shall negotiate with the owner in an effort to find a means of preserving the building, structure, or site. If the Commission finds that a building,

structure, or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

- B. In the case of demolition action by the Town, the application for such a certificate will first be reviewed by the Commission and secondly by the Town Board of Commissioners for final order of demolition or removal.
- C. If the Commission has voted to recommend the designation of an area as a historic district and the final designation has not been made by the Town Board of Commissioners, the demolition or destruction of any building, structure, or site in the proposed district or on the property of the designated landmark may be delayed by the Commission for up to 180 days or until the Town Board of Commissioners takes final action on the designation, whichever occurs first.

#### **6.1.8 Application Review by Commission**

As part of its review procedure, the Commission may view the premises and seek the advice of the Department of Cultural Resources or such other expert advice, as it may deem necessary under the circumstances.

#### **6.1.9 Appeal of Decision**

- A. In any action granting or denying a Certificate of Appropriateness, an appeal by an aggrieved party may be taken to the Board of Adjustment.
- B. Written notice of the intent to appeal must be sent to the Commission, postmarked within 30 days following the decision. Appeals shall be in the nature of certiorari. Appeals of decisions of the Board of Adjustment shall be heard by the Superior Court of Polk County.
- C. The State of North Carolina shall, for property of the State or its agencies, have a right of appeal to the North Carolina Historical Commission, which shall render its decision within 30 days from the date that a notice of appeal by the State is received by the Historical Commission. The decision of the Historical Commission shall be final and binding upon both the State and the Commission.

#### **6.1.10 Compliance**

- A. Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Zoning Administrator. Failure to comply with a Certificate of Appropriateness shall be a violation of the Zoning Ordinance. The discontinuance of work or the lack of progress toward achieving compliance with a Certificate of Appropriateness for a period of six months shall be considered as a failure to comply with a Certificate of Appropriateness.
- B. Nothing contained in the Ordinance shall prohibit, impair, or limit in any way the power of the Town Board of Commissioners to prevent the construction, reconstruction, alteration, restoration, or removal of buildings, structures, appurtenant fixtures, or outdoor signs in the Historic Districts in violation of any provisions of this Ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws. (See General Statute 160D.)

#### **6.1.11 State Recommendations**

The districts shall not be established or the authority and powers of a Historic Preservation Commission be implemented until the Department of Cultural Resources shall have been given opportunity, in accordance with the provision of North Carolina General Statute 160D to make recommendations with respect to the establishment of the districts.

### **6.2 Roadway Protection Overlay District (RPO)**

#### **6.2.1 Application**

The requirements of this Section shall apply to all uses located in an RPO district, except one and two family dwellings, that meet one or more of the following criteria. In the event that there are physical hardships or situations where existing parking or other required facilities would be detrimentally affected or rendered useless, the Planning Board may, through the site plan review process, grant an exemption from any or all of the requirements of the RPO.

- A. The initial use, development or occupancy of the non-residential property.
- B. Any change in use or occupancy of the non-residential property which results

from a change in the zoning classification of the non-residential property; and/or

- C. Any building expansion that increases the floor area of the non-residential use or any addition of parking that provides five (5) or more spaces, whether required or not.

### **6.2.2 Requirements**

- A. Front Yard Setback The front yard setback shall be a minimum of thirty (30) feet as measured perpendicular to the adjacent thoroughfare right-of-way line. Where applicable, the front yard setback is to be measured from any future right-of-way as designated in the Town of Tryon or Polk County Thoroughfare Plans. No chain link or similar fencing is permitted in the front yard. Fences of natural materials (i.e. wood, brick, stone, etc.) shall be permitted in the front yard.
- B. Minimum Lot Width The minimum lot width for all lots created after the effective date of the district shall be one hundred (100) feet.
- C. Underground Utilities All utilities services on the property, including all wire services, shall be placed underground.
- D. Development with More Than One Principal Building Developments in the district with more than one principal building (including “out parcels” and multi-tenant buildings) shall include similar architectural styles but should not be identical throughout the development. All sides of the individual building shall be treated in an architecturally similar manner. More specifically, at least two of the following three “unifying elements” must be presented in each building (including accessory buildings and those buildings located on out parcels) and to the greatest extent practical, in other architectural features of the development (walls, fences, signs, etc.):
  - 1) Building Materials. Such material shall apply to at least 30% of each ground-mounted sign as well.
  - 2) Colors. A maximum of three colors may be designated as the unifying element but the maximum number of colors throughout the development is not limited.
  - 3) Architectural Features. These features include but are not limited to: roof treatment (style, color, and material), façade treatments or building

form (overhangs, canopies, arcades, protected walkways, and entrance treatments).

- E. Entrances/Exits to Public Streets Any lot of record in existence on the effective date of this section shall be allowed one access point to the roadway notwithstanding the provisions of this Section that may prohibit such access; provided, however, that two or more lots under common ownership shall be considered one lot and shall comply with the requirements of this section. The maximum number of access points shall be as follows:

<u>Street Frontage</u>	<u>Access Points to Roadway</u>
0 - 299	1
300 - 999	2
1000 or more	3

Except where access would be denied, driveways shall be located not less than 200 feet from the center line of any street intersecting the roadway, and shall be located at least 30 feet from side property lines, except where a mutual joint access agreement exists, which provides for a shared driveway for adjoining owners. Driveways shall be not less than 300 feet apart, measured along the right-of-way from center of driveway to center of driveway. Driveways shall be a minimum of 12 feet for one-way traffic, a minimum of 24 feet for two-way traffic, and a maximum of 36 feet unless otherwise required by NCDOT.

- F. Outdoor Lighting Standards. Outdoor lighting shall not exceed 6-foot-candles, measured at ground level at any point within the property, and shall be installed in such a manner that the source of light (the bulb) is shielded and not visible from adjacent roadways. All lighting shall be directed inward in such a manner so as not to produce glare onto adjacent property and so that the primary cone of illumination does not extend beyond the property lines.

- G. Landscaping standards as required in Section 4.10.3 of this ordinance.

### **6.3 Flood Damage Prevention Overlay (FDP-O)**

#### **6.3.1 Statutory Authorization, Findings of Fact, Purpose, & Objectives**

### **SECTION A. Statutory Authorization**

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160D; and Article 8 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Town Board of Commissioners of Tryon, North Carolina, does ordain as follows:

### **SECTION B. Findings of Fact**

- 1) The flood prone areas within the jurisdiction of Tryon are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- 2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

### **SECTION C. Statement of Purpose**

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- 1) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- 2) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- 3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- 4) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- 5) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.



## **SECTION D. Objectives**

The objectives of this overlay are to:

- 1) protect human life, safety, and health;
- 2) minimize expenditure of public money for costly flood control projects;
- 3) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- 4) minimize prolonged business losses and interruptions;
- 5) minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- 6) help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- 7) ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

### **6.3.2 Definitions**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

“Area of Shallow Flooding” means a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity

flow may be evident.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and/or
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

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

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard

risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Floodway” means the channel of a river or other watercourse and the adjacent land

areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Reference Level” is the bottom of the lowest horizontal structural member of the lowest floor for structures within all Special Flood Hazard Areas.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus 2 feet of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least 2 feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

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

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

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

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Section 6.4.3, Section B of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory



buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Threat to Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 6.4.4 and 6.4.5 is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

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

### **6.3.3 General Provisions**

#### **SECTION A. Lands to Which this Overlay Applies**

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdiction (ETJ), of Tryon and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

#### **SECTION B. Basis for Establishing the Special Flood Hazard Areas**

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Polk County dated 9/3/2008, which are adopted by reference and declared to be a part of this ordinance.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:

Polk County Unincorporated Area, dated 1/1/1987

Town of Tryon, dated 8/19/1986

#### **SECTION C. Establishment of Floodplain Development Permit**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development

activities within Special Flood Hazard Areas determined in accordance with the provisions of 6.3.3, Section B of this ordinance.

#### **SECTION D. Compliance**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

#### **SECTION E. Abrogation & Greater Restrictions**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **SECTION F. Interpretation**

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

#### **SECTION G. Warning & Disclaimer of Liability**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Tryon or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

#### **SECTION H. Penalties for Violation**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a

separate offense. Nothing herein contained shall prevent Tryon from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **6.3.4 Administration**

##### **SECTION A. Designation of the Floodplain Administrator**

The Zoning Administrator or his/her designee, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this ordinance.

##### **SECTION B. Floodplain Development Application, Permit, and Certification Requirements**

- 1) Application Requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
  - (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
    - (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
    - (ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in 6.3.3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
    - (iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in 6.3.3, Section B;
    - (iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in 6.3.3, Section B;
    - (v) the Base Flood Elevation (BFE) where provided as set forth in 6.3.3, Section B; 6.3.4, Section C; or 6.3.5, Section D;
    - (vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
    - (vii) the certification of the plot plan by a registered land surveyor or professional engineer.

- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
  - (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
  - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be floodproofed; and
  - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale,, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
  - (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with 6.3.5, Section B(4)(c) when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30. Usage details of any enclosed areas below the lowest floor.
- (e) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (f) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (g) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of 6.3.5, Section B, subsections (6) and (7) of this ordinance are met.
- (h) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown

on plot plan) showing the location of the proposed watercourse alteration or relocation.

**2) Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit.
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in 6.4.3, Section B.
- (c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- (d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- (g) The flood openings requirements, if in Zones A, AO, AE or A1-30.
- (h) Limitations of below BFE enclosure uses (if applicable). (I.e., parking, building access and limited storage only).

**3) Certification Requirements.**

(a) Elevation Certificates

- (i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
- (ii) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to

submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

- (iii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) Floodproofing Certificate

If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of 6.3.5 5, Section B(3)(b).
- (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
  - (i) Recreational Vehicles meeting requirements of 6.3.5, Section B(6)(a);
  - (ii) Temporary Structures meeting requirements of 6.3.5, Section B(7); and
  - (iii) Accessory Structures less than 150 square feet meeting requirements of 6.3.5 Section B(8).

