

Chapter 5 Zoning Districts

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Chapter 5: Zoning Districts

Section 5.1 Purpose (Amended 6/25/14)

Section 5.1.1 Purpose Statement

In accordance with the requirement of NCGS 160A-382 that zoning regulations be by districts, the Village, as shown on the Zoning Map accompanying this Ordinance, is hereby divided into the districts set forth in this Chapter.

The purposes of establishing the zoning districts are:

- To implement adopted plans;
- To promote public health, safety, and general welfare;
- To provide for orderly growth and development;
- To provide for the efficient use of resources;
- To encourage the preservation of and continued use of land for conservation and community recreation purposes
- To facilitate the adequate provision of services.

Section 5.1.2 Use Categories

Each zoning district has uses permitted by right, uses requiring special use permits, and uses permitted with special requirements. The following describes the processes of each of the three categories that the uses are subject to:

- **Permitted by Right:** Review as described in Chapter 3 and approval subject to district provisions and other applicable requirements only.
- **Permitted with Special Requirements:** Review as described in Chapter 3 and approval subject to district provisions, other applicable requirements, and special requirements identified in Table of Permitted Uses and specified in Chapter 6.
- **Special Uses:** Review as described in Chapter 3 and approval of Special Use Permit subject to district provisions, other applicable requirements, and conditions of approval. Some Special Uses may also be subject to special requirements outlined in Chapter 6.

Section 5.2 Zoning District Categories

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

Section 5.2.1 General Use Zoning Districts

General Use Zoning Districts are created to provide comprehensive land use regulations throughout the jurisdiction of this Ordinance. There are ten (10) General Use Zoning Districts

that provide for a variety of uses that are appropriate to the character of the individual districts throughout the jurisdiction of this Ordinance.

Section 5.2.2 Conditional Zoning Districts

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

Section 5.2.3 Overlay Zoning Districts

Overlay Zoning Districts are created to provide special additional development standards for specially identified areas or uses such as Highway Corridors, Water Supply Watersheds, Floodplains, and Class B Manufactured Homes. Overlay Zoning Districts combine with the regulatory provisions of the underlying General Use or Conditional Zoning Districts to provide additional or different standards. In such case, the land is subject to not only the underlying General Use or Conditional Use Zoning Districts, but also the additional requirements of the Overlay District or Districts. There are four (4) Overlay Zoning Districts discussed herein below.

Section 5.3 General Use Districts: Purpose and Intent

Section 5.3.1 REC - Recreational District

This is established as a District in which the principal use of the land is for recreational purposes. In promoting the general purposes of this Ordinance, the specific intent of this District is: 1) to permit the continued use of the land for recreational purposes; 2) to prohibit commercial and residential use of the land, except for such structures and incidental commercial use as may be necessary to utilize such land for recreational purposes; 3) to prohibit any other use which would interfere with the use of such land for recreational purposes; and 4) to encourage the discontinuance of existing uses which would not be permitted as new uses under the provisions of this District.

Section 5.3.2 RA – Residential and Agricultural District

This is established as a District in which the principal use of land is for low-density residential and agricultural purposes. In promoting the general purposes of this Ordinance, the specific intent of this District is: 1) to permit the development and continued use of the land for low density residential and low intensity agricultural purposes; 2) to prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with the development or continuation of dwellings and low intensity agriculture in the District; 3) to encourage the discontinuance of existing uses which would not be permitted as new uses under the provisions of this District; 4) to discourage any use which would generate traffic on minor streets other than normal traffic to serve the residences and small farms on those streets; and 5) to ensure that residential development not having access to public water supplies and dependent upon on site waste water treatment for sewage disposal will occur at sufficiently low densities to ensure a healthful environment.

Section 5.3.3 RS – Residential Single Family District

This is established as a District in which the principal use of land is for single-family dwellings. In promoting the general purposes of this Ordinance, the specific intent of this District is: 1) to permit the construction of single family dwellings and the continued use of the land for such purposes; 2) to prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of single family dwellings in the District; 3) to encourage the discontinuance of existing uses which would not be permitted as new uses under the provisions of this District; 4) to discourage any use which, because of its character or size, would create burdensome requirements and costs for public services, such as police and fire protection, water supply, household and waste collection, which would be substantially in excess of such requirements and costs if the District were developed solely for single family dwelling; and 5) to discourage any use which would generate traffic on minor streets other than normal traffic to serve residents on those streets.

Section 5.3.4 RS/H – Residential Single Family -Horse District

This is established as a District in which the principal use of the land is for single-family dwellings, but with horse farms allowed on larger tracts. In promoting the general purpose of this Ordinance, the specific intent of this District is: 1) to permit the construction of single family dwellings and the continued use of the land for such purposes; and permit use of land for horse farms 2) to prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of single family dwellings in the District; 3) to encourage the discontinuance of existing uses which would not be permitted as new uses under the provisions of this District; 4) to discourage any use which, because of its character or size, would create burdensome requirements and costs for public services, such as police and fire protection, water supply and waste collection, which would be substantially in excess of such requirements and costs if the District were developed solely for single family dwellings; and 5) to discourage any use which would generate traffic on minor streets other than normal traffic to serve residents in those streets.

Section 5.3.5 RM – Residential Multiple Unit Dwelling District

This is established as a District in which the principal use of land is for single family and multi-family dwellings. In promoting the general purposes of this Ordinance, the specific intent of this District is: 1) to permit the construction of single family and multi-family dwellings and the continued use of the land for such purposes; 2) to prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of single family and multi-family dwellings in the District; 3) to encourage the discontinuance of existing uses which would not be permitted as new uses under the provisions of this District; 4) to discourage any use which, because of its character or size, would create burdensome requirements and costs for public services, such as police and fire protection, water supply and waste collection, which would be substantially in excess of such requirements and costs if the District were developed solely for single family or multi-family dwellings; and 5) to discourage any use which would generate traffic on minor streets other than normal traffic to serve residents in those streets.

