

**PISGAH FOREST
COMMUNITY
ZONING
ORDINANCE**



*Adopted
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PISGAH FOREST COMMUNITY ZONING ORDINANCE

ARTICLE I.

TITLE

This ordinance shall be known and may be cited as "The Pisgah Forest Community Zoning Ordinance of Transylvania County, North Carolina" and may be referred to as the "Pisgah Forest Community Zoning Ordinance".

ARTICLE II.

AUTHORITY AND ENACTMENT

Pursuant to the authority and provision conferred by the General Statutes (G.S.) of the State of North Carolina (Chapter 153A, Article 18, Part 3), the Transylvania County Commissioners hereby ordain and enact into law these articles and sections.

ARTICLE III.

PURPOSE

The purpose of this ordinance is to ensure safe, orderly, and economically sound development and to protect the community character and existing property values within the zoned area of Transylvania County.

ARTICLE IV.

JURISDICTION

The provisions of this ordinance shall apply to the portion of Transylvania County specifically identified and delineated on the zoning map entitled "The Official Zoning Map of Transylvania County, North Carolina." Such map and all explanatory matter thereon accompany and are hereby made a part of this ordinance by reference. The ordinance shall be on file in the office of the Transylvania County Commissioners.

ARTICLE V.

EXEMPTIONS

This ordinance shall in no way regulate, prohibit, or otherwise deter any bona fide farm and its related uses, except that any use of such property for non-farm purposes shall be subject to the provisions of this ordinance.

ARTICLE VI.

DEFINITIONS

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

- (1) Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.
- (2) The word "County" shall mean Transylvania County, North Carolina.
- (3) The words "County Commissioners" shall mean the County Commissioners of Transylvania County, North Carolina.
- (4) The words "Planning Board" shall mean the Planning Board of Transylvania County, North Carolina.
- (5) The word "may" is permissive.
- (6) The word "shall" is mandatory.
- (7) The word "lot" includes the word "plot", "parcel", "tract" or "camp. "
- (8) The word "building" includes the word "structure."
- (9) The word "road" includes the word "highway."
- (10) The word "person" or "applicant" includes a firm, association, organization, partnership, corporation, company, trust and individual or governmental unit.
- (11) The words "Zoning Map" or "Transylvania County Zoning Map" shall mean The Official Zoning Map of Transylvania County, North Carolina.
- (12) The word "days" shall mean calendar days.

Definitions - The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this article, except where context clearly indicates a different meaning:

Access Road means a private passageway containing a road, street, driveway, etc., that provides the principal means of direct vehicular entry and/or exit between a regulated use and a paved, public road, street or highway. An access road shall be located entirely on the subject property or on an easement appurtenant. An access road corridor shall contain a clear and unobstructed travel way, except for any approved security gates, and shall have a minimum vertical clearance of a least 13 feet, six inches.

Accessory Use means a use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Adult Entertainment Establishment means any establishment which would be considered an adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, or adult live entertainment business as each is defined in G.S. 14-202.10. This definition does not include bona-fide massage parlors as defined in G.S. 90-622.

Amusement park means establishments of the type known as "amusement parks," "theme parks," "water parks" and "kiddy parks," which group together and operates in whole or in part a number of attractions, such as mechanical rides, amusement devices, refreshment stands, and picnic grounds and all associated activities. This definition specifically excludes camps, motion picture theaters, museums, art galleries, arboreta and botanical and zoological gardens.

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

Asphalt Plant means an establishment, whether portable or non-portable, engaged in petroleum refining, manufacturing asphalt-type roofing materials, asphalt and tar paving mixtures and paving block made of asphalt and various compositions of asphalt or tar with other materials; and the recycling of old asphalt into asphalt-type material.

Automobile Graveyard means any establishment or place of business that is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Any establishment or place of business upon which six or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more shall be deemed to be an "automobile graveyard".

Board of Adjustment means a body composed of those appointed members whose duties, powers, and procedures are set forth in Article X of this ordinance.

Bona fide Farm means all land on which agricultural operations are conducted as the principal use as defined in G.S. 153A-340.

Buffer means a continuous strip of land, measured from the property line or from any street bordering or traversing the property (whichever is closer to the principal use or building), where no development or principal use may occur, but which may contain vegetative screening, fencing, a wall or a combination of these items.

Building means any structure having a roof supported by columns or by walls and intended for shelter, housing, or enclosure of persons, animals or chattels. The connection of two buildings by means of an open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building. The word "building" includes the word "structure" and "manufactured homes."

Building Setback Line means a line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the road right-of-way to the closest edge of the building (drip line or drip edge).

Child Day Care Home means a facility where supervision or care is provided on a regular basis, as an accessory use within a principal residential dwelling unit, by a resident of the dwelling for less than six children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adult.

Chip Mill means any non-portable wood-chipping facility that stands alone and apart from a sawmill, mulch yard, or a pulp mill, and whose purpose is to provide wood chips to an off-site fabricating facility including, but not limited to, a paper mill or oriented strand board mill.

Commercial means related to the buying and selling of goods and services.

Concrete Plant means an establishment, whether portable or non-portable, primarily engaged in manufacturing hydraulic cement, including portland, natural, and masonry cements delivered to a purchaser in a plastic and unhardened state. This industry includes production and sale of central-mixed concrete, shrink-mixed concrete, and truck-mixed concrete. Also included are the manufacture of concrete products from a combination of cement and aggregate.

Dwelling, Single-family means a building arranged or designed to be occupied by one family.

Dwelling, Multi-family means any building or buildings which contain more than one residential dwelling unit on a single lot including, but not limited to, apartment houses and condominiums.

Dwelling Unit means a building, or portion thereof, providing complete and permanent living facilities for a single family.

Easement means a grant by a property owner of land for a specified purpose and use by the public, a corporation or persons.

Extremely Hazardous Substance means any material, substance or product that is considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases toxic by inhalation); a Class 6 toxic material or infectious substance; or a Class 7 radioactive substance or material, all as classified by the United States Department of Transportation Hazard Classification System.

Family means one or more persons occupying a single dwelling unit. Separate bedrooms shall be provided for persons not related by blood, marriage or adoption, not to exceed two such persons per bedroom.

Family Care Home means a home with support and supervisory personnel providing room and board, personal care and rehabilitation services in a family environment for not more than six resident handicapped persons. (G.S. 168-21)

Gross Floor Area means the total floor area of all buildings in a project including the basements, mezzanines and upper floors, exclusive of stairways and elevator shafts. It excludes separate service facilities outside the main building such as boiler rooms and maintenance shops.

Group Care Facility means a facility that provides resident services to more than six individuals, at least one of which is unrelated to the other. These individuals are handicapped, aged, or disabled and are being provided services in the facility to meet their needs. This category includes uses licensed by any federal, state, or county health/welfare agency.

Hazardous Waste Disposal Facility means any industrial facility that stores, handles, processes or manufactures any material, substance or product that is considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases toxic by inhalation); a Class 6 toxic material or infectious substance; or a Class 7 radioactive substance or material, all as classified by the United States Department of Transportation Hazard Classification System. This term shall also mean any industry or facility that is a large quantity generator of hazardous waste as that term is defined by the North Carolina Department of Environment and Natural Resources.

Home Occupation means an occupation or profession conducted within a dwelling unit by a residing family member that is incidental to the primary use of the dwelling as a residence. Home occupations are non-retail businesses which generally cannot be discerned from the frontage, are seldom visited by clients, require little parking, little or no signage, have only one or two employees and provide services such as professional services, music instruction, and hair styling. Home occupations include child day care homes as defined herein.

Impervious Surface means any man-made surface that restricts the percolation of rain water into the soil including, but not limited to, roofs, patios, porches, driveways (paved or graveled), sidewalks, parking areas, and athletic courts.

Incinerator shall mean: (1) any enclosed device that burns material other than the classic boiler fossil fuels, such as natural gas, coal, or fuel oil, is a principal use on any lot or parcel, and (a) uses controlled flame combustion and neither meets the criteria for classifications as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; and (b) meets the definition of "infrared incinerator" or "plasma arc incinerator." This definition does not apply to afterburners, flares, fume incinerators, and other similar devices used to reduce process emissions of air pollutants. Specifically excluded from this definition and any regulation under this chapter are those incinerators that are constructed and/or operated by or on behalf of any federal, state, or local governmental entity; provided, however, that this exclusion from regulation only applies to those incinerators not operating as a hazardous waste facility.