### **SECTION C. Duties and Responsibilities of the Floodplain Administrator**

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- 1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- 2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- 3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- 4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- 5) Prevent encroachments into floodways and non-encroachment areas unless the



- certification and flood hazard reduction provisions of 6.3.5, Section F are met.
- 6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of 6.3.4, Section B(3).
  - 7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of 6.4.4, Section B(3).
  - 8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of 6.3.4, Section B(3).
  - 9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of 6.3.4, Section B(3) and 6.3.5, Section B(2).
  - 10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
  - 11) When Base Flood Elevation (BFE) data have not been provided in accordance with the provisions of 6.3.3, Section B, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to 6.3.5, Section D(2)(b), in order to administer the provisions of this ordinance.
  - 12) When Base Flood Elevation (BFE) data are provided but no floodway or non-encroachment area data have been provided in accordance with the provisions of 6.3.3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
  - 13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area are above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
  - 14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

- 15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action. If inspecting, the Floodplain Administrator must enter the premises during reasonable hours and upon presenting credentials; must have consent of premises owner or an administrative search warrant to inspect areas not open to the public.
- 16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, 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.
- 17) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- 18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- 19) Follow through with corrective procedures of 6.3.4, Section D.
- 20) Review, provide input, and make recommendations for variance requests.
- 21) Maintain a current map repository to include, but not limited to, the FIS

Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of 6.3.3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

- 22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

#### **SECTION D. Corrective Procedures**

- 1) Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification. The Floodplain Administrator must issue notices of violation (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different; may deliver to occupant or person undertaking the activity; delivery by hand, email, or first-class mail; may be posted onsite; administrator to certify NOV for the file.)
- 2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - (a) that the building or property is in violation of the floodplain management regulations;
  - (b) that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
  - (c) that following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that

corrective action be taken in such lesser period as may be feasible.

- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

#### **SECTION E. Variance Procedures**

- 1) The Board of Adjustment as established by Tryon, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- 2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- 3) Variances may be issued for:
  - (a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
  - (b) functionally dependent facilities if determined to meet the definition as stated in 6.3.2 of this ordinance, provided provisions of 6.3.4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - (c) any other type of development, provided it meets the requirements of this Section.
- 4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

- (a) the danger that materials may be swept onto other lands to the injury of others;
  - (b) the danger to life and property due to flooding or erosion damage;
  - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) the importance of the services provided by the proposed facility to the community;
  - (e) the necessity to the facility of a waterfront location as defined under 6.3.2 of this ordinance as a functionally dependent facility, where applicable;
  - (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) the compatibility of the proposed use with existing and anticipated development;
  - (h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- 5) A written report addressing each of the above factors shall be submitted with the application for a variance.
  - 6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
  - 7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

- 8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- 9) Conditions for Variances:
  - (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
  - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
  - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (d) Variances shall only be issued prior to development permit approval.
  - (e) Variances shall only be issued upon:
    - (i) a showing of good and sufficient cause;
    - (ii) a determination that failure to grant the variance would result in exceptional hardship; and
    - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- 10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
  - (a) The use serves a critical need in the community.
  - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
  - (c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
  - (d) The use complies with all other applicable Federal, State and local laws.
  - (e) The Town of Tryon has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

### **6.3.5 Provisions for Flood Hazard Reduction**

## **SECTION A. General Standards**

In all Special Flood Hazard Areas the following provisions are required:

- 1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- 2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- 3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- 4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- 5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- 6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- 7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- 8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of “new construction” as contained in this ordinance.
- 9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- 10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in 6.3.4, Section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water

treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of 6.3.4, Section B(3).

- 11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- 12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- 13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- 14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- 15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- 16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple Base Flood Elevations (BFEs), the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

## **SECTION B. Specific Standards**

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data have been provided, as set forth in 6.3.3, Section B, or 6.3.5, Section D, the following provisions, in addition to the provisions of 6.3.5, Section A, are required:

- 1) **Residential Construction.** New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in 6.3.2 of this ordinance.
- 2) **Non-Residential Construction.** New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in 6.3.2 of this ordinance. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure,



together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with 6.3.5, Section G(2). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in 6.3.5, Section B(3), along with the operational plan and the inspection and maintenance plan.

3) Manufactured Homes.

- (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in 6.3.2 of this ordinance.
- (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (c) All enclosures or skirting below the lowest floor shall meet the requirements of 6.3.5, Section B(4).
- (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

- (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area

shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

- (b) shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
- (c) shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
  - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
  - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
  - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
  - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
  - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

5) Additions/Improvements.

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new

construction.

- (b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
  - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

6) Recreational Vehicles. Recreational vehicles shall either:

- (a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
- (b) meet all the requirements for new construction.

7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- (a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
- (b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
- (c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
- (e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

- 8) **Accessory Structures.** When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
  - (b) Accessory structures shall not be temperature-controlled;
  - (c) Accessory structures shall be designed to have low flood damage potential;
  - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
  - (e) Accessory structures shall be firmly anchored in accordance with the provisions of 6.3.5, Section A(1);
  - (f) All service facilities such as electrical shall be installed in accordance with the provisions of 6.3.5, Section A(4); and
  - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of 6.3.5, Section B(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with 6.3.5, Section B(3).

## **SECTION C. Reserved**

## **SECTION D. Standards for Floodplains without Established Base Flood Elevations**

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in 6.3.3, Section B, where no Base Flood Elevation (BFE) data have been provided by FEMA, the following provisions, in addition to the provisions of 6.3.5, Section A, shall apply:

- 1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- 2) The BFE used in determining the Regulatory Flood Protection Elevation shall be

determined based on the following criteria:

- (a) When Base Flood Elevation (BFE) data are available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in 6.3.5, Sections A and B.
- (b) When floodway or non-encroachment data are available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of 6.3.5, Sections B and F.
- (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with the provisions of 6.3.3, Section B and utilized in implementing this ordinance.
- (d) When Base Flood Elevation (BFE) data are not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in 6.3.2. All other applicable provisions of 6.3.5, Section B shall also apply.

**SECTION E. Standards for Riverine Floodplains with Base Flood Elevations but without Established Floodways or Non-encroachment Areas**

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- 1) Standards of 6.3.5, Sections A and B; and
- 2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the

community.

### **SECTION F. Floodways and Non-encroachment Areas**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in 6.3.3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to the standards outlined in 6.3.5, Sections A and B, shall apply to all development within such areas:

- 1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - (a) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
  - (b) a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- 2) If 6.3.5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- 3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
  - (a) the anchoring and the elevation standards of 6.3.5, Section B(3); and
  - (b) the no encroachment standard of 6.3.5, Section F(1).

### **SECTION G. Standards for Areas of Shallow Flooding (Zone AO)**

Located within the Special Flood Hazard Areas established in 6.3.3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to 6.3.5, Sections A and B, all new construction and substantial improvements shall meet the following requirements:

- 1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of four (4) feet, above the highest adjacent grade; or at least four (4) feet above the highest

adjacent grade if no depth number is specified.

- 2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in 6.3.5, Section G(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with 6.3.5, Section B(3) and 6.3.5, Section B(2).
- 3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

#### **6.4.6 Legal Status Provisions**

##### **SECTION A. Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance**

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted 8/19/1986 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Tryon enacted on 8/19/1986 as amended (Chapter 151 of the Code of Tryon) which are not reenacted herein are repealed.

The date of the initial flood damage prevention ordinance for the unincorporated area of Polk County is 4/18/1988.

##### **SECTION B. Effect upon Outstanding Floodplain Development Permits**

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

**SECTION C. Effective Date**

This overlay shall become effective September 3, 2008.

**SECTION D. Adoption Certification**

I hereby certify that this is a true and correct copy of the flood damage prevention overlay regulations as adopted by the Board of Commissioners of Tryon, North Carolina, on the 17<sup>th</sup> day of June, 2008.

WITNESS my hand and the official seal of Tryon, this the 17<sup>th</sup> day of June, 2008.

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Town Clerk

**ARTICLE 7**

**Non-Conforming Situations**

The purpose of this Article is to avoid undue hardship by permitting the continued use of any building, structure, or property that was lawful at the time of the enactment of this Ordinance or any applicable amendment thereof even though such use, structure or property does not conform with the provisions of this Ordinance. However, this Article is also established to require that non- conforming situations be



terminated under certain circumstances.

### **7.1 Continuation of Non-conforming Situations**

Non-conforming situations that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in Sections 7.2 through 7.8 of this Article.

### **7.2 Non-conforming Lots of Record**

Where the owners of a legally existing lot of record at the time of the adoption of this Ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the area or lot width requirements of this Ordinance, such lot may be used as a building site provided all other dimensional requirements are met and provided that the use to be made of the property is not one to which larger than minimum lot area requirements are called for in the list of Permitted Uses and the Special Requirements.

### **7.3 Extension or Enlargement of Non-conforming Situations**

- A. Except as specifically provided in this Article, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation.
- B. Subject to Paragraph 4 of this Section, a non-conforming use may be extended through any portion of a completed building that, when the use was made non-conforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, a non-conforming use may not be extended to additional buildings or to land outside the original building.
- C. A non-conforming use may not be extended to cover more land than was occupied, or manifestly designed and arranged to be occupied, by that use when it became non-conforming.
- D. The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of

this Section occur.

E. Physical alteration of non-conforming structures or structures containing a non-conforming use is unlawful if it results in:

- 1) An increase in the total amount of space devoted to a non-conforming use.
- 2) Greater non-conformity with respect to dimension restrictions such as yard requirements, height limitations, or density requirements.
- 3) The enclosure of previously unenclosed areas, even though those areas are or were used in connection with the non-conforming activity.

