

## PISGAH FOREST CORRIDOR AREA ZONING ORDINANCE

**Article I. Title**

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

**Article II. Authority and Enactment**

Pursuant to the authority and provision conferred by the General Statutes of the State of North Carolina (Chapter 153A, Article 18, Part 3), the Transylvania County Board of 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 Board of 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 chapter 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 Board of Commissioners of Transylvania County, North Carolina.

(4) The words "Planning Board" shall mean the Planning Board of Transylvania County, North Carolina.<sup>1EN</sup>

(5) The word "may" is permissive.

(6) The word "shall" is mandatory.

(7) The word "lot" includes the word "plot" or "parcel."

(8) The word "building" includes the word "structure."

(9) The word "street" includes the words "road" and "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.

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

***Access Road Corridor*** 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 corridor shall be located entirely on the subject property or on an easement appurtenant. An access road corridor shall contain a clear and unobstructed travelway, except for any necessary 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.

***Amusement park*** means establishments of the type known as "amusement parks," "theme parks," and "kiddie 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.

***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, to include cultivation of crops and the husbandry of livestock.

***Buffer*** means a continuous strip of land, measured from the property lines or from any street bordering or traversing the property (whichever is closer to the principal use or building), in which 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."

***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 highway right-of-way.

***Chip mill*** means any non-portable wood-chipping facility that stands alone and apart from a sawmill or a pulpmill, and whose purpose is to provide wood chips to an off-site fabricating facility including, but not limited to, a papermill or oriented strand board (OSB) mill.

***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.

***Conditional use*** means a use which is permitted in specified zoning districts only after review by the board of adjustment and found to meet specific conditions and procedures as set forth in this article so as to maintain the safety and general welfare of the community.

***DUA*** means dwelling units per acre.

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

***Dwelling, two-family*** means a building arranged or designed to be occupied by two families living independently of each other.

***Dwelling, multifamily*** 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, single-family attached*** means townhouses, row houses, condominiums, or group houses for single-family dwellings, having or sharing one or more common walls or other parts of the structure, and whose ownership may be divided into lots for individual sales.

***Dwelling unit*** means a building, or portion thereof, providing complete and permanent living facilities for one family.

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

***Extremely Hazardous 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.

***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, provided that unless all members are related by blood or marriage, no such family shall contain over five persons, but further provided that domestic servants employed on the premises may be housed on the premises without being counted as a family.

***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.

***Gross residential density*** means the number of dwelling units proposed to be built, divided by the area of the tract being developed.

***Hazardous waste 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.

**Healthcare Facility** means any residential or in-patient medical facility, whether public or private, including but not limited to the following: general hospitals; chronic disease, maternity, mental, tuberculosis, or other specialized hospitals; facilities for intensive care and self-care; nursing homes, including skilled nursing facilities and intermediate care facilities; and facilities for continuing care of the elderly and infirm.

**Heavy Industry** means any industrial use establishment that is an extremely hazardous facility as defined above, or is 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 are not extremely hazardous facilities 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 uses listed Section 21.3.

**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.

**Individual sewer system** means any septic tank, privy, or other facility serving a single source with a design capacity of 3,000 gallons per day or less.

**Individual water system** means any well, spring, stream, or other source used to supply a single connection.

**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 a parcel of land on which junk, waste material or inoperative vehicles and other machinery are collected, stored, salvaged, or sold.

**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" or "parcel."

**Lot depth** means the mean horizontal distance between front and rear lot lines.

***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, the description of which has been so recorded.

***Mining and extraction operation*** means any establishment or business primarily engaged in dressing and beneficiating 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.

***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 primarily as vegetated open space for 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 board of 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.

**Setback** means the distance from the street right of way to the closest edge of a structure or sign.

**Site specific development plan** means a plan of land development submitted to the county for purposes of obtaining a zoning or land use permit or approval pursuant to division 6 of this article. Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

**Slaughtering plant** means an establishment primarily engaged in slaughtering animals or poultry/small game. For purposes of the open use district, this definition includes slaughtering plants that conduct processing of animals or poultry/small game, including dressing, packing, freezing, canning, cooking, and/or curing of animals or poultry/small game or their carcasses. This definition specifically excludes slaughtering and processing activities performed for personal use only.

**Solid waste management facility** means (1) land, personnel, and equipment in the management of solid waste including a transfer station, landfill, or materials recovery facility. Specifically excluded from this definition are incinerators and drop-off recycling centers; and those solid waste management facilities 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 solid waste management facilities not operating as a hazardous waste facility.

**Street, road, or highway** means a right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

**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.

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

**Yard, front** means an open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the street or property line and the front line of the building, projected to the side lines of the lot.

**Yard, rear** means an open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the sidelines of the lot.

*Yard, side* means an open, unoccupied space on the same lot with a principal building, situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard. For any building permit or mobile home placement permit issued subsequent to the adoption of this article, any structure abutting two or more highways, roads, or streets shall maintain minimum "front yard" setbacks on any side of the structure which abuts a street, road, or highway in accordance with the provisions of the district in which the property is situated.

*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. 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 1. Penalties for violations.**

Any person adjudged in violation of this ordinance shall be guilty of a misdemeanor and shall be subject to punishment as provided in G.S. 14-4.

#### **Section 2. 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 VIII. Abrogation or greater restrictions.**

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

provisions made by this article, the provisions of that statute or local ordinance or regulation shall govern.

## **Article IX. Administration and Enforcement**

### **Section 3. 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. Any appeal from a decision of the board of adjustment shall be to the Board of Commissioners and then to the courts as provided by law.

### **Section 4. Zoning administrator; duties**

The board of commissioners shall appoint a zoning administrator. It shall be the duty of the duly appointed 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, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He 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 5. Zoning Permits and Administration**

#### **5.1 Certificate of zoning compliance.**

5.1.1 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 be made until a certificate of zoning compliance shall have been issued by the zoning administrator. All buildings, structures, and accessory uses shall meet the dimensional requirements, use requirements, and any other requirements, that are noted in this ordinance. No certification of zoning compliance shall be issued except in conformity with the provisions of this article.

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

5.1.3 No Zoning Permit will be required for uses allowed by right in the open use district.

5.1.4 A zoning permit is required for special uses shown in section 21.3, planned unit developments as shown in Article XV and new or expanded uses in the corridor district as shown in section 25.

5.2 A building permit shall be obtained from the Transylvania County Building Permitting and Enforcement Department for the construction or alteration of any building, structure or mobile home.

5.3 In conjunction with the final building inspection, the zoning administrator shall certify that all requirements of this ordinance have been met. The applicant shall call the zoning administrator and apply for such certification coincident with the final building inspection or within ten days following completion. A certificate of occupancy, either for the whole or part of the building, shall be issued within 30 days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this ordinance. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this ordinance. If the certificate of occupancy is denied, the zoning administrator shall state in writing the reasons for refusal, and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the zoning administrator, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

5.4 Construction progress.

If no substantial construction progress has been made within one year of the date of the issuance of the zoning permit, the permit becomes invalid.

5.5 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 other appropriate county authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

5.6 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 X. Board of Adjustment**

The Transylvania County Planning Board shall serve as the Board of Adjustment.

## **Section 6. Rules of conduct**

6.1 Members of the board of adjustment may be removed by the board of commissioners for cause, including violation of the rules stated in this section.

6.2 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.

6.3 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.

6.4 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 clerk prior to the hearing.

6.5 Members of the board of adjustment shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

6.6 No board of adjustment member shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise, from any person, firm, or corporation that, in the member's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the county.

6.7 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.

6.8 No board of adjustment member shall grant any improper favor, service, or thing of value in the discharge of duties.

### **Section 7. General proceedings**

The board of adjustment shall annually elect a chairperson and a vice-chairperson from among its members. 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 8. Meetings**

8.1 The board of adjustment shall hold regular monthly 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. At least 48 hours' written notice of the time and place of meeting shall be given, by the chairperson, to each member of the board of adjustment. All board of adjustment meetings are to be held in accordance with G.S. 143-338.9 et seq., commonly referred to as the Open Meeting Law.

