

# ZONING ORDINANCE

TOWN OF RUTHERFORD COLLEGE, N.C.

Prepared by:  
WESTERN PIEDMONT COUNCIL OF GOVERNMENTS  
Adopted: April 5<sup>th</sup>, 2010

\*Revisions

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## **ZONING ORDINANCE**

An Ordinance regulating the uses of buildings, structures, and land for trade, industry, commerce, residence, recreation, public activities or other purposes; the size of yards, and other open spaces; the location, height, bulk, number of stories and size of buildings and other structures; the density and distribution of population; creating districts for said purposes and establishing the boundaries herein; providing for the method of administration, amendment, and enforcement; providing penalties for violations; providing for a Board of Adjustment and defining the duties and powers of said Board; repealing conflicting ordinances; and for other purposes.

### **ARTICLE I**

#### **AUTHORITY AND ENACTMENT**

The Town Council of Rutherford College in pursuance of the authority granted by the General Statutes of North Carolina, Chapter 160A, Article 19, Part 3, hereby ordain and enact into law the following Articles and Sections, this the 5<sup>th</sup> day of April, 2010.

### **ARTICLE II**

#### **SHORT TITLE**

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

### **ARTICLE III**

#### **JURISDICTION**

The provisions of this ordinance shall be applicable to all property within the town limits of Rutherford College, North Carolina and that land as designated by the Official Zoning Map as authorized by North Carolina G.S. 160A-360, to be known as extraterritorial area.

**ARTICLE IV**  
**DEFINITIONS OF TERMS USED IN THIS ORDINANCE**

For the purpose of interpreting this ordinance, certain words or terms are herein defined. Unless otherwise expressly stated the following words shall, for the purpose of this ordinance have the meaning herein indicated.

**Section 41. Interpretation of Certain Terms and Words**

- 41.1 Words used in the present tense include the future tense.
- 41.2 Words used in the singular number include the plural and words used in the plural number include the singular.
- 41.3 The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
- 41.4 The word "lot" includes the word "plot" and "parcel."
- 41.5 The word "building" includes the word "structures."
- 41.6 The word "shall" is mandatory, not directory.
- 41.7 The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied".
- 41.8 The word "Map", "Zoning Map", or "Rutherford College Zoning Map" shall mean the "Official Zoning Map of the Town of Rutherford College, North Carolina".
- 41.9 The term "Zoning Inspector" shall include the term "Watershed Administrator."
- 41.10 The term "Zoning Permit" shall include the term "Watershed Protection Permit," and the term "Certificate of Occupancy" shall include the term "Watershed Protection Occupancy Permit."
- 41.11 The phrase "date of recordation" shall mean the date on which the deed for a parcel of property was filed with the Burke County Register of Deeds.

## **Section 42. Definitions**

- 42.1 Accessory Use. A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.
- 42.2 Accessory Building. A building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building, and located on the same lot therewith.
- 42.3 Adult Use Business. Any principal or accessory use which excludes minors by reason of age. This definition does not apply to applicable alcoholic beverage laws or voluntary restrictions of the motion picture industry. This classification includes but is not limited to:

Adult Bookstore. An establishment which has a substantial portion of its stock and trade in books, magazines, other printed materials or videos and excludes minors by reason of age.

Adult Picture Theater. An enclosed building or part thereof with the capacity of more than 50 persons used for showing movies, slide shows, closed circuit television or similar offerings and excludes minors by reason of age.

Adult Mini-Picture Theater. An enclosed building or part thereof with the capacity of 50 persons or less used for showing movies, slide shows, closed circuit television or similar offerings and excludes minors by reason of age.

Adult Drive-in Theater. A drive-in theater used for showing movies, slide shows, closed circuit television or similar offerings and excludes minors by reason of age.

Adult Cabaret. An establishment which features go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainment and excludes minors by reason of age.

Adult Massage Parlor. An establishment in which body massages are offered as a service and from which minors are excluded by reason of age.