F. Minor repairs to and routine maintenance of property where non-conforming situations exist are permitted and encouraged. Major renovation - i.e., work estimated to cost more than ten percent (10%) but less than sixty percent (60%) of the taxed value of the structure to be renovated may be done provided that the work will not result in a violation of any other paragraphs of this Subsection particularly Paragraph 5. In no case however shall work costing more than sixty percent (60%) of the taxed value of the structure be done, singularly or cumulatively, within any five (5) year period.

Provided, nothing herein shall prevent the maintenance, repair and extension of a single-family dwelling that is non-conforming as to use, provided such is done in conformance with the dimensional requirements of the R-4 Residential District.

#### **7.4 Reconstruction Prohibited**

A. Any non-conforming building or structure or any building or structure containing a non-conforming use for which major repair or reconstruction is proposed in any amount equal to sixty percent (60%) or more of the taxed value of the building or structure or which has been damaged by any cause to an extent equal to sixty percent (60%) or more of its taxed value shall only be repaired and/or reconstructed and used as a conforming structure and a conforming use.

- B. Provided, nothing herein shall prevent the reconstruction of a single-family dwelling that is non-conforming as to use provided such reconstruction conforms to the dimensional requirements of the R-4 Residential District.

#### **7.5 Change in Kind of Non-conforming Use**

- A. A non-conforming use may be changed to a conforming use. Thereafter, the property may not revert to a non-conforming use.
- B. A non-conforming use shall not be changed to another non-conforming use except upon a finding by the Board of Adjustment that the use is more in character with the uses permitted in the District than the previous use.
- C. If a non-conforming use and a conforming use, or any combination of non-conforming uses exist on one lot, the use made of the property may be changed only to a conforming use.

#### **7.6 Replacement of Non-conforming Manufactured Homes**

- A. A non-conforming manufactured home on an individual lot outside of a manufactured home park may not be replaced except by a conforming dwelling. A non-conforming manufactured home may not be enlarged or altered externally in any way.
- B. Existing manufactured home parks shall not be permitted to enlarge or increase the number of spaces. However, manufactured homes located in a pre-existing manufactured home park may be replaced in the same location. Said manufactured home replacement shall be with another manufactured home that is at least 20.

#### **7.7 Discontinuance of Non-conforming Uses**

When active operation or occupancy of a non-conforming use is discontinued regardless of the purpose or reason for a consecutive period of one hundred and eighty (180) days, the property involved may thereafter be used only for conforming uses.

#### **7.8 Discontinuance of Non-conforming Adult Oriented Businesses**

Notwithstanding the provisions of Section 7.7 above, Adult Oriented Businesses shall be governed by the following:

- A. Any Adult Oriented Business that fails to comply with the use and locational requirements of this Ordinance but which was lawfully operating before the effective date of this Ordinance, shall not be deemed to be in violation of this Ordinance but shall be a non-conformity. Any such business which ceases active operation for a period of thirty (30) days regardless of the purpose or reason shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.
- B. Any Adult Oriented Business lawfully operating as of the effective date of this Ordinance but which subsequently fails to comply with the use and locational requirements of this Ordinance as the result of changes within the vicinity or amendment to this Ordinance, shall not be deemed to be in violation of this Ordinance but shall be a non-conformity. Any such business which ceases active operation for a period of thirty (30) days regardless of purpose or reason shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.
- C. Any Adult Oriented Business that is rendered a non-conforming use as a result of the conditions described in 1. and 2. above shall either cease to operate or meet all of the requirements of this Ordinance for the use no later than sixty (60) months from the date that the Adult Oriented Business becomes a non-conforming use.

#### **7.9 Certain Non-Conforming Uses Existing on February 15, 2011**

Notwithstanding the other provisions of this Article 7, any non-conforming use existing on a particular lot of record within the area rezoned from the GB General Business District to the CB Central Business District by the Board of Commissioners on February 15, 2011, in Town of Tryon Ord. No. 2011-04 shall be governed by the following:

- A. Such use may be extended, enlarged or reconstructed within the bounds of the lot on which such use is located as of February 15, 2011, to the extent that such proposed extension, enlargement or reconstruction would be allowed if the lot

were located in the GB General Business District at the time of the proposed extension, enlargement or reconstruction, or, if such proposed extension, enlargement or reconstruction will occur after April 17, 2012, then to extent that such proposed extension, enlargement or reconstruction would be allowed if the lot were located in the TB Transitional Business District at the time of the proposed extension, enlargement or reconstruction.

B. Such non-conforming use shall be subject to the other provisions of this Article 7 not inconsistent herewith, including, but not limited to the provisions of Section 7.7 regarding discontinuance of non-conforming uses.

1. **The Board finds that the foregoing amendments are consistent with the plans and policies of the Town of Tryon.**

## **ARTICLE 8**

### **BOARD OF PLANNING & ADJUSTMENT**

#### **8.1 Establishment of Board of Planning & Adjustment**

A Board of Planning & Adjustment is hereby established to fulfill the duties of the town Planning Board and the Board of Adjustment. Said Board shall consist of seven (7) members; four (4) members of the Board shall be appointed by the Board of Commissioners and shall be residents of the Town of Tryon, and three (3) members shall be residents of the extraterritorial jurisdiction of Tryon (ETJ) and appointed by

the Board of County Commissioners of Polk County, all for overlapping terms of three (3) years. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. The Board of Planning & Adjustment shall also have two (2) alternate members to serve for overlapping terms of three (3) years. One (1) alternate member shall be a resident of the Town of Tryon and shall be appointed by the Town Board of Commissioners. One (1) alternate member shall be a resident of the ETJ and shall be appointed by the Board of County Commissioners of Polk County. Alternate members shall fill the seats of absent regular members. ETJ members shall have equal rights, privileges, and duties with other members of the Board on all matters. All members will be required to take an oath of office prior to joining the board.

## **8.2 Proceedings of the Board of Planning & Adjustment**

A. The Board of Planning & Adjustment shall elect a chairman and a vice-chairman from its members who shall serve for one (1) year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a municipal officer, an employee of the Town, or a member of the Board. The Town Clerk or the Town Clerk's appointee shall serve as clerk to the Board. The Board may at its discretion require that the party appealing from a decision of the Zoning Administrator employ and pay for a court reporter to take and to provide to the Board a verbatim transcript of the hearing of the appeal. The Board may adopt rules and by-laws in accordance with the provisions of this Ordinance and of Article 19, Chapter 160D of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. There shall be a quorum of four members for the purpose of taking any official action.

B. 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 of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

C. Subpoenas. The Board of Adjustment, 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, persons with standing under G.S. 160D 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 appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment 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.

D. Expiration of permits. Unless otherwise specified, any order or decision of the Board in granting a variance shall expire if a building permit or certificate of occupancy for the use is not obtained by the applicant within six months from the date of the decision.

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

### **8.3 Rules of Conduct**

Members of the Board may be removed by the Town Board of Commissioners for cause, including violation of the rules stated below:

A. Conflicts of interest.

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

2) Appointed boards. Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is

a person with whom the member has a close familial, business, or other associational relationship.

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

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

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

B. No Board member shall discuss any quasi-judicial case with any parties thereto or other Board members prior to the public hearing on that case; provided however, that members may receive and/or seek information on that case from the Zoning Administrator or any other member of the Board, its secretary or clerk prior to the hearing.

C. A member of the Board shall give notice to the chairman forty-eight (48) hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board. Conflicts of interest shall be disclosed as per NC General Statute 160D and Subsection 8.G(1), below.

## **8.4 Specific Provisions Regarding the Planning Board**

### **A. Powers and Duties of Planning Board**

The Board of Planning and Adjustment, when performing its role as the Planning Board, shall have the following duties and responsibilities:

1. To review and approve or deny requests for Zoning Permits that require site plan approval as set forth in Section 2.2.2;



2. To review and approve or deny requests for Zoning Permits with Vested Rights in accordance with Section 2.2.5;
3. To review and approve or deny requests for alternative methods of compliance with the Building Design Requirement set forth in Section 4.13;
4. To review, hold “courtesy hearings”, and make recommendations for Text Amendments and Map Amendments (Standard and Conditional Use Rezoning);
5. To render opinions and make recommendations on all issues related to the Zoning Ordinance, Zoning Map, Subdivision Ordinance, Comprehensive Plan, and other land use plans which may be adopted from time to time and which require approval by the Town Board of Commissioners;
6. To make studies of the area within its jurisdiction and surrounding areas;
7. To determine objectives to be sought in the development of the study area;
8. To prepare and adopt plans for achieving these objectives;
9. To develop and recommend policies, ordinances, administrative procedures and other means for carrying out plans that the Board of Commissioners may direct;
10. To advise the Board of Commissioners concerning the use and amendment of means for carrying out plans;
11. To exercise any functions in the administration and enforcement of various means for carrying out plans that the Commissioners may direct; and
12. To perform any other related duties that the Commissioners may direct.
13. The Planning Board will consider any plan adopted according to G.S. 160D-501.

**B. Basic Studies for Background on Plans, Ordinances and Other Areas of**

### **Application**

1. As background for its comprehensive plans and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of manmade and natural physical features of the area, statistics on past trends and present conditions with respect to population, property values, the economic base of the community, land use and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts.
2. In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, condition and adequacy of specific facilities, which may include, but are not limited to, studies of housing, commercial and industrial facilities, public and private utilities, and traffic, transportation and parking facilities.
1. All officials of the town shall, upon request, furnish to the Planning Board such available records or information as it may require in its work. The Board or its agents may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

### **C. Comprehensive Plans**

1. The comprehensive plans, with the accompanying maps, plats, charts and descriptive matter, shall be and show the Planning Board's recommendations to the Board of Commissioners for the development of the area, including, among other things, the general location, character and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, aviation fields and other public ways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, power, gas, sanitation, transportation, communication and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, buildings, grounds, open spaces, properties, utilities or terminals.
2. The comprehensive plans and any ordinances or other measures to effectuate the plans shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the town and its environs which will, in accordance with present and future needs, best promote

health, safety, morals, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civil design and arrangement, the wise and efficient expenditure of public funds, and the adequate provision of public utilities, services and other public requirements.