Industry means any industrial use establishment or a large quantity generator of hazardous waste as that term is defined by the North Carolina Department of Environment and Natural Resources. Specifically excluded from this definition are those establishments that operate in an enclosed building(s) or structure(s) having a total gross floor area of less than 30,000 square feet; and those other uses listed in Section 22.3.

Junk means old or scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old scrap ferrous or nonferrous material.

Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or maintenance or operation of an automobile graveyard.

Lot means a parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the lot. The word "lot" includes the words "plot", "parcel", "tract" or "camp."

Lot of Record means any lot for which a plat has been recorded in the office of the Transylvania County Register of Deeds, or described by metes and bounds and so recorded.

Mining and Extraction Operation means any establishment or business primarily engaged in processing of ores; the breaking, washing and grading of coal; the crushing and breaking of stone; and the crushing, grinding, or otherwise preparing of sand, gravel, and nonmetallic chemical and fertilizer minerals.

Motor Sports Facility means any facility, track, or course upon which racing or motor sporting events are conducted including, but not limited to vehicles, motorcycles, all-terrain vehicles, motor scooters, go-carts, etc.

Motor Sports Facility Major means any motor sports facility having a seating or standing capacity of 1,000 or more persons.

Nonconforming Use means any parcel of land, use of land, building, or structure existing at the time of adoption of this article, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

Open Space means a part or portion of the project area unoccupied and unobstructed from the ground upward.

Parking Space means an area for parking a vehicle plus the necessary access space.

Parks means any public or private land managed recreational, aesthetic, or educational use.

Planned Unit Development (PUD) means more than two principal buildings or uses proposed to be constructed on a single lot, any building with a gross floor area of 35,000 square feet or more, or any residential complex of five or more units. Residential units within a planned unit development may include single-family detached or attached units, townhouse developments, garden apartments, patio homes, and other types of residential units, excluding mobile homes and mobile home parks.

Planning Board means a body composed of those members organized and appointed by the County Commissioners under the authority granted in G.S. 153A-321 and G.S. 153A-322. The power of the Planning Board to perform its duties is granted in Chapter 58, Article II, of this Code.

Property Line means any boundary line of a lot or parcel of real property.

Residence means any building, structure or portion thereof which is designed, arranged, or used for a residential occupancy, but shall not include a motel, hotel, rooming house, or vacation rental.

Residential Use means the use of land and buildings for domestic occupancy within dwelling units, including single-family dwellings, multi-family dwellings or family care facilities by the persons

authorized to occupy such units. Home occupations are considered residential uses. Group care facilities are **not** considered residential uses.

Road or Highway means a right-of-way for vehicular traffic.

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

Setback means the distance from the road right of way or property line to the closest edge (drip edge) of a structure or sign.

Slaughtering and/or Processing Plant means an establishment primarily engaged in the slaughtering and/or processing of animals or poultry/small game. This definition specifically excludes slaughtering and processing activities performed for personal use only.

Secured Fencing means a barrier extending from the surface of the ground to a uniform height of 6 to 8 feet around portions of a property containing the facilities, including but not limited to the principle use, accessory uses, storage, materials and equipment, of a special use in the open use district.

Structure means that which is built or constructed.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development, whether immediate or future, and includes all division of land involving the dedication of a new road or a change in existing roads.

Surface Water means any body of water, perennial or intermittent stream (including any "blue line stream" as indicated on a United States Geological Survey Topographical Map), river, brook, wetland (as identified by means of the Cowardin wetland classification system or other appropriate classification system as employed by agencies of the United States or the State of North Carolina), swamp, pond, lake, branch, creek, reservoir, waterway, or other body or accumulation of water, whether surface or temporarily underground by means of a man-made conveyance.

Waste Management Facility means land, personnel, and equipment in the management of waste including a transfer station, landfill, or materials recovery facility.

Wetland means areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Zoning Administrator means an official of the county charged with enforcing and administering this ordinance.

Zoning Map means the official zoning map of Transylvania County.

Zoning Vested Right means a right pursuant to G.S. 153A-344.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

ARTICLE VII.

ADMINISTRATION AND ENFORCEMENT

Section 1. Zoning Administrator; duties - The County Commissioners shall appoint a Zoning Administrator. It shall be the duty of the Zoning Administrator to administer and enforce the provisions of this ordinance. If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, the Zoning Administrator shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Administrator shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Zoning Administrator is questioned, the aggrieved party may appeal such ruling to the Board of Adjustment.

Section 2. Enforcement generally; duties of enforcing officers and agencies - All questions arising in connection with the enforcement of this ordinance shall be presented first to the Zoning Administrator who shall be responsible for the day-to-day administration of this ordinance. The Board of Adjustment shall have the authority to rule on matters of interpretation of this ordinance, consider appeals from decisions of the Zoning Administrator, issue conditional use permits, and grant variances.

Section 3. Zoning Permits and Administration

3.1 **Zoning Permit**

- 3.1.1 No zoning permit will be required for uses allowed by right in the open use district.
- 3.1.2 A zoning permit is required for special uses shown in Section 22.3, Planned Unit Developments (PUD's) as shown in Article XV and new or expanded uses in the corridor district as shown in Section 26.
- 3.1.3 In districts or for uses requiring a zoning permit, no building or other structures shall be erected, moved, added to or structurally altered, nor shall any building permit be issued, nor shall any change in the use of any building or land, including any land disturbance, be made until a zoning permit is issued by the Zoning Administrator. All buildings and structures shall meet the applicable requirements of this ordinance.

- 3.1.4 Applications for zoning permits shall provide the information specified in Section 24 and any other information required by the Zoning Administrator to ensure the requirements of this ordinance are met.
- 3.2 In conjunction with the final building inspection, the Zoning Administrator shall certify that all requirements of this ordinance have been met. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this ordinance. If the certificate of occupancy is denied, the Zoning Administrator shall state in writing the reasons for denial, and the applicant shall be notified of the denial. A record of all certificates shall be kept on file in the office of the Zoning Administrator.
- 3.3 Construction progress - If no construction progress is made within one year of the date of the issuance of the zoning permit, the permit becomes invalid and the applicant must reapply for a permit. A six (6) month extension may be granted by the Zoning Administrator when reasonable cause is shown. The approval or denial of an extension shall be documented in writing.
- 3.4 Prevention of violation by legal procedure - In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building or land is used in violation of this ordinance, the Zoning Administrator or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.
- 3.5 Appeal from decision of the Zoning Administrator - All questions arising in connection with the enforcement of this ordinance shall be presented first to the Zoning Administrator, and such questions shall be presented to the Board of Adjustment only on appeal from a ruling of the Zoning Administrator. Any order, requirement, decision, or determination made by the Zoning Administrator may be appealed to the Board of Adjustment pursuant to the procedure found in Section 11.

ARTICLE VIII.

ABROGATION, GREATER RESTRICTIONS, AND SEPARABILITY

It is not intended that this Ordinance repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law.

When provisions of this ordinance require a greater setback or buffer or impose greater restrictions than are required in any other statute or local ordinance or regulation, provisions of this ordinance shall govern. When the provisions of any other statute or local ordinance or regulation impose greater restrictions than are required by the provisions made by this ordinance, the provisions of that statute or local ordinance or regulation shall govern.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

ARTICLE IX.

VIOLATIONS

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

Section 4. Penalties for violations - Any person adjudged in violation of this ordinance shall be subject to fine or punishment as provided in G.S. 153A-323 or G.S. 14-4. Each day's continuing violation, as determined by the zoning administrator, shall constitute a separate and distinct offense. Civil penalty for violation of this ordinance shall be \$50 for the first violation, \$100 for the second violation, \$200 for the third violation, and \$500 for the fourth and each succeeding violation.

Section 5. Remedies for violations - If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure, or land is used in violation of this ordinance, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use; to restrain, correct or abate the violation; to prevent occupancy of the building, structure or land; or to prevent any illegal act, conduct of business or use in or about the premises.

ARTICLE X.

BOARD OF ADJUSTMENT

Section 6. Membership

- 6.1 The Transylvania County Planning Board shall serve as the Board of Adjustment.
- 6.2 The County Commissioners shall also appoint two alternate members who may be called in by the secretary to the Board of Adjustment to serve in the absence of a regular Board of Adjustment member. Alternate members shall serve three year terms. While attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member each alternate member shall have and exercise all powers and duties of a regular member.

- 6.3 The Board of Adjustment shall appoint a secretary, who may be a County officer, an employee of the County, or a member of the Board of Adjustment. The secretary shall take minutes of meetings, keep all records, conduct correspondence, notify members of meetings, arrange for public notices, and notify parties to cases of hearings and decisions.