Section 5.3.6 OP – Office and Professional District

This District is established as a District in which the principal use of land is for offices, institutions, clubs, and overnight accommodations to serve the surrounding Residential Districts and provide certain regulations that may preserve residential areas. In promoting the general purposes of this Ordinance, the specific intent of the District is: 1) to permit the construction of and continued use of the land for club, professional office and local government purposes; 2) to establish offices, club and administrative buildings and related uses in these areas without allowing highly commercialized or industrialized uses to develop that would deter or interfere with a desirable type of residential growth and development of the Village; 3) to prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with the development or continuation of the commercial structures in the District; and 4) to discourage any use which, because of its character or size, would interfere with the use of the land as an office and service center for the surrounding Residential District.

Section 5.3.7 AC – Assisted Care Living

This District is established in which the principal use of land is intended to serve the living needs for persons who require assistance, whether it be medical or otherwise, in the course of maintaining a temporary or permanent residence, and for all stages of the aging process.

Section 5.3.8 NS – Neighborhood Shopping District

This is established as a District in which the principal use of land is for commercial and service uses to serve the surrounding Residential Districts and in which traffic parking and congestion can be reduced to a minimum in order to preserve residential values and promote the general welfare of the surrounding Residential Districts. In promoting the general purposes of this Ordinance, the specific intent of the District is: 1) to permit the construction of and continued use of the land for neighborhood commercial and service purposes; 2) to prohibit residential, heavy commercial and industrial use of the land and to prohibit any other use which would substantially interfere with the development or continuation of the commercial structures in the District; 3) to discourage any use which, because of its character or size, would interfere with the use of the land in the District as a shopping and service center for the surrounding Residential Districts; and 4) to require insofar as possible that all future neighborhood service commercial areas be zoned NS – Neighborhood Shopping District.

Section 5.3.9 AP – Airport District

This is established as a District in which the principal use of land is for use as an airport and related facilities. District standards are set by the Moore County Airport Authority and the FAA.

Section 5.3.10 GOV – Government District (Amended 2/10/16)

This is established for land within the Village, owned by the Municipal, County, State or Federal government, in which the principal use of land is for public use and their accessory uses.

Section 5.4 Table of Permitted and Special Uses

The Table of Permitted and Special Uses which follows contains a listing of uses which may be permitted in one or more of the various General Use Zoning Districts established by this Ordinance.

Section 5.4.1 Entries in the Table

A “P”, “MA” or “MI” opposite the listed use in the District column(s) indicates the District or Districts in which a particular listed use may be permitted. The meanings of the entries in the Table are as follows:

- (1) “P” indicates that the use is permitted by right and a Development Permit may be obtained, subject to meeting all the requirements of this Ordinance for a Development Permit;
- (2) “MA” indicates the use requires approval of a Major Special Use Permit by the Village Council in accordance with the procedures of Chapter 3 before obtaining a Development Permit;
- (3) “MI” indicates the use requires approval of a Minor Special Use Permit by the Board of Adjustment in accordance with the procedures of Chapter 3 before obtaining a Development Permit;
- (4) The column on the far right of the table, labeled “SR” (Special Requirements) means that there are additional special requirements with which the use must comply. These requirements are contained in Chapter 6, Special Requirements. For any use subject to a Special Use Permit, the Special Requirement along with the requirements of this Ordinance shall represent the minimum conditions for issuance of a Special Use Permit;

The listing of a use in the Table of Permitted and Special Uses in no way relieves that use of having to meet all local, State and Federal laws pertaining to the establishment and operation of that use.

Any use not explicitly allowed in the Table of Permitted and Special Uses is prohibited. The enumeration of expressly prohibited uses shall not be deemed exclusive or all inclusive.

Table of Permitted and Special Uses. (Special Requirements [SR] for Uses are set forth in Chapter 6)

Uses	DISTRICTS										
	REC	RA	RS	RS/H	RM	OP	AC	NS	AP	GOV	SR
Accessory Buildings	P	P	P	P	P	P	P	P		P	1
Accessory Swimming Pools, Spas, & Hot Tubs and Pool Houses	P	P	P	P	P	P	P				2
Assisted Living Facilities							MA				
Agriculture, Livestock											
Agriculture, Non-Livestock		P									
Airport-Airport Facilities											
Antennas (Residential)	P	P	P	P	P	P	P	P		P	5
Bank						MA		MA			
Beekeeping		MI	MI								13
Bulkhead	P	P	P	P	P	P	P				3
Cemetery		MA									
Child Day Care Center		MA									
Child Day Care Home		MI	MI		MI						11
Concealed Attached Wireless Telecommunications Facilities	P	P	P	P	P	P	P	P		P	14
Concealed Free Standing Telecommunications Facilities		MA									14
Country Club	P					MA					
Dock	P	P	P	P	P	P	P	P		P	3
Dwelling, Multi-Family (Including duplexes)					P						
Dwelling, Single Family		P	P	P	P						
Electronic Gaming Operations								MA			16
Family Care Home		P	P	P	P						10
Farmer’s Market		MI									
Fences	P	P	P	P	P	P	P	P			
Financial Institution						P		P			
Forestry		MA									
Fuel Tanks and Containers	P	P	P	P	P	P	P	P		P	4
Geothermal Closed Loop Systems	P	P	P	P	P	P	P	P		P	

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Golf Course	P										
Government Building		MA				P				P	
Home Occupation		MI	MI	MI	MI						9
Horse Farm-Horse Stable		P		P							12
Medical Office						MA		MA			