3. In accordance with Chapter 160D, the Planning Board will present a Comprehensive Plan to the Board of Commissioners by July 1, 2022, to maintain zoning ordinances.

#### **D. Zoning Amendments**

The Planning Board may initiate, from time to time, proposals for amendment of the Zoning Ordinance and map, based upon its studies and plans. In addition, the Board shall review and make recommendations to the Board of Commissioners concerning all proposed amendments to the Zoning Ordinance and map.

#### **E. Review of Subdivision Regulations**

1. The Planning Board shall review, from time to time, the existing regulations for the control of land subdivision in the area and submit to the Board of Commissioners its recommendations, if any, for the revision of said regulations.
2. The Planning Board shall review and make recommendations to the Board of Commissioners concerning all proposed plats of land subdivision.

#### **F. Recommendations for Public Facilities**

The Planning Board shall review with the Town Manager and other town officials and report its recommendations to the Board of Commissioners upon the extent, location and design of all public structures and facilities, on the acquisition and disposal of public properties, on the establishment of building lines, mapped street lines and proposals to change existing street lines. However, whether or not there is a recommendation from the Planning Board, the Board of Commissioners may, if it deems wise, take final action on any such matter at any time.

#### **G. Public Hearings**

The Planning Board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment and maintenance of the plans.

#### **H. Reports, Expenditures and Budget Requests**

The Planning Board shall, in May of each year, submit in writing to the Town Manager a report of its activities, and an analysis of the expenditures to date for the current fiscal year; and shall submit to the Town Manager for budget consideration its requested budget of funds needed for operation during the ensuing fiscal year.

### **8.5 Specific Provisions Regarding the Board of Adjustment.**

#### **A. Duties of Board of Adjustment**

The Board of Planning and Adjustment, when performing its role as Board of Adjustment, shall hear and decide requests for variances, provided that the Board shall not be authorized to grant a variance in regard to the maximum size, location or height of a sign. The Board shall also hear and decide applications for statutory vested rights, appeals of decisions of administrative officials charged with enforcement of this ordinance, and Special Use Permits. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals, requests for variances and Special Use Permits. The Board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

#### **B. Notice of Hearing**

Notice of hearings conducted pursuant to this Article 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 including property owners with parcels separated from the subject property by street, railroad, or other transportation corridor when applicable; and to any other persons entitled to receive notice as provided by the Zoning Ordinance. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also

prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

### **C. Conduct of Hearing**

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

1. The Chairperson, or such person as he or she shall direct, shall give a preliminary statement of the case;
2. The applicant shall present the argument in support of his or her application;
3. Persons opposed to granting the application shall present the argument against the applications;
4. Both sides will be permitted to present rebuttals to opposing testimony; and
5. The Chairperson will summarize the evidence, which has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

### **D. Appeals**

The Board of Adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the Zoning Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

1. Any person who has standing under G.S. 160D or the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.

2. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
3. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. The Zoning Administrator must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent.
4. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
5. The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
6. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal.

within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

7. Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
8. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
9. When hearing an appeal pursuant to G.S. 160D or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D.
10. The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. A majority of the members shall be required to decide to determine an appeal made in the nature of certiorari in accordance with Subsection G, below.

#### **E. Special Use Permits**

1. A special use permit from the Board of Adjustment is required for all conditional uses except for those special use permits governed by Article V and Section 9.7. The Board of Adjustment shall hear and decide special use permits in accordance with standards and procedures specified in this Section and Section 4.5 and may issue special use permit in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified herein and may impose reasonable and appropriate conditions and

safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided.

2. At the applicant's expense, the special use permit shall be filed with the Polk County Register of Deeds by the Clerk to the Board of Adjustment within one month from the date of approval. All special use permit that are granted shall run with the property or structure for which the special use permit is being sought and not with the owner of the property or structure.

#### **F. Variances**

1. When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:
  - a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
  - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;
  - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and
  - d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

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 ordinance that regulates land use



or development may provide for variances consistent with the provisions of this subsection.

2. Application. When a variance is requested the applicant shall submit a completed application for such permit.
3. Quasi-Judicial Hearings on Applications for Variances. Once the Zoning Administrator is in receipt of a complete application and seven copies of a complete site plan, he or she will schedule the application for a public hearing before the Board. The Zoning Administrator shall mail the Notice of Hearing in accordance with Subsection B, above. The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by agent or attorney.
4. Board Action on Applications for Variances. After the quasi-judicial hearing, and on consideration of the record, the Board shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more conditions. A concurring vote of four-fifths of the Board shall be necessary to grant a variance in accordance with Subsection G, below.
5. Recordation/Effect of Approval. At the applicant's expense, the approved variance shall be filed with the Polk County Register of Deeds by the Clerk to the Board of Adjustment within one month from the date of approval. All variances that are granted shall run with the property or structure for which the variance is being sought and not with the owner of the property or structure.

## **G. 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 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.

1. Recusal. A member of the Board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-

judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

#### **H. Quasi-Judicial Decisions and Judicial Review**

1. Quasi-Judicial Decisions. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board of Adjustment. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to 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 that proper notice has been made.
2. 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. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Subsection H.1., above. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(Ord. 2014-04; passed 04-15-14)

## **ARTICLE 9**

## **AMENDMENT PROCEDURES; CONDITIONAL DISTRICTS**

### **9.1 General**

The Board of Commissioners may amend, supplement or change the Zoning Ordinance text and zoning district lines and designations according to the following procedure. It is the intent of this Ordinance that the applicant for rezoning to any district other than a Conditional District shall be prohibited from offering any testimony or evidence concerning the specific manner in which he intends to use or develop the property. If the applicant believes that the development of his property in a specific manner will lessen adverse effects upon surrounding properties or otherwise make the rezoning more in accordance with the principles underlying the Town's comprehensive zoning plan, he shall apply for rezoning to the appropriate Conditional District.

### **9.2 Amendment Initiation**

Applications to change, supplement or amend this Ordinance may be initiated by:

#### **A. Textual Amendment.**

- 1) The Board of Commissioners;
- 2) The Planning Board;
- 3) Anyone who owns property or resides in the area of jurisdiction of this Ordinance or the agent of such person.

#### **B. Map Amendment.**

- 1) The Board of Commissioners;
- 2) The Planning Board;
- 3) Anyone who owns property or resides in the area of jurisdiction of this Ordinance or the agent of such person. Provided, however, map amendments involving Conditional Districts may only be initiated by the owner or authorized agent of the owner.

### **9.3 Submittal**

- A. All applications for amendments to this Ordinance shall be in writing, signed and filed with the Zoning Administrator.

- B. The Zoning Administrator, before scheduling any application for amendment for consideration by the Planning Board, shall ensure that it contains all the required information as specified in this Ordinance and on the application form. Applications which are not complete, or otherwise do not comply with the provisions of this Ordinance shall not be scheduled by the Zoning Administrator, but shall be returned to the applicant with a notation of the deficiencies in the application.
- C. Completed applications shall be received a minimum of fourteen (14) days prior to the Planning Board meeting at which the proposed amendment is scheduled to be considered.
- D. All applications for amendment shall contain, as a minimum, a description of the proposed change, and if it would require a change of the zoning maps, the application shall include a survey drawn to a scale of not less than four hundred (400) feet to the inch and not more than twenty (20) feet to the inch showing the land covered by a proposed map amendment, and a list of names and addresses of all owners of property involved in the map change. The applicant shall also provide a statement regarding the consistency of the request with adopted Town plans and the surrounding area.
- E. The applicant shall include a statement of reasonableness regarding the request to a change to a Conditional District showing the use or uses proposed and any conditions being proposed in the application.

#### **9.4 Planning Board Action**

- A. The Zoning Administrator shall present any properly completed application for amendment to the Planning Board at its next regularly scheduled meeting occurring at least fourteen (14) days after filing of such application with the Zoning Administrator.
- B. The Planning Board shall have 30 days from the initial referral of the request by the Zoning Administrator to either recommend in favor of an amendment or in opposition to an amendment in writing by simple majority vote of those present and voting. The Planning Board shall include in their recommendation a

statement of consistency. The Planning Board may also propose conditions to their recommendation for a Conditional District request. A tie vote on a proposal shall be considered to be in opposition to such amendment. If the Planning Board should fail to act on any proposed amendment within 30 days after it is referred to the Board the request shall be forwarded to the Town Board of Commissioners without a recommendation.

### **9.5 Board of Commissioners Action**

- A. The Zoning Administrator shall present any proposed amendments to the Board of Commissioners at its next regular scheduled meeting, following Planning Board action, at which it hears rezoning proposals. The Zoning Administrator shall transmit to the Board of Commissioners the Planning Board's record of action on the proposed amendments. The Board of Commissioners shall take such lawful action on such proposals as it may deem advisable provided that no zoning amendment shall be adopted until after a public hearing shall have been held.
- B. Notice of public hearing for map amendments shall be given as required by N.C.G.S. §160D as follows:

Notice shall be sent by first class mail to all owners of parcels of land within the proposed amendment area, as shown on the county tax listing, and the owners of all parcels of land abutting the land in the proposed amendment area, as shown on the county tax listing, describing the proposed development plan at least 10 days but not more than 25 days prior to the public hearing; provided, however, that if the zoning map amendment directly affects more than 50 properties, owned by at least 50 different property owners, the Town may utilize the alternative method of notice procedure in N.C.G.S. §160D.

A notice shall be published in a newspaper having general circulation in the Town for two successive weeks with the first publication being at least 10 days but not more than 25 days prior to the public hearing.