Adult Sexual Paraphernalia Store. Any retail store specializing in the sale of paraphernalia, devices, or equipment distinguished or characterized by an emphasis on depicting or describing specific sexual conduct or used in connection with specified sexual conduct.

- 42.4 Agriculture. Farming, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, or harvesting for the production of

food and fiber products (except commercial logging and timber harvesting.)

- 42.5 Alley. A public or private thoroughfare which affords only a secondary means or access to abutting property and not intended for general traffic circulation.
- 42.6 Animal Hospital. An establishment for the care and treatment of small animals, including household pets.
- 42.7 Animal Shelter. Any premises designated by the county for the purpose of impounding and caring for cats and dogs found running at large or otherwise subject to impoundment in accordance with the provision of this law.
- 42.8 Billboard. An outdoor structure or display, pictorial or otherwise, either freestanding or attached to a building, which advertises or attracts attention to a business, commodity, service or other activity conducted, sold or offered elsewhere than on the premises on which said sign is located.
- 42.9 Boarding House. A building where, for compensation, lodging and/or meals are provided for not more than ten (10) persons.
- 42.10 Bed and Breakfast. A residence or building which has six or more guest units which exhibits a character of use consistent with a motel or hotel and which may have a restaurant open to the general public as well as the guests.
- 42.11 Best Management Practices (BMP). A structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
- 42.12 Buffer (Watershed). An area of natural or planted vegetation through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering or pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.
- 42.13 Buffer Strip. A strip of land consisting of walls, fences, vegetation and/or combination thereof provided between varying zoning districts and/or land uses.
- 42.14 Building. Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattels.
- 42.15 Building, Principal. A building in which is conducted the main or principal use of the lot on which said building is situated.

- 42.16 Building Height. The vertical distance measured from the average elevation of the finished lot grade at the front building line to the highest point of the roof beams adjacent to the front of the wall in the case of a flat roof, to the average height of the gables in the case of a pitched roof, and to the deck line in the case of a mansard roof.
- 42.17 Building Setback Line. A line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutters, and similar fixtures), and the street or highway right-of-way line when measured perpendicularly thereto. When no right of way exists, then a 50-foot distance will be used to determine the setback (25-feet on each side from the center of the road). This distance is measured from the middle of the existing road or street.
- 42.18 Built-Up Area. That portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities, etc., excluding wooden slatted decks and the water area of a swimming pool.
- 42.19 Corner Lot. A lot which occupies the interior angle at the intersection of two street lines which make an angle of more than 45 degrees and less than 135 degrees with each other. The street line forming the least frontage shall be deemed the front of the lot except where the two street lines are equal, in which case the owner shall be required to specify which is the front when requesting a zoning compliance permit.
- 42.20 Child Care Facility. Any establishment that provides supervision, and cares for individuals on a regular basis, for more than five (5) individuals unrelated to the operator for a period of less than twenty-four (24) hours a day, and which receives payment, fee or grant, for any of the individuals receiving care, and whether or not operated for profit. The term includes day care centers, day nurseries, Smart Start, and/or any facility that provides daytime care for individuals.
- 42.21 Child Care Home. Any place operated by a person, society, agency, corporation, institution, or any other group that is licensed by the state wherein children under 17 years of age who are not related to such person and whose parents or guardians are not residents in the same house and with such person, society, agency, corporation, or institution responsible for the control and care of children enrolled therein.
- 42.22 Cluster Development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