8.2 Whenever there are no appeals, applications for special or conditional uses or variances, or other business for the board of adjustment, or whenever so many regular and alternate members notify the zoning administrator of their inability to attend that a quorum will not be available, the chairperson may dispense with a meeting by giving written or oral notice to all members.

8.3 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 or conditional use permit when there are less than six members present.

8.4 All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in section 6. The required vote to decide appeals and applications shall be as provided in subsection 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. For purposes of this article, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

8.5 The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this ordinance, the board of adjustment may apply to the general court of justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this ordinance may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person, while under oath during a proceeding before the board of adjustment, who willfully swears falsely is guilty of a Class 1 misdemeanor.

8.6 The applicant must file their application for a hearing with the zoning administrator, who shall act as clerk to the board of adjustment in receiving this notice. 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 9. Powers and duties**

The powers and duties of the board of adjustment shall be as follows:

9.1 The board of adjustment shall interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and any other questions of interpretation that may arise in the administration of this ordinance.

9.2 The board of adjustment shall hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator in the enforcement of this ordinance, as provided in section 5. 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 or to effect any variation in this ordinance.

9.3 The board of adjustment shall grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses as authorized in division 6 of this article set forth as conditional uses under the various use districts. The board of adjustment shall follow the requirements and procedures outlined in division 6 prior to issuance of a conditional use permit.

9.4 The board of adjustment shall authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, and so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of adjustment that the following conditions exist:

9.4.1 That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance;

9.4.2 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;

9.4.3 That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings located in the same zoning district;

9.4.4 That the special conditions and circumstances do not result from the action of the applicant;

9.4.5 That the variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit;

9.4.6 That the variance is the minimum necessary to afford relief; and

9.4.7 That the public safety and welfare have been assured and substantial justice has been done.

9.5 A nonconforming use 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.

9.6 In granting a variance, the board of adjustment shall make findings that the requirements of this ordinance have been met. The board of adjustment shall make a finding, and written notice

of the decision shall be prepared as prescribed in subsection 11.4. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards 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 1.

### **Section 10. Statutory vested rights provisions**

10.1 The purpose of this section is to implement the provisions of G.S. 153A-344.1 pursuant to which a statutory zoning vested right is established upon the approval of a site-specific development plan.

10.2 Establishment of a zoning vested right.

10.2.1 A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the board of adjustment of a site specific development plan, following notice and public hearing.

10.2.2 The board of adjustment may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.

10.2.3 Notwithstanding subsections (1) and (2) of this section, approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

10.2.4 A site specific development plan shall be deemed approved upon the effective date of the board of adjustment's action relating thereto.

10.2.5 The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulations by the county, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with subsection (e) below.

10.2.6 A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

10.3 Approval procedures and approval authority.

10.3.1 Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the board of adjustment for the specific type of zoning or land use permit or approval for which application is made.

10.3.2 Notwithstanding the provisions of subsection (1) above, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the board of commissioners, board of adjustment or other planning agency designated to perform any or all of the duties of a board of adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the approval authority, following notice and a public hearing as provided in G.S. 153A-323.

10.3.3 In order for a zoning 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.

10.3.4 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)."

10.3.5 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 not inconsistent with the original approval.

10.3.6 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.

#### 10.4 Duration.

10.4.1 A zoning vested right that has been vested as provided in this article shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (2) below. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the board of adjustment at the time the amendment or modification is approved.

10.4.2 Notwithstanding the provisions in subsection (1) above, the board of adjustment may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the board of adjustment at the time the site specific development plan is approved.

10.4.3 Upon issuance of a building permit, the expiration provisions of G.S. 153A-358 and the revocation provisions of G.S. 153A-362 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

#### 10.5 Termination.

A zoning right that has been vested as provided in this ordinance shall terminate:

- 10.5.1 At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- 10.5.2 With the written consent of the affected landowner;
- 10.5.3 Upon findings by the county board of commissioners, by ordinance after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- 10.5.4 Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the county, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
- 10.5.5 Upon findings by the county board of commissioners, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the board of adjustment of the site specific development plan; or
- 10.5.6 Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the board of adjustment may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

10.6 Limitations. Nothing in this ordinance is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 154A-344.1.

10.7 Repealer. In the event that G.S. 154A-344.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

### **Section 11. Appeals and applications.**

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.

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 notice of the order, requirement, decision or determination by the zoning administrator. The applicant must file his application for a hearing with the zoning administrator, who shall act as clerk for the board of adjustment in receiving this notice. All applications shall be made upon the form specified for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

11.3 Hearings shall be conducted as follows:

11.3.1 After receipt of notice of appeal, the board chairperson shall schedule the time for a hearing, which shall be at a regular or special meeting within 33 days from the filing of such notice of appeal.

11.3.2 The board of adjustment shall mail notices of the hearing to the affected parties to the action appealed from, and to such other persons as the zoning administrator shall direct, at least five 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 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 shall present the argument in support of his application.

11.3.3.3 Persons opposed to granting the application shall present the argument against the application.

11.3.3.4 Both sides will be permitted to present rebuttals to opposing testimony.

11.3.3.5 The chairperson shall summarize the evidence, which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the board 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. 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 change, it shall thereupon treat the request in the same manner as any other application.

11.4 *Decisions.* Decisions shall be made in the following manner:

11.4.1 *Time.* A decision by the board of adjustment shall be made within 30 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 given to the applicant by the zoning administrator as soon as practical after the case is decided. Also, written notice shall be given 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 upon approval of the minutes of the board of adjustment. 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. The record shall state in detail what, if any, conditions and safeguards are imposed by the board of adjustment in connection with the granting of a variance.

11.4.3 *Expiration of permits.* Unless otherwise specified, any order or decision of the board of adjustment granting a conditional use or variance shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within one year from the date of the decision.

11.4.4 *Voting.* 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; to decide in favor of the applicant any matter upon which the board of adjustment is required by this ordinance to pass; or to grant a variance from the provisions of this ordinance.

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

## **Section 12. Appeals from decision of board of adjustment**

Appeals from decisions by the board of adjustment may be taken to the Board of Commissioners of Transylvania County. Further appeals may be taken to the courts pursuant to G.S. 153A-345.

## **ARTICLE XI. ZONING DISTRICTS AND MAPS**

For the purpose of this ordinance, the Pisgah Forest zoning district(s) of Transylvania County as delineated on the official zoning map of Transylvania County, adopted by the board of commissioners, shall be designated as an open use district (OU) or a corridor mixed use district (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 maintained in the office of the zoning administrator of the county. This map shall be available for inspection by interested persons during normal business hours of the zoning administrator. It shall be the duty of the zoning administrator to maintain the map and post any changes thereto as they may be made.

## **Section 14. Rules governing district boundaries**

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

14.1 Boundaries indicated as approximately following the centerlines of streets, highways, alleys, streams, rivers, other bodies of water, and/or other topographic features, shall be construed to follow such lines.

14.2 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

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

14.4 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.

14.5 Where physical features existing on the ground are at variance with those shown on the zoning map or in other circumstances not covered by subsections (1) through (4) of this section, the board of adjustment shall interpret the district boundaries.

## **ARTICLE XII. AMENDMENTS**

### **Section 15. Board of commissioners to amend ordinance**

This ordinance, including the zoning map, may be amended by action of the Transylvania County Board of Commissioners in accordance with the provisions of this article.

### **Section 16. Initiation of amendments**

Proposed changes or amendments to this ordinance may be initiated by the Transylvania County Board of Commissioners, Transylvania County Planning Board, board of adjustment, or one or more owners of property within the area proposed to be changed.

