

## Article XI Supplementary Use Regulations

### Part I General Provisions

#### Section 178. Planned Residential Developments

**[a]** Planned residential developments (PRD's) are permissible only on tracts of land of at least five acres located within an R-2, R-3, or R-4 zoning district.

**[b]** The overall density of a tract developed by a PRD shall be determined as provided in Section 200.

**[c]** Permissible types of residential uses within a PRD include single family detached dwellings (use classification 1.111), two family residences (1.200), and multi-family residences (1.300). At least fifty percent (50%) of the total number of dwelling units must be single family detached residences on lots of at least 6,000 square feet.

**[d]** A PRD shall be an architecturally integrated subdivision.

**[e]** To the extent practicable, the two family and multi-family portions of a PRD shall be developed more toward the interior rather than the periphery of the tract so that the single family detached residences border adjacent properties.

**[f]** In a PRD, the screening requirements that would normally apply where two family or multi-family development adjoins a single family development, shall not apply within the tract developed as a PRD, but all screening requirements shall apply between the tract so developed and adjacent lots.

#### Section 179. Mixed Use Districts Established

**[a]** Multi-family residential uses (use 1.300) are allowed in the B-1, B-2 and B-3 zoning districts when the following criteria are met. Objectives of this Section include: protecting and preserving the Town's limited business zones and primary corridors for commercial uses, while allowing appropriate housing opportunities; providing options for living, working, and shopping environments in close proximity to each other; facilitating more efficient use of land while minimizing potentially adverse impacts; and providing options for pedestrian-oriented lifestyles. For purposes of this Section, "commercial" shall include allowable uses from Use 2.0 Sales and Rentals of Goods, Merchandise and Equipment through 27.0 Government Uses except Use 10.0 Storage and Parking. To the extent this Section conflicts with other Articles of this Ordinance, this Section shall control.

**[b]** Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Central Business District (B-1) only if the projects in which they are included meet all the following criteria:

- [1] Each project shall provide primary street level commercial land uses (i.e. retail, office, restaurant) of at least 50% of the square footage of the footprint of the development on the primary street level. For developments located on lots which abut more than one public street in the Central Business District, each additional street level floor shall provide commercial uses of at least 30% of that level's square footage. For purposes of this sub-section, the "primary street" shall be determined according to the following order: King Street, Howard Street, Depot Street, all other streets. For example, if a project is located on a lot that abuts both King Street and Howard Street, King Street shall be considered the "primary street" while for a project which abuts Howard Street and Depot Street, Howard Street shall be considered the "primary street" and so on.
- [2] The entire frontage of the primary street level of the building abutting the street shall provide commercial uses. Required entrances for ingress and egress to secondary uses are permitted along said frontage so long as they are no larger than necessary to meet building code and safety requirements for ingress and egress. Commercial uses on the non-primary street level(s) shall front on the non-primary street.
- [3] The entire primary street level floor of the building shall be constructed to commercial standards in accordance with North Carolina Building Code Group A, B, E or M.
- [4] New projects shall be at least two floors above the primary street level.
- [5] Buildings facades shall be oriented to each public street and shall have a primary entrance door facing each abutting public sidewalk.
- [6] A minimum of 60% of primary public street level facing building facade shall be comprised of transparent, non-reflective windows and 30% of non-primary street level facing building facades shall be comprised of transparent, non-reflective windows.
- [7] Surface parking shall be located away from each public street to the extent possible, and if practical, to the rear of the principal building.
- [8] Structured parking is permitted to the rear of the building or below the street level floor.

- [9] Building facades may be no further than 0'-0" from the established street setback line, except where necessary to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities.
  - [10] The minimum building footprint shall be 50% of the total gross square feet of the lot.
  - [11] Pedestrian weather protection such as awnings or canopies are encouraged along the public street but may be placed only in accordance with an encroachment agreement authorized by the Town Council.
- [c] Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Neighborhood Business District (B-2) only if the projects in which they are included meet all the following criteria:
- [1] Each project shall provide street level commercial land uses (i.e. retail, office, restaurant) of at least 100% of the street-level floor square footage.
  - [2] Buildings facades shall be oriented to the public street and shall have a primary entrance door facing the public sidewalk.
  - [3] A minimum of 60% of the street facing street level building facade shall be comprised of transparent, non-reflective windows.
  - [4] Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
  - [5] Structured parking is permitted but shall be located to the rear or below street-level commercial uses.
  - [6] Building facades may be no further than 0'-0" from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or when there would be interference with public utilities.
  - [7] Interior setbacks for all mixed use buildings shall be 10'-0" except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

- [8] Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council. Such awnings or canopies count toward the Recreation Space requirements found in Section 204 of this Ordinance.
- [9] All development shall comply with the landscape standards set forth in Article XX except that Type “A” interior landscape buffers may be provided regardless of adjacent land use classifications.

**[d]** Multi-family residential uses, either as the result of new construction or conversion, are allowed in the General Business District (B-3) only if the projects in which they are included meet the following:

- [1] Multi-family uses wholly or partially on property zoned B-3 General Business within the Corridor Districts.
- [A] Mixed Use Building(s):
- i. Each building shall fully consist of street level commercial uses (i.e. retail, office, and restaurant).
  - ii. A minimum of 60% of the street level building façade facing the Corridor shall be comprised of transparent, non-reflective windows.
  - iii. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line. Structured parking is permitted but shall be located to the rear or under street level commercial uses.
  - iv. Building facades may be no further than 10’ from the street right-of-way line, except where necessary to preserve existing significant or historic trees which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20’ or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.
  - v. Interior setbacks for all mixed use buildings shall be a minimum of 10’ except where abutting a residential zoning district, in which case the interior setback shall at a minimum equal the required interior setback in the abutting residential district.

- vi. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.
- [B] Single Use Building(s)
- i. Single use multi-family building(s) are only allowed as part of a mixed use project.
  - ii. A mixed use project shall meet the following criteria:
    - a. Each project shall fully consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a corridor protected by the Corridor District. In addition, at least 50% of the total gross floor area of all buildings located within the Corridor District shall fully consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building as long as the requirement set forth in Section 179 [d][1][B][i] above is met.
    - b. The street level floor of all buildings within the Corridor District shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.
    - c. A minimum of 60% of the street facing street level building façade of a building which fronts a protected corridor shall be comprised of transparent, non-reflective windows.
    - d. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
    - e. Structured parking is permitted but shall be located to the rear or below the commercial uses.