Uses	DISTRICTS										
	REC	RA	RS	RS/H	RM	OP	AC	NS	AP	GOV	SR
Office						MA		P			
Open Space	P	P	P	P	P	P	P	P		P	
Outdoor Storage		MA									
Overnight Accommodations Facility	MA					MA					
Park, Public	P	P	P	P	P	P	P	P		P	
Personal Service						MA		MA			
Portable On-Site Storage	P	P	P	P	P	P	P	P		P	7
Public Safety Station	MA	MA	MA	MA	MA	MA	MA	MA			
Public Utility Facility	MA	MA	MA	MA	MA	MA	MA	MA		P	
Religious Institution		MA									
Restaurant								MA			
Retail, 8,000 sf and less						MA		MA			
Retail, more than 8,000 sf								MA			
School		MA									
Service Station								MA			
Sexually Oriented Business								MA			15
Shopping Center								MA			
Solar Panels	P	P	P	P	P	P	P	P		P	6
Temporary Buildings and Uses	P	P	P	P	P	P	P	P		P	8
Veterinary Office		MA				MA		MA			

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Section 5.5 Table of Dimensional Requirements (Amended 1/13/16)

All uses and structures in the general use zoning districts shall comply with the following requirements, except as may otherwise be provided by this Ordinance:

Dimension	DISTRICTS								
	REC	RA	RS	RS/H	RM	OP	AC	NS	AP
Min. Lot Area (sq. ft.) (Excluding wetlands)	(7)	40,000 (7)	25,000 (10)(11)(7)	25,000 (4)(11)(7)	25,000 (5)(11)(7)	25,000 (11)(7)			
Min. Mean Lot Width (ft.)		125 (11)	125 (11)	125 (11)	125 (11)	125 (11)			
Min. Street Frontage / Access		75 (11)	75 (11)	75 (11)	75 (11)	75 (11)	75 (11)		
Front Yard Setback (ft.)	40	40	40	40	40	40	40	35	
Rear Yard Setback (ft.)	40	(1)	50	50	50	50	50	20	
Side Yard Setback (ft.)	40	(2)	15 (9)(10)	15 (9)(10)	15 (9)(10)	15 (10)	15	20	
Side Street Setback (ft.)	40	(2)	20 (10)	20 (10)	20 (10)	20 (10)	15	20	
Max. Building Height (ft.)	35 (3)(6)	(3)(6)	35 (3)(6)	35 (3)(6)	35 (3)(6)	35	35	35	
Max. Built Upon Area (Impervious Surface)		24%	24%	24%	24%	24%	24%	24%	
Min. Principal Dwelling Unit Size (heated sq. ft.)		1800 (8)	1800 (8)	1800 (8)	1800 (8)				
Min. Principal Dwelling Unit Size 1st Floor (heated sq. ft.)		1200 (8)	1200 (8)	1200 (8)	1200 (8)				

Notes:

- (1) 20% of mean depth but not to exceed 50 ft
- (2) 10% of mean Lot width with a 15 ft minimum and 20 ft if a side street
- (3) No building shall exceed 35 ft in height unless the depth of the front and total width of side yards required herein shall be increased by 1/2 ft for every 1 ft, or fraction thereof, of building height in excess of 35 ft but no building shall exceed 50 ft in height.
- (4) See SR # 12 for standards for Horse Farms and Horse stables.
- (5) For multi-family developments, 25,000 square ft is the per dwelling unit land area required. Lots platted prior to April 16, 2014 shall not be deemed to be nonconforming. Construction of a dwelling on such lots shall be permitted and the square ft. per lot shall be 20,000.
- (6) Maximum height for buildings is 35 ft. Maximum height shall be measured from the mean average height of the lowest and highest ground levels of the principal building. In addition, the following are not to be included in the calculation of building height: basements, spires, steeples, chimneys, incidental antennae attached to buildings, water tanks.
- (7) Wetland areas do not count for minimum lot size dimension
- (8) A garage is required for each dwelling unit.
- (9) Those lots platted prior to 1993 which do not meet the minimum lot size requirement, shall not be deemed to be nonconforming lots. Construction of a residence on such lots shall be permitted and the side setback lines shall be 8 feet. Lots in Section 11, 14, and 15 which were developed prior to November 14, 2002 and which utilized a setback of less than 12 feet shall not be considered non-conforming and may continue to adhere to the original setback for all purposes. Lots in Sections 1-8 and 10 shall have side set backs of 8 feet.
- (10) Those lots platted prior to April 16, 2014 which do not meet the minimum lot size requirement shall not be deemed to be nonconforming lots. Construction of a residence on such lots shall be permitted and the side setback lines shall be 12 feet or 15 feet for side streets.
- (11) Those lots platted prior to April 16, 2014 which do not meet the minimum street frontage or minimum mean lot width may use a street frontage of 25 ft. and a min. mean lot width of 100 ft.

Section 5.5.1 Lots (Amended 2/11/15)

A. Lot sizes, shapes and locations shall be made with due regard to zoning regulations, topographic conditions, contemplated use, and the surrounding area. Land subject to flooding, land with a slope over 12 percent, and land deemed by the Planning Board to be uninhabitable for other reasons shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life or property, or aggravate the flood hazard. Such land may be set aside for such uses as will not be endangered by periodic or occasional inundation, or will not produce unsatisfactory living conditions.

B. The size, shape, and location of Lots shall be established with due regard to topographic conditions, contemplated uses, and the character of the surrounding area.

C. Side Lot lines shall be at right angles or radial to street lines.

Section 5.5.2 Dimensional Requirements for Multi-Family Dwellings

A. The basic minimum site size for a multi-family development shall be four (4) acres.

B. Maximum density shall not exceed one (1) dwelling unit per twenty thousand (25,000) square feet of land area.

- C. The tract containing the development shall comply with the setbacks and other dimensional standards of the zoning district. Lots within the development may be of any size as approved on the site plan and spacing between buildings shall be as provided in this subsection. The conveyance of ground space for single-family attached units or for common area or similar purposes shall not preclude development under this subsection. Such conveyances however shall be subject to the requirements of the subdivision provisions and may be subject to the North Carolina Unit Ownership Act.