### **Section 17. Application**

Before any action on a proposed change or amendment, an application shall be submitted to the office of the zoning administrator at least 30 days prior to the planning board's meeting at which the application is to be considered. The application shall contain the name(s) and address (es) of the owner(s) of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question. 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. The planning board shall also give public notice of the meeting in a newspaper having general circulation in Transylvania County. Said notice shall be published at least five days prior

to the date of the meeting. 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 street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons. Neither the planning board nor the board of commissioners will consider an application for property denied within the preceding 12 months by the board of commissioners.

#### **Section 18. Planning board action**

Before taking any action on a proposed amendment to this ordinance, the board of commissioners shall consider the planning board's recommendations on each proposed amendment. All proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of commissioners may proceed in its consideration of the amendment without the planning board report.

#### **Section 19. Public hearing**

Before enacting any amendment to this ordinance, board of commissioners shall hold a public hearing. A notice of such public hearing shall be published in a newspaper of general circulation in Transylvania County once a week for two successive weeks, the first publication shall not appear less than 10 days or more than 25 days prior to the date fixed for the 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 board of 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 in advance of the hearing.

#### **Section 20. Decision**

The board of commissioners shall make a decision on the proposed amendment within 60 days after the public hearing. Prior to adopting or rejecting any zoning amendment, the board of commissioners shall adopt a statement describing whether its action is consistent with the Transylvania County Comprehensive Plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review. The planning board shall advise and comment on whether the proposed amendment is consistent with the Transylvania County Comprehensive Plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the board of commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board, but a 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 board of commissioners.

### **ARTICLE XIII. OPEN USE DISTRICT**

#### **Section 21. Open Use District (OU)**

The OU District is established as a district in which all uses (excluding hazardous waste

disposal facilities and radioactive waste disposal facilities and adult establishments) are allowed but certain uses are regulated so as to ensure that neighborhood impact is mitigated. The neighborhood impact from the uses listed below will be mitigated through the use of minimum specific site standards combined with general standards which provide the flexibility to impose a higher level of specific site standards dependent upon the degree of neighborhood impact.

21.1 Uses allowed by right. Unless otherwise stated herein below:

21.1.1 All uses are allowed by right in the Open Use District;

21.1.2 No zoning permit shall be required for uses allowed by right in the Open Use District; and

21.2 Other Transylvania County ordinances apply. Any ordinance adopted by the Transylvania County Board of Commissioners will apply to the zoned area of the County as the ordinance applies to the remainder of the County except where there is a stricter requirement imposed by the zoning ordinance, the zoning ordinance will take precedence.

21.3 Special uses.

21.3.1 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 Subsection 22.4 and those specific site standards listed in Subsection 22.6, if any, will be met:

21.3.1.1 Incinerators.

21.3.1.2 Solid waste management facilities.

21.3.1.3 Mining and extraction operations.

21.3.1.4 Concrete plants.

21.3.1.5 Asphalt plants.

21.3.1.6 Junkyards.

21.3.1.7 Motor sports facilities.

21.3.1.8 Slaughtering plants.

21.3.1.9 Amusement parks.

21.3.1.10 Chip mills.

21.3.1.11 Heavy industry.

21.3.2 It is expressly acknowledged that the above-referenced uses will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood as long as the site standards as specified in Subsection 22.6 and the general site standards as specified in Subsection 22.4 are met.

21.4 Prohibited uses. The following uses shall be prohibited in the Open Use District:

21.4.1 Hazardous waste disposal facilities, unless preempted pursuant to N.C.G.S. § 130A-293.

21.4.2 Radioactive Waste Disposal Facilities, unless preempted pursuant to N.C.G.S. §104E-6.2.

21.4.3 Adult establishments.

21.5 Expansion and alteration of certain uses in the Open Use District.

#### 21.5.1 Uses having a special use permit.

The following requirements apply to those uses listed in section 21.3 which receive a special use permit after the effective date of a Zoning Map amendment applying the Open Use District in the applicable area:

##### 21.5.1.1 Alteration of a use (without physical expansion).

Alterations of the operations of a use shall be allowed as long as such alterations do not violate any specific standards of this ordinance, (see Subsection 22.7), general standards of this ordinance, (see Subsection 22.4) or conditions of the special use permit. If an alteration would result in the violation of any of these standards or conditions an amendment to the special use permit shall be required, otherwise such alteration will be deemed a violation of this ordinance. This section shall not be deemed to allow a use to change to another use listed in section 21.3 without applying for a new special use permit. Alterations of operations shall include, but not be limited to, increases in productivity arising from the addition of equipment, the addition of employee shifts or the change of means and methods.

##### 21.5.1.2 Physical expansion of a use.

A use may expand its facilities without any additional restrictions and without securing an amendment to the special use permit if the specific standards of this chapter (see Subsection 22.6, general standards of this chapter (see Subsection 22.4) or the conditions of the permit, if any, will not be 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%. Notwithstanding the foregoing, no use may expand in accordance with the terms of this exception on more than two occasions without securing an amendment to the special use permit. All other expansions will require an amendment to the special use permit. If any condition of the special use permit will be violated by a proposed expansion to facilities, or such proposed expansion will result in more than two expansions to facilities pursuant to the exception contained hereinabove, or such expansion results in the total size of the structures or areas devoted to the principal use being expanded by more than 10%, then such expansion will be deemed a violation of this ordinance.

#### 21.5.2 Uses for which a special use permit was not required when established.

For those uses of the same type as those listed in section 21.3 if constructed or established after the effective date of a Zoning Map amendment applying the Open Use District in the applicable area, which did not require a special use permit when the use was constructed or established, any expansion or alteration to the operations, or any expansion or alteration to the structures or areas devoted to the principal use, which bring the use within the definition for those uses listed in section 21.3 shall require a special use permit. The entire use, including but not limited to the expansion or alteration, shall be required to comply with all applicable standards in the Open Use District.

### 21.5.3 Preexisting uses.

For those uses of the same type as those listed in section 21.3 constructed or established before the effective date of a Zoning Map amendment applying the Open Use District in the applicable area the following requirements shall apply:

#### 21.5.3.1 Alteration of a use (without physical expansion).

Alterations of the operations of a use of the type listed in section 21.3 shall be allowed without a special use permit if the use did not meet the definition of one of the uses listed in section 21.3 when constructed or established, and such alteration does not bring the use within the definition for one of the uses listed in section 21.3. If, however, such alteration will bring the use within the definition of one of the uses listed in section 21.3, then a special use permit shall be required. Once a special use permit is obtained for a preexisting use, however, further alterations shall be governed by section 21.7.1 above.

#### 21.5.3.2 Physical expansion of a use.

Expansions of the facilities for uses of the type listed in section 21.3 shall be allowed without a special use permit if the use would not have met the definition of one of the uses listed in section 21.3 when constructed or established, and such expansion does not bring the use within the definition for one of the uses listed in section 21.3. If, however, such expansion will bring the use within the definition of one of the uses listed in section 21.3 or the use would have met the definition of one of the uses listed in section 21.3 when constructed or established, then a special use permit shall be required. Once a special use is obtained for a preexisting use, however, further expansions shall be governed by section 21.5.2 above.

#### 21.5.3.3 Applicable standards.

Notwithstanding any provisions of this ordinance, alterations or expansions to uses required to obtain a special use permit pursuant to this article shall be required to meet the specific site standards listed in Subsection 22.7 to the extent possible for the expanded or altered portion of the facility or operation only. Any such alteration or expansion shall be required to meet the general standards listed in Subsection 22.4 with or without conditions imposed by the Board of Commissioners as allowed by this ordinance. Such conditions may include, but not be limited to, Notwithstanding anything herein to the contrary, development occurring around a preexisting use will not affect the ability of such use to alter or expand its facilities or operations.

21.6 Subsequent events. Events occurring subsequent to the date of an application for a special use permit for those uses in the OU District requiring such permit, including but not limited to the location of a health-care facility or school within the stated separation or a change in the residential density, shall not operate to invalidate the permit or affect the ability of the use to alter or expand its facilities or operations. In addition, development occurring around a preexisting use or a use for which a special use permit was not required when established will not affect the ability of such use to alter or expand its facilities or operations.