- f. Building facades may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.
  - g. Interior setbacks for all mixed use buildings shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.
  - h. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.
- [2] Multi-Family Uses wholly or partially on Property Zoned B-3 General Business Outside the Corridor District but Proximate to Major Streets.
- i. For the purposes of this Section "major street" refers to collector and arterial streets.
  - ii. "Proximate" shall mean any building wholly or partially within 200 feet of the centerline of a major street.
  - iii. Mixed Use Building(s)
    - a. Mixed use building(s) shall meet the same requirements as described in Section 179[d][1][A].
  - iv. Single Use Building(s)
    - a. Single use multi-family building(s) are only allowed as part of a mixed use project.
    - b. A mixed use project shall meet the following criteria:

1. Each project shall consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a major street. In addition, at least 25% of the total gross floor area of all buildings wholly or partially located within 200 feet of the centerline of a major street shall consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building.
2. For any floor containing a commercial use the entire floor shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.
3. A minimum of 60% of the major street facing street level façade of a building containing commercial use(s) shall be comprised of transparent, non-reflective windows.
4. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
5. Structured parking is permitted but shall be located to the rear or below the commercial uses.
6. Building facades fronting the major street may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.
7. Interior setbacks shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

8. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.
- [3] Multi-Family Uses wholly or partially on property zoned B-3 General Business in all other areas.
    - [A] Multi-family uses not part of a mixed use development may be allowed if an applicant demonstrates that within  $\frac{1}{4}$  mile (1,320 feet) of the borders of the lot that is to be developed there exists commercial uses with gross floor area square footage equal to the gross floor area square footage of the proposed multi-family project. If this standard cannot be met then the proposed project must meet the requirements in Section 179[d][2] above.

## **Section 180. Temporary Uses**

### **[a] General Regulations for Temporary Uses**

- [1] All listed temporary uses are required to obtain a permit in compliance with the regulations of this Section.
- [2] Unless expressly permitted no sign may be erected in conjunction with a temporary use.
- [3] Only those improvements and modifications minimally necessary for the temporary use to function are permitted.
- [4] In the event the property owner fails to remove a temporary structure within the described time frames after the permit authorizing its use has been terminated, the Town may remove the said temporary structure at the expense of the owner, and may seek to recover through collection efforts or a civil action against the owner, the costs of removal, court costs and attorney fees.
- [5] A sight triangle ten (10) feet by seventy (70) feet must be observed at all intersections of driveways or streets with adjacent streets.
- [6] Temporary uses shall not be subject to the requirements of Section XXII Commercial Appearance Standards unless provided in this Section.
- [7] No required existing landscape buffer may be disturbed for any temporary use.

- [8] All temporary uses shall meet all applicable NC Building Codes.
- [9] Unless otherwise provided herein, the land use intensity ratios of Section 200 shall apply.

**[b]** Temporary Care Provider Dwelling: A temporary care provider dwelling may be permitted as a temporary use on a lot with Use 1.110 Single-family detached, one dwelling unit per lot, subject to the following conditions:

- [1] Occupancy of a temporary care provider dwelling shall be limited to the family care provider or the aged, infirmed or disabled persons requiring a substantial amount of personal care or attention based on a certified medical need.
- [2] The temporary care provider dwelling shall meet all minimum building spacing requirements set forth in Section 208.
- [3] The temporary care provider dwelling shall be placed on the lot in such manner that it meets all required setbacks.
- [4] No more than one accessory temporary care provider housing unit per lot shall be allowed.
- [5] Only Class A and B manufactured homes may be used as a temporary care provider dwelling.
- [6] The applicant must provide a certification by a qualified medical provider that the temporary care provider dwelling is needed to take care of a sick, elderly or disabled person who lives on the same lot who is in need of personal or medical attention.
- [7] The location, placement, and type of the temporary care provider dwelling must be selected so as to minimize any negative effects on adjacent properties.
- [8] A permit shall be valid for a period of 1 year. Applications for extensions for an additional 1 year period must be filed between 30 to 90 days prior to the expiration of the permit. For each new extension the applicant must demonstrate continuing compliance with this Section and a new certification in accordance with Section 180 [b] [6] must be submitted. The applicant can continue to apply for extensions so long as all other requirements of this Section are met.
- [9] Upon expiration of the permit or the cessation of the conditions giving rise to the permit, the temporary structure shall be removed from the property within 60 days.

**[c]** Temporary Construction or Repair Dwelling: A temporary construction or repair dwelling may be permitted as a temporary use while either a Use 1.111 (site built or modular structures) or 1.200 (two-family residences) is being constructed or repaired, subject to the following conditions:

- [1] Upon completion, the dwelling under construction or repair must be the principal residence of the owner of the lot.
- [2] Only Class A and B manufactured homes may be used as temporary construction or repair dwellings.
- [3] The permit may not be issued until the owner of the lot has received a building permit for the construction or repair of the non-temporary dwelling.
- [4] The temporary construction or repair dwelling shall be placed on the lot in such manner that it meets all required setbacks.
- [5] A permit shall be valid for a period of 1 year but may be extended for up to 2 consecutive 6 month periods upon an application filed no later than 30 days before the end of each permit period. Each extension shall require a finding by the Administrator that significant progress is being made in completing the construction or repair.
- [6] The temporary construction or repair dwelling shall be removed within 30 days upon:
  - [i] Expiration of the permit.
  - [ii] Expiration or lapse of the building permit for the dwelling under construction or repair.
  - [iii] Issuance of a certificate of occupancy or certificate of compliance, as appropriate, for the dwelling under construction or repair.

**[d]** Temporary Construction Trailer: A temporary construction trailer may be permitted as a temporary use for a temporary office, security shelter or shelter for materials or tools (but not for residential purposes or sales office) incident to construction or development of the premises upon which the temporary construction trailer is located subject to the following conditions:

- [1] Temporary construction trailers may only be located on a lot upon which a valid zoning or building permit has been issued.
- [2] A temporary construction trailer shall be located at least 10 feet away from all road rights-of-way and property lines.

- [3] A temporary construction trailer may not be used for residential purposes.
- [4] The permit shall be valid for 2 years from the date of issuance or for a maximum of 30 days after the issuance of a certificate of occupancy, whichever is less; provided however, if the project is multi-family or nonresidential in nature, the temporary use permit may be extended if the approved project is not yet completed and the applicant requests an extension within 90 days prior to the expiration of the permit period. Each such extension may be for 1 year. The applicant can continue to apply for extensions so long as all other requirements of this Section are met.

**[e]** Temporary Mobile Medical Unit: A temporary mobile medical unit may be permitted as a temporary recurring use accessory to an existing medical use subject to the following conditions:

- [1] A temporary mobile medical unit must be accessory to the principal medical use and related to the care provided by the principal medical use.
- [2] A temporary mobile medical unit must be located on the same lot as the principal medical use.
- [3] A temporary mobile medical unit may be recurring but shall be limited to one (1) 48-hour period per week.
- [4] A temporary mobile medical unit shall not encroach upon or disturb traffic movements and pedestrian circulation either within the site or on the adjacent streets and sidewalks.
- [5] A temporary mobile medical unit shall not be subject to Section 200 Schedule of Land Use Intensity Regulations or to Section 206 Accessory Building Setbacks. Setbacks for temporary mobile medical units shall be 10 feet from any street rights-of-way and 5 feet from any interior boundary.
- [6] Landscape buffers must be provided to the extent possible in the setback areas adjacent to the temporary mobile medical unit.
- [7] No building may be constructed in association with the temporary mobile medical unit, and none is authorized by a permit for a temporary mobile medical unit.

**[f]** Temporary Structures in Special Flood Hazard Area:

- [1] All temporary structures to be located in a Special Flood Hazard area are subject to the regulations in Section 303 [b] [7].