- D. For multi-family developments proposing more than one building on a tract, the following provisions shall apply:
 - (1) Along each exterior property line or public street, a minimum front, rear, and side yard setback as required by the district in which the development is located shall be established.

 - (2) To determine building separation yards (or position of an individual building or series of attached units), an isosceles triangle (yard space triangle) shall be drawn from each building façade. Facades shall be designed on each building so that a minimum number, normally four, results. The base of the triangle shall be a line connecting the extreme ends of the façade (ignoring one story storage rooms and other one story protrusions of one hundred (100) square feet or less, exterior stairways, and decks) and its altitude shall be the length of the base line multiplied by a factor related to the height of the building as shown below:

<u>Number of Stories</u>	<u>Altitude Factor</u>
1	0.4
2	0.5

The isosceles triangle thus established shall not:

- (a) Overlap any portion of any other building.

- (b) Overlap any other yard space triangle.

- (c) Extend across the property lines of the development.

- (3) In addition to the yard space triangle, in no case shall any building be closer than twenty (20) feet to any other building in the development. Furthermore, buildings shall not be arranged in straight rows oriented in such a way as to resemble rows of barracks.

- (4) All portions of every building shall be located within three hundred (300) feet of a public street that furnishes direct access to the property unless the Administrator determines that on site fire hydrants and service drives will offer adequate protection.

- (5) All private streets or access ways providing ingress and egress from the development to an existing public street system shall comply with the current standards being required by the subdivision regulations in effect, including street drainage, except that no curb and gutter is required and a pavement width of only twenty (20) feet shall be required.
- (6) Storm drainage improvements shall be made in the same manner and under the same criteria as that established in the subdivision regulations.

Section 5.6 Conditional Districts

Section 5.6.1 Conditional Districts. For each General Use District establish, there is also established a corresponding Conditional District as follows:

- A. REC-CD Recreational Conditional District
- B. RA-CD Residential and Agricultural Conditional District
- C. RS-CD Residential Single Family Conditional District
- D. RS/H-CD Residential Single Family/Horse Conditional District
- E. RM-CD Residential Multiple Unit Dwelling Conditional District
- F. OP-CD Office and Professional Conditional District
- G. AC-CD Assisted Care Living Conditional District
- H. NS-CD Neighborhood Shopping Conditional District
- I. GOV Governmental Use Conditional District

Section 5.6.2 Purpose and Intent

It is recognized that certain types of zoning districts would be inappropriate at certain locations in the absence of special conditions. Where the applicant for rezoning desires property to be rezoned to such a district in such situations, the Conditional District (CD) is a means by which such special conditions can be imposed in the furtherance of the purposes of this Ordinance. The Conditional District classification will be considered for rezoning only upon request of a property owner. If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid or if the applicant should fail to accept any condition, it is the intent of this Ordinance that the authorization of such Conditional District classification shall be null and void and that proceedings shall be instituted to rezone the property to its previous zoning classification.

Section 5.6.3 Conditional District Regulations

Within a CD, only those uses authorized as either permitted uses or minor or major special uses in the zoning district with which the CD corresponds shall be permitted, and all other

requirements of the corresponding district shall be met as minimum standards. Additionally, within a CD, no use shall be permitted unless it is consistent with the Conditional District authorized by the Village Council, which shall specify the use or uses authorized. Such zoning may further specify the location on the property of the proposed use or uses, the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways and access streets, the location and extent of buffer areas, and other special purpose areas, the timing of development, the location and extent of right-of-ways and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request. Prior to granting a Conditional District rezoning, Village Council may impose such additional reasonable and appropriate safeguards upon such permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured, and substantial justice done. The rezoning of a Conditional District to permit any use that is permitted only as a minor or major Special Use Permit in the zoning district that corresponds to the CD shall preclude any requirement for obtaining a Special Use Permit for any such use in a separate procedure.

Section 5.7 Highway Corridor Overlay Districts

Section 5.7.1 Purpose and Intent

The primary purpose of this Section is to preserve and enhance the natural beauty adjacent to and along the Village's public highways in conjunction with the existing zoning districts. These overlay districts are established to prevent unsightly conditions as a result of development which may destroy or detract from the natural character, beauty and conditions and to exercise such reasonable control over land within the district as may be necessary to accomplish the objective. Secondly, this Section is intended to minimize undue visual harshness and potential safety hazards that may exist along the roadways in the Village and to ensure a view that is in keeping with the character of the natural ecosystems as well as the high quality of life.

Section 5.7.2 Location of Districts

- A. The Highway Corridor Overlay Districts shall be measured from the edge of the public right-of-way. The Highway Corridor Overlay Districts shall extend four hundred (400) feet from the right-of-way and run parallel to the right-of-way; Lots to be developed with single family dwellings are not subject to the Highway Corridor Overlay District regulations;
- B. The use and development of land or structures within the Highway Corridor Districts shall comply with regulations applicable to the underlying zoning district(s), as well as the requirements of this Section. Where the requirements of this Section are in conflict with any other provisions of this Ordinance, the more strict requirements shall apply;
- C. This Section establishes a set of dimensional, landscaping and buffer standards. These standards are designed to achieve a natural or landscaped edge along the highway corridor. The standard dimensions in the following section provide a higher level of public safety on and along the highway corridors. They also provide protection of property values through balanced natural and infrastructure resources. These patterns are characteristic of the visual qualities along the highway corridors in the Village. If an applicant feels that there are

better alternatives that will facilitate the spirit of the Corridor on a specific property, the site plan may be reviewed by the Village Council as part of the site plan review process. The Village Council may approve the alternative to the Corridor dimensional standards if it is determined that the intent is met;

D. The Highway Corridor Districts are:

1. NC Hwy 22 extending from northern edge of the Moore County Airport property line to McCaskill Road.
2. Niagara-Carthage Road from Cardinal Drive to Vass-Carthage Road.
3. Airport Road, from the western most boundary of the extraterritorial jurisdiction to the eastern most boundary of the extraterritorial jurisdiction.
4. Rays Bridge Road, from Farm Life School Road to NC Highway 22.