Adequate notice shall be posted prominently on the subject property on at least each public street that it fronts upon continuously for at least 10 days prior to the public hearing.

(Ord. Am. 2013-03, passed 02-19-13)

- C. Notice of public hearing for text amendments shall be given as required by NC G.S. 160D once a week for two consecutive 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 public hearing date.
- D. In taking action on a proposed amendment, the Board of Commissioners shall include in its decision a statement regarding the consistency of the proposed amendment with adopted Town plans and, if applicable, the surrounding area. Additionally, for Conditional Districts (see 9.7) and small-scale map amendments, a statement regarding the reasonableness of the request shall be included in the decision.

## **9.6 REPEALED**

## **9.7 Special Provisions for Conditional Districts**

- A. Proposals for rezoning to any Conditional District shall always be legislative decisions by the Board of Commissioners.
- B. In approving a Conditional District Rezoning, the Board of Commissioners shall make the following affirmative findings:
  - 1) That the use(s) requested is among those listed as an eligible use in the Conditional District in which the subject property is located or is to be located.
  - 2) The use limitations and conditions proposed and/or imposed by the Board of Commissioners' meet or exceed and/or are at least as restrictive as the minimum standards for the corresponding general use district.
  - 3) That the use limitations and conditions as proposed and/or imposed for the Conditional District can reasonably be implemented and enforced for the subject property.
  - 4) That when implemented, the proposed and/or imposed use limitations and conditions will mitigate specific land development issues that would likely result if the subject property were zoned to accommodate all the uses and the minimum standards of the corresponding general use zoning district.

- 5) That the applicant has agreed to accept the use limitations and conditions as proposed and/or imposed for the requested Conditional District.
  - 6) That the location and character of the Conditional District if developed according to the site-specific plan will be reasonable and consistent with the surrounding area and with adopted plans of the Town and its extraterritorial jurisdiction.
- C. In approving a Conditional District Rezoning, the Town Board of Commissioners may impose such additional restrictions and requirements upon such approval as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done.
- D. Any Conditional District so approved shall be perpetually binding upon the property included in such Permit unless subsequently changed or amended by the Board of Commissioners, as provided for in this Article.

#### **9.8 Maximum Number of Applications.**

No application for the same zoning district applicable to the same property or any part thereof shall be filed until the expiration of one (1) year from:

- A. The date of final determination by the Board of Commissioners; or
- B. The date of the public hearing or scheduled public hearing if the application is withdrawn after it has been advertised for public hearing. Fees submitted for withdrawn cases shall not be refundable.

### **ARTICLE 10**

#### **ADMINISTRATION, ENFORCEMENT AND PENALTIES**

##### **10.1 Administrative Officer**

This Ordinance shall be administered and enforced by the Zoning Administrator who

shall be appointed by the Town Manager and is hereby empowered:

- A. To issue a Zoning Compliance Certificate prior to issuance of a building permit by the County Inspections Department;
- B. To collect the designated fees in the administration of this ordinance.
- C. To investigate violations of the provisions of this ordinance and enforce actions necessary for correction thereof. To enter upon private property at reasonable times upon presenting credentials with the consent of the premises owner or an administrative search warrant to inspect areas to carry out duties.
- D. To make and keep all records necessary and appropriate to the office including record of issuance and denial of all Zoning Compliance Certificate, Special Use Permits, Amendments, Variances, Appeals and of receipt of complaints of violations of this ordinance and action taken on the same.
- E. To appoint agents to act on his behalf.

No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a city local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.



## **10.2 Duties of Zoning Administrator, Board of Adjustment, Courts and Board of Commissioners to Matters of Appeal**

It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Zoning Administrator; and that from the decision of the Board of Adjustment recourse shall be to courts as provided by law. It is further the intention of this Ordinance that the duties of the Board of Commissioners in connection with the Ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as herein set out in the Ordinance, and that the duties of the Board of Commissioners in connection with this Ordinance shall be only the duty of considering and passing upon any proposed amendment or repeal of the Ordinance as provided by law.

## **10.3 Lawful Use**

Structures, buildings and conditions existing on a lot or parcel subject to the terms of this ordinance on the effective date of this ordinance are for the purposes of this ordinance conclusively presumed to be lawful.

## **10.4 Violations; Remedies**

Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Article and by State law.

### **A. Development Without Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required permits, certificates, or other forms of authorization as set forth in this Ordinance.

### **B. Development Inconsistent With Permit**

To engage in any development, use, construction, remodeling, or other

activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form or authorization granted for such activity.

C. Violation by Act or Omission

To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the Board of Commissioners or its agent boards upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

D. Use in Violation

To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this Ordinance or any other regulation made under the authority conferred thereby.

E. Continue a Violation

Each day's continuation of any of the above violations is a separate and distinct offense.

## **Section 10.5 Penalties for Violation**

A. Violations of this Ordinance shall constitute either a misdemeanor, with a fine not exceeding \$50.00 (fifty dollars) or imprisonment not exceeding thirty (30) days, or, at the election of the Town, shall subject the offender to a civil penalty upon the issuance of a citation for said violation as hereinafter provided. The civil penalty, if not paid to the Town within fifteen days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt. Said civil penalties shall be in the amount of \$50.00 (fifty dollars) for each violation and each day any single violation continues shall be a separate violation.

B. In addition to the civil penalties set out above, any provision of this Ordinance

may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

- C. In addition to the civil penalties set out above, any provision of this Ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by General Court of Justice. When a violation of such a provision occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.
- D. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.
- E. The provisions of this Ordinance may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.
- F. Upon determination of a violation of any section of this Ordinance, the penalty

for which is a civil penalty, the Zoning Administrator shall cause a warning citation to be issued to the violator via first class mail. The notice of violation (NOV) will be delivered to the permittee and landowner if different. The NOV may also be delivered to the occupant or person undertaking the activity. The Zoning Administrator may also issue the NOV via hand, email, or onsite to ensure the citation is adequately distributed. Such citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated.

- G. An appeal from a warning citation shall be taken within ten (10) days from the date of said warning citation and the Board of Adjustment, in considering such appeal, shall, notwithstanding other powers as may be granted, have power only in the manner of administrative review and interpretation where it is alleged that the Zoning Administrator has made an error in the application of the Ordinance, in the factual situation as it relates to the application of the Ordinance, or both.
- H. Where the Zoning Administrator determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or Consent Agreement, the Zoning Administrator may amend the warning citation to provide for additional time. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.
- I. Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the Zoning Administrator and either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the Town or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to pay the civil assessment in person within fifteen days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

- J. If the violator fails to respond to a citation within ten (10) days of its issuance, and pay the penalty prescribed therein, the Town may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law.

## **ARTICLE 11**

### **GENERAL LEGAL PROVISIONS; DEFINITIONS**

#### **11.1 Interpretation, Purpose, Conflict**

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction or imposes higher standards than those required by other ordinances, rules, regulations, or by easements, covenants, or agreements the provisions of this Ordinance shall govern so that, in all cases, the most restrictive limitation or requirement, or the requirement causing the highest standard of improvement, shall govern.

#### **11.2 Repeal and Reenactment of Existing Zoning Ordinance**

The rewriting of this Ordinance in part carries forth by reenactment some of the provisions of the existing Zoning Ordinance of the Town of Tryon and it is not intended to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have been accrued are preserved and may be enforced. All provisions of the Zoning Ordinance which are not reenacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the Zoning Ordinance 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 been instituted, may be 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 have been instituted or prosecuted.

### **11.3 Effects Upon Outstanding Building Permits and Zoning Compliance Permits**

Nothing herein contained shall require any change in the plans, construction, size or designated use of any building, structure or part thereof for which a building permit has been granted by the Building Inspector prior to the time of passage of this Ordinance or any amendment thereto; provided, however, that where construction is not begun under such outstanding permit within a period of one hundred eighty (180) days subsequent to the passage of this Ordinance or any amendment thereto, or where it has not been prosecuted to completion within eighteen (18) months subsequent to passage of this Ordinance or any amendment thereto, any further construction or use shall be in conformity with the provisions of this Ordinance or any such amendment.

### **11.4 Definitions**

For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein when not inconsistent with the context; words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The words "used for" shall include the meaning "designed for."

Accessory Dwelling. A single-family residential unit that is subordinate to the principal dwelling located on the same property.

Accessory use or accessory structure (non-residential). A subordinate non-residential use or structure customarily incidental to and located on the same lot with the main use or structure.

Accessory use or accessory structure (residential). A noncommercial use or structure customarily incidental and subordinate to but located on the same lot with the main residential use or structure such as a private garage or carport, family garden, personal

storage building, or workshop, all of which are totally for personal use.

Adult Day Care Program: A program as defined in North Carolina General Statutes § 131D-6(b). The program shall be subject to all requirements of its state certification

Adult Establishment. Any place defined as an "Adult Establishment" as defined by North Carolina General Statute 14-202.10 as such statute may be amended from time to time, including Adult Cabarets, and except the definition of "Massage Business" shall not include any establishment or business where massage is practiced that is a health club, exercise studio, hospital, physical therapy business or other similar health-related business. Adult establishment specifically includes, however, any Massage Business where "massages" are rendered by any person exhibiting "Specified Anatomical Areas" and/or where "massages" are performed on any client's "Specified Anatomical Areas." "Specified Anatomical Areas" are those defined by North Carolina General Statutes 14-202.10 as such statute may be amended from time to time.

Agricultural Uses.

For purposes of this Ordinance, the terms, "bona fide farm" "agriculture", "agricultural use", and "farming" refer to all of the following:

- The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- The planting and production of trees and timber.
- Dairying and the raising, management, and care of livestock (excluding horses), bees, poultry and fowl, and other animals for individual and public use, consumption, and marketing.
- Aquaculture as defined in NCGS 106-758.
- The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incidental to the operation of a farm.