**Section 181. Primary Residence with Accessory Apartment**

[a] A lot may be classified as a Primary Residence with Accessory Apartment (land use 1.210) and permitted as such only when one of the following standards is met:

- [1] The owner of the lot resides in the primary residence or the accessory apartment at least ninety percent of the year, a “year” understood and defined as the preceding twelve month period ending on the date of the application or any inquiry by the administrator. In situations in which an applicant seeks to initiate the use of a lot as a Primary Residence with Accessory Apartment and there has been no prior occupancy of either dwelling unit, the owner shall make a written declaration of the intention to reside in the primary residence or the accessory apartment at least ninety percent of the year, and the written declaration shall acknowledge that should the owner’s residency ever fall below ninety percent of any subsequent rolling twelve month period, the zoning permit shall be revoked and the right to use the property as a primary residence with accessory apartment shall cease. The Town shall retain the original declaration and acknowledgment, and a copy of each shall be provided to the owner.
- [2] The owner and all tenants of the lot comply with all registration and other requirements of Section 159[d], *above*, and for lots not located in a neighborhood conservation district, the owner also notifies all tenants of UDO occupancy limitations. In situations in which an applicant seeks to initiate the use of a lot as a Primary Residence with Accessory Apartment and there has been no prior occupancy of either dwelling unit, the owner shall make a written declaration of the intention to comply with all registration and other requirements of Section 159[d], *above*, and for lots not located in a neighborhood conservation district, to notify all tenants of UDO occupancy limitations. The written declaration shall acknowledge that should the owner or tenants fail to comply with all registration and other requirements of Section 159[d], *above*, or the requirements of this subsection, the zoning permit shall be revoked and the right to use the property as a primary residence with accessory apartment shall cease. An owner who does not reside on the lot for the period described in subsection [1], *above*, may only allow others to reside on the lot pursuant to a written lease and shall file a copy with the Town. The lease must include provisions that the tenant(s) must comply with the Town’s noise ordinance and the Town’s occupancy limitations and that violation of the Town’s noise ordinance or occupancy limitations shall be considered a material violation of the lease and shall result in the termination of the lease and tenancy.

**[b]** On a single lot, a Primary Residence with Accessory Apartment (land use 1.210) may have no more than one single family residence and one accessory apartment.

**[c]** The occupancy of an accessory apartment shall be limited to no more than 2 unrelated persons or 4 members of a family.

**[d]** The owner of a Primary Residence with Accessory Apartment shall provide adequate off-street parking in compliance with Section 346(e), *infra*, for the accessory apartment to the side or to the rear of the primary residence. In no case shall a front yard area be converted to parking or used to satisfy off-street parking requirements. For purposes of this section, the “front yard area,” “side” or “rear” of the primary residence shall be determined by the location of the street referenced in the physical address of the lot, with the portion of the primary residence closest to said street considered “the front” without regard to the orientation or main entrance of the primary residence.

**[e]** The accessory apartment shall not be served by a driveway separate from any driveway serving the primary residence.

**[f]** An attached accessory apartment shall be designed so that the appearance of the primary residence remains that of a single family dwelling. The accessory apartment entrance shall be located on the side or in the rear of the single family residence.

**[g]** An accessory apartment shall be clearly subordinate to the primary residence. The floor area of an attached accessory apartment may not be more than 50 (fifty) percent of the floor area of the primary residence and may never exceed eight hundred (800) square feet. The floor area of a detached accessory apartment may not be more than 50 (fifty) percent of the floor area of the primary residence and may never exceed six hundred (600) square feet.

**[h]** Detached accessory apartments are those which are not attached to the primary residence. A detached accessory apartment may be located over a garage, workshop, studio or similar structure or built as a free standing cottage. Every detached accessory apartment must be architecturally compatible with the primary residence, and certified as such by the Community Appearance Commission.

**[i]** A detached accessory apartment shall be located to the side or rear of the primary residence and its front most point may be no closer to the fronting street than the front most point of the primary residence.

**[j]** A two story detached accessory apartment may be allowed only when the primary residence is 1 ½ stories or more, and its architectural compatibility has been certified by the Community Appearance Commission.

**[k]** A Primary Residence with Accessory Apartment (land use 1.210) must comply with all applicable land use intensity ratios, and the exemption in Section 200 [a], *infra*, shall not apply.

**[l]** At any time when a lot classified and permitted as a Primary Residence with Accessory Apartment (land use 1.210) no longer complies with all applicable requirements of this section, the zoning permit allowing the use shall be revoked and the right to use the property as a Primary Residence with Accessory Apartment shall cease.

### **Section 182. Mining or Quarrying Operations, Including On Site Sale of Products**

**[a]** The mining or quarrying operations, including the on site sale of products (use 14.200) shall conform to the following requirements:

- [1] Permanent roads, defined as those to be used in excess of one year, within the excavation site shall be surfaced with a dust free material, such as soil cement, bituminous concrete, or Portland Cement concrete.
- [2] Roads other than permanent roads shall be treated with dust inhibitors which will reduce to a minimum the generation of dust from the road surfaces as a result of wind or vehicular action.
- [3] A security fence at least six (6) feet high shall be installed where the proposed extraction takes place within three hundred (300) feet of a dwelling, school, church, hospital, commercial or industrial building, public building, or public land.
- [4] Spoil piles and other accumulations of by products shall not be created to a height more than thirty five (35) feet above the original contour and shall be so graded that the vertical slope shall not exceed a forty five (45) degree angle.

### **Section 183. Fraternity or Sorority Dwellings**

**[a]** A fraternity or sorority dwelling (use 1.540) shall contain a minimum of two hundred fifty (250) square feet of floor area for each resident.

### **Section 184. Home Emphasizing Special Services, Treatment or Supervision**

**[a]** Separation Requirements

- [1] A Family Care Home (Use 1.410) shall not be located within five hundred feet of another Family Care Home (Use 1.410).

- [2] A Nursing Care Home (Use 1.420) and a Home for Survivors of Domestic Violence (Use 1.430) shall not be located within one-half (.5) mile of any other home emphasizing special services, treatment or supervision (Use 1.400).

**[b]** Buffer and Streetyard Requirements: A home emphasizing special services, treatment, or supervision (Use 1.400) shall meet the buffer and streetyard requirements as outlined in Article XVII.

**[c]** Supervision:

- [1] A home emphasizing special services, treatment or supervision (Use 1.410) will provide adequate supervision in light of the number and needs of the residents and security concerns for the home.

**[d]** Additional requirements for a Home for Survivors of Domestic Violence:

- [1] The home shall be operated by a non-profit organization recognized by the Internal Revenue Service and that is registered by the State of North Carolina.
- [2] Staff shall be present at all times. In addition, staff shall be trained in emergency procedures (including CPR and first aid), safety plans and procedures used by the home.
- [3] The organization operating the home must receive domestic violence funding from the North Carolina Department of Administration's Council for Women/Domestic Violence Commission.
- [4] The home shall have a security plan which outlines all security measures taken by the home to assure the safety of the residents of the home and the neighborhood.
- a. Before a Zoning Permit is issued this security plan shall be submitted to the Administrator and approved by the Town of Boone Police Department.
- b. Before a Zoning Permit is issued the home's security measures shall be physically inspected by the Town of Boone Police Department to determine accuracy with the submitted security plan. After the initial inspection, each home shall be inspected annually by the Town of Boone Police Department.
- c. Thirty (30) days prior to amending the approved security plan, the organization shall submit to the Administrator the proposed modifications which are subject to approval from the Boone Police Department.