**Section 22. Special Uses in the Open Use District**

- 22.1 When a special use permit is required by the terms of this ordinance, application for such a permit shall accompany the application for a zoning compliance permit. The application shall be transmitted immediately to the Board of County Commissioners, which shall refer it to the Planning Board for review and recommendations prior to a public hearing.
- 22.2 A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in the county as provided in § 200-70A(1)(b).
- 22.3 The applicant shall identify all adjacent property owners, whom the Zoning Administrator will notify by registered mail of the special use application. The Zoning Administrator shall post the property with a hearing notice detailing the special use sought and the hearing time. 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 before a special use permit is issued.
- 22.4 General site standards. All uses requiring a special use permit 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. The applicant will not bear the burden of proving that all of the general site standards as listed below have been met. The applicant will, however, be required to produce evidence sufficient to rebut any evidence presented that the general site standards would not be met or that a condition is necessary.
- 22.4.1 The following general site standards shall apply to all uses requiring a special use permit:
- 22.4.1.1 Establishments requiring a special use permit shall not be located or developed in such a manner as to adversely affect the health or safety of the persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.
- 22.4.1.2 Establishments requiring a special use permit shall be located or developed in such a manner as to minimize the effects of noise, glare, dust, solar access and odor on those persons residing or working in the neighborhood of the proposed use and the property and public improvements in the neighborhood.
- 22.4.1.3 Establishments requiring a special use permit shall not be located or developed in such a manner as to seriously worsen the traffic congestion so as to endanger the public safety.
- 22.4.1.4 Establishments requiring a special use permit shall be located or developed in such a manner as to comply with all applicable federal, state and local laws, rules and regulations.

- 22.4.1.5 Establishments requiring a special use permit shall be located and developed in such a manner as to be consistent with the goals and objectives as outlined in the Transylvania County Comprehensive Plan.
- 22.4.1.6 Establishments requiring a special use permit shall be located and developed in such a manner as to be consistent with any approved Official Thoroughfare Plans of Transylvania County or any municipality therein.
- 22.1.4.7 Establishments requiring a special use permit shall be located and developed in such a manner as to minimize the environmental impacts on the neighborhood including the following: groundwater, surface water, wetlands, endangered and threatened species, archeological sites, historical preservation sites and unique natural areas.
- 22.4.2 In the event that the Board of County Commissioners determines that a proposed use is contrary to one or more of the general site standards, then the Board of Commissioners may impose a condition on the issuance of the special use permit when such condition will avoid a violation of the general site standards. The condition imposed may be an increase in any minimum specific site standards stated for the regulated use. The imposition of a condition may only be based on evidence presented at the hearing that the general site standards would not be met without the imposition of such condition. The Board must make specific findings of fact based upon the evidence presented prior to the imposition of such condition.
- 22.5 If at any time after a special use permit has been issued for any special use, the Board of County Commissioners finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated immediately and the operation of such use discontinued.
- 22.6 If a special use permit is terminated for any reason, it may be reinstated upon application as in the case of a new matter.
- 22.7 Specific Site Minimum Standards Table (See Table 1)

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<b>TABLE 1</b>	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant	Incinerator	Junkyard	Motor Sports Facility	Slaughtering Plant	Amusement Park	Chip Mill
Hours of Operation	No stated minimum	7 a.m.-11 p.m.	7 a.m.-11 p.m.	7 a.m.-11 p.m.	7 a.m.-11 p.m.	No stated minimum	7 a.m.-11 p.m.	7 a.m.-11 p.m. No more than 3 consecutive days	7 a.m.-11 p.m. On weekdays	7 a.m.-11 p.m. weekdays; 7 a.m.-2a.m. Fir. & Sat.	7 a.m. – 11 p.m.
Screening	No stated minimum	No stated minimum	No stated minimum	No stated minimum	No stated minimum	No stated minimum	Full	No stated minimum	No stated minimum	No stated minimum	No stated minimum
Fencing	Secured	Secured	Secured	Secured	Secured	Secured	Secured	Secured	Secured	Secured	Secured
Buffer (feet)	100	500	500	100	100	100	50	100	100	100	100
Setback (feet)	300	1,500 (landfill) 500 (other)	No stated minimum	200	500	300	300 (from public road)	500 (minor) 1,500 (major)	1,000	500	200
Parking	See Section 31	See Section 31	See Section 31	See Section 31	See Section 31	See Section 31	See Section 31	See Section 31	See Section 31	See Section 31	See Section 31
Loading	See Section 32	See Section 32	See Section 32	See Section 32	See Section 32	See Section 32	See Section 32	See Section 32	See Section 32	See Section 32	See Section 32
Access Road Corridor	Number:1 Width: 60 feet	Number:2 Width: 60 feet	Number:1 Width: 60 feet	Number:1 Width: 60 feet	Number:1 Width: 60 feet	Number:1 Width: 60 feet	Number:1 Width: 45 feet	Number:1 (minor) 2 (major) Width: 45 feet	Number:1 Width: 60 feet	Number:2 Width: 45 feet	Number:1 Width: 60 feet
Width of Travelway (feet)	30	30	30	30	30	30	20	20	30	20	30
Fire Protection	Required	Required	Required	Required	Required	Required	Required	Required	Required	Required	Required
Noise Mitigation	Plan Required	Plan Required	Plan Required	Plan Required	Plan Required	Plan Required	Plan Required	Plan Required	Plan Required	Plan Required	Plan Required
Lighting	Required	Required	Required	Required	Required	Required	Required	Required	Required	Required	Required
Separation	½ mile - schools ⅔ mile - healthcare	⅓ mile - schools	½ mile – schools ½ mile – healthcare	⅓ mile - schools	½ mile – schools ½ mile – healthcare	½ mile – schools ½ mile – healthcare	½ mile – schools	½ mile – schools 2 miles - healthcare	½ mile – schools ½ mile – healthcare	½ mile – schools ½ mile – healthcare	½ mile – schools
Maximum Residential Density	1 unit per 8 acres Radius: 1 mile	1 unit per 2 acres Radius: 1 mile	1 unit per 2 acres Radius: 1 mile	N/A	1 unit per 8 acres Radius: 1 mile	1 unit per 8 acres Radius: 1 mile	N/A	1 unit per 2 acres Radius: 1 mile	1 unit per 2 acres Radius: 1 mile	1 unit per 2 acres Radius: 1 mile	1 unit per 1 acre Radius: ½ mile
Protected Mountain Ridge	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited

Section 23. Application requirements for special uses in the open use district

23.1 All applicants for those uses listed in section 21.3 above shall provide the following information by completing an application form (to be provided by the Zoning Administrator) and providing supporting documentation as required:

23.1.1 Name and address of applicant

23.1.2 Permit fee as set forth by the Transylvania County Board of Commissioners on a fee schedule.

23.1.3 Site plan prepared by an active North Carolina registered land surveyor, registered professional engineer or registered landscape architect and containing the following information:

23.1.3.1 Names, addresses and telephone numbers of the applicant and the property owner.

23.1.3.2 Plan scale, a North arrow and a vicinity map.

23.1.3.3 Tax parcel identification number for any parcel of land containing the proposed use.

23.1.3.4 Name, address, signature and seal of the person who prepared the site plan.

23.1.3.5 Surveyed boundary lines of any parcel, or portion thereof, that will contain the proposed use, and surveyed point of highest elevation (finished grade) to the nearest foot. (Such boundary lines shall be surveyed by an active North Carolina registered land surveyor).

23.1.3.6 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 Board of Commissioners a reasonable understanding of each.

23.1.3.7 Proposed location, use and dimensions of all structures, and areas not within structures, devoted to accessory uses. All such structures and areas shall be appropriately labeled, including a description of each sufficient to give the Board of Commissioners a reasonable understanding of each.