Section 7. Rules of conduct

- 7.1 Members of the Board of Adjustment may be removed by the County Commissioners for cause, including violation of the rules stated in this section.
- 7.2 Faithful attendance at meetings of the Board of Adjustment and conscientious performance of the duties required of members of the Board of Adjustment shall be considered a prerequisite of continuing membership on the Board of Adjustment.
- 7.3 A member of the Board of Adjustment 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.
- 7.4 No Board of Adjustment member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that a member may receive and/or seek information pertaining to the case from the Zoning Administrator or any other member of the Board of Adjustment or its staff prior to the hearing.
- 7.5 Members of the Board of Adjustment shall not express individual opinions on judgment of any case prior to its determination on that case.
- 7.6 No Board of Adjustment member shall accept any gift, favor, or thing of value that may tend to influence that board member in the discharge of duties.
- 7.7 No Board of Adjustment member shall grant any improper favor, service, or thing of value in the discharge of duties.

Section 8. General proceedings - The chairperson, or in his absence the vice-chairperson, may administer oaths and request the attendance of witnesses in accordance with G.S. 153A-345. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and also keep records of its examinations and other official actions.

Section 9. Meetings

- 9.1 The Board of Adjustment shall hold regular meetings at a specified time and place. Special meetings of the Board of Adjustment may be called at any time by the chairperson or by request of three or more members of the Board of Adjustment.
- 9.2 Whenever there are no appeals, applications for variances, or other business for the Board of Adjustment, or whenever a quorum will not be available, the chairperson may cancel the meeting by giving written or oral notice to all members.
- 9.3 A quorum shall consist of four members of the Board of Adjustment, but the Board of Adjustment shall not pass upon any questions relating to an appeal from a decision, order, requirement, or determination of the Zoning Administrator, or an application for a variance when there are less than six members present.
- 9.4 Board of Adjustment members may vote on any issue unless they have recused themselves for one or more of the reasons listed in Section 7. The required vote to decide appeals and applications shall be as provided in Section 11.4. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board of Adjustment.
- 9.5 The applicant must file their application for a hearing with the Zoning Administrator. All applications shall be submitted at least 30 days prior to the date the application is to be heard. All applications shall be made on the form specified for that purpose and all information required on the form shall be complete before an application shall be considered as having been filed.

Section 10. Powers and duties - The powers and duties of the Board of Adjustment shall be as follows:

- 10.1 Interpret zoning maps and decide disputed questions of district boundary lines and any other questions of interpretation that may arise in the administration of this ordinance;
- 10.2 Hear and decide appeals from any order, requirement, decision or determination made by the Zoning Administrator;
- 10.3 Authorize upon appeal in specific cases such variance(s) from the terms of this ordinance as will not be contrary to the public interest and upon a finding by the Board of Adjustment that all the following conditions exist (G.S. 153A-345):
 - 10.3.1 That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance;
 - 10.3.2 That if the applicant complies with the provisions of the ordinance, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property;

- 10.3.3 That special conditions and circumstances exist which are peculiar to the land, structure, or building involved;
 - 10.3.4 That the special conditions and circumstances do not result from the action of the applicant;
 - 10.3.5 That the variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit;
 - 10.3.6 That the variance is the minimum necessary to afford relief; and
 - 10.3.7 That the public safety and welfare have been assured and substantial justice has been done.
- 10.4 Make findings that the requirements of this ordinance have been met when granting a variance. Written notice of the decision shall be prepared as prescribed in Section 11.4.
 - 10.5 Prescribe appropriate conditions and safeguards when granting any variance in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable as described under Section 4.

Section 11. Appeals

- 11.1 The Board of Adjustment shall hear and decide all appeals from any order, requirement, decision, or determination made by the Zoning Administrator. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of this article and those based upon alleged hardship resulting from strict interpretation of this article. Nonconforming uses of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts will not be considered grounds for the issuance of a variance.
- 11.2 No appeal shall be heard by the Board of Adjustment unless notice thereof is filed within 30 days after the interested party receives written notice of the order, requirement, decision or determination by the Zoning Administrator. The applicant must file his application for a hearing with the Secretary to the Board of Adjustment in receiving this notice. All applications shall be made upon the form provided by the Zoning Administrator for that purpose and all information required thereon shall be complete before an appeal shall be considered filed.
- 11.3 Hearings shall be conducted as follows:
 - 11.3.1 After receipt of notice of appeal, the secretary to the Board of Adjustment shall schedule the time for a hearing, at a regular or special meeting within 45 days from the receipt of notice.

11.3.2 The Zoning Administrator shall mail notices of the hearing to the affected parties to the action appealed from at least ten days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.

11.3.3 Conduct of hearing - Any party with legally sufficient interest, as determined by the Chairman of the Board of Adjustment, may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:

11.3.3.1 The chairperson, or such person as he shall direct, shall give a preliminary statement of the case.

11.3.3.2 The applicant or the applicants appointed representative shall present the argument in support of the application.

11.3.3.3 Persons opposed to granting the application and other persons supporting the application shall present their arguments.

11.3.3.4 Both sides will be permitted to present rebuttals.

11.3.3.5 The chairperson shall summarize the evidence presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted. The Board of Adjustment shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board of Adjustment may view the premises before arriving at a decision. All witnesses before the Board of Adjustment shall be placed under oath and the opposing party may cross examine them.

11.3.4 Rehearings - An application for a rehearing may be made in the same manner as provided for an original hearing if some substantial change has occurred in the facts, evidence or conditions in the case. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board of Adjustment to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The application for rehearing shall be denied by the Board of Adjustment if, from the record, it finds that there has been no substantial change in facts, evidence or conditions. If the Board of Adjustment finds that there has been a substantial change, it shall treat the request in the same manner as any other application.

11.4 Decisions - The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant any matter which it is required to pass under this ordinance. (G.S. 153A-345). Decisions shall be made in the following manner:

11.4.1 Time - A decision by the Board of Adjustment shall be made within 45 days from the time of hearing.

11.4.2 Form - Written notice by certified or registered mail of the decision in a case shall be sent to the applicant by the Zoning Administrator within 30 days after the case is decided. Also, written notice shall be sent to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the Board of Adjustment shall be shown in the record of the case as entered in the minutes of the Board of Adjustment and signed by the Zoning Administrator and the chairperson. Such record shall show the reasons for the determination, with summary of the evidence introduced and the findings of fact made by the Board of Adjustment. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board of Adjustment finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from.

11.4.3 Expiration of permits - Unless otherwise specified, any order or decision of the Board of Adjustment granting a variance shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant, his successors or heirs within one year from the date of the decision. A six (6) month extension may be granted by the Zoning Administrator when reasonable cause is shown.

Section 12. Appeals from decision of Board of Adjustment - Appeals from decisions by the Board of Adjustment shall be taken to the courts pursuant to G.S. 153A-345.

ARTICLE XI.

ZONING DISTRICTS AND MAPS

For the purpose of this ordinance, there shall be two zoning districts: Open Use (OU) and Corridor Mixed Use (CMX).

Section 13. Establishment of district boundaries - The boundaries of the district(s) are hereby established as shown on the Official Zoning Map of Transylvania County, North Carolina.

Section 14. Establishment of zoning map - A zoning map entitled the "Official Zoning Map of Transylvania County, North Carolina," clearly setting forth all approved use districts and their respective boundaries, is hereby made a part of this ordinance and shall be on file in the offices of the Zoning Administrator and the Clerk to the Board of Commissioners. This map shall be available for inspection by interested persons during normal business hours. It shall be the duty of the Zoning Administrator to update any changes to the zoning map.

Section 15. Rules governing district boundaries - Where uncertainty exists with respect to the boundaries of any district, as shown on the zoning map, the following shall apply:

- 15.1 Boundaries indicated as approximately following the centerlines of roads, highways, alleys, railroads, streams, rivers, other bodies of water, ridgelines and/or other topographic features, shall be construed to follow such lines.
- 15.2 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- 15.3 Where district boundaries are so indicated that they are approximately parallel to the centerlines of roads, highways, alleys 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 the use of the scale shown on the zoning map.
- 15.4 Where a district boundary line divides a lot of single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such lot more than 35 feet beyond the district boundary line.
- 15.5 Where physical features existing on the ground differ from those shown on the zoning map or in other circumstances not covered by Sections 15.1 through 15.4, the Board of Adjustment shall interpret the district boundaries.

ARTICLE XII.

AMENDMENTS

Section 16. County Commissioners to amend ordinance - This ordinance, including the zoning map, may be amended by action of the Transylvania County Commissioners in accordance with the provisions of this article.