- d. The home shall be equipped with a monitored alarm system or an alternative measure that will ensure the immediate response of emergency services in the event of an emergency.
- [5] A Home for Survivors of Domestic Violence shall meet the buffer and streetyard requirement of Article XVII except that the Administrator is allowed flexibility in either increasing or decreasing the buffer and streetyard requirements in order to protect the residents of the home.
- [6] The overnight occupancy of the home shall be limited to no more than 13 persons.

### **Section 185. Open Air Markets**

- [a] Open air markets (use 19.0) shall contain a minimum gross land area of forty thousand (40,000) square feet and the area utilized for display shall not be in excess of forty percent (40%) of the total gross land area.
- [b] All display areas shall be at least thirty five (35) feet from any street right of way line and the area between the display area and the street right of way shall contain an opaque screen, Type C in accordance with the screening requirements of Section 363.
- [c] The open air market shall provide rest room facilities for merchants and customers.
- [d] Any electric supply or installation shall conform with the requirements of the National Electric Code.

### **Section 186. Parking As A Principal Use**

- [a] Automobile parking garages or parking lots not located on a lot on which there is another principal use to which the parking lot is related (use 10.100) shall meet the parking lot landscaping requirements of Section 367.

### **Section 187. Reserved**

### **Section 188. Reserved**

### **Section 189. Home Occupations**

- [a] A Home Occupation may be conducted as an accessory use of a dwelling unit, provided that:

- [1] No person other than members of the resident family shall be engaged in such occupation,

- [2] The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes, and not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation,
- [3] No external evidence of the conduct of the home occupation shall be visible, other than a sign as permitted in Article XVIII,
- [4] The home occupation shall not generate traffic volumes or parking area needs greater than would normally be expected in a residential neighborhood,
- [5] No equipment or process shall be employed that will cause noise, vibration, odor, glare, or electrical or communication interference detectable to the normal senses off the lot; in the case of detached dwelling units, or outside the dwelling unit, in the case of attached dwelling units, and
- [6] The on premise sale and delivery of goods which are not the products of the home occupation are prohibited.

### **Section 190. Adult Establishments**

**[a]** The purpose for creating the adult establishments use classification shall be to set forth the appropriate locations in which adult entertainment or sexually oriented businesses may be established within the town's zoning jurisdiction and to provide for certain development standards. Adult establishments, because of their very nature, are recognized as having serious objectionable characteristics, particularly when they are located near a residential zoning district or certain other districts which permit residential, eleemosynary, educational, or recreational uses. Studies have shown that lower property values and increased crime rates tend to accompany and are brought about by the concentration of adult establishments. The Town Council finds that regulation of these uses is necessary to ensure that these adverse effects do not contribute to the blighting of surrounding neighborhoods and to protect the integrity of the town's schools, churches, child care centers, and public parks and playgrounds which are typical areas in which juveniles congregate.

**[b]** The requirements of this section shall apply to all adult establishments as outlined in NC G.S. 14-202.10 and shall also apply to adult video stores and adult hotels and motels as defined in this ordinance.

**[c]** Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this section.

*Adult Establishment:* Any structure or use of land which meets the definition of adult establishment as outlined in NC G.S. 14-202.10, and including adult video stores and adult hotels and motels.

*Adult Video Store:* Any store which receives a majority of its gross income during any calendar month from the sale or rental of films, motion pictures, video cassettes or video reproductions, slides, computer media, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas" as defined in NC G.S. 14-202.10.

*Adult Hotel or Motel:* A hotel, motel, or similar commercial establishment that:

- a. Provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes, or
- b. Offers a sleeping room for rent for a period of time less than ten (10) hours, or
- c. Allows a tenant or occupant of a sleeping room to sub lease a sleeping room for a period of time less than ten (10) hours.

**[d]** Adult establishments shall be permitted subject to the following requirements:

- [1] Adult establishments shall be permitted in the following zoning districts:
  - a. Adult bookstores shall be permitted in the same zoning districts that permit bookstores.
  - b. Adult video stores shall be permitted in the same zoning districts that permit video stores.
  - c. Adult hotels and motels shall be permitted in the same zoning districts that permit hotels and motels.
  - d. Adult live entertainment business shall be permitted in the same zoning districts as the nearest type of corresponding non adult use, provided, however, if the adult live entertainment business is also a private club it shall be subject to the location standards for private clubs as set forth in Article X of this ordinance.

- e. Adult massage business shall be permitted in the B-1, B-2, B-3 and M-1 zoning districts, provided, however, no provision of this section shall apply to any bona fide therapeutic massage service provided by a licensed medical professional or other person certified by a state or nationally recognized organization, nor shall this section apply to any private or public fitness center or nonprofit community recreational fitness and service organization, either of which provides massage therapy as a service incidental to the operation of a fitness center.
  - f. Adult motion picture and adult mini motion picture theaters shall be permitted in the same zoning districts that permit motion picture theaters.
- [2] No lot containing an adult establishment shall be within one thousand (1000) feet of another lot containing an adult establishment. No lot on which an adult hotel or adult motel is located shall be within two thousand (2000) feet of another lot containing an adult establishment.
- [3] No adult establishment shall be located on any lot whose property line is within one thousand (1000) feet of the property line of a church, school, library, public park or playground, daycare center (except a home daycare center), or residential zone.
- The required distance shall be measured from the closest edge of the property occupied by an adult establishment to the closest edge of the property occupied by a protected use or another adult establishment. Provided, however, that when an adult establishment is located in a multi-tenant facility, the distance shall be measured from the closest edge of the portion of the facility occupied by such establishment.
- [4] No more than one adult establishment shall be located within the same structure or portion thereof.
- [5] Except for adult hotels and motels, no adult establishment may provide sleeping quarters.
- [6] No printed material, slide, video, photograph, written text, live show, or other visual presentation shall be visible, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.
- [7] All signage shall meet the standards of Article XVII. In addition, the following restrictions shall apply.

- a. No freestanding (detached) signs shall be permitted.
- b. Attached signage on all building faces shall not exceed eighty (80) square feet total. Provided, however, in no case shall signage cover more than ten (10) percent of the area of any building face.
- c. A sign plan showing the location and number of attached sign(s) must be submitted to the administrator prior to the issuance of any permits to verify compliance with this section.
- d. Promotional materials for advertising shall not be visible to the public from pedestrian sidewalks or walkways.

[8] The adult establishment must meet all other applicable provisions of this ordinance.

**[e]** The Board of Adjustment shall have no authority to modify or grant variances from the separation distance requirements imposed by Section 190 [d] [2] and [3].

**[f]** This section in no way limits, restricts, modifies or changes Chapter 12, of the Town of Boone Public Display Ordinance. Any use permitted under this section must comply in all respects with the Public Display Ordinance.