Uses which shall not be deemed as "agricultural uses", for the purposes of this

Ordinance, include:

- zoos
- animal services & kennels
- equestrian uses

Animal Services. A use that includes the boarding, grooming, and/or medical care of animals. This does not include agricultural or equestrian uses as defined herein.

Apartment. A room or suite of rooms in a multi-unit residential building, generally rented by the occupant, which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation in each separate unit.

Art Center. A public or private facility for visual and/or performing arts including related ancillary uses such as gift shops, galleries, cafes, art fairs and shows.

Automotive/Boat Sales Use. A commercial use where the sale or rental of automobiles or boats takes place. This does include the storage of junked vehicles.

Automotive/Boat Service Use. A commercial use intended for repairing, maintaining, and/or servicing automobiles or boats. This does include the storage of junked vehicles.

Bed and breakfast. A dwelling in which lodging available for rent to the public, with or without meals, is provided for overnight guests for a fee.

Bedroom. Sleeping room.

Bona Fide Farm. Bona Fide farm purposes include the production of and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

Building. See "structure."

Building Height. The vertical distance from the mean elevation of the finished grade along the front of the building to the highest point of a flat roof, or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip



and gambrel roof.

Building, main. Building shall mean any one and two-family dwelling or portion thereof, including townhouses, that is used, or designed or intended to be used for human inhabitation, for living, sleeping, cooking or eating purposes, or any combination thereof, and shall include accessory structures thereto.

Building Occupancy. See "Use".

Building setback line. See "Setback".

Common open space. The open space land held in common ownership by property or unit owners in a development, normally provided for in the declaration or restrictive covenants and normally in common use.

Condominium. Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

Congregate care facility. A facility providing shelter and services for ambulatory individuals at least fifty-five (55) years of age who by reason of age, functional impairment, or infirmity may require meals, housekeeping, and personal care assistance. Congregate care facilities do not include nursing homes or similar institutions devoted primarily to the care of the chronically ill or the incurable.

Day care center. A facility providing care for six (6) or more non-handicapped children, more than four (4) hours per day, for payment of a fee, but without transfer or assignment of custody.

Distribution. A use in which products are brought in or manufactured on-site and are trucked off-site.

Drive In Restaurant. A drive-in restaurant is one which allows cars to park next to each other; the food is generally brought to the window by a server, called a carhop, and the customer can remain in the parked car to eat.

Drive Through Restaurant. A drive through restaurant is one where orders are generally placed using a microphone and picked up in person at a window. The cars create a line and move in one direction in drive-throughs. Food service may also be

available for ordering and consumption within the restaurant. These area typically fast-food type establishments.

Dwelling, single-family (Conventional or Modular). A detached building constructed on-site or in industrialized modules in compliance with the North Carolina State Building Code and designed for or occupied exclusively by one family.

Dwelling, single-family attached. A single-family dwelling that except for corner units is connected on each side by means of a common dividing structural or load bearing party wall of at least ten (10) linear feet to another single-family dwelling, each on its own individual lot.

Dwelling, single-family detached. A single-family dwelling which is completely surrounded by permanent open space.

Dwelling, two family. A detached residential building arranged or designed to be occupied by two (2) families living independent of each other.

Dwelling, multifamily. A detached building constructed on-site in compliance with the North Carolina State Building Code and designed for three (3) or more dwelling units.

Dwelling unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Electronic Gaming Operation: Any business enterprise, whether as a primary or an accessory use, where persons utilize electronic machines or devices, including but not limited to electronic machines or devices as defined in N.C. Gen. Stat. § 14-306.4(a)(1), to conduct games of chance, including sweepstakes, and where further game credits, 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 does not include any lottery approved by the State of North Carolina.

Equestrian Use. A use that includes the boarding of horses and/or horseback riding.

Family. Any number of persons related by blood, adoption or marriage or no more than four (4) persons not related by blood, adoption or marriage, living together as a

single housekeeping unit sharing the same domestic facilities. It does not include congregate residential care facilities; family care and group care facilities; foster homes for children; homes for the aged and infirmed; family care homes for the aged and infirmed; day care facilities; day care centers; and family day care homes; shelter homes for children and/or families including foster shelter homes and group shelter homes; adult day care centers; day nurseries; preschool centers; hospitals; nursing homes; sanitariums; and dormitories, fraternal organizations, or other organized social or institutional residential situations.

Family day care home. A building used as a residence for a family which is also used to provide day care services on a temporary basis without transfer of custody for three (3) to five (5) unrelated children, for a fee. (The keeping of 1-2 children does not require a permit.)

Family care home. A home with support and supervisory personnel which provides room and board, personal care and habilitation services in a family environment for not more than six (6) resident handicapped persons.

Family members, direct. Direct lineal descendents (children, grandchildren, and great grandchildren) and direct lineal ascendants (father, mother, grandfather and grandmother); and brothers, sisters, nieces and nephews.

Farmers' Market. An outdoor market at which vendors rent space to sell locally grown agricultural produce.

Flood Damage Prevention. See Section 6.4.2 for Flood Damage Prevention Definitions.

Frontage. The property abutting on one side of a street measured along the street right-of-way line.

Game of Chance: A game whose outcome is strongly influenced by randomizing device, and upon which contestants may or may not wager money or anything of monetary value.

Gross Floor Area. The total area of any buildings in the projects, including the basements, mezzanines and upper floors, exclusive of stairways and elevator shafts. It excludes separate service facilities outside the store such as boiler rooms and maintenance shops.

Group care facility. A facility licensed by the State of North Carolina, (by whatever name it is called, other than "Family Care Home" as defined by this Ordinance), with support and supervisory personnel that provides room and board, personal care, or habilitation services in a family environment.

Handicapped person. A person with a temporary or permanent physical, emotional or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments, but does not include mentally ill persons who are dangerous to others as defined in section 122-58.2(1)b of the General Statutes of North Carolina, or any amendment thereto.

Home occupation, customary. An occupation conducted incidental to the use of property as a dwelling unit, which does not adversely impact or change the residential character of the neighborhood. The incidental use of any dwelling by the occupant (s) for the purpose of receiving or transmitting messages by mail, record or bookkeeping, filing, address listing for applicable privilege license or tax identification and other similar activities which do not involve the on-site sale, delivery, distribution, reception, storage or manufacture of goods, products or services shall not constitute a home occupation for the purpose of regulation under this ordinance.

Hotel or motel. A building which provides sleeping accommodations in six (6) or more rooms, commonly available for pay on a daily basis to transient or permanent guests.

Junk yard. A lot or group of contiguous lots where more than six hundred (600) square feet of area is used for the dismantling or the storage of wrecked or used automobiles or the storage, sale, or dumping of dismantled or wrecked cars or their parts, or for storage of appliances, machinery and other salvage goods.

Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devise, successors, assigns and personal representative of such owner. The owner may allow a person holding a valid option to purchase, to act as his agent or representative for purposes of submitting a proposed site specific development plan in the manner allowed by this Ordinance.

Livestock. Domesticated or semi-domesticated animals held captive for agricultural purposes that may include a goats, sheep, horses, donkeys, mules, cows, bison, llamas, alpaca, or similar animals.

Live/Work Unit. A building that consists of one (1) dwelling component attached to one (1) business component attached either vertically or horizontally that is owned and operated by the occupant of the dwelling.

Lot. A parcel of land, the boundaries of which are established by some legal instrument such as a deed or a recorded plat (but not tax maps) and which is recognized as a separate tract for purposes of transfer of title or lease of greater than three (3) years.

Lot, corner. A lot adjacent to or abutting on two (2) streets at their intersection.

Lot front. On a corner lot, the front is the frontage with the least dimension at the street. Where the dimensions are equal the front shall be designated by the owner.

Lot, interior. Any lot other than a corner lot.

Lot lines. The line forming the perimeter or boundary of the lot.

Lot, through. An interior lot having frontage on two (2) streets. Also called a double frontage lot.

Lot width. The distance from side lot line to side lot line measured at the required minimum front yard setback parallel to the front property line. For lots with a radial side line(s), lot width may be measured at a front yard setback greater than the minimum required front yard setback. In such case the point where the minimum lot width is measured shall become the front yard setback for that lot.

Lot of record. A lot which is a part of a subdivision, a plat of which has been recorded in the office of the register of deeds, or a lot which is described by metes and bounds, the description of which has been so recorded, prior to the effective date of this Ordinance.

Manufacturing, Heavy. The assembly, fabrication, production or processing of good and materials using processes that ordinarily have greater than average impacts on the surrounding environment and may include noise, smoke, fumes odors, glare, health or

safety hazards, or uses that otherwise do not constitute “light manufacturing”. There may be the outdoor storage of materials necessary to the operation.

Manufacturing, Light. The assembly, fabrication, production or processing of goods and materials using processes that ordinarily do not create noise, smoke fumes, odors, glare, or health and safety hazards for the surrounding environment. Outdoor storage of materials is minimal compared to the overall operation.

Manufactured home. A dwelling unit that (i) is not constructed in accordance with the standards set forth in the North Carolina State Building Code, and (ii) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and (iii) exceeds forty (40) feet in length and eight (8) feet in width.

Manufactured home park, non-conforming. A lot(s) or tract(s) for two (2) or more mobile homes sharing common ownership and/or facilities and which do not qualify as individual mobile homes on individual lots.

Modular home; Building. Any building or structure which was premanufactured, all or in part, at some point other than the building site for assembly or installation later at the building site and which complies with the State of North Carolina Building Code. Further defined, such building may be assembled from premanufactured rooms, wall panels, frame units, or other factory manufactured parts, which may be fabricated of wood, concrete, metal or other materials, and anchored on a permanent foundation or foundation material at the building site. This definition does not include mobile homes as defined in this Ordinance.

Net residential area (net land). That portion of a development or project site designated for residential lots and related common open space areas excluding dedicated public rights-of-way.

Nonconforming use. Any use which legally existed on the effective date of this Ordinance, and which does not conform with each regulation of the zoning district in which it is located, including any nonconforming use legally recognized under a prior zoning ordinance.