Section 17. Initiation of amendments - Proposed changes or amendments to this ordinance may be initiated by the Transylvania County Commissioners, Planning Board, Board of Adjustment, one or more owners of property within the area proposed to be changed or by any third party. Notifications shall be made in accordance with G.S. 153A-343.

Section 18. Application for amendment

- 18.1 Before any action on a proposed change or amendment, an application shall be submitted to the office of the Zoning Administrator at least 45 days prior to the Planning Board's meeting at which the application is to be considered. The application shall contain name(s) and address(es) of the owner(s) of the property in question, the location and description of

the property, and a description and/or statement of the present and proposed zoning regulation or district.

- 18.2 The Zoning Administrator shall mail notices to the Planning Board, the applicant(s), and all adjoining property owners at least ten days in advance of the Planning Board's meeting at which the application is to be heard and place public notice of the meeting in a newspaper having general circulation in Transylvania County. The notice shall be published at least five (5) days prior to the date of the meeting.
- 18.3 Neither the Planning Board nor the County Commissioners will consider an application denied within the preceding 12 months.

Section 19. Planning Board action - Before taking any action on a proposed amendment(s) to this ordinance, the County Commissioners shall consider the Planning Board's recommendation. The Planning Board shall advise and comment on whether the proposed amendment is consistent with the Transylvania County Comprehensive Plan and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the County Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board. Any comment by the Planning Board that a proposed amendment is inconsistent with the Transylvania County Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the County Commissioners. If no written report is received from the Planning Board within 30 days of consideration of the amendment by the Planning Board, the County Commissioners may proceed in its consideration of the amendment without the Planning Board report.

Section 20. Public hearing, notices and postings - Before enacting any amendment to this ordinance, the County Commissioners shall hold a public hearing. The notice shall include the time, place, and date of the hearing and include a description of the property or the nature of the change or amendment to the article and/or map. The County Commissioners shall mail notices to the Planning Board, adjoining property owners, and to other such persons as the Planning Board may direct at least ten days and no more than 25 days in advance of the hearing. When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public road or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons. (G.S. 153A-343)

Section 21. Decision - The County Commissioners shall make a decision on the proposed amendment within 30 days after the public hearing. Prior to adopting or rejecting any zoning amendment, the County Commissioners shall adopt a statement describing whether its action is consistent with the Transylvania County Comprehensive Plan and explaining why the County Commissioners considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

ARTICLE XIII.

OPEN USE DISTRICT

Section 22. Open Use District (OU) and Special Uses - The OU District is established as a district in which all uses (excluding hazardous waste disposal facilities, radioactive waste disposal facilities and adult entertainment establishments) including Planned Unit Developments (see Section 34) are allowed but certain uses called special uses are regulated so as to ensure that community impact is mitigated. The community impact from the uses listed below will be mitigated through the use of minimum specific site standards combined with general standards that provide the flexibility to impose a higher level of specific site standards dependent upon the degree of community impact. The applicable properties are included in the Open Use (OU) District as shown on the Official Zoning Map of Transylvania County, North Carolina.

22.1 Uses allowed by right - Unless otherwise stated herein all uses are allowed by right in the Open Use District and no zoning permit shall be required.

22.2 Other Transylvania County ordinances apply - Any other ordinance adopted by the Transylvania County Commissioners applies to the zoned area of the County. Where there is a stricter requirement imposed by the zoning ordinance, the zoning ordinance will take precedence.

22.3 Special uses - The following special uses shall be permitted in the Open Use District, subject to the Board of County Commissioners finding that both the general site standards stated in Section 23.4 and those specific site standards listed in section 23.7, if any, shall be met:

- 22.3.1 Industry
- 22.3.2 Solid waste management facilities
- 22.3.3 Mining and extraction operations
- 22.3.4 Concrete plants
- 22.3.5 Asphalt plants
- 22.3.6 Incinerator
- 22.3.7 Junkyards or salvage yards
- 22.3.8 Motor sports facilities
- 22.3.9 Slaughtering plants
- 22.3.10 Amusement parks
- 22.3.11 Chip mills

22.4 Prohibited uses - The following uses shall be prohibited in the Open Use District:

22.4.1 Hazardous waste disposal facilities, unless preempted pursuant to G.S. 130A-293.

22.4.2 Radioactive Waste Disposal Facilities, unless preempted pursuant to G.S. 104E-6.2.

22.4.3 Adult entertainment establishments (G.S. 14-202.10).

22.5 Expansion and alteration of certain uses in the Open Use District

22.5.1 Permitted Special Uses - The following requirements apply to those uses listed in Section 22.3 that received a zoning permit.

22.5.1.1 Alteration of a use (without physical expansion) - Alterations of a use shall be allowed as long as such alterations do not violate any standards of this ordinance (see Sections 23.4 and 23.7) or conditions of the zoning permit. If an alteration would result in the violation of any standards or conditions, an amendment to the zoning permit shall be required. An alteration that creates a different use shall require a new zoning permit.

22.5.1.2 Physical expansion of a use - A use may expand its facilities without any additional restrictions and without securing an amendment to the zoning permit if the general standards of this chapter (see Section 23.4), specific standards of this chapter (see Section 23.7) or the conditions of the permit are not violated and if the total size of the structures or areas devoted to the principal uses after the proposed expansion would not be increased by more than 10%. No use may expand in accordance with the terms of this exception on more than two occasions without securing an amendment to the zoning permit.

22.5.2 Uses for which a zoning permit was not required when established - If alterations or expansions of a use not requiring a zoning permit bring the use within the definition of a special use as shown in Section 22.3, then a zoning permit shall be required for the altered use. The entire use, including but not limited to the expansion or alteration, shall be required to comply with all applicable standards.

22.5.3 Pre-existing uses - Uses listed in Section 22.3 (Special Uses), established before the effective date of inclusion in an Open Use District shall comply with the following requirements:

22.5.3.1 Alteration of a pre-existing use (without physical expansion) - If alterations of a use bring the use within the definition of a special use listed in Section 22.3, then a zoning permit shall be required. Once a zoning permit is obtained for a pre-existing use, however, further alterations shall be governed by Section 22.5.1.2

22.5.3.2 Physical expansion of a pre-existing use - If expansion of a use will bring the use within the definition of a special use listed in Section 22.3, then a zoning permit shall be required. Once a zoning permit is obtained for a pre-existing use, further expansions shall be governed by Section 22.5.1.2.

22.6 Subsequent events - Events occurring after approval of a zoning permit including, but not

limited to, the location of a health-care facility or school within the stated separation, shall not invalidate the permit or affect the ability of the use to alter or expand its facilities or operations.

Section 23. Permitting Procedures

- 23.1 **Application** - When a zoning permit for a special use is required by the terms of this ordinance or a vested right per Section 35 is requested, a completed application shall be submitted to the Zoning Administrator at least 45 days prior to the Planning Board meeting at which the application is to be considered. The Zoning Administrator shall then transmit a copy of the completed application to the County Commissioners and the Planning Board. The Planning Board shall review the application and forward recommendations to the County Commissioners within 45 days. The County Commissioners shall schedule a public hearing on the application within 30 days of receipt of the Planning Board's recommendations and shall make a decision to approve, approve with conditions or deny the application within 30 days after the public hearing.
- 23.2 **Notification** - The Zoning Administrator shall post a notice of public hearing on the property for which the zoning permit or a vested right is sought and in a local newspaper at least 10 days and no more than 25 days prior to the public hearing. This legal notice shall describe the request and appear at least once weekly for two consecutive weeks. All owners of adjacent property shall be notified by first class mail of the zoning permit application and public hearing date. (G.S. 153A-343)
- 23.3 **Fee** - The Board of County Commissioners may establish and maintain a fee schedule to recover costs of legal notices, posting the property and notifying the adjacent property owners. These fees shall be paid by the applicant at the time the application is submitted.
- 23.4 **General site standards** - All uses requiring a zoning permit or a vested right must meet the general site standards listed below. In evaluating whether the general site standards have been met, the Board of County Commissioners may consider the type and size of the principal use, size of the property and other relevant factors and its effect on community character and welfare.
- 23.4.1 Uses requiring a zoning permit shall be located or developed in a manner that will:
- 23.4.1.1 minimize the adverse effects on the health or safety of the persons residing or working in the areas surrounding the proposed use.
 - 23.4.1.2 minimize the effects of noise, glare, dust, solar access and odor on those persons residing or working in the areas surrounding the proposed use.
 - 23.4.1.3 minimize traffic congestion so as not to endanger the public safety.
 - 23.4.1.4 comply with all applicable federal, state and local laws, rules and regulations.