### **Section 191. Manufactured Home Park**

**[a]** Manufactured home parks (use 1.122) shall be developed in accordance with the following general requirements:

- [1] A manufactured home park shall have one (1) sign designating the park.
- [2] A manufactured home park may have a manufactured home as a designated office.
- [3] A manufactured home park may have material and equipment storage buildings for maintenance of the park. Said buildings shall be located a minimum of twenty five (25) feet from any residential units.
- [4] Each manufactured home shall be set up and installed in accordance with the state of North Carolina regulation for installation of manufactured homes adopted and published by the North Carolina Department of Insurance.
- [5] Each manufactured home foundation shall be fully enclosed with aluminum, vinyl or masonry materials.

- [6] All units within manufactured home parks must be constructed to HUD standards and contain the appropriate seals to verify this fact.

**[b]** The requirements for the manufactured home space shall be:

- [1] Each manufactured home space shall have a permanent site number sign that is clearly visible from the street and located on each power panel box serving the home.
- [2] Each manufactured home space shall have proper drainage to prevent accumulation of water.
- [3] Each manufactured home space shall have a solid ground surface where the home will be placed.
- [4] The following separation requirements are established for fire protection purposes and are designed to ensure the public health, safety and general welfare of individuals in manufactured home parks. Each manufactured home shall be located at least twenty (20) feet from any other manufactured home and at least twenty five (25) feet from any other building within the park, excluding storage buildings accessory to individual manufactured homes. Each home shall be at least twenty (20) feet from any property line or right-of-way. Each home shall be set back at least ten (10) feet from any private streets within the park. No structure or fence may be placed in the open area between the rear of the units.
- [5] Accessory storage buildings shall be located flush with the rear of the home, a minimum of five (5) feet from the principal home and no less than eight (8) feet from any adjoining home, unless otherwise approved by the town Fire Marshal.
- [6] There shall be an open area within the park provided by the owner and designated for recreational purposes. Said area shall comply with Section 204.
- [7] There shall be adequate space for off street parking of two (2) passenger cars at each home. Said spaces shall be located a minimum of four (4) feet from any unit.
- [8] There shall be front and rear steps for each manufactured home. If the resident elects to have decks, the home will be required to have steps until decks are completed.

**[c]** The streets in a manufactured home park shall meet the following requirements:

- [1] Streets within the manufactured home park shall be a minimum width of eighteen (18) feet and have a minimum easement width of thirty (30) feet.
- [2] Traffic control signs (i.e. stop, yield and speed signs) shall be placed throughout the manufactured home park where necessary, as specified by the administrator.
- [3] Each street shall have a permanent sign installed with a designated name identifying each street.
- [4] Streets and parking areas shall be maintained by the operator/manager of the manufactured home park.
- [5] Street lighting shall be provided throughout the manufactured home park.

**[d]** The utilities and solid waste disposal in a manufactured home park shall meet the following requirements:

- [1] The source of the water supply shall be through the municipal public water system.
- [2] A municipal sewage disposal system shall be provided in the manufactured home park.
- [3] There shall be a storage and disposal system for solid waste for the manufactured home park in order to alleviate health and pollution hazards. Bulk solid waste storage containers shall be provided on site. There shall be a minimum of one (1) ten (10) yard container for every twenty (20) residential units. These containers shall be distributed throughout the park as per the recommendations of the supervisor of sanitation, and screened in accordance with local regulations. It shall be the responsibility of the operator/manager of the manufactured home park to see that a municipal or private solid waste disposal service is provided to the residents of the manufactured home park on a weekly basis. This may or may not be at the expense of the residents.

**[e]** The buildings and grounds in manufactured home park shall meet the following requirements:

- [1] The grounds of the manufactured home park shall be free of debris, trash and litter.
- [2] Grounds, buildings and storage areas within the manufactured home park shall be maintained to prevent the infestation of rodents, flies, mosquitoes and other pests.

- [3] Grounds within the manufactured home park shall also be maintained to prevent the growth of ragweed, poison ivy, poison oak and other weeds.
- [4] All grounds within the manufactured home park shall have proper drainage to prevent the accumulation of water.
- [5] All recreational areas provided by the owner for the manufactured home park shall be maintained in a safe and sanitary manner by the operator/manager.
- [6] The operator/manager shall provide space on the grounds for mail service to the residents of the manufactured home park.

## **Section 192. Telecommunication Towers and Related Structures**

**[a]** The purpose of this section is to establish rules and standards for the location and construction of towers and antennas for commercial wireless communications. The intent of the section is to protect the health, safety and welfare of the citizens of the town, to encourage the location of towers in non residential areas, to encourage the joint use of new and existing tower sites and to minimize the adverse impact of commercial wireless communication towers.

**[b]** The following words, terms and phrases shall have the meaning indicated when used in this section.

*Antenna:* Any equipment or device designed to transmit or receive telecommunication signals. Satellite receiving antenna less than one (1) meter in diameter are permitted in any zoning district and satellite receiving antenna less than two meters in diameter are permitted in non-residential districts.

*Major Mountain Ridge:* A ridge with an elevation higher than three thousand (3000) feet above mean sea level and an elevation five hundred (500) feet or more above the elevation of an adjacent valley floor.

*Stealth Technology:* Man made trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

*Transmitting and Receiving Tower:* A tower structure and antenna under fifty (50) feet in height, owned and operated by a federally licensed individual, which serves only the needs of a single building and its occupant, which shall be exempt from the requirements of this section.

*Tower Height:* The vertical distance measured from the ground to the upper most point of the tower, not including the antenna(s).

*Tower Site:* The real property that an applicant is required to have ownership of, leasehold interest in, or easement over.

*Vegetative Canopy:* Trees which create a roof like layer of spreading branches.

*Viewshed:* Those lands seen from a known location forming a visual composition, with foreground, middle ground, and background areas. Foreground is the area within one (1) mile of the known location close enough to a viewer so that individual plant types, smells, colors, and forms are extremely vivid.

*Wireless Telecommunication Tower:* Any tower or structure erected for the purpose of supporting, including, but not limited to, one or more antennas designed to transmit or receive television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electronic communication.

**[c]** It shall be unlawful for any person, corporation, partnership or other entity to erect any wireless communication towers without first obtaining a zoning permit from the administrator. A permit shall also be required for the erection of a replacement tower or the modification of an existing tower. Existing towers owned by government agencies and designed for non commercial emergency communications may be replaced with a tower equal in height to the replaced tower, however all other ordinance provisions are applicable.

**[d]** A completed wireless communication tower zoning permit application with all the supporting documentation identified in Subsection [e] shall be submitted to the administrator, including a site plan which contains the following information:

- [1] A vicinity map and a title block containing the name of the tower owner and/or property owner, scale, North arrow, latitude/longitude coordinates and surveyed ground elevation.
- [2] Exact boundary lines of the property containing the proposed tower construction, any associated guy wires and tower height. The boundary line corners shall be clearly marked on the site to allow for a field inspection by the administrator.
- [3] The tower design plan prepared by a professional engineer registered in the state of North Carolina, including engineer's signature, seal and address.
- [4] The foundation and base of the tower, the foundation for all the guy line anchors and support structures, all proposed buildings, and any other proposed improvements including access roads and utility connections within and to the proposed site.
- [5] A description of adjacent land use and all property owner names, deed book and page number and tax parcel number.