Section 5.7.3 Development Standards

The following standards shall apply in each Highway Corridor Overlay District:

- | | | |
|----|-------------------------------------|----------------|
| A. | Minimum Dimensional Requirements | |
| | Lot Area | 40,000 Sq. Ft. |
| | Minimum Lot Width | 200 Ft. |
| B. | Front Yard Setback | |
| | Structures | 75 Ft. |
| | Parking Areas | 35 Ft. |
| C. | Side and Rear Setbacks | |
| | From Residential Zones | 50 Ft. |
| | From Non-residential Zones | 25 Ft. |
| D. | Height Limitations | |
| | Religious Institutions | 50 Ft. |
| | All Other Structures | 35 Ft. |
| E. | Built Upon Area Coverage | 24% |
| F. | Maximum Number of Driveways per Lot | |
| | Less than 400 feet of frontage | 1 |
| | More than 400 feet of frontage | 2 |

Section 5.7.4 Landscaping and Buffering

Landscaping and buffering shall be subject to the standards of Chapter 8, provided that the buffer along the highway shall be thirty-five (35) feet wide and shall be composed of the following:

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Trees: Large trees (as defined in Chapter 16) with a minimum size of 3-inch caliper at the following rates:

One Hardwood Per

300 sq. ft. of buffer

One Pine Per

150 sq. ft. of buffer

Shrubs: Shrubs shall be a minimum of 18 inches in height, and of a variety that can be expected to reach 4 to 5 feet in height within 3 years of planting. Shrubs shall be distributed along the entire length of the buffer at the following rates:

One Shrub Per

75 sq. ft. of buffer

Section 5.7.5 Approval of Alternative Buffer and Landscaping Authorized.

Notwithstanding any other provision of this Section 5, for developments within a Highway Corridor Overlay District that require the issuance of a conditional use permit, the permit applicant may submit and the Village Council may approve a detailed buffer, landscaping, and screening plan that does not strictly comply with all the specific buffer, landscaping and screening requirements set forth in this Section if the Council concludes that the plan achieves the objectives of this Section and that such plan is otherwise consistent with the standards set forth in this Ordinance.

Section 5.8 Water Supply Watershed Protection Overlay Districts

Section 5.8.1 Purpose and Intent

The legislature of the State of North Carolina has, in Chapter 143, Article 21, Watershed Protection Rules, and in 15A North Carolina Administrative Code 2B.0100 and 15A NCAC 2B.0200, directed local government units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. The intent of the Watershed Protection Overlay District is to ensure the availability of public water supplies at a safe and acceptable level of water quality for present and future residents of the Village and the surrounding region. Watershed protection measures allowed by this Section of the Ordinance include:

- A. Impervious area limitations;
- B. Stream and reservoir buffers;
- C. Restriction of land uses and density allowed within water supply basins by the use of zoning.

Section 5.8.2 Applicability

- A. The Watershed Protection District is an overlay district to be applied to all Class III watersheds lying within the Village’s zoning jurisdiction, with regulations superimposed on all lands lying within the watershed of a public water supply. All of the land in the Village and its extraterritorial jurisdiction is in one of the two following water supply watersheds and is subject to the regulations of this Section:

Little River—Intake #2 WS III, Balance of Watershed

Little River—Vass WS-III, Balance of Watershed

Further, approximately 95% of the Class III Watershed is High Quality Water (HQW) as designated by the State on the latest version of the DENR Environmental Sensitivity Map. If the development application is in a High Quality Water District, the Developer is instructed to submit all applications relating to HQW development to the Department of Environmental and Natural Resources. Prior to approval by the approving body of the Village of any development proposal that is subject to such State requirements, the applicant shall submit to the Village, documentation from the State indicating that the application complies with the referenced State laws and regulations.

- B. The uses prohibited and the limitations on built-upon area in the Class III Watershed Protection Districts are listed in this Chapter

5.8.3 Density Requirements for Class III Watershed.

Developments will be low density development with all high density development subject to the 5/70 Rule. For the purposes of this Ordinance, “high density” development refers to any development that is subject to the 5/70 Rule. Vegetative buffers along perennial stream will be increase from 30 feet in low density developments to 100 feet in high density developments.

- (A) Low Density Option: A residential development will be deemed to be a low density development if the following criteria are met
- (1) each lot within the development is at least 20,000 square feet in size (excluding roadway right-of-way), or
 - (2) the overall density of the development tract does not exceed two dwellings per acre, or
 - (3) the development does not exceed 24 percent built-upon area for the entire development tract.
- (B) Other residential and non-residential development shall not exceed 24 percent built-upon area.
- (C) Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable.

Pursuant to North Carolina Administrative Codes and this Ordinance, all projects that utilize the low-density option must first determine if transportation of stormwater by vegetated conveyance is practicable. If transportation of stormwater on the site can be practicably done by the use of vegetated conveyances, then the standard curb and gutter and stormwater drain collection systems are not allowed. That is, the below listed vegetated swale specifications are required.

a. Vegetative swale requirements

- i. A vegetated conveyance device such as a swale shall be used to provide transportation of stormwater runoff. The construction of the swale must, provide for even distribution of runoff across the width of the vegetated swale;
- ii. The slope and length of the vegetative swale shall be designed, constructed, and maintained so as to provide a non-erosive velocity of flow through the swale for the 10-year storm and shall have a slope of five percent or less, where practicable; and
- iii. Vegetation in swale may be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristic.