- 23.4.1.5 be consistent with the goals and objectives as outlined in the Transylvania County Comprehensive Plan.
 - 23.4.1.6 be consistent with any approved Official Thoroughfare Plans of Transylvania County.
 - 23.4.1.7 minimize the environmental impacts on the surrounding areas including the following: groundwater, surface water, wetlands, endangered and threatened species, archeological sites, historical preservation sites and unique natural areas.
- 23.4.2 In the event that the County Commissioners determine that a proposed use would be in violation of one or more of the general site standards, then the County Commissioners may deny the application or may impose additional condition(s) on the issuance of the zoning permit when such condition(s) will avoid a violation of any general site standards. Conditions may only be based on evidence presented at the hearing that one or more general site standards would not be met. The County Commissioners must make specific findings of fact based upon the evidence presented.
- 23.5 Termination - If at any time after a zoning permit has been issued for any special use, the County Commissioners finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a zoning permit, the permit may be terminated and the operation of such use discontinued after notification and sufficient time for corrective action.
- 23.6 Reinstatement - If a zoning permit is terminated for any reason, a reapplication is required for reinstatement.
- 23.7 Special Uses Minimum Standards Table (See Table - page 21)

Special Uses Minimum Standards Table

	Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant	Incinerator	Junkyard Salvage yard	Motor Sports Facility	Slaughtering Plant	Amusement Park	Chip Mill
Hours of Operation	No stated minimum	7:00 am – 11:00 pm				No stated minimum	7:00 am – 11:00 pm			7 am-11 pm weekdays; 7 a.m.-2a.m. Fri. & Sat.	7 am – 11 pm
Screening	Plan Required						Full	Plan Required			
Fencing	Secured										
Buffer (feet)	100	500	500	100	100	100	50	100	100	100	100
Setback (feet)	300	1,500 (landfill) 500 (other)	1,000	200	500	300	300 (from public road)	500 (minor) 1,500 (major)	1,000	500	200
Parking	See Section 32										
Loading	See Section 33										
Min. Number Access Road(s)/RW/ Travelway Width	One 50/25 ft	Two 50/25 ft	One 50/25 ft	One 50/25 ft	One 50/25 ft	One 50/25 ft	One 50/25 ft	One (minor) Two (major) 50/25 ft	One 50/25 ft	Two 50/25 ft	One 50/25 ft
Fire Protection	Per Code										
Noise Mitigation	Plan Required										
Lighting	Plan Required										
Separation-Schools / Healthcare	½ mile / 1 mile	½ mile / ½ mile					½ mile / 2 miles	½ mile / ½ mile			

Section 24. Application requirements for zoning permits in the open use district - All applicants for those uses listed in Section 22.3 shall provide the following information by completing an application form and providing supporting documentation as required:

- 24.1 Name, address and telephone numbers of applicant and property owner(s).
- 24.2 Permit fee(s) as set forth by the County Commissioners.
- 24.3 Site plan prepared by a professional land surveyor, professional engineer or professional landscape architect licensed in North Carolina and containing the following information:
 - 24.3.1 Names, addresses and telephone numbers of the applicant and the property owner.
 - 24.3.2 Plan scale, a North arrow and a vicinity map.
 - 24.3.3 Tax parcel identification number for all parcels of land containing the proposed use.
 - 24.3.4 Name, address, signature and seal of the site plan preparer.
 - 24.3.5 Surveyed boundary lines of any parcel, or portion thereof, that will contain the proposed use, and surveyed points of building finished grades to the nearest foot. Boundary lines and points shall be surveyed by a professional land surveyor currently licensed in North Carolina.
 - 24.3.6 Proposed location, use and dimensions of all structures and areas not within structures devoted to principal uses. All such structures and areas shall be appropriately labeled, including a description of each sufficient to give the County Commissioners a reasonable understanding of each.
 - 24.3.7 Proposed location(s) and dimensions of the stated minimum buffer(s) and the stated minimum setback(s).
 - 24.3.8 Existing site conditions, including structures, watercourses, flood hazard areas, existing utilities, roads and rights-of-way.
 - 24.3.9 Proposed locations, dimensions and arrangement of all off road parking and loading areas.
 - 24.3.10 Proposed locations (including line and grade) of access road travelway(s) and service road(s).
 - 24.3.11 Proposed location and description of facilities to be used for sewage disposal, water supply, stormwater drainage and any other utilities.
 - 24.3.12 Proposed location and description of fencing and screening.
 - 24.3.13 Proposed location and description of outdoor lighting.

- 24.3.14 Owners of adjoining parcels of land.
- 24.4 Names, mailing addresses and tax parcel identification numbers for all property owners of parcels adjoining the proposed use.
- 24.5 Schedule of proposed hours of operation.
- 24.6 Statement of potential noise generation and proposed mitigation plan.
- 24.7 Outdoor lighting plan designed to control light spillage and glare as not to adversely affect motorists, pedestrians, and adjacent properties.
- 24.8 A detailed plan describing or showing the proposed method(s) of fencing and screening.
- 24.9 Written narrative which provides a description and details regarding the proposed use including, but not limited to:
 - 24.9.1 A description of the operations, including whether indoor or outdoor, associated with the proposed use.
 - 24.9.2 Proposed number of employees.
 - 24.9.3 Maximum anticipated patron capacity for which application is being made.
 - 24.9.4 A listing of the federal and state permits that must be acquired for the proposed use.
 - 24.9.5 Type(s) and approximate quantity(ies) of units to be produced, extracted, disposed of, processed and/or stored as applicable for the proposed use.
 - 24.9.6 Any other information necessary to fully convey the intended scope, intensity, capacity and/or size of the proposed use.
- 24.10 Material Safety Data Sheets for extremely hazardous substances to be used, stored, handled, processed or manufactured.

ARTICLE XIV.

CORRIDOR MIXED USE DISTRICT

Section 25. Applicability

- 25.1 The following sections in this article **shall apply to non-residential uses** in the Corridor Mixed Use (CMX) District as shown on the Official Zoning Map of Transylvania County, North Carolina.
- 25.2 The following uses shall be prohibited in the Corridor Mixed Use District:

- 25.2.1 Hazardous waste disposal facilities, unless preempted pursuant to G.S. 130A-293.
- 25.2.2 Radioactive Waste Disposal Facilities, unless preempted pursuant to G.S. 104E-6.2.
- 25.2.3 Adult entertainment establishments. (G.S. 14-202.10).

Section 26. Zoning permit and final zoning approval required - The Zoning Administrator shall be the approving authority for zoning permits and approvals under this article.

- 26.1 Zoning permits - A zoning permit shall be required for all new non-residential development and for expansions of existing non-residential uses exceeding 50% of the pre-expansion floor area or structural renovations exceeding 50% of the assessed value of the building. Rebuilding a structure damaged by fire, flood, wind or other natural damage shall not be considered a structural renovation.
- 26.2 Zoning permit application requirements
 - 26.2.1 A site plan as described in section 24.3
 - 26.2.2 Contours of 5 (five) foot intervals or less and designation of portions of the site with 25% slope or greater shall be shown on the site plan.
- 26.3 Preliminary zoning approval - when the location for any new or expanded structure has been located on the permitted site as evidenced by survey stakes, footer or pier trenches or other preparation for building, the Zoning Administrator shall be notified and shall make an inspection to ensure the site plan and its requirements are being followed. Building foundation inspections shall not be made before preliminary zoning approval is obtained.
- 26.4 Final zoning approval - No structure shall be used or occupied until Final Zoning Approval has been issued by the Zoning Administrator and a Certificate of Occupancy has been issued by the Transylvania County Building Permitting and Enforcement Department. A Certificate of Occupancy shall not be issued before a Final Zoning Approval has been issued.

Section 27. Access management - All roads and driveways connecting to a public road require a permit from the NC Department of Transportation (NCDOT) and are subject to their design standards. Where NCDOT requirements conflict with the standards in this section, the stricter of the two standards shall take precedence.

- 27.1 All existing parcels are allowed one driveway.
- 27.2 Distance between existing driveways and new curb cuts shall be at least 400 feet.
- 27.3 Distance between new curb cuts and road intersections shall be at least 500 feet.

- 27.4 Parcels and development projects shall be permitted a maximum of two curb cuts or driveways regardless of frontage.
- 27.5 Additional Provisions:
- 27.5.1 The Zoning Administrator may waive these requirements only in situations where these requirements cannot be met due to pre-existing conditions of insufficient lot width and with NCDOT agreement.
- 27.5.2 The applicant shall first exhaust all other alternatives to waiving these requirements, including but not limited to: shared driveways, rear service roads and others.
- 27.5.3 The Zoning Administrator shall not waive these requirements and shall require that access be provided through an adjacent parcel when such adjacent parcel is under the same ownership or management as the parcel in question.
- 27.5.4 The Zoning Administrator may require the closure of any non-conforming driveway or curb cut as a condition of approval of any zoning permit application.