- [6] An elevation profile, drawn to scale, of all existing and proposed towers with any proposed lighting and antennas to be located on the property.
- [7] The zoning designation of the property and adjacent properties.

**[e]** The administrator shall approve or disapprove the permit based upon the receipt of a completed site plan as required in Subsection [d], and the following provisions:

- [1] The applicant shall identify all possible alternatives considered within the service area for the proposed tower and explain why the proposed tower is necessary and why existing towers or other structures cannot accommodate the proposed antenna(s).
- [2] Locating a tower on a major mountain ridge shall be considered as a last resort and justifying documentation shall be provided.
- [3] All towers located on any major mountain ridge shall be monopole and no taller than thirty (30) feet higher than the vegetation canopies immediately surrounding the base of the tower. Towers located on sites off the major mountain ridge(s) shall be no taller than one hundred (100) feet.
- [4] The proposed tower shall be designed and constructed for co-location of at least one other telecommunication antenna system if location is not on a major mountain ridge.
- [5] The applicant shall be required to provide documentation certifying compliance with all applicable federal and state regulations.
- [6] The applicant shall present to the administrator proof of either fee simple ownership, an option to purchase or lease, a recorded leasehold interest, or an easement, from the record owner of all property involved and any necessary rights-of-way to the tower site.
- [7] A sign identifying the owner(s) and operator(s) of the tower and an emergency telephone number shall be placed in a clearly visible location on the premises of the tower.
- [8] Tower sites shall comply with all other applicable regulations of this ordinance.

- [9] All towers shall be set back from any surrounding property lines by a distance equal to the height of the tower unless a professional engineer registered in the state of North Carolina certifies the fall zone of the tower and appurtenances will be within the setback area proposed.
- [10] The tower shall be designed to meet the ANSI/EIA/TIA-222-E standards of a minimum one hundred (100) year return wind speed and a minimum one half (1/2) inch of solid radial ice. In no case shall the design wind speed be less than specified in Section 1609 of the North Carolina Building Code.
- [11] The tower and any other necessary buildings or structures shall be surrounded by a commercial grade chain link secure fence at least eight (8) feet in height, which may include no more than two (2) feet of barbed wire.
- [12] Lighting on towers shall not be permitted except as required by federal and state regulations. Towers shall be light gray or another earth tone (such as environmental green), except when specific colors and color patterns are required by federal or state regulations.
- [13] When a tower is proposed adjacent to a residential area the setback space is to be used as a buffer zone and shall be landscaped as described herein. Buffers shall consist of planting evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1 1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, a planting of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless prohibited by topography. The buffer zone shall not be in, and no planting shall be placed in the road right-of-way.
- [14] If a proposed tower site is within one mile of the Blue Ridge Parkway centerline and in the parkway viewshed, the applicant shall inform the National Park Service of the proposed tower siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the administrator. The Park Service shall be afforded thirty (30) days to respond to the applicant's written intention to erect a tower. No response to the notification within the thirty day response period shall be considered as an affirmative of the site as proposed.

- [15] A permit issued pursuant to this ordinance expires six (6) months after the date of issuance if the work authorized has not commenced. If after commencement the work is discontinued for a period of twelve (12) months, the permit therefor immediately expires. No work authorized by a permit that has expired may thereafter be performed until a new permit has been obtained.
- [16] The applicant shall provide the administrator with proof of general liability insurance in the minimum amount of one million dollars (\$1,000,000.)
- [17] The application for a wireless communication tower zoning permit shall be accompanied by payment of a non refundable processing fee set by resolution of the Town Council.

**[f]** An appeal for review of any order, requirement, decision, or determination made by the administrator may be made to the Board of Adjustment. Such appeal shall be submitted in writing to the Board of Adjustment within ten (10) days of receipt of notice of order, requirement, decision or determination. The board shall decide the appeal based upon its findings of fact and the intent of the ordinance. The effect of this decision shall not be to vary the terms of the ordinance, but rather to interpret it.

**[g]** A request for a variance from the requirements of this section shall be submitted by the applicant in writing to the Board of Adjustment within ten (10) days of receipt of notice of an adverse decision by the administrator. The request shall be accompanied by:

- [1] Identification of any variance(s) to the ordinance, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse effects of the ordinance, and
- [2] tax parcel numbers and names of all owners of residential dwellings, day care centers and schools within one hundred (100) feet of the tower site property line.

**[h]** The co-location of facilities and/or stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request. A variance may be granted by the Board of Adjustment if it reaches the conclusions and findings listed in Subsection 107 [b]. The decision of the Board of Adjustment may also include conditions as described in Subsection 107 [c] [d] and [e].

**[i]** The denial of an appeal or variance by the Board of Adjustment, and the appeal from the decision of the board shall be in accordance with Sections 112, 113 and 114 of this ordinance.

[j] Any tower constructed under a permit pursuant to this ordinance shall be removed within one hundred eighty (180) days of the date which it ceases to be in active use, or upon notice from the ordinance administrator, whichever is more favorable to the permittee. Failure to do so subjects the permittee to the penalties set forth in Article VII.

### Section 193. Manufacturing/Processing Performance Standards

[a] **Visible Emissions.** In the B-3 and all PUD districts, no light industrial use is permitted that will produce visible emissions from a stationary source (including, but not limited to, a vent, stack, chimney, or combustion process). In the M-1 district, no light industrial use is permitted that will produce visible emissions from a stationary source that exceeds an average plume opacity of ten (10) percent.

- [1] The plume opacity of visible emissions from all light industrial uses shall be determined by the methods and procedures outlined in the Code of Federal Regulations, Title 40, Part 60 – “Standards of Performance for New Stationary Sources”.
- [2] All measurements will be taken at the point of emission.
- [3] Water vapor which is free of pollutants shall not be considered in measuring opacity.

[b] **Odors.** No light industrial use will emit any continuous, frequent or repetitive odor or odor causing substance or compound which is detectable beyond the lot line of the property on which the use is located.

- [1] For the purposes of establishing initial compliance with this section, the existence of an odor will be presumed when the lowest mean concentration of the odor causing substance or compound in the air exceeds published odor threshold values. In order to demonstrate initial compliance with this section, an odor assessment which accurately represents the concentrations of odor causing substances or compounds present at the property boundary may be required by the permit issuing authority. The assessment must adequately reflect the emission rates of the proposed use, source heights, receptor distance from the source and the effects of buildings, terrain features and other relevant environmental considerations.
- [2] For the purposes of maintaining continuous compliance with this section, odor assessments involving field sampling may be required by the administrator.

- [3] If the administrator receives odor complaints from two or more individuals within a 30-day period alleging that a use is in violation of this section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that a use has caused continuous, frequent or repetitive odors, that use will be found to be in violation of this ordinance.