Open space. Any land area not occupied by buildings, structures, storage areas, open or enclosed balconies, patios, porches or decks, excluding, however, any land encroaching or located within a right-of-way or easement. Open area in any required

setback or land used for sidewalks, landscaping and grassing shall be considered open space.

Outdoor Kennel. A business that includes the boarding of animals outside of a fully-enclosed building.

Outdoor Market. A use involving the sale of items outside an enclosed permanent structure on the same property or by the same organizer(s) more than 6 days per calendar year. This may include outdoor farmers markets and flea markets, but does not include town sponsored events.

Outdoor Storage. The non-residential keeping of items and/or merchandise outside of a fully-enclosed building.

Overlay District. A zoning district which overlays and combines with one of the principal zoning districts established by this Ordinance. In such case the property involved is subject to the requirements of both districts.

Parking lot. An area or tract or partial tract of land used for the storage or parking of vehicles.

Personal Service Uses. Services provided by licensed professional stylists, aestheticians, and therapists including but not limited to hair care, nail care, waxing, massage therapy, and similar spa services.

Planned unit development. A tract(s) of land under single corporation, firm, partnership or association ownership, or otherwise under unified ownership or control, planned and developed as integral unit in a single development scheme or a well defined series of development operations in accordance with an approved site plan.

Pre-engineered Metal Building. A building consisting of light gauge metal roof panels on steel purlins spanning between rigid frames, with light gauge metal cladding. It is a relatively flexible structure as opposed to a conventional steel structure. (Examples of pre-engineered metal buildings are the structures at 332 South Trade Street and 1081 South Trade Street).

Produce Stand (permanent). The sale of any agricultural product at a retail stand located on the same site where the products are grown. Off-site produce stands shall

be considered temporary uses and shall meet the requirements of such.

Property. Means all property subject to zoning regulations and restrictions and zone boundaries within the zoning jurisdiction of the Town.

Public Sewage Disposal System. An approved sewage disposal system serving ten (10) or more connections, including municipal and sanitary district sewerage systems as well as "package" plants constructed in a location and to specifications approved by the Polk County Environmental Health Department in consultation with the NC Division of Health Services.

Public Water Supply System. An approved water supply system serving ten (10) or more connections, including municipal and sanitary district water systems as well as water systems designed to serve particular subdivisions at full development and constructed to specifications approved by the Polk County Environmental Health Department in consultation with the NC Division of Health Services.

Recreation facility (indoor). A publicly or privately owned facility for active and/or passive recreation within fully enclosed a building including related ancillary uses such as concessions and equipment rental. Examples of indoor recreation facilities include exercise facilities, gymnasiums, indoor swimming pools, skating rinks, bowling alleys, etc. Arcades, carnival games, and similar entertainment uses are not included in this definition.

Recreation facility (outdoor). A publicly or privately owned facility for active and/or passive recreation not within a fully enclosed a building including related ancillary uses such as concessions and equipment rental. Examples of outdoor recreation facilities include swimming pools, ball fields, golf courses, playgrounds, tracks, outdoor fitness facilities, etc. Go cart tracks, carnival games, and similar entertainment uses are not included in this definition.

Recreation or travel trailer. A vehicular, portable, structure built on a chassis designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified as a travel trailer by the manufacturer of the unit. Includes motor home, recreational vehicle, etc.

Residential care facility. A building or facility used primarily to provide residential, social and personal care for children, the aged or others who suffer some limit on the ability for self-care, but where medical care is not a major service. It includes such



uses as adult day care facilities, home for the aged and other like uses which are not otherwise specifically defined.

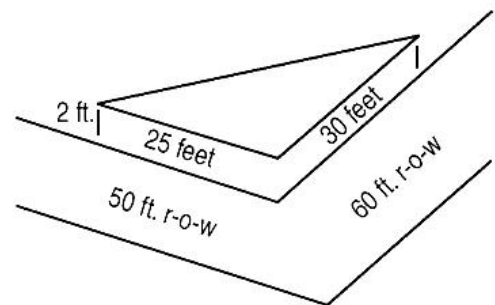
Screen. A devise such as a fence or planting area used to visually separate property.

Service station. A lot or building where gasoline, oil, grease and automobile accessories are supplied and dispensed to the motor vehicle trade, or where battery, tire and other similar repair services are rendered.

Setback. The horizontal distance from the property line or street right-of-way line to the nearest part of the applicable building, structure, sign, or use, measured perpendicularly to the line.

Sight Triangle. The triangular area formed by a diagonal line connecting two points located on intersecting property lines (or a property line and the curb or a driveway) within which no planting, structure, sign, fence, wall, or obstruction greater than three (3) feet in height shall be placed or maintained. The following are the distances used to establish a sight triangle as measured from an intersecting right-of-way:

Right-of-Way width	Distance (feet)
Driveway	10'
30'	15'
40'	20'
50'	25'
60' or greater	30'



Sign. Any object, placard, device, display or structure, or part thereof, made of any material, except live vegetation, including any surface, fabric or other background material which is designed, constructed and/or used for the purpose of relaying information from a fixed or mobile position to visually inform, advertise, identify, display, promote, direct or attract the attention of general or privileged persons to an object, person, institution, organization, corporation, business, profession, commodity, product, service, event or location by any means including, but not limited to, words, letters, phrases, sentences, emblems, trademarks, tradenames, insignias, numerals, figures, devices, designs, symbols, pictures, logos, fixtures, colors, illumination or projected images or any other attention directing device, displayed by means of paint, bills, posters, panels, or other devices erected on an open framework,

or attached or otherwise applied to stakes, poles, trees, buildings or other structures or supports. The term sign shall include the terms advertisement, announcement, insignia, billboard, bill, billet, badge, display, brand, emblem, flyer, label, message board, poster, shingle, symbol, title and trademark. The term sign shall not include the terms television, telegraph, radio, signal or transmission. If the message is removed from a structure that was originally designed and used as a sign, this structure shall still be considered a sign.

Animation - The movement, or the optical illusion of movement of any part of the sign structure, design or pictorial segment including the movement of any illumination or the flashing, scintillating or varying of light intensity. The automatic changing of all or any part of the facing of a sign shall be considered to be animation. Also included in this definition are signs having “chasing action” which is the action of a row of lights commonly used to create the appearance of motion.

Balloon - A nonporous bag of material filled with heated or non-heated air or gas so as to rise or float in the atmosphere.

Banner - A sign or outside advertising display having the character, letters, illustrations, ornamentations, symbol, color or visual representation applied to cloth, paper, vinyl, fabric, plastic, or like kind of malleable material with or without frame. National flags, state or municipal flags, or the official flag of any nonprofit institution shall not be considered banners.

Building Front - The linear length of building facing a street right-of-way or in the case of a planned unit development, a legal private access road.

Building Marker – Any sign indicating the name of a building, date and incidental information about its construction, which sign is cut into a masonry surface or made of bronze or other permanent material.

Building Sign – Any sign attached to any part of a building, as contrasted to a freestanding sign.

Canopy - A protective cover over a door, entrance, window, or outdoor service area, which is attached to or cantilevered from a building. Also known as an awning. Permanent marquees and porticoes that are designed as a continuous or integral part of the structure shall not be considered canopies.

Canopy Sign - A sign that is suspended from, attached to, supported from, applied to, or constructed as part of a canopy or awning. A marquee is not a canopy.

Changeable Copy Sign - A sign on which message copy is changed manually in the field through attachment of letters, numbers, symbols and other similar

characters of changeable pictorial panels. Also known as a reader-board sign.

Combined Development - Two or more establishments or businesses occupying a common building or adjoining buildings which are designed and developed in a coordinated manner and which share parking, driveways and other common facilities.

Commercial Message - Any sign wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.

Electronic Message Board - A sign that displays messages, such as time and temperature, or advertising, in alternating light cycles.

Facade - The entire building walls, including wall faces, parapets, fascia, windows, doors, canopy and visible roof structures of one complete elevation.

Facsimile Sign - An oversized, three-dimensional object, such as a chicken bucket, lettering, automobile (or automobile part), or human figure, which may or may not contain advertising matter, and may or may not contain information about products sold on the premises, and is located in such a manner as to attract attention.

Fence Sign - A sign mounted on, attached to, or constructed as part of a fence or similar structure.

Festoon Lighting - A string of outdoor lights suspended between two or more points.

Flag - Any fabric, banner or bunting containing distinctive colors, patterns, or symbols, used as a symbol of government, political subdivision, or other entity.

Flashing Sign - Any sign which contains an intermittent or flashing light source, or which includes the illusion of intermittent or flashing light by means of animation or an externally mounted intermittent light source. Electronic message boards, except for those that display only time, temperature and date, are classified as flashing signs.

Freestanding Sign - A sign which is permanently affixed to and supported by structures or supports such as poles, masts or frames which are placed upon or anchored in the ground and which structures or supports are independent from any building or other structure.

Grade - The uppermost surface directly below the sign or immediately adjacent to the support. Where the uppermost surface has been artificially raised for landscaping or other purposes, grade shall be measured from the level of the nearest City or state street curb.

Ground Sign - A free-standing sign with its base or its supports mounted directly to the ground. For the purposes of this ordinance, a ground sign shall be defined as two sign faces that are located back-to-back on a single structure. The maximum sign area as set forth in this Article 10 shall be applied to each of the sign faces independently.

Holiday Decorations - Displays erected on a seasonal basis in observance of religious, national or state holidays, which are not intended to be permanent in nature, and which contain no advertising material or commercial message.

Illumination, Indirect - Illumination which reflects light from an artificial light source intentionally directed upon a surface. This shall also include silhouettes of letters or symbols placed before a background of reflected light.

Illumination, Internal - Illumination provided from a source located inside or within the face of the sign.