Section 28. Setbacks and Other Building Requirements

- 28.1 Front setbacks from the edge of the Right of Way shall be 10 feet.
- 28.2 Side and rear setbacks from property lines shall be 10 feet.
- 28.3 The Zoning Administrator may approve reductions from setback requirements up to 20% in order to protect the right of way or in deference to floodplain, surface water protection or other requirements of this ordinance.
- 28.4 No building or structure shall exceed 50 feet in height as measured from the highest ground elevation of the building or structure to the highest point of the roof.

Section 29. Buffers - A buffer shall be established and maintained along the side and rear lot lines of any non-residential use adjoining a residential use or a vacant lot.

- 29.1 Width of buffer - A buffer shall be not less than 20 feet where the lot with the nonresidential use is one acre or greater and not less than 15 feet where the lot with the nonresidential use is less than one acre. The Zoning Administrator may approve reductions from buffer width requirements up to 20% in order to protect right of way or in deference to floodplain, surface water protection or other requirements of this ordinance.
- 29.2 Use of buffer - Required buffers shall not be disturbed except for approved driveway openings, designated trails or greenways, utilities, drainage ways, walls, fences or other passive and minor uses compatible with the general separation of land uses and provided that the total number of required plantings are still met. Permanent buildings and sheds shall not be allowed in a buffer. Utility easements may be included in the width of the buffer.

29.3 Placement of buffer plantings - The selection and exact placement of the required plants shall be the decision of the developer or designer, but shall be approved by the Zoning Administrator. The use of plants that are indigenous to the region and are readily available from local nurseries is encouraged. Plants shall meet the requirements of American Standards for Nursery Stock (ANSI 260.1) and shall be healthy, well branched and free from disease and insect infestation. Plants shall be placed in a manner to serve as an effective screen year-round when viewed from an area accessible to the public or from adjacent properties. Trees and shrubs should be planted at least five (5) feet from the property line to ensure maintenance access and to avoid encroachment onto neighboring property. If the season or weather conditions are not suitable for successful planting, the developer may provide a performance or surety bond, an irrevocable letter of credit or funds placed in an attorney's escrow account in the amount of 150% of the cost of installing the required plantings. The cost estimate shall be documented in a landscaping contractor's bid or contract, a nurseryman's bid, or a similar document. The financial guarantee so provided shall be released upon completion of the required landscaping.

29.4 Maintenance of buffers - The owner of the property on which a buffer is required shall be responsible for the maintenance and protection of all plants required by this section. Failure to maintain the required plantings or to replace dead or diseased plants or to repair or replace a broken fence or wall shall be a violation of this ordinance. Corrective action shall be taken within 30 days of notification or within 120 days of a catastrophic event that destroys a majority of the plantings.

29.5 Buffer description table

Minimum buffer width (see Section 29.1)	15'	20'
Total number plants per 100 linear feet	18	26
Number of evergreen trees	6	8
Number of large deciduous trees	2	2
Number of small deciduous trees	2	3
Number of shrubs (at least 75% must be evergreen)	8	12

29.6. Minimum plant size requirements:

29.6.1 Large deciduous tree - Greater than 35 feet in height at maturity. Minimum size at planting shall be 2 inches caliper with a 12 to 14 foot height.

29.6.2 Small deciduous tree - Less than 35 feet in height at maturity. Minimum size at planting shall be 1.5 inches caliper with an 8 to 10 foot height.

29.6.3 Evergreen tree - Minimum height at planting shall be six (6) feet.

29.6.4 Shrub - Minimum size at planting shall be a three (3) gallon container or 10 inch root ball with a height of 18 inches.

29.7 Existing vegetation in the buffer - Existing vegetation in the buffer area may be counted toward the required plantings. The Zoning Administrator must approve the use of existing vegetation to meet the buffer requirement.

29.8 Buffer reductions - The width of the buffer may be reduced up to five (5) feet with the use of a fence or wall. Fences and walls must meet the following standards:

29.8.1 Fences or walls shall be constructed of wood, fauxwood, vinyl, vinyl coated and slatted chain link, brick, stone, or other masonry (except unfinished concrete block) and be architecturally compatible with the proposed structure. Seventy-five percent (75%) of the fence or wall shall be opaque with any spaces evenly distributed. The fence or wall shall be constructed as a permanent structure with fence posts secured in concrete and walls placed upon a concrete footing. A detailed drawing of the fence or wall must be shown on the site or landscape plan and approved by the Zoning Administrator.

29.8.2 Fences and walls shall be a minimum of six (6) feet tall and a maximum of eight (8) feet tall;

29.8.3 The finished side of the fence or wall shall face the abutting property; and

29.8.4 A planting strip with a minimum width of five (5) feet shall be located between the fence or wall and the property line. The strip shall be planted with trees and/or shrubs on the side that faces the abutting property. The trees and/or shrubs shall be spaced no further than eight (8) feet apart in order to screen at least 50% of the fence or wall at maturity.

Section 30. Stormwater run-off provisions - The purpose of this section is to minimize runoff and flooding generated by impervious surface areas and to protect water quality and natural ecosystems.

30.1 Affected property - The requirements of this section shall apply to the following activities:

30.1.1 Any Planned Unit Development, any new non-residential or mixed-use development, or any existing non-residential or mixed-use development undergoing expansion of impervious surface area of 25% or more.

30.1.2 Any project for which stormwater management is required as a condition of approval by the County Commissioners or Board of Adjustment.

30.2 Exempt activities - The following activities are exempt from the stormwater management provisions of this section:

30.2.1 Bona fide farm structures used exclusively for farm purposes.

30.2.2 The placement of small accessory buildings or structures or small amounts of other built-upon area provided that the total additional built-upon area shall be no greater than four hundred (400) square feet.

30.3 Stormwater management requirements - The following requirements shall apply to the entire parcel of land or project area.

- 30.3.1 The property owner and developer of all affected property shall be required to comply with the following stormwater design standards:
- 30.3.1.1 The stormwater run-off generated by a 1-year, 24 hour rain event, shall be captured and contained.
 - 30.3.1.2 At a minimum, stormwater measures shall be designed to remove 85% of the Total Suspended Solids (TSS) from the first inch of rainfall of any rain event.
 - 30.3.1.3 Stormwater measures shall have a drawdown of at least 48 hours, but not more than 120 hours.
- 30.3.2 Stormwater measures shall be designed by an engineer, landscape architect or other appropriately qualified professional licensed in North Carolina. Innovative designs that utilize “low impact” and non-structural control and treatment measures such as rain gardens are encouraged.
- 30.3.3 Stormwater measures may be located off-site provided such measures are located within a parcel of land under the same ownership as the affected property or within a common area under the management of a property owners’ association or similar entity. When stormwater measures are located off-site, deeds of both the affected property and the property containing the stormwater measure shall be provided and shall clearly reference an access easement.
- 30.3.4 Stormwater measures shall be designed to minimize potential threats to public health or safety. If ponds or lakes are used, such areas shall be landscaped as amenities or hidden from view.
- 30.4 Permit requirements - The Zoning Administrator shall review all stormwater plans required by this Ordinance to ensure compliance. In making this determination, the Zoning Administrator shall use the *Stormwater Best Management Practices Design Manual* published by the North Carolina Department of Environment and Natural Resources or other commonly accepted information and engineering data. If the Zoning Administrator deems it necessary, the County may retain, at the permit applicant’s expense, a professional engineer for assistance in the review of a stormwater plan.
- 30.4.1 Stormwater management system plan - When required as part of any project, a plan of the proposed stormwater management system shall be submitted along with other application materials.
 - 30.4.2 As-built plans and final approval - Upon project completion, and before final zoning approval or a certificate of occupancy may be granted, the applicant shall certify that the completed project has been built in accordance with the approved stormwater management system plans and designs. The applicant shall submit actual "as built" plans for all stormwater management facilities or practices after

final construction is completed. Submittal of plans in digital format shall be required.

30.4.2.1 The plans shall show the final design and locations for all stormwater management facilities, practices, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater facilities, practices, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance.

30.4.2.2 A final inspection and approval by the Zoning Administrator is necessary prior to the issuance of any certificate of occupancy, release of improvement guarantee, or other final approval.