23.1.3.8 Proposed location(s), use and dimensions of the stated minimum buffer and the stated minimum setback.

23.1.3.9 Existing site conditions, including watercourses, flood hazard areas, existing utilities and streets and rights-of-way.

23.1.3.10 Proposed locations, dimensions and arrangement of all off-street parking and loading areas.

23.1.3.11 Proposed locations (including line and grade) of access road corridor(s), travelway(s) and service road(s).

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- 23.1.3.12 Proposed location and description of facilities to be used for sewage disposal, water supply, stormwater drainage and any other utilities.
- 23.1.5 Names, mailing addresses and tax parcel identification numbers for all property owners adjacent to the proposed use
- 23.1.6 Schedule of proposed hours of operation which shall be subject to approval by the Board of Commissioners.
- 23.1.8 Estimated peak noise emission measured at the property boundaries during hours of operation
- 23.1.9 Noise mitigation plan, which shall be subject to approval by the Board of Commissioners
- 23.1.10 Lighting plan
- 23.1.11 A detailed plan describing or showing the proposed method(s) of screening
- 23.1.12 A detailed plan describing or showing the proposed method(s) of fencing
- 23.1.13 Written narrative which provides a description and details regarding the proposed use including, but not limited to:
  - 23.1.13.1 A description of the operations associated with the proposed use.
  - 23.1.13.2 Number of employees, if any.
  - 23.1.13.3 Maximum patron capacity for which application is being made. If approved, this shall be the maximum permitted patron capacity for the use.
  - 23.1.13.4 Types of material and equipment to be used on site.
  - 23.1.13.5 Whether operations will be indoors and/or outdoors, with specificity as to which operations will be located indoors and/or outdoors.
  - 23.1.13.6 A listing of the federal and state permits which must be acquired for the proposed use.
  - 23.1.13.7 Type(s) and maximum quantity(ies) of units to be produced, extracted, disposed of, processed and/or stored as applicable for the proposed use. If approved, the type(s) and quantity(ies) requested shall be the maximum permitted type(s) and quantity(ies).
  - 23.1.13.8 Any other information necessary to fully convey the intended scope, intensity, capacity and/or size of the proposed use
- 23.1.14 Identification of any and all extremely hazardous substances to be used, stored, handled, processed or manufactured and their proposed location(s) on the required site plan

**ARTICLE XIV Corridor Mixed Use District**

**Section 24. Applicability**

The following sections in Article XVI shall apply to non-residential properties in the zoning district and abutting North Carolina Highway 280 (NC 280) and United States Highway 64 (US64) from the intersection of NC280, US64 and US276 to \_\_\_\_\_.

**Section 25. Permit Required**

A development permit shall be required for all new non-residential development and for expansions of existing uses exceeding 50% of the pre-expansion floor area or renovations exceeding 50% of the assessed value of the building.

**Section 26. Access Management**

Standards for the connection of new streets and driveways to the NC280 and US64 Corridors are given in this section. All driveway and street connections 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.

26.1 All parcels are allowed one driveway

26.1 Distance between driveways and curb cuts shall be at least 400 feet.

26.2 Distance between driveways and intersections shall be at least 500 feet.

26.3 Parcels and development projects shall be permitted a maximum of 2 curb cuts or driveways regardless of frontage.

26.4 Additional Provisions

26.4.1 The administrator may waive these requirements only in situations where these requirements cannot be met due to pre-existing conditions and in agreement with NCDOT.

26.4.2 The administrator shall first exhaust all other alternatives to waiving these requirements, including but not limited to: shared driveways, rear service roads and others.

26.4.3 The 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.

26.4.4 The administrator shall require the closure of any non-conforming driveway or curb cut as a condition of approval of any land development application.

**Section 27. Setbacks**

27.1 Front yard setbacks from the edge of the Right of Way shall be ten (10) feet.

27.2 Side yard setbacks from property lines shall be zero (10) feet except thirty (30) feet from residential uses.

27.3. Rear yard setbacks shall be 10 feet except 30 feet from residential uses.

27.4 The administrator may approve deviations from setback requirements up to 20 per cent in order to protect right of way or in deference to steep slope, floodplain, surface water protection or other requirements of this ordinance.

27.5 The administrator shall require additional setbacks as necessary to account for existing or proposed additional automobile, bicycle or pedestrian travel lanes, turn lanes, roundabouts, or other improvements that deviate from a standard corridor cross section.

## **Section 28. 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. If a setback requirement is less than the minimum buffer requirement, the buffer width shall override the setback requirement.

28.1 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.

28.2 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. Utility easements may be included in the width of the buffer with the following conditions:

28.2.1 Utility lines should be located to cross perpendicular to a buffer, if possible, to minimize the impact.

28.2.2 If utility lines must run with a buffer, they must be located along the edge of the buffer.

28.2.3 The developer should minimize the amount of plantings in the utility easement area so that they will not have to be removed or pruned if the utility line needs maintenance. If the developer plans to plant in the utility easement, approval must be obtained from the affected utility companies to ensure that the plantings will not interfere with the installation, operation, or maintenance of the utility lines. Trees and shrubs planted within the utility easement will not count toward the bufferyard planting requirements unless they are approved by the utility companies.

28.3 Placement of bufferyard plantings. The exact placement of the required plants shall be the decision of the developer or designer, but shall be approved by the zoning administrator. 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.

28.4 **Mixed uses.** When a lot has a combination of different land uses, the buffer is calculated based upon the category of land use occupying the greatest percentage of the lot.

## **28.5 Buffer description table**

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

**28.6 Existing vegetation in the buffer.** Existing vegetation in the buffer area may be counted toward the required plantings according to section 9-2(c)(2). The zoning administrator must approve the use of existing vegetation to meet the buffer requirement.

**28.7 Buffer reductions.** The width of the buffer may be reduced up to 50% with the use of a fence or wall. Fences and walls must meet the following standards:

28.7.1 Fences or walls shall be constructed of wood, brick, stone, or other masonry (except plain block) and be architecturally compatible with the proposed structure. Seventy-five (75%) of the fence or wall must be opaque with any spaces evenly distributed. A detailed drawing of the fence or wall must be shown on the site or landscape plan and approved by the zoning administrator.

28.7.2 Fences and walls shall be a minimum of six (6) feet tall;

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

28.7.4 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 29. Stormwater Runoff Provisions.**

The purpose of this section is to (1) protect life and property and minimize nuisances by limiting destructive runoff and flooding generated by impervious surface areas; and (2) to protect water quality and natural ecosystems by filtering sediments and pollutants such as nitrogen, phosphorus, trace metals, and hydrocarbons.

29.1 Affected Property. The requirements of this Section shall apply to the following activities:

29.1.1. Any new non-residential or mixed-use development; or any existing non-residential or mixed-use development undergoing significant improvement; or any existing nonresidential or mixed-use development undergoing an expansion of impervious surface area of 25% or more.

29.1.2 Any new residential development or subdivision of four or more dwelling units; or any existing multi-family residential structure of four or more dwelling units undergoing significant improvement; or any expansion of or additions to an existing residential structure or development that would result in four or more dwelling units within the same parcel of land or structure or grouping of joined structures.

29.1.3 All new residential subdivisions with four or more lots or dwelling units and any new phase or expansion of existing residential subdivisions of four or more lots or dwelling units.

29.1.4 All new non-residential or mixed-use subdivisions and any new phase or expansion of existing non-residential or mixed-use subdivisions.

29.1.5 Any new residential or non-residential development project permitted as a planned unit development.

29.1.6 New structures; significant improvements to existing non-residential or mixed use structures; significant improvements to existing residential structures containing four or more dwelling units; and any expansion of impervious surface area of 25% or more within any development except expansions to residential structures containing fewer than four dwelling units, unless otherwise subject to these requirements.

29.1.7 Any project for which stormwater management is required as a condition of approval by the Planning Board or Board of Adjustment.