Individual Establishment or Business - A single establishment or business occupying one or more buildings and located on an individual parcel of land, designed to function as a single enterprise.

Inflatable Signs - A three-dimensional object, filled with air or gas, and located in such a manner as to attract attention.

Mansard - A steeply pitched roof, pitched at such an angle as to resemble a building wall.

Monument Sign - A ground sign that is mounted generally flush with the surrounding grade. It may not be attached to a pole or pylon, nor raised by mounting on a man-made berm, wall, or similar structure. Supporting elements may not exceed 24 inches in height and are included in the measurement of sign height.

Off-Premise Sign - A sign identifying/advertising and/or directing the public to a business, or merchandise, or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured and/or furnished at a place other than the real property on which said sign is located. However, this definition shall include Outdoor Advertising or "Billboard" signs.

On-Premise Sign - A sign or display that identifies or communicates a message related to the activity conducted, the service offered, or the commodity sold on the premises where the sign is located.

Outdoor Advertising (Billboard) Signs - A permanently installed sign identifying/advertising and/or directing the public to a business, or merchandise,

or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured and/or furnished at a place other than the real property on which said sign is located.

Panel - The primary surface of a sign that carries the identifying/advertising message.

Pennant - Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

Political Sign - A sign advertising a candidate or issue to be voted upon on a specific election day, which is attached to the ground by a stake or stakes, but which excludes any other sign defined as a portable sign.

Portable Sign - Any sign designed or intended to be readily relocated whether or not it is permanently attached to a building, structure or on the ground. Portable signs also include signs on wheels or on portable structures such as trailers, tent signs, A-frame or T-shaped signs and normal advertising placed on motor vehicles which are not used regularly and are placed in such a manner as to attract attention.

Projecting Sign - A sign which projects from a structure into a vehicular or pedestrian access way, more than one foot from the surface on which it is mounted, and is mounted usually, but not always, at right angles to the building.

Pylon (or Pole) Sign - A ground mounted sign attached to one or more posts, whose base is greater than 24 inches above grade.

Roof Sign - Any sign erected and constructed wholly on and over the roof of a building, supported by the roof, and extending vertically above the highest portion of the roof.

Spinner - A wind activated, propeller-type device, which may or may not be attached to advertising copy.

Streamer - A string or strip of miniature or full size pennants or flags which may or may not be suspended between two points.

T-Shaped Sign - A portable sign comprised of one or more panels or faces joined at the bottom to a perpendicular base on which the sign stands.

Temporary Sign - A sign advertising a special event and not intended to be displayed on a permanent basis.

Vehicle Sign - See Portable Sign.

Wall Sign - A sign affixed on and parallel to the exterior wall of any building and projecting not more than 12 inches from the wall. Signs mounted on porticoes shall be considered as wall signs.

Window Sign - A sign which is applied to the building glass area located such that the identifying/advertising message, symbol, insignia, visual representation, logotype or any other form which communicates information can be read from off-premise.

Site specific development plan. A plan which has been submitted to the Town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

Sludge. Any solid, semisolid or liquid waste generated from residential wastewater treatment plant.

Sleeping Unit. A room designated as sleeping or bedroom on the plans and permit application.

Stacking Space. A space to store an automobile off-street while waiting in line for a drive-through service such as an automatic teller service, drive through restaurant etc.

Standing Seam Metal Roof. The term standing seam is used to describe any type of joinery that uses an upturned portion of the metal to connect adjacent metal sections. The joinery raises the seam above the drainage plane of the panel, creating its distinctive vertical lines. Standing-seam joints are held together with a concealed clip, or cleat, at the seam. The clip involves a male and a female upstand that joins with or without seaming, thus eliminating any exposed fasteners. Standing-seam metal sheets go through a roll-forming process to create the panels. The roll-formed panels are custom cut to the specific lengths of the roofs. Because they are custom cut, the product is usually special-ordered for each job. (An example of a standing seam metal roof is the roof on the building at 289 South Trade Street).

Street, private. A vehicular travel way not dedicated as a public street or a dedicated but unaccepted vehicular travel way.

Street, public. A public right-of-way for vehicular travel which has been constructed and then dedicated to and accepted by a municipality or the North Carolina Department of Transportation for public use or which has been otherwise obtained by such agencies for such use or which is proposed to be constructed and then

dedicated to and accepted by such agencies as a public right-of-way for vehicular traffic for public use.

Structure. Anything constructed or erected which requires location on the ground or attached to something having location on the ground.

Structural alterations. Any change, except for the repair or replacement, in the supporting members of a building such as load bearing walls, columns, beams or girders.

Temporary Use. A use placed on a lot for a limited time period that may include temporary sales, structures, or events. Examples of temporary uses include mobile classrooms, construction trailers, and produce stands.

Townhouse. A single-family dwelling unit constructed in a series or group of attached units with property lines separating each such unit.

Transmission Tower. A structure, either freestanding, supported by guy wires, or attached to a building, and accessory equipment related to broadcast services, private radio services, including AM, FM, two-way radio, television and cable antenna television transmission, microwave transmission and facilities such as satellite dish receiving centers. This definition does not include electrical transmission distribution poles, towers, and line, personal satellite dishes, or structures not more than 35' in height.

Travel trailer parking area. A parcel of land in which two (2) or more spaces are designed, occupied or intended for occupancy by trailers for transient dwelling purposes.

Use. The primary purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

Vending Machine: A machine that dispenses merchandise when a customer deposits money sufficient to purchase the desired item (as opposed to a shop, where personnel is required for every purchase).

Vested right or zoning vested right. The right to undertake and complete the development and use of the property under the terms and conditions of an approved site specific development plan.

Warehouse use. A building or group of buildings for the storage of goods belonging either to the owner of the facility or to one or more lessees of space in the facility with access to contents only through management personnel. This does not include mini-warehousing or mini-storage.

Warehouse, Mini-. A structure containing separate storage spaces of varying sizes leased or rented on an individual basis that does not include outdoor storage.

Wholesale. A commercial use primarily engaged in selling merchandise to retailers, industrial, institutional, or professional businesses or to other wholesalers. The majority of such businesses are for resale purposes. Wholesale clubs, and similar membership warehouses, where membership is easily available to the consuming public shall not be included in this definition.

Wireless Telecommunication Tower. A tower supporting licensed or unlicensed wireless telecommunication facilities including cellular, digital cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), commercial or private paging services, or similar services marketed or provided to the general public. This definition does not include services by non-commercial entities in the Amateur Radio Service, Public Safety Radio Service, or licenses assigned to non-profit organizations, such as the Red Cross, Civil Air Patrol, Military Affiliated Radio Service (MARS) that are licensed by the Federal Communications Commission.

Antenna: A conductor by which electromagnetic waves are transmitted or received.

Fall Area: A circle whose center is the base of a telecommunications tower and whose radius is the lesser of (i) one and one-half the tower's height and (ii) the distance indicated in a structural engineering certification provided by a NC Registered Professional Engineer certifying integrity and design characteristics.

Tower Height: The vertical distance measured from ground to the upper most point of the tower and any antenna, structure, or appendage fixed thereto.

Yard. An open space located on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees, shrubbery or as otherwise provided herein. A yard is the area created by a setback.



**Yard, front.** A yard extending across the full width of the lot and extending from the closest front wall of the building to the property line or established edge of a right-of-way, whichever is closer.

**Yard, rear.** A yard extending across the full width of the lot and extending from the closest rear wall of the main building to the rear of the property.

**Yard sale.** A temporary sale conducted by a civic or religious organization, an individual occupant of a residence, or in cooperation with neighbors for the purpose of selling surplus household items for profit or for charitable purposes. Yard sales are not conducted at the same location or by the same organizer(s) more than six (6) days per calendar year.

**Yard, side.** A yard which extends from the closest side wall of a building to the nearest side property line or the established edge of the street right-of-way, whichever is closer, if the lot is a corner lot.

**Zoning Administrator.** An employee or agent of the Town who is assigned primary responsibility for the administration and enforcement of the Zoning Ordinance.

**Zoning Permit.** A permit issued by the Town conferring the right to undertake and complete the development of and use of property.

**Zoning Permit with Vested Rights.** A permit authorized by the Planning Board concerning the right to undertake and complete the development of and use of property under the terms and conditions of an approved site-specific development plan.

## **11.5 Validity**

If any Section, Subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Commissioners hereby declares that it would have passed this Ordinance and each Section, Subsection, clause, and phrase thereof, irrespective of the fact that any one or more Sections, Subsections, sentences, clauses or phrases be declared invalid.

## **11.6 Effective Date**

This Ordinance shall become effective upon its adoption by the Board of Commissioners of the Town of Tryon, North Carolina, provided, however, that the amendments to Article 8, approved on August 18, 2009, shall become effective on October 18, 2009.

ADOPTED the 20<sup>th</sup> day of September, 2005, by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 18<sup>th</sup> day of August, 2009 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 15<sup>th</sup> day of February, 2011 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 17<sup>th</sup> day of April, 2012 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 19<sup>th</sup> day of February, 2013 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 21<sup>st</sup> day of May, 2013 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 19<sup>th</sup> day of September, 2013 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 15<sup>th</sup> day of April, 2014 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 17<sup>th</sup> day of June, 2014 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 21<sup>st</sup> day of October, 2014 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 20<sup>th</sup> day of October 2015 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 19<sup>th</sup> day of January 2016 by the Board of Commissioners of the

Town of Tryon, North Carolina.

AS AMENDED the 21<sup>st</sup> day of June 2016 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 17<sup>th</sup> day of November 2017 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 21<sup>st</sup> day of May 2019 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 18<sup>th</sup> day of May 2021 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 15<sup>th</sup> day of June 2021 by the Board of Commissioners of the Town of Tryon, North Carolina.

AS AMENDED the 19<sup>th</sup> day of October 2021 by the Board of Commissioners of the Town of Tryon, North Carolina.