30.5 Inspection of stormwater management systems - The Zoning Administrator may, with cause, inspect approved stormwater management systems for compliance with this section and approved plans. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in stormwater measures; and evaluating the condition of stormwater measures. If the Zoning Administrator deems it necessary, the County may retain, at the permit applicant's expense, a professional engineer for assistance in the inspection of a stormwater plan.

30.6 Maintenance of stormwater management systems - The owner of any stormwater management system installed pursuant to this section shall maintain and operate such system so as to preserve and continue its function.

30.7 Prohibited discharges - No person shall cause or allow the discharge, emission, disposal, pouring, or pumping, whether directly or indirectly, of any liquid, solid, gas, or other substance as described below, other than stormwater, into any surface water, ground water, or stormwater conveyance. This prohibition includes any substance deposited upon the land in manner and amount that the substance is likely to reach a stormwater conveyance, surface or ground water.

30.7.1 Prohibited discharges include but are not limited to the following:

30.7.1.1 Discharges of oil, grease, fuels, anti-freeze, chemicals, paints, garbage, litter;

30.7.1.2 Raw sewage discharges or overflows;

30.7.1.3 Discharges of wash water resulting from the hosing or cleaning of gasoline stations, auto repair garages, or other types of automotive service facilities;

30.7.1.4 Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility (including motor vehicles,

cement-related construction equipment, port-a-potty servicing, etc.) except that such discharges in small quantities from home occupations are allowed;

30.7.1.5 Discharges of water containing chlorine, biocides or other chemicals.

30.7.1.6 Discharges of water containing sediment or construction related wastes;

30.7.1.7 Discharges of commercial food-related wastes such as grease, oil, fish processing water, kitchen mat wash water, trash bin wash water, discharges from garbage dumpsters; and

30.7.1.8 Discharges from manufacturing or processing facilities.

30.8 Prohibited connections - It shall be unlawful to cause or permit any connection to a surface water or stormwater conveyance or stormwater conveyance system that allows the discharge of anything other than stormwater.

30.8.1 Prohibited connections include, but are not limited to the following: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

30.8.2 Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision, the property owner or the person using said connection shall remove the connection within one year following the effective date of this Ordinance or notification by the Zoning Administrator. The one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges that pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

30.8.3 Upon determining that an illicit connection may result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat the Zoning Administrator shall designate the time limit within which the connection shall be removed. In setting the time limit for compliance, the Zoning Administrator shall take these matters into consideration:

30.8.3.1 The quantity and complexity of the work;

30.8.3.2 The consequences of delay;

30.8.3.3 The potential harm to the environment, to the public health, and to public and private property; and

30.8.3.4 The cost of remedying the damage.

Section 31. Surface water protection

- 31.1 Purpose and intent - The purpose of this section is to protect streams and their drainage basins.
- 31.2 Applicability - This section shall apply to all surface waters and all non-encroachment areas and regulatory floodways within the zoned areas of Transylvania County.
- 31.3 Surface water protection area delineation - Surface water protection area requirements apply to the regulatory floodway and non-encroachment areas, as well as lands within 20 feet from the top of each bank of a stream or other surface water body.
- 31.3.1 For streams and other surface waters with defined channels, protection area widths are measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the channel.
- 31.3.2 "Top of bank" shall be determined by the Zoning Administrator by considering factors such as the break in slope for a watercourse and the presence of streamside vegetation.
- 31.3.3 For wetlands, as defined in this Ordinance, protection area widths are measured horizontally, landward from the outermost point at which wetland conditions can be identified.
- 31.3.4 For ponds, lakes, and other impounded surface waters, protection areas widths are measured horizontally, landward from the ordinary high water line. Protection areas requirements do not apply to wet ponds used as structural stormwater control and treatment measures for stormwater.
- 31.4 Surface water protection area requirements
- 31.4.1 Protection areas shall be left in a naturally vegetated state, unless a disturbance of the vegetated area is approved as part of a site plan. When re-vegetation of a protection area is required, it shall be done in accordance with a planting plan approved by the Zoning Administrator.
- 31.4.2 Concentrated run-off from ditches or other manmade conveyances shall be diverted to diffuse water flow before the run-off enters the protection area.
- 31.4.3 Periodic corrective action to maintain diffuse water flow shall be taken by the property owner as necessary to avoid the formation of erosion gullies.
- 31.4.4 Surface water protection areas shall be delineated upon any site plan and shall be noted as protection areas.
- 31.4.5 The following impacts are not allowed in surface water protection areas unless included as part of an approved plan of development:

- 31.4.5.1 The placement of fill or the deposition of any natural or manmade material or substance;
 - 31.4.5.2 New development, substantial improvements, new construction, new impervious surfaces, the placement of structures or any other form of development or encroachment, except those associated with public utilities;
 - 31.4.5.3 Grading, excavation, the removal of vegetation, or any disturbance of any kind; except excavation and fill required to plant any new trees or vegetation;
 - 31.4.5.4 The ditching, dredging, channelization, straightening, relocation, diking, levying, or any other alteration or modification of any kind to surface waters, except dredging necessary to maintain pre-existing, human-made water impoundments such as ponds, ditches, and lakes;
 - 31.4.5.5 The routing underground (by culvert or other means) of any surface water, except to facilitate crossings by approved roads, driveways, greenways, and other transportation facilities;
 - 31.4.5.6 The impoundment of water bodies (this shall not prohibit the maintenance of existing ponds, lakes, and other impoundments); and
 - 31.4.5.7 Any other type of encroachment, disturbance, or modification to floodways, non-encroachment areas, or other surface water protection areas or associated surface waters.
- 31.4.6 The following protection area impacts are permitted; however, design and construction shall comply with applicable County standards for stabilization of disturbed areas to minimize negative effects on the quality of surface waters and shall be approved by the Zoning Administrator.
- 31.4.6.1 Road crossings for connectivity or transportation links and required utilities including public and private roads, driveways, and bridges, where the Zoning Administrator has granted site plan approval.
 - 31.4.6.2 Parallel utility installation as approved by the Zoning Administrator.
 - 31.4.6.3 Incidental drainage improvements/repairs for maintenance provided that such maintenance does not result in channelization, straightening, or modification of the natural course of a stream channel or the deforestation of the regulatory floodway or protection areas.
 - 31.4.6.4 Mitigation approved by a local, state, or federal agency acting pursuant to Sections 401 or 404 of the Federal Clean Water Act.

31.4.6.5 Stream bank or stream channel restoration or soil stabilization activities of the North Carolina Cooperative Extension Service, Transylvania County Soil and Water Conservation Service, USDA Natural Resources Conservation Service, Transylvania County, the North Carolina Forest Service, or a cooperating organization or entity. This exception does not include the straightening or channelization any watercourse.

31.4.6.6 The removal of invasive exotic plant and tree species or trees posing a hazard to life or property.

31.4.7 The Zoning Administrator may reduce the required setbacks by up to 20% of the required distance in order to facilitate compliance with this section. Additional setback deviations shall be considered as variances by the Board of Adjustment in accordance with the procedures set forth in this Ordinance.

Section 32. Parking - Parking spaces with minimum dimensions of 9 feet by 18 feet shall be provided for all listed uses in accordance with the following minimum ratios:

- 32.1 Retail Uses: One (1) per 500 square feet
- 32.2 Office Uses: One (1) per 500 square feet
- 32.3 Theaters: One (1) per three (3) seats
- 32.4 Restaurants: One (1) per four (4) seats
- 32.5 Manufacturing/Warehousing/Light Assembly: One (1) per 4,000 square feet of non-office space
- 32.6 Bed & Breakfast Inns/Hotels/Motels: One (1) per room or suite
- 32.7 Civic Uses (Assembly Uses Only): One (1) per four (4) seats (If benches or pews are used then the standard shall be measured as 1 per 6 feet)
- 32.8 Handicap spaces shall be provided in accordance with applicable N.C. building and accessibility codes.