## 29.2 Exempt Activities.

The following activities are exempt from the stormwater management provisions of this Section:

29.2.1 Bona fide agricultural structures used exclusively for agricultural purposes; and

29.2.2 Except as provided elsewhere in this Ordinance, the placement of small accessory buildings or structures or small amounts of other built-upon area; provided, however, that the total additional built-upon area shall be no greater than four hundred (400 square feet) and the additional built-upon area shall not be placed within a special flood hazard area or surface water protection area.

## 29.3 Stormwater Management Requirements.

The following requirements shall apply to the entire parcel of land or project area and all impervious surface areas of affected properties.

29.3.1 Design Standards: The property owner and developer of all affected property shall be required to comply with the following design standards:

29.3.1.1 The storm water run-off generated by a 10-year, 33-hour rain event, shall be controlled.

29.3.1.2 At a minimum, storm water measures shall be designed to remove 85% of the Total Suspended Solids (TSS) from the first inch of rainfall of any rain event.

29.3.1.3 Stormwater measures shall have a drawdown of at least 48 hours, but not more than 120 hours.

29.3.2 Stormwater measures shall be designed by an appropriately qualified engineer, landscape architect or other appropriately qualified professional, and shall be constructed and maintained in accordance with commonly accepted best practices. Innovative designs that utilize “low impact” and non-structural control and treatment measures are encouraged.

29.3.3 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 and the right and responsibility of the owner of the affected property to access and maintain such measure.

29.3.4 In all instances stormwater measures shall be designed to compliment a development and surrounding community and to minimize any threat to public health. If ponds or lakes are used, such areas shall be landscaped as amenities or hidden from view. This provision applies regardless whether the pond or lake typically contains water or may be dry for periods of time.

#### 29.4 Permit Requirements.

The Administrator shall review all stormwater plans required by this Ordinance to ensure compliance therewith. In making this determination, the 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.

29.4.1 Stormwater Management System Concept Plan. When required as part of any project, a written or graphic concept plan of the proposed post-development storm water management system shall be submitted along with other application materials and shall include the following: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

29.4.2 As-Built Plans and Final Approval. Upon completion of a project, 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 plans and designs. The applicant shall submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

29.4.2.1 The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the storm water management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance.

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

#### 29.5 Inspection of Measures.

The Administrator may, from time to time, inspect approved storm water measures 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 storm water measures; and evaluating the condition of storm water measures. No person shall obstruct, hamper or interfere with the Administrator while carrying out his or her official duties. If the owner or occupant of any affected property refuses to allow such inspection, the Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor.

#### 29.6 Maintenance of Stormwater Measures.

29.6.1 The owner of any stormwater measure installed pursuant to this Section shall maintain and operate such measure so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the storm water measure was designed.

29.6.2 Furthermore, stormwater measures installed prior to the enactment of this Ordinance as a requirement of the issuance of any permit shall be subject to the maintenance requirements herein.

29.6.3 The owner of each stormwater measure, whether structural or non-structural in design, shall maintain it so as not to create or permit a nuisance condition.

#### 29.7 Illicit Discharges

Except as provided herein, 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, other than stormwater, into any surface water, ground water, or stormwater conveyance. This prohibition applies to any substance deposited upon the land in manner and amount that the substance is likely to reach a stormwater conveyance, surface or ground water.

29.7.1 The following discharges shall not be deemed illicit and shall be permitted under the terms stated:

29.7.1.1 Water line flushing, except any anti-freezing agent;

29.7.1.2 Landscape irrigation;

29.7.1.3 Diverted stream flows;

29.7.1.4 Rising ground waters;

29.7.1.5 Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));

29.7.1.6 Uncontaminated pumped ground water;

29.7.1.7 Discharges from potable water sources;

29.7.1.8 Foundation drains;

29.7.1.9 Air conditioning condensation;

29.7.1.10 Irrigation water;

29.7.1.11 Springs;

29.7.1.12 Water from crawl space pumps;

29.7.1.13 Footing drains;

29.7.1.14 Lawn watering;

29.7.1.15 Individual residential car washing;

29.7.1.16 Flows from riparian habitats and wetlands;

29.7.1.17 Dechlorinated swimming pool discharges;

29.7.1.18 Street wash water; and

- 29.7.1.19 Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina.
- 29.7.2 Prohibited discharges include but are not limited to the following:
- 29.7.2.1 Discharges of oil, anti-freeze, chemicals, paints, garbage, litter;
  - 29.7.2.2 Raw sewage discharges or overflows;
  - 29.7.2.3 Discharges of wash water resulting from the hosing or cleaning of gasoline stations, auto repair garages, or other types of automotive service facilities;
  - 29.7.2.4 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.);
  - 29.7.2.5 Discharges of wash water from mobile operations such as steam cleaning, power washing, pressure washing, carpet cleaning, and mobile carwash facilities; discharges of wash water from the cleaning or hosing of impervious surfaces in industrial and commercial areas including parking lots, streets, sidewalks, driveways, patios, plazas, work yards, and outdoor eating or drinking areas;
  - 29.7.2.6 Discharges of runoff from material storage areas containing chemicals, fuels, grease, oil or hazardous materials or chemicals;
  - 29.7.2.7 Discharges of pool or fountain water containing chlorine, biocides or other chemicals, and also discharges of pool or fountain filter backwash water;
  - 29.7.2.8 Discharges of water containing sediment or construction-related wastes; and
  - 29.7.2.9 Discharges of food-related wastes such as grease, oil, fish processing water, kitchen mat wash water, trash bin wash water, pouring liquids into dumpsters.

## 29.8 Illicit Connections.

Other than those exceptions listed in Section 6.6.H.1, above, 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.

29.8.1 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.

29.8.2 Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other Ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this Ordinance. Provided, however, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which 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.

29.8.3 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 or that a connection was made in violation of any applicable regulation or Ordinance, other than this Section the Administrator shall designate the time limit within which the connection shall be removed. In setting the time limit for compliance, the Administrator shall take these matters into consideration:

29.8.3.1 The quantity and complexity of the work;

29.8.3.2 The consequences of delay;

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

29.8.3.4 The cost of remedying the damage.

### **Section 30. Surface Water Protection Requirements.**

#### **30.1 Purpose and Intent.**

The purpose of this section is to provide a network of protected stream corridors thereby helping to maintain water quality, provide wildlife habitats, filter pollutants, store floodwaters, and contribute to the “green infrastructure” of the City of Brevard and lands within its jurisdiction. Stream systems are comprised of each stream and its respective drainage basin. Streams have the primary natural functions of conveying storm, ground, and surface waters, storing flood waters, and supporting aquatic life. Vegetated lands adjacent to the stream channel serve to protect the stream’s ability to fulfill its natural functions. Surface water protection areas have the primary natural functions of protecting water quality by (1) filtering sediments and pollutants such as nitrogen, phosphorus, trace metals, and hydrocarbons, (2) providing intermittent storage for flood waters, (3) allowing channels to meander naturally, and (4) providing suitable habitat for wildlife.

#### **30.2 Applicability.**

This section shall apply to all surface waters (as defined by this Ordinance), and all non-encroachment areas and regulatory floodways (as delineated upon the most recently published Flood Boundary and Floodway Map (FBFM) and/or Flood Insurance Rate Map (FIRM), within the planning jurisdiction of Transylvania County.

#### **30.3 Relationship to Previously Approved Development Plans, Structures, and Uses.**

Uses and structures approved and constructed in a protection area prior to the enactment of this Ordinance may remain as nonconformities, subject to any legal requirements attributed to that status. All development plans, development projects and uses permitted subsequent to the enactment of this Ordinance, including expansions to previously approved and constructed uses and structures, shall comply with the surface water protection requirements of this Ordinance.

#### **30.4 Surface Water Protection Area Delineation.**

Surface water protection area requirements apply to the regulatory floodway and non-encroachment areas, as well as lands within thirty (30) feet from the top of each bank of a stream or other surface water body.