(D) When a Subdivision property is developed using the maximum 24 percent built upon standard, then:

- (1) Each time a plat is recorded, the plat shall indicate the maximum built-upon area (BUA) allowed on each lot shown on such plat, as well as the BUA allocated to any street or other area not constituting a developable lot that is shown on such plat. The total BUA allocated shall not exceed 24 percent of the area of the subdivided tract. Thereafter, no permit may be issued authorizing any development on a lot shown on such plat if the proposed development exceeds the amount of BUA allocated to that lot.
- (2) At any time after a plat is recorded showing the allocation of BUA, the developer may increase or decrease the amount of BUA that is permissible on any lot shown on such plat that is still owned by the developer by recording an amended plat of the subdivision showing the revised allocation, so long as the total BUA allocated does not exceed 24 percent of the area of the subdivided tract. The amended allocation must be approved by the Administrator before the amended plat is recorded and shall not be effective until a copy of the recorded amended plat is provided to the Village.
- (3) Successive owners of lots shown on a map recorded pursuant to this subsection may increase or decrease the amount of BUA allocated to their respective lots by recording a plat or plats showing the revised allocation, so long as the total square

footage of BUA allocated to the lots involved in such a reallocation does not exceed the amount allocated to all such lots prior to the reallocation. The amended allocation must be approved by the Administrator before the amended plat is recorded and shall not be effective until a copy of the recorded amended plat is provided to the Village.

- (E) High Density Option 5/70 Rule: if new development density exceeds the low density option requirements then the development will be subject to the 5/70 Rule as described below.
- (F) 5/70 Rule. A maximum of 5 percent of the area within the Watershed Overlay Districts may be developed for residential and non-residential uses to 70 percent built-upon area on a project- by-project basis, provided that the following conditions are met:
 - (1) For the purpose of calculating built-upon area, total project area shall include the total acreage in the tract on which the project is to be developed.
 - (2) The Village Council must approve such Special residential and Non-Residential Intensity Allocation
 - (3) Projects must, to the maximum extent practicable, minimize the built-upon area, direct stormwater runoff away from surface waters, and incorporate the best management practices to minimize water quality impacts.
 - (4) Vegetative Buffers of 100 feet will be required on perennial streams.
- (G) Land within the watershed shall be deemed compliant with the density requirements if the density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire watershed area;

Section 5.8.4 Vegetative buffers

- A. In all developments under this Section, a vegetative buffer shall be required for all development adjoining a perennial stream, lake as shown on the most recent version of USGS 1:24,000(7.5 minute) scale topographic or local government studies, or wetlands as shown in the most recent version of the U.S. Army Corp of Engineers Delineation Manual. The buffer shall be of a minimum width of thirty (30) feet in low density Watershed III development and such vegetative buffer shall be one hundred feet (100) in a high density 5/70 Watershed III development.
- B. The width of each buffer shall be measured perpendicular to the banks of the stream or water body or wetlands. Additionally, within the first 20 feet of such buffer, as measured from the water edge, not less than two existing trees meeting the requirements of Section 8.1.1 and Section 8.1.2 set forth in Chapter 8 shall be preserved and minimum undergrowth clearing shall be allowed. Roots of such trees shall be protected to the extent practicable.

- C. The Development Permit shall include a representation by the Owner agreeing to maintain the buffers described hereinabove. Failure to comply with the representation shall be a violation of this Ordinance and shall incur the penalties provided in this Ordinance. The representation shall run with the land and be binding upon the successors and assigns of the Owner for the five year period commencing on the date of the issuance of the Certificate of Compliance.
- D. No new development is allowed in the buffer; however water dependent structures and other structures such as flag poles, signs and security lights, which result in only de minimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built-upon surface area, direct runoff away from surface waters and maximize the utilization of BMPs. In that connection streets, associated facilities, pedestrian paths, and water dependent structures are not allowed in the buffer by right, nor are golf courses or driveways.
- E. Vegetative buffers shall be shown on all site plans and subdivision plats approved within the Class III Watershed Protection District.

Section 5.8.5 Determination of Variances.

- A. Persons who believe they are entitled to seek relief from a requirement of this section may apply for a Variance. The process, procedure and requirements for obtaining a Variance are found in Chapter 12 of this Ordinance.
- B. Variances to be Granted by the North Carolina Environmental Management Commission:
The following provisions of this Section may be varied only by the North Carolina Environmental Management Commission:
 - (1) The complete waiver of any requirement of this Section;
 - (2) A major variance is needed for any increase of ten percent (10%) or more of any management requirement under the low density option; or 5% of any buffer, density, or built upon area requirement under the high density option (or 5/70 provision in this case).
- C. Recommendation by Board of Adjustment to the Environmental Management Commission:
If an application calls for the granting of a variance as listed in B above, the Board of Adjustment shall reach a recommendation on the variance in accord with the requirements of Chapter 12. If the Board of Adjustment decides in favor of granting the variance, the Board of Adjustment shall prepare a preliminary record of the hearing as soon as possible and forward it to the Environmental Management Commission. The preliminary record of the hearing shall include:
 - (1) The variance application;

- (2) The hearing notices;
- (3) The evidence presented;
- (4) Motions, offers of proof, objections to evidence, and rulings on them;
- (5) Proposed findings and exceptions;
- (6) The proposed decision including all conditions proposed to be added to the permit.

If the Board of Adjustment denies the variance, the variance is denied and may only be appealed to the Village Council as provided for in Chapter 12 of this Ordinance. Appeals from the decision of the Village shall be by certiorari to the Superior Court. Such appeal must be filed within thirty (30) days from the date the decision was sent by first class mail.