Section 33. Loading - Off street loading facilities with minimum loading space dimensions of 12 feet by 40 feet shall be provided for listed uses as follows:

- 33.1 Retail businesses: 1 space per business location
- 33.2 Wholesale, industrial, governmental and institutional uses:

0 – 24,999 s.f.	1 space
25,000 – 99,000 s.f.	2 spaces
100,000 – 159,999 s.f.	3 spaces
160,000 – 239,000 s.f.	4 spaces
239,000 – 349,000 s.f.	5 spaces
Additional 100,000 s.f. (or fraction)	1 additional space

Section 34. Steep Slope Development

- 34.1 Definition - Steep slope areas are defined as those areas with a slope of 25% or greater. Slope shall be computed by dividing the change in height for any 100 feet of horizontal distance over the entire parcel of land.
- 34.2 Applicability - Provisions in this section shall apply to development, including new subdivisions, driveways or access roads, on any portion of a lot or tract of land with slopes of 25% or greater.
- 34.3 Exclusions - Single family homes constructed on pre-existing lots shall be excluded from the requirements of this section.
- 34.4 Topography data required - Contours of five foot intervals or less and designation of portions of the site with 25% slope or greater shall be shown on the site plan.
- 34.5 Steep Slope Development Standards
 - 34.5.1 Cut or fill slopes shall not exceed 1.5:1 unless designed and certified by a geotechnical engineer, licensed in North Carolina.
 - 34.5.2 Maximum gross site area disturbed shall be:
 - 34.4.2.1 Thirty percent (30%) for areas with 25-35% slope.
 - 34.4.2.2 Fifteen percent (15%) for areas with greater than 35% slope.
 - 34.5.3 Maximum gross site area with impervious surfaces shall be:
 - 34.4.3.1 Fifteen percent (15%) for areas with 25-35% slope.
 - 34.4.3.2 Eight percent (8%) for areas greater than 35% slope.
 - 34.5.4 Land not approved for disturbance shall remain in a natural state. Plans for removal of any tree with a diameter of twelve (12) inches or more at one (1) foot above the ground shall be approved by the Zoning Administrator.
 - 34.5.5 Revegetation shall be required on all disturbed areas that remain after construction. Approval of the revegetation plan shall be required for zoning permit approval.
 - 34.5.6 Minimum lot sizes for single family residences are shown on the following table:

SLOPE %	MINIMUM LOT SIZE (1 dwelling per lot)
25 - 30	1.5 acres
31-35	2.0 acres

36-40	2.5 acres
SLOPE %	MINIMUM LOT SIZE (1 dwelling per lot)
41-45	3.0 acres
46-50	3.5 acres
51-55	4.0 acres
56-60	7.0 acres
61-65	10.0 acres

ARTICLE XV.

PLANNED UNIT DEVELOPMENTS

Section 35. Standards for Planned Unit Developments - A planned unit development (PUD) may be located in any zoned area, subject to a finding by the Transylvania County Commissioners, on the advice and recommendation of the Transylvania County Planning Board, that certain conditions be met.

35.1 Land development standards - The following land development standards shall apply for all planned unit developments.

35.1.1 Ownership control - At the time an application is submitted, the land in a PUD shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development is under ownership and control by the applicant.

35.1.2 Frontage requirements - PUDs shall be prohibited except on parcels of land having a minimum frontage of 45 feet on a paved, public, state-maintained road or highway. The frontage shall be sufficient to accommodate the appropriate access for the development.

35.1.3 Building requirements

35.1.3.1 Height limitations - No building or structure shall exceed 50 feet in height as measured from the highest ground elevation of the building or structure to the highest point of the roof.

35.1.3.2 Access - Every dwelling unit shall have access to a street, walkway, or other area dedicated to common use; and there shall be provision for adequate vehicular circulation to all PUD properties in order to insure acceptable levels of access for emergency vehicles.

- 35.1.4 Perimeter requirements - If topographical or other barriers do not provide reasonable privacy for existing uses adjacent to the PUD, the County Commissioners may impose additional requirements.
- 35.1.5 Documentation to ensure that the water and wastewater systems proposed for the PUD are approved by the appropriate local and state agencies, shall be submitted as a part of the application.
- 35.1.6 Plans shall include parking provisions for all proposed uses within the PUD in accordance with Section 32 of this ordinance. In addition, residential uses shall be provided with two parking spaces for each unit.
- 35.1.7 Non-residential PUD Plans shall include off street loading facilities with minimum loading space in accordance with Section 33 of this ordinance.
- 35.1.8 Any PUD area with a slope of 25% or greater shall comply with the requirements of Section 34.
- 35.2 Timing - If no development has begun pursuant to the issuance of a zoning permit one year after the date of the zoning permit for the PUD the zoning permit shall become null and void. A six (6) month extension may be granted by the Zoning Administrator when reasonable cause is shown.
- 35.3 Conveyance of open space, recreational areas and communally owned facilities.
- 35.3.1 Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and the plan for maintenance and improvement.
- 35.3.2 The applicant must submit the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of and maintenance of common areas and facilities for the designated purposes. The open space restrictions shall be permanent.
- 35.4. Maintenance - PUDs shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, rights-of-way and communally owned facilities which would be legally enforceable. No such instrument shall be acceptable until approved by the County Attorney as to legal form and effect and the County Commissioners as to suitability for the proposed uses.
- 35.5. Procedures for PUD application and review
- 35.5.1 Preapplication conference - Prior to submission of an application for a zoning permit to the County Commissioners, the applicant shall arrange a preapplication conference with the Zoning Administrator.

- 35.5.1.1 The applicant shall submit a sketch development plan and a brief description of the proposed development strategy to the Zoning Administrator. The Zoning Administrator may schedule a review with the Planning Board. The sketch plan and development strategy shall show and describe the layout of the PUD, depicting proposed areas and types of development, open spaces and recreation areas and roads.
- 35.5.2 Zoning permit - Upon completion of the preapplication conference the applicant may submit an application for a zoning permit in accordance with Sections 23 and 24 of this ordinance.
- 35.5.3 The application for a zoning permit for a PUD shall comply with the land development standards of this section in addition to the requirements of Sections 23 and 24 and shall include the following information and supporting documentation:
 - 35.5.3.1 Written documents.
 - 35.5.3.1.1 A legal description of the total site proposed for development, including a statement of present and proposed ownership.
 - 35.5.3.1.2 The zoning district or districts in which the project is to be located.
 - 35.5.3.1.3 A general statement of objectives to be achieved by the PUD through the approach proposed by the applicant.
 - 35.5.3.1.4 A development schedule indicating approximate beginning and completion dates of the development, including any proposed phases.
 - 35.5.3.1.5 Quantitative data for the following: proposed total number and type of units, parcel sizes, total amount of open space and recreation areas, utilities, and vehicular circulation facilities.
 - 35.5.3.1.6 Documentation from the County Fire Marshal confirming the adequacy of the PUDs accessibility and facilities for fire protection.
 - 35.5.3.1.7 Listing of permits required from any local, state or federal agency.
 - 35.5.3.2 Site plan and supporting maps - A map or maps drawn to an appropriate scale, with the date of preparation and North point, shall include the information in Section 24.3 and additionally the following information:
 - 35.5.3.2.1 Location and size of all areas to be conveyed, dedicated or reserved as common open space, parks, recreational

areas, school sites and similar public and semipublic uses and utility facilities.

35.5.3.2.2 The existing and proposed street and/or vehicular circulation facilities, easements or rights-of-way, and notations of proposed ownership of street and/or vehicular circulation facilities (public or private).

35.5.3.2.3 Contours of five (5) foot intervals or less and designation of portions of the site with 25% slope or greater.

35.5.4 Additional information - Any additional information required by the Zoning Administrator in order to fully evaluate the impact of the proposed planned unit development.

35.6 Amendments to the development plan. Minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator. Change(s) authorized by the Zoning Administrator under this section shall not increase the size of any building or structure by more than 10%, nor change the location of any building or structure by more than 10 feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this chapter. All other changes, including changes listed below, shall require resubmission of the development plan.

35.6.1 A change in the use or character of the development.

35.6.2 An increase in overall density.

35.6.3 An increase in intensity of use.

35.6.4 Alteration of the traffic circulation system.

35.6.5 A reduction in approved open space.

35.6.6 A reduction of parking and loading space.

ARTICLE XVI.

VESTED RIGHTS

Section 36. Statutory vested rights provisions - The purpose of this section is to implement the provisions of G.S. 153A-344.1 as amended for establishment, duration and termination of a site specific development plan vested right.

36.1 Approval procedures and approval authority

- 36.1.1 An application for site specific development plan approval shall be processed in accordance with the permitting procedures in Section 23 and application requirements in Section 24 of this ordinance.
- 36.1.2 In order for a statutory vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the county, that a zoning vested right is being sought.
- 36.1.3 Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. 153A-344.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
- 36.1.4 Following approval or conditional approval of a site specific development plan, nothing in this ordinance shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are consistent with the original approval.
- 36.1.5 Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this ordinance.
- 36.2 Limitation - Nothing in this ordinance is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 153A-344.1.
- 36.3 Repealer - In the event that G.S. 153A-344.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

Passed and adopted by the Transylvania County Commissioners this 10th day of May, 2010 to become effective August 1, 2010.