30.4.1 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.

30.4.2 “Top of bank” shall be determined by the Administrator by considering factors such as the break in slope for a watercourse and the presence of streamside vegetation.

30.4.3 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.

30.4.4 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.

30.4.5 For other surface waters, the protection area shall be determined by the Administrator in consideration of the purposes of this section.

30.4.6 When a combination of floodway / non-encroachment area and / or surface water types exist, the most restrictive measurement of surface water protection area shall apply.

### 30.5 Surface Water Protection Area Requirements.

30.5.1 Protection areas shall be left in a naturally vegetated state, unless reforestation of disturbed protection areas is required as part of any site plan approval. When reforestation of a disturbed protection area is required, it shall be done in accordance with a planting plan approved by the Administrator.

30.5.2 Concentrated runoff from ditches or other manmade conveyances shall be diverted to diffuse flow before the runoff enters the protection area.

30.5.3 Periodic corrective action to restore diffuse flow shall be taken by the property owner as necessary to avoid the formation of erosion gullies.

30.5.4 Diffuse flow of runoff shall be maintained in the protection area by dispersing concentrated flow and reestablishing vegetation.

30.5.5 Surface water protection areas shall be delineated upon any development plan and shall be noted as protection areas within which no disturbance or development shall be permitted.

30.5.6 The following impacts are expressly forbidden in surface water protection areas (including floodways, non-encroachment areas) and associated water bodies:

30.5.6.1 The placement of fill or the deposition of any natural or manmade material or substance;

30.5.6.2 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;

30.5.6.3 Grading, excavation, the removal of vegetation, or any disturbance of any kind; except excavation and fill required to plant any new trees or vegetation;

30.5.6.4 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 and lakes;

30.5.6.5 The routing underground (by culvert or other means) of any surface water, except to facilitate crossings by approved roads, streets, driveways, greenways, sidewalks, and other transportation facilities;

30.5.6.6 The impoundment of water bodies (this shall not prohibit the maintenance of existing ponds, lakes, and other impoundments); and  
30.5.6.7 Any other type of encroachment, disturbance, or modification to floodways, non-encroachment areas, or other surface water protection areas or associated surface waters.

30.5.7 The following protection area impacts are permitted; however, design and construction shall comply with applicable City standards for stabilization of disturbed areas to minimize negative effects on the quality of surface waters.

30.5.7.1 Road crossings for connectivity or transportation links and required utilities including public and private streets, driveways, and bridges, where the City of Brevard has granted site plan approval.

30.5.7.2 Parallel water and sewer utility installation as approved by City of Brevard.

30.5.7.3 Approved public or common area open space paths and trails. Pathways should use existing and proposed utility alignments or previously cleared areas and minimize tree cutting to the maximum extent practicable. To the extent possible, pathways shall be “on-grade” and shall preserve existing drainage patterns and avoid drainage structures that concentrate stormwater.

30.5.7.4 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.

30.5.7.5 Mitigation approved by a local, state, or federal agency acting pursuant to Sections 401 or 404 of the Federal Clean Water Act.

30.5.7.6 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 City of Brevard, the North Carolina Forest Service, or a cooperating organization or entity. This exception does not include the straightening or channelization any watercourse.

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

30.5.8 Uses permitted in the protection area shall be coordinated to ensure minimal disturbance of the protection area system. For example, if it is necessary to install utilities within the protection area and if greenway trails are then to be built, they should follow these cleared areas instead of necessitating additional clearing.

30.5.9 The approving authority 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 31. Parking**

Parking spaces shall be provided for all listed uses in accordance with the following minimum ratios:

- a. Retail Uses 1 per 500 square feet
- b. Office Uses 1 per 500 square feet
- c. Theaters 1 per 3 seats
- d. Restaurants 1 per 4 seats
- e. Manufacturing/Warehousing/Light Assembly .25 per 1000 square feet of non-office space
- f. Bed & Breakfast Inns/ Hotels/ Motels 1 per room or suite
- g. Civic Uses (Assembly Uses Only) 1 per 4 seats (If benches or pews are used then the standard shall be measured as 1 per 6 feet)

**Section 32. Loading**

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

- a. Retail businesses: 1 space per business location
- b. 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
- c. Multi-family residences 10 units or more 1 space

**ARTICLE XV. Planned Unit Developments**

**Section 33. Standards for Planned Unit Developments**

A planned unit development (PUD) may be located in the zoned area as a special use, subject to a finding by the Transylvania County Board of Commissioners on the advice and recommendation of the Transylvania County Planning Board that certain conditions be met. The purpose of this section is to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building siting, mixtures of housing types and land use. Densities are calculated on a project basis, thus allowing the clustering of buildings in order to create useful open spaces and to preserve natural site features.

- 33.1 Land development standards. The following land development standards shall apply for all planned unit developments.
- 33.1.1 Ownership control. The land in a planned unit development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.
- 33.1.2 Density requirements. The proposed density of the planned unit development (dwelling units per acre) shall conform to that permitted in the district in which the development is located. The density (dwelling units per acre) of any proposed planned unit development shall be determined by dividing the total number of square feet in the property by the minimum lot size requirement of a single-family dwelling in the district in which the development is proposed.
- 33.1.3 Frontage requirements. Planned unit developments shall be prohibited except on parcels of land having a minimum frontage of 200 feet on a paved, public, state-maintained road or highway.
- 33.1.4 Minimum size. The minimum area for a planned unit development shall be one and one-half contiguous acres. [Amended 7-7-1998; 2-5-2001]
- 33.1.5 Residential uses. Those land uses normally permitted in the district within which a planned unit development is located shall be permitted in the planned unit development with the following modifications:
- 33.1.5.1 Permitted types of dwelling units shall include single-family detached homes, townhouses and garden apartments.
- 33.1.5.2 Condominium, cooperative, individual, municipal or any other type of ownership shall be permitted.
- 33.1.6. Minimum requirements.
- 33.1.6.1 The normal minimum lot size, setbacks and frontage requirements are hereby waived for the planned unit development, provided that the spirit and intent of this section are complied with in the total development plan as determined by the Board of Commissioners. The Board of Commissioners shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.
- 33.1.6.2 Height limitations. No building or structure shall exceed 35 feet in height as measured from the highest ground elevation of the building or structure to the highest point of the roof.
- 33.1.6.3 Required distance between buildings. The minimum distance between buildings in a planned unit development shall be as follows:
- 33.1.6.3.1 All buildings located or situated end to end (shortest sides) and are less than 20 feet in height shall have a minimum separation of 20 feet

between buildings. When one or both buildings exceed 20 feet in height, the building separation shall be increased an additional one foot for every foot of increased height to a maximum of 30 feet.

33.1.6.3.2 All buildings located or situated side to side or end to end (longest sides) and are less than 20 feet in height shall have a minimum separation of 30 feet between buildings. When one or more adjacent buildings exceed 20 feet in height, the building separation shall be increased an additional one foot for every foot of increased height to a maximum of 40 feet.

33.1.6.3.3 The Planning Board may permit the minimum building separation for single-family detached units to be reduced below the minimums stated above, provided that the construction of adjacent walls conforms with the North Carolina Building Codes, but in no case shall buildings be closer than 10 feet. When the minimum separation is reduced, the area between buildings shall remain open and unobstructed.

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

33.1.6.5 Location Considerations. The location of structures, shown on the development plan, shall be so arranged as not to be detrimental to existing or other proposed structures or to the development of the neighborhood.

33.1.7 Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and landscaping shall be used as appropriate for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views or uses, and reduction of noise. Multilevel buildings shall be located within a planned unit development in a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings.

33.1.8 Perimeter requirements. If topographical or other barriers within 200 feet of the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Board of Commissioners may impose any of the following requirements:

33.1.8.1 Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provision of this chapter controlling the district within which the property is situated.

33.1.8.2 Structures other than single-family detached units located on the perimeter of the development may require screening in a manner which is approved by the Board of Commissioners.