D. Decision by the Environmental Management Commission:

Approval: If the Commission approves the variance as proposed or with additional conditions, the Commission shall prepare a decision and send it to the Board of Adjustment. The Board of Adjustment shall prepare a final decision in accordance with the Commission's decision; Appeals from the decision of the Village shall be by certiorari to the Superior Court. Such appeal must be filed within thirty (30) days from the date the decision was sent by first class mail.

Disapproval: If the Commission denies the variance as proposed, the Commission will prepare a decision and send it to the Board of Adjustment. The Board of Adjustment shall prepare a final decision in accordance with the Commission's decision. Appeals from the decision of the Village shall be by certiorari to the Superior Court. Such appeal must be filed within thirty (30) days from the date the decision was sent by first class mail.

Section 5.8.9 Amendments to Section 5.8

Under no circumstances shall the Village Council adopt any amendments, supplements or changes to any portion of Section 5.8 that would cause this ordinance to violate the watershed protection rules as adopted by the NC Environmental Management Commission. All such amendments, supplements or changes must be filed with the N.C. Division of Water Quality.

Section 5.9 Flood Damage Prevention Overlay District

Section 5.9.1 Findings of Fact

- A. The flood prone areas within the jurisdiction of Village of Whispering Pines are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

- B. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

Section 5.9.2 Statement of Purpose

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

- A. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- E. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

Section 5.9.3 Objectives

The objectives of this Ordinance are to:

- A. Protect human life, safety, and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business losses and interruptions;
- E. Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- F. Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- G. Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

Section 5.9.4 Lands to Which This Ordinance Applies

This Ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs) if applicable, of the Village of Whispering Pines and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

Section 5.9.5 Basis for Establishing the Special Flood Hazard Areas

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Moore County dated October 17, 2006, which are adopted by reference and declared to be a part of this Ordinance.

Section 5.9.6 Establishment of Floodplain Development Permit

A Floodplain Development Permit shall be required in conformance with the provisions of this Ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of set forth herein.

Section 5.9.7 Compliance

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

Section 5.9.8 Abrogation and Greater Restrictions

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

Section 5.9.9 Interpretation

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

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under State statutes.

Section 5.9.9 Warning and Disclaimer of Liability

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

Section 5.9.11 Designation of Floodplain Administrator

The Administrator, herein referred to as the “Floodplain Administrator”, shall administer and implement the provisions of this Ordinance.

Section 5.9.12 Floodplain Development Application Requirements

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

- A. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (1) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (2) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined as set forth herein, or a statement that the entire Lot is within the Special Flood Hazard Area;
 - (3) The flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined herein;
 - (4) The boundary of the floodway(s) or non-encroachment area(s) as determined herein;
 - (5) The Base Flood Elevation (BFE) where provided as set forth herein;
 - (6) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;

- B. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - (1) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (2) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and
 - (3) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;

- C. If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

- D. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this Ordinance are met. These details include but are not limited to:
 - (1) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);
 - (2) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with this Chapter when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30;
- E. Usage details of any enclosed areas below the lowest floor.
- F. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- G. Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- H. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of this Chapter are met.
- I. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

Section 5.9.13 Floodplain Development Permit Requirements

The Floodplain Development Permit shall include, but not be limited to:

- A. A description of the development to be permitted under the floodplain development permit.
- B. The Special Flood Hazard Area determination for the proposed development in accordance with available data specified herein.
- C. The regulatory flood protection elevation required for the reference level and all attendant utilities.
- D. The regulatory flood protection elevation required for the protection of all public utilities.
- E. All certification submittal requirements with timelines.
- F. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

- G. The flood openings requirements, if in Zones A, AO, AE or A1-30.
- H. Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).

Section 5.9.14 Floodplain Development Certification Requirements

A. Elevation Certificates

- (1) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
- (2) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. . Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder’s risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
- (3) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

B. Floodproofing Certificate

If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all

attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- C. If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than thirty-six (36) inches in height above grade, an engineered certified foundation is required in accordance with the provisions herein.

- D. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

- E. Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items 1 and 2 of this subsection:
 - (1) Recreational Vehicles meeting requirements of this Chapter;
 - (2) Temporary Structures meeting requirements of this Chapter; and
 - (3) Accessory Structures less than one hundred fifty (150) square feet meeting requirements of this Chapter.

Section 5.9.15 Corrective Procedures

- A. Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws; it shall be the Administrator's duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

- B. Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (1) That the building or property is in violation of the floodplain management regulations;
 - (2) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the

owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

- (3) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- C. Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- D. Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- E. Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

Section 5.9.16 Variance Procedures

- A. The Board of Adjustment as established by the Village of Whispering Pines, herein referred to as the “Appeal Board”, shall hear and decide requests for variances from the requirements of this Ordinance.
- B. Any person aggrieved by the decision of the Appeal Board may appeal such decision to Village Council as described in Chapter 12 of this Ordinance.
- C. Variances may be issued for:
- (1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (2) Functionally dependent facilities if determined to meet the definition as stated in Chapter 16 of this Ordinance, provided provisions of this Chapter have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

- (3) any other type of development provided it meets the requirements of this Section.
- D. In passing upon variances, the Appeal Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Ordinance, and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location as defined under Chapter 16 of this Ordinance as a functionally dependent facility, where applicable;
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- E. A written report addressing each of the above factors shall be submitted with the application for a variance.
- F. Upon consideration of the factors listed above and the purposes of this Ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this Ordinance.
- G. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to

life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

H. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

I. Conditions for Variances:

(1) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

(2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued prior to development permit approval.

(5) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

J. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:

(1) The use serves a critical need in the community.

(2) No feasible location exists for the use outside the Special Flood Hazard Area.

(3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.