**[c] Air Pollution.**

- [1] Any 4.0 use classification that emits any “air contaminant” as defined in NC G.S. 143-213 (2) shall comply with applicable state standards concerning air pollution, as set forth in the North Carolina air pollution control law.
- [2] No zoning or special use permit may be issued with respect to any development covered by Subsection [a] until the North Carolina Division of Air Quality has certified to the permit issuing authority that the appropriate state permits have been received by the developer, or that the developer will be eligible to receive such permits and that the development is otherwise in compliance with applicable air pollution laws.

**[d] Electrical Disturbances or Interference**

- [1] No 4.0 use classification may create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance, or
- [2] Otherwise cause, create, or contribute to the interference with electronic signals (including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

**[e] Noise.** The sound level for all light industrial uses, measured beyond the lot line of the property on which the use is located, may not exceed 65 dbA between 6:00 a.m. and 10:00 p.m., or 45 dbA between 10:00 p.m. and 6:00 a.m. Measurements shall be a time-weighted average over any one-hour period. No one-hour time-weighted average may exceed the 65 or 45 dbA thresholds described in this paragraph.

- [1] For the purpose of this section, noise shall be defined as sound produced directly in connection with light industrial operations, including associated vehicular noise, and audible to the human ear.

- [2] Noise shall be measured with a sound level meter (set to the A-weighted scale) which complies with the standards set forth in the “American Standard Specification of General Purpose Sound Level Meters,” American National Standards Institute. (ANSI S1. 4-1961).

**[f] Dust.** No light industrial use shall create, or cause to be created, any dust which is detectable beyond the lot line of the property on which the use is located.

### **Section 194. Indoor Shooting Ranges**

**[a]** No indoor shooting range may be authorized or permitted under this section unless it also meets all requirements imposed by Section 130.01 of the Town of Boone Municipal Code.

**[b]** Noise. The sound level for all indoor shooting ranges must be controlled in such way that there is no sound emanating from any activities within the building in which the range is located that are audible to the human ear of a person of normal hearing at any border of the tax parcel upon which the range is located, as shown on the tax maps of the Watauga County Tax Administrator.

- [1] If the administrator receives noise complaints from two or more individuals within a 30-day period alleging that activities within the indoor shooting range are producing noise levels in violation of this section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that the indoor use has caused or is causing continuous, frequent or repetitive noise, that the use will be found to be in violation of this ordinance.

**[c]** Odors. No indoor shooting range may emit any continuous, frequent or repetitive odor, or any odor-causing substance or compound which is detectable beyond the lot line of the property on which the use is located.

- [1] For the purposes of establishing initial compliance with this section, the existence of an odor will be presumed when the lowest mean concentration of the odor-causing substance or compound in the air exceeds published odor threshold values. In order to demonstrate initial compliance with this section, an odor assessment which accurately represents the concentrations of odor-causing substances or compounds present at the property boundary may be required by the permit issuing authority. The assessment must adequately reflect the emission rates of the proposed use, source heights, receptor distance from the source and the effects of buildings, terrain features and other relevant environmental considerations.

- [2] For the purposes of maintaining continuous compliance with this section, odor assessments involving field sampling may be required by the administrator even after a special use permit has been granted.
- [3] If the administrator receives odor complaints from two or more individuals within a 30-day period alleging that a use is in violation of this section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that a use has caused continuous, frequent or repetitive odors, that use will be found to be in violation of this ordinance.

**[d]** Construction Standards.

- [1] Any building in which an indoor shooting range is proposed or operated must meet accepted national standards for the design and construction of an indoor shooting range, and must be designed and constructed in such a way as to eliminate any significant risk of injury to a patron of the range, or a member of the public either inside or outside the range, during the normal operation and use of the range. Such design and construction in accordance with these standards must be certified by a professional architect and/or professional engineer, who must be licensed by the State of North Carolina and in good standing, and who must be experienced or specifically trained, and skilled, in the design and construction, respectively, of indoor shooting ranges.
- [2] An indoor shooting range must be constructed and maintained in such way that the structure will contain within the portion(s) of the building in which firearms are discharged, a fired projectile with the greatest structure-penetrating characteristics which is proposed to be fired within the range. Such construction in accordance with this standard must be certified by a professional architect and/or professional engineer, licensed by the State of North Carolina and in good standing, who is experienced or specifically trained, and skilled, in the construction of indoor shooting ranges.

**[e]** Emissions.

- [1] Any building in which an indoor shooting range is proposed or operated must be designed and constructed in such way that no lead or other toxic particulate will leave the structure itself or the portion(s) of the structure used for the discharge of firearms. Such design and construction in accordance with this standard must be certified by both a professional architect and professional engineer, each of whom must be licensed by the State of North

Carolina and in good standing, and each of whom must be experienced or specifically trained, and skilled, in the design and construction, respectively, of toxin collection systems for indoor shooting ranges. In addition, the applicant for a special use permit must provide manufacturing information which affirmatively demonstrates that the toxin collection system(s) to be used will meet this standard.

- [2] For the purposes of maintaining continuous compliance with this section, emissions assessments involving field sampling at the owner's expense may be required by the administrator on repeated occasions and the owner of the property shall comply with any such requests. In addition, the administrator may, with or without advance notification and with such frequency as to insure that this standard is continuously met, obtain testing samples from inside and/or outside the indoor shooting range, to measure compliance. The owner and operator of an indoor shooting range must fully comply with requirements and recommendations of the manufacturer of the toxin collection system(s).

**[f]** When a shooting range is proposed for a particular property, other uses proposed for the same property or application should be closely scrutinized for compatibility, the Town ordinarily disfavoring the combination of an indoor shooting range and other activities designed to attract persons to the property other than those attending the shooting range.

**[g]** Violation of any of the provisions of this Section, once an indoor shooting range has been issued a special use permit and/or certificate of occupancy, if it involves regulations designed to protect the health or safety of the public, as determined by the Administrator, shall give rise to an immediate suspension of the special use permit and/or certificate of occupancy, and, following notice and an opportunity for a hearing in accordance with this ordinance, permanent revocation of the special use permit and/or certificate of occupancy.

**Section 195.           Supplementary Regulations for Large Scale Retail  
(Land Use 2.400)**

**[a]** Purpose: The purpose for creating the large scale retail land use classification (2.400) shall be to set forth the appropriate locations within the town's planning jurisdiction where large scale retail uses may be established and to provide for certain development standards which apply to the development of such uses. Specifically, this section has been established for the following reasons:

- [1] Very large scale retail uses, those exceeding 150,000 square feet, require a large amount of land to accommodate the both structural footprint and the associated parking these uses demand. Within

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the Town of Boone's Primary Growth Area, there are few parcels of land which can accommodate this type of use.

- [2] Large scale retail uses generate significant traffic impacts due to the automobile oriented nature of the use. In conjunction, these automobile oriented uses negatively impact air quality, water quality and levels of service on already congested roadways within Boone's planning jurisdiction.
- [3] Large scale retail uses create a significant impact on Boone's unique community character and sense of place as a high country small town.
- [4] Large scale retail uses lack the flexibility for reuse increasing the potential of visual and economic blight which occurs in areas where these stores are vacated.

**[b]** Applicability: The requirements in this section apply to the following:

- [1] Any newly created large scale retail either by proposed expansion or new construction; and
- [2] Any new large scale retail tenant within existing development.