- 14.1.8. The location of the structures on the perimeter of the development, as shown on the development plan, shall be so arranged as not to be detrimental to existing structures or to the adjacent neighborhood.
- 33.1.9 Planned unit development in more than one district. If the planned unit development lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate district and must then be combined to determine the number of dwelling units allowable in the entire planned unit development.
- 33.1.10 Plans and accompanying documentation to ensure that the water and sewer systems proposed for the planned unit development have been designed by a professional engineer, and have been approved by the appropriate local and state agencies, shall be submitted as a part of the application.
- 33.1.11 Plans shall include parking provisions for all proposed uses within the planned unit development in accordance with the following minimum ratios:
- a. Residential (All types) 2 Spaces
  - b. Residential Accessory Dwelling Unit 1 Space
  - c. Retail Uses 1 per 500 square feet
  - d. Office Uses 1 per 500 square feet
  - e. Theaters 1 per 3 seats
  - f. Restaurants 1 per 4 seats
  - g. Manufacturing/Warehousing/Light Assembly .25 per 1000 square feet of non-office space
  - h. Bed & Breakfast Inns/ Hotels/ Motels 1 per room or suite
  - i. Civic Uses (Assembly Uses Only) 1 per 4 seats (If benches or pews are used then the standard shall be measured as 1 per 6 feet)
- 33.1.12 Plans shall include off street loading facilities with minimum loading space dimensions of 12 feet by 40 feet for listed uses as follows:
- a. Retail businesses: 1 space per business location
  - b. 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
  - c. Multi-family residences 10 units or more 1 space

- 33.1.13 Any pedestrian and bicycle path circulation system and its related walkways shall be insulated as reasonably as possible in order to provide separation of pedestrian and motorized vehicular traffic.
- 33.1.14 Layout of parking areas, service areas, entrance, exits, yards, courts and landscaping and control of signs, lighting, noise or other potentially adverse influences shall be such as to protect the residential character within the PUD and the desirable character in any adjoining property.
- 33.2 Timing. If no development has occurred pursuant to the issuance of a special use permit one year after the date of the special use permit for the PUD or upon the expiration of one ninety-day extension of time for starting development granted by the Board of Commissioners, the special use permit shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on the subject property.
- 33.3 Staged development (phasing). After general construction commences, the Zoning Administrator shall review at least once every six months all permits issued and compare them to the overall development phasing program. If he determines that the rate of construction of residential units or nonresidential structures substantially differs from the approved phasing program, he shall so notify the developer, and the Board of Commissioners may issue such appropriate orders to the developer as it sees fit and, upon continued violation of this subsection, may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.
- 33.4 Conveyance of open space, recreational areas and communally owned facilities.
- 33.4.1 Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the planned unit development or adjoining property owners or both.
- 33.4.2 The applicant must submit to the Board of Commissioners the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.
- 33.5. Maintenance. Planned unit developments 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. The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include in every deed he makes that membership be mandatory for each home buyer.
- 33.5.1 The provisions shall include, but not be limited to, the following:
- 33.5.1.1 The homeowners' association must be set up before the homes are sold.
- 33.5.1.2 The open space restrictions must be permanent not just for a period of years.

- 33.5.1.3 The association must be responsible for liability insurance, local taxes and the maintenance of recreational and other designated facilities.
- 21.4.5.4 Homeowners must pay their pro rata share of the cost; the assessment levied by the association can become a lien on the property.
- (e) The association must be able to adjust the assessment to meet changed needs.
- 33.5.2 No such instrument shall be acceptable until approved by the County Attorney as to legal form and effect and the Board of Commissioners as to suitability for the proposed uses.
- 33.6. Procedures for application and review. An applicant desiring to develop a planned unit development shall adhere to the following procedures:
- 33.6.1 Preapplication conference. Prior to submission of an application for a special use permit to the Board of Commissioners, the applicant shall arrange a preapplication conference with the Planning Board and its staff.
- 33.6.1.1 The applicant shall submit to the Planning Board a sketch development plan and a brief description of the proposed development strategy. The sketch plan and development strategy shall show and describe the layout of the planned unit development, depicting proposed areas and types of residential development, open spaces and recreation areas and streets.
- 33.6.1.2 The preapplication conference is designed to inform the developer of the local government's regulations and policies concerning development alternatives and to inform the local government of the developer's intentions, enough to be able to give him some informal, nonbinding feedback on the acceptability of his ideas. The greater the level of common understanding between the developer and the local government that can be achieved at the preapplication conference stage, the smoother the remaining steps of the review process will be.
- 33.6.2 Special use permit. Upon completion of the preapplication conference with the Planning Board, the applicant shall submit to the Board of Commissioners a written application for a special use permit in accordance with § 200-70.
- 33.6.3 Development plan. After the preapplication conference and upon submission of a written application for a special use permit, the applicant shall submit a development plan to the Board of Commissioners. A second copy of the development plan shall be submitted to the Planning Board for review and recommendations. The Board of Commissioners shall not issue a special use permit until it has received recommendations from the Planning Board. If no action is taken by the Planning Board within 45 days of the meeting at which the Planning Board first considers the development plan, it shall be deemed to have recommended approval of the development plan, and the Board of Commissioners may proceed to act upon the application.

33.6.4 The Planning Board shall review the development plan for conformance with the land development standards of this section, the sketch plan and development strategy presented in the preapplication conference and the requirements of the development plan which shall include the following information and supporting documentation:

33.6.4.1 Written documents.

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

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

33.6.4.1.3 A general statement of objectives to be achieved by the planned unit development through the particular approach proposed by the applicant.

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

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

33.6.4.1.6 Quantitative data for the following: proposed total number and type of residential dwelling units, parcel sizes, gross residential densities and total amount of open space.

33.6.4.1.7 Plan for maintenance of common areas, recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

33.6.4.2 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 following information:

33.6.4.2.1 Existing site conditions, including contours, watercourses, identified flood hazard areas and any unique natural or man-made features.

33.6.4.2.2 Boundary lines of the proposed development, proposed lot lines and plot designs.

33.6.4.2.3 Proposed location and use of all existing and proposed structures.

33.6.4.2.4 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.

33.6.4.2.15 The existing and proposed street and/or vehicular circulation facilities, including off-street parking areas, service areas, loading areas and major points of access to public rights-of-way, notations of proposed ownership of street and/or vehicular circulation facilities (public or private); documentation from Transylvania County Emergency Medical Services and the Fire Chief from the appropriate district of the adequacy of the development's facilities for emergency medical and fire services.

- 33.6.4.2.6 Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved sedimentation and erosion control plan shall also be submitted.
- 33.6.4.2.7 Location and/or notation of existing and proposed easements and rights-of-way.
- 33.6.4.2.8 The proposed treatment of the perimeter of the development, including materials and/or techniques, such as screens, fences and walls.
- 33.6.4.2.19 Information on adjacent land areas, including land use, zoning classifications, public facilities and any unique natural features.
- 33.6.3 Additional information. Any additional information required by the Board of County Commissioners in order to evaluate the impact of the proposed planned unit development. The Board of Commissioners may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision on the project. The advice and recommendations of the Planning Board is one of an advisory capacity, and the Board of Commissioners has final authority on granting or denying a special use permit.
- 33.7 The Board of Commissioners shall submit a copy of its decision on a specific planned unit development to the Planning Board.
- 33.8 Amendments to the development plan. Minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator, if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, that no change authorized by the Zoning Administrator under this section may 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 in the planned unit development, including changes listed below, shall not be made without resubmission of the planned unit development according to the procedures, in this section:
- 33.8.1 A change in the use or character of the development.
- 33.8.2 An increase in overall density.
- 33.8.3 An increase in intensity of use.
- 33.8.4 Alteration of the traffic circulation system.
- 33.8.5 A reduction in approved open space.
- 33.8.6 A reduction of off-street parking and loading space.

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