- (4) The use complies with all other applicable Federal, State and local laws.
- (5) The Village of Whispering Pines has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

Section 5.9.17 Provisions in All Special Flood Hazard Areas

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

- A. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- B. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- C. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- D. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- E. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- G. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- H. Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this Ordinance, shall meet the requirements of “new construction” as contained in this Ordinance.
- I. Nothing in this Ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this Ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Ordinance.

- J. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in this Chapter. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of this Chapter.
- K. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- L. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- M. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- N. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- O. When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.
- P. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.

Section 5.9.18 Specific Standards

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in this Chapter, the following provisions are required:

- A. Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Chapter 16 of this Ordinance.
- B. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Chapter 16 of this Ordinance. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially

impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with this Chapter. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in this Chapter, along with the operational and maintenance plans.

C. **Manufactured Homes.**

1. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Chapter 16 of this Ordinance.
2. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
3. All enclosures or skirting below the lowest floor shall meet the requirements of this Chapter.
4. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management coordinator.

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

- (1) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
- (2) Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation;

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

E. Additions/Improvements.

- (1) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (2) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

- (3) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (a) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - (b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- F. Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
- (1) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
 - (2) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - (3) The time frame prior to the event at which a structure will be removed (i.e., minimum of seventy two (72) hours before landfall of a hurricane or immediately upon flood warning notification);
 - (4) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - (5) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- G. Accessory Structures. When Accessory Structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (1) Accessory Structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - (2) Accessory Structures shall not be temperature-controlled;
 - (3) Accessory Structures shall be designed to have low flood damage potential;
 - (4) Accessory Structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

- (5) Accessory Structures shall be firmly anchored in accordance with the provisions of this Chapter;
- (6) All service facilities such as electrical shall be installed in accordance with the provisions of this Chapter ; and
- (7) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of this Chapter.

An Accessory Structure with a footprint less than one hundred fifty (150) square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other Accessory Structures in accordance with this Chapter.

Section 5.9.19 Standards for Floodplains without Established Base Flood Elevations

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in this Chapter, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to any other the provisions of this Chapter, shall apply:

- A. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:
 - (1) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this Ordinance and shall be elevated or floodproofed in accordance with standards in this Chapter.
 - (2) When floodway data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway areas shall also comply with the requirements of this Chapter.
 - (3) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) Lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with this Chapter and utilized in implementing this Ordinance.

- (4) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Chapter 16. All other applicable provisions of this Chapter shall also apply.

Section 5.9.20 Standards for Riverine Floodplains with BFE but without Established Floodways or Non-Encroachment Areas

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

- A. Standards of Section 5.9.19 and 20; and
- B. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

Section 5.9.21 Floodways and Non-Encroachment Areas

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

- A. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - (1) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
 - (2) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- B. If Section 5.9.23. is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this Ordinance.

- C. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - (1) The anchoring and the elevation standards of this Chapter; and
 - (2) the no encroachment standard of this Chapter.

Section 5.9.22 Standards for Areas of Shallow Flooding (Zone AO)

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

- A. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least four (4) feet, above the highest adjacent grade if no depth number is specified.
- B. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in this chapter, so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with this Chapter.
- C. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

Section 5.9.23 Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance

This Ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted August 12, 1992, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this Ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Village of Whispering Pines enacted on August 12, 1992, as amended, which are not reenacted herein, are repealed.

Section 5.9.24 Effect upon Outstanding Floodplain Development Permits

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or the Administrator's authorized agents before the time

of passage of this Ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Ordinance.

Section 5.10 Class B Mobile Home Overlay Districts

Section 5.10.1 Purpose and Intent

This Overlay District is established to fulfill the requirements of North Carolina General Statutes 160A – 383.1 Zoning Regulations for manufactured homes.

Section 5.10.2 Qualifications

To qualify for a rezoning to this Overlay District a minimum of five (5) acres must be involved in the petition and the underlying general district must be zoned Residential and Agricultural (RA) A Site Plan and application for a Development Permit as described in Chapter 3, shall be submitted for Village Council approval prior to the Council acting on the rezoning application. The Site Plan shall follow the review process as set forth in Chapter 3 of this Ordinance.

Section 5.10.3 Single-family Dwelling Appearance Standards

Class B Manufactured homes to be placed in this Overlay District shall be required to meet the Appearance Standards (other than the architectural requirements) and comply with the review process of Chapter 7, Appearance Standards. In addition, all such Class B dwellings shall have minimum exterior dimensions of at least twenty-four (24) feet by forty (40) feet and comply with all the dimensional standards of the Underlying RA District.

Section 5.10.3.1 Standards

The Standards for rezone to Class B Mobile Home Overlay Districts are as follows:

- A. The rezoned property shall, in all other respects, conform to the applicable regulations of the district in which it is located;
- B. The rezoned property will not materially endanger the public health, safety or general welfare if located where proposed and developed according to the plan as proposed;
- C. The rezoned property will not be injurious to the use and enjoyment of the other properties in the immediate vicinity nor substantially diminish and impair property values within the neighborhood.
- D. The rezoned property will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
- E. The exterior architectural appeal and functional plan of any proposed structure (s) is not at variance with either the exterior architectural appeal and functional plan throughout the Village.

- F. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been, or are being provided;
- G. Adequate measures have been or will be taken to provide site ingress and egress so designed as to minimize the traffic congestion in all streets; Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the streets and in the surrounding neighborhood.
- H. The use will not unduly congest or limit the existing use of amenities and recreational facilities.

There shall be adequate buffering such that no Class B Mobil Home is visible from the adjoining property or roadway.

Section 5.10.4 Class C Manufactured Homes

After the effective date of this Ordinance, no Class C Manufactured Home shall be placed in the jurisdiction of this Ordinance nor shall any Class C Manufactured Home that is existing within the jurisdiction of this Ordinance be moved and placed at any other location within the jurisdiction of this Ordinance.