**[c]** Large scale retail shall not exceed a gross floor area of 150,000 square feet.

**[d]** Large scale retail uses having a gross floor area ranging between 25,000 and 150,000 square feet shall provide a Community Impact Analysis. This assessment shall be prepared by an independent consultant, qualified by education and experience, chosen by the developer and approved by the Town, and shall include projected impacts on public services and infrastructure. The analysis shall be submitted for review by the permit issuing authority in conjunction with the required Special Use Permit Application. The permit issuing authority shall review the projected impacts determined by the analysis and may utilize the information in their deliberations concerning the issuance or denial of a Special Use permit in accordance with the provisions of Section 69 of this ordinance.

**[e]** Outdoor Display area associated with large scale retail use shall not exceed 10% of the gross floor area of the structure. All areas utilized for outdoor display shall be clearly indicated on all permit applications. Outdoor display must be located in areas specifically designed for outdoor sales and is prohibited in or on designated exterior walkways, parking areas, driveways, and landscape areas.

**Section 196. Bed and Breakfast Establishments**

**[a]** The following regulations are for Land Use 1.550 Bed and Breakfast Establishments.

- [1] A maximum of fifty percent (50%) of the gross floor area of the dwelling unit may be used for the Bed and Breakfast establishment. Only the floor areas of the bedroom and bathroom areas used by the Bed and Breakfast guests shall be considered in floor area calculations.
- [2] The residence used for Bed and Breakfast establishments shall be occupied by the owner or managing agent during the time the Bed and Breakfast is open for business.
- [3] No display of goods, products, services, or other advertising shall be visible from outside the building.
- [4] Signage shall be limited to a single on premise sign, not to exceed four square feet.
- [5] No activities other than lodging, a morning meal, and an afternoon and/or evening refreshment shall be provided.
- [6] Activities shall be provided for overnight guests only.
- [7] A maximum of one non-resident of the dwelling may be employed on a full-time basis.
- [8] Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- [9] Parking
  - [a] Off street parking shall be provided at one space per guest room in addition to the parking requirements as set forth in Section 346 [e] for use 1.110.
  - [b] Parking shall be on the same lot on which the Bed and Breakfast establishment is located.
  - [c] Parking shall be located at the rear of the lot and screened with a Type A buffer from adjacent properties and from the street.
- [10] The length of stay of guests shall not exceed 14 days.
- [11] Bed and Breakfast establishments shall comply with N.C. Building Code requirements.

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**Section 197. Supplementary Rules for Uses involving Certain Activities which pose Particular Concerns about Public Health, Safety or Welfare.****[a] Electronic and Internet Gaming Uses.**

- [1] Application. The requirements of this section shall apply to all Electronic and Internet Gaming uses, as defined in this ordinance, whether conducted as a principal use or activity, or an accessory use or activity.
- [2] Definitions. Unless otherwise specifically provided herein, or unless clearly required by the context, the words and phrases used in this section shall have the following meaning indicated when used in this section.
  - [A] Electronic and Internet Gaming Use. A use, whether principal or accessory, where person(s) utilize electronic machines, including but not limited to computers or gaming terminals, to conduct or participate in games of chance, including sweepstakes and gambling activities not prohibited under N.C. Gen. Stat. Chapter 14, Article 37, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, including but not limited to Internet cafes, Internet sweepstakes, electronic gaming machines/operations or cybercafes, and excluding a business solely participating in a lottery approved by the State of North Carolina.
- [3] Requirements.
  - [A] An Electronic and Internet Gaming use shall be permitted with a special use permit in the B-3 and M-1 zoning districts.
  - [B] An Electronic and Internet Gaming use shall not be located on a lot which is within two thousand, six hundred and forty (2640) feet of another lot containing an Electronic and Internet Gaming use as measured from the closest edge of each lot to the other lot.
  - [C] An Electronic and Internet Gaming use shall not be located on a lot which is within one thousand (1,000) feet from a lot upon which a church, school, library, public park, playground, or daycare center is located

as measured from the closest edge of each lot to the other lot.

- [D] No Electronic and Internet Gaming use shall be located on any lot which is within one thousand (1000) feet from any residential district, as defined in Section 151, as measured from the closest edge of each lot to the other lot.
- [E] No more than one Electronic and Internet use may be located on the same lot.
- [F] No Electronic and Internet Gaming use may operate between the hours of 10:00 p.m. and 8:00 a.m.
- [G] No permits shall be issued for Electronic and Internet Gaming uses until all required privilege and other licenses are obtained and all required fees have been paid.
- [H] A certificate of occupancy shall not be issued until the Electronic and Internet Gaming use meets any applicable federal, State or County requirements, including any requirements of the Appalachian Regional Health Department.

### **Section 198. Transitional Zones.**

**[a]** Transitional zones are hereby established and may apply to the procedures and evidence required for development in any existing zoning districts. The land within a transitional zone may be used as permitted in the underlying district, but only pursuant to the procedures and standards applicable to these zones, as created under this section.

**[b]** Transitional zones attach to each R-1, R-1A, R-R, R-2, and R-A district, (hereinafter, “the protected district”) without regard to the current uses in that district. They are established for the purpose of creating special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a “one size fits all” approach.

**[c]** The size of the transitional zone varies with the type of development proposed nearby:

- [1] For a proposed large scale retail development, or a multi-family development containing ten units or more, the transitional zone is three hundred feet (300') from the boundary of the protected district as measured from all points along that boundary.
- [2] For a proposed small scale retail development within a B-1 district, temporary mobile medical units or a multi-family development containing fewer than five units, the transitional zone is seventy-five feet (75') from the boundary of the protected district as measured from all points along that boundary.
- [3] For a proposed small scale retail development other than within a B-1 district, a multi-family development containing between five units and nine units, and any other commercial development, the transitional zone is one-hundred-and-fifty feet (150') from the boundary of the protected district as measured from all points along that boundary.

**[d]** Whenever a permit is sought to authorize development within a transitional zone, and any part of any primary or accessory structure or use of the development will be located within the pertinent transitional zone, a special use permit is required. The Board of Adjustment may deny the application if the requirements of this section are not met, or it may place reasonable conditions on the development, in addition to such conditions as may otherwise be reasonably imposed, specifically designed to mitigate the potential impacts identified herein.

**[e]** In addition to all other requirements of this ordinance which pertain to the proposed development, including but not limited to those relating to the location and placement of structures, the type and quantity of landscape buffering, the type and location of lighting, and the size of setbacks, in order to meet the requirements of this section, the applicant must also show:

- [1] That the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development upon the protected district, including:
  - [A] noise impacts;
  - [B] light impacts; and
  - [C] any other predictable negative effect, including:
    - (i) negative visual effects;
    - (ii) negative traffic effects; and
    - (iii) negative health effects.

**[f]** Because of the variable topography and characteristics of particular tracts of land within the Town's zoning jurisdiction, the solutions incorporated into the development plan by the applicant must be tailored to specifically address the characteristics of the particular location in relation to the protected district. Only if an applicant can demonstrate beyond a reasonable doubt that the normal requirements of the ordinance are themselves sufficient to protect the protected district may the application be approved without additional measures being incorporated into the site specific development plan.