- 42.23 Critical Area. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending one-half mile upstream and draining to the normal pool elevation of a water supply reservoir or water intake located in a stream; or to the ridge line of the watershed, whichever comes first.
- 42.24 Customary Home Occupation. An accessory use of a dwelling unit utilized for gainful employment that is clearly a customary, incidental and secondary use of a dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.
- 42.25 Development Activities. Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.
- 42.26 Duplex. A building designed for containing two dwelling units.
- 42.27 Dwelling Unit. A building or portion thereof designed, arranged or used for permanent living quarters for one family. The term "dwelling unit" shall not be deemed to include a motel, hotel, tourist home, mobile home or other structure designed for transient residence.
- 42.28 Emergency Structure. A temporary building for emergencies including trailers, mobile vehicles, which can be used for temporary living purposes, or for office use, in conjunction with construction.
- 42.29 Existing Development. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:
- A. having expended substantial of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
  - B. having an outstanding valid building permit as authorized by the General Statutes (G.S.) 153A-344.1 and G.S. 160A-385.1, or
  - C. having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385. 1).
- 42.30 Family Care Home. A home licensed by the North Carolina State Department of Human Resources with support and supervisory personnel that provides room and

board, personal care and habilitation services in a family environment for not more than six (6) resident handicapped persons defined by the State of North Carolina. Such family care homes shall not be within a one-half mile radius of an existing family care home or group home as measured from property line to property line. This definition shall also include the term Group Home.

- 42.31 Gambling, video lottery terminal. A building being used for gambling by the use of any electronic computerized video game machine that, upon the insertion of cash or other thing of value, is available to play a video game authorized by the lottery commission, and which uses a video display and microprocessor in which, by chance, the player may receive free games or credits that can be redeemed for cash.
- 42.32 Grade. An average level of the finished surface of the ground adjacent to the exterior walls of the building or structure.
- 42.33 Gross Floor Area. The total floor area of all buildings in a project including basements, mezzanines and upper floors exclusive of stairways and elevator shafts. It excludes separate service facilities outside the main building such as boiler rooms and maintenance shops.
- 42.34 Group Home. Any facility licensed by the North Carolina State Department of Human Resources, by whatever name it is called, other than a "family care home", as defined by this ordinance, with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than nine (9) resident persons. Such group homes shall not be within a one-half mile radius of an existing family care or group home as measured from property line to property line.
- 42.35 Hazardous Material. Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).
- 42.36 Home Occupation. An occupation customarily conducted for profit within a dwelling and carried on by the occupant thereof, which use is clearly secondary to the use of the dwelling for residential purposes.
- 42.37 Horticulture. The use of land for the growing or production for income of fruits, vegetables, flowers, nursery stock, including ornamental plants and trees, and cultured sod.
- 42.38 Hotels and Inns. A building in which lodging is provided and offered to the public for compensation, and which is open to transient guests and is not a bed and

breakfast as herein defined.

- 42.39 Impervious Surface. Any hard-surfaced, man-made area that does not readily absorb or retain water, including, but not limited to building roofs, parking and driveway areas, graveled areas, sidewalks, and paved recreation areas.
- 42.40 Junkyard. The use of more than 100 square feet of the area of any lot for the storage, keeping or abandonment of junk, including scrap metals, or other scrap materials, or for the dismantling, demolition, or abandonment of automobiles or other vehicles or parts thereof.
- 42.41 "Junk or Salvage" shall mean old, second hand, or scrap ferrous or nonferrous metals, paper and paper products including roofing and tar paper, cloth and clothing, wood and wood products, manufactured rubber products, including motor vehicle tires, rope, manufactured plastic products, paint, manufactured clay and porcelain products, trash and similar materials and shall include dismantled or inoperable machinery and household appliances, equipment and parts. Junk and salvage shall also include the baling of cardboard boxes, paper and paper cartons.
- 42.42 Kennel. Any location where boarding, caring for or keeping of more than a total of three dogs or cats or other small animals or a combination thereof (except litters of animals of not more than six months of age) is carried on, and also raising, breeding, caring for or boarding dogs, cats, or other small animals for commercial purposes.
- 42.43 Kennel, Noncommercial. Any location where the boarding, caring for and keeping of more than three (3) but not more than ten (10) dogs or cats or other small animals or combination thereof (except litters of animals of not more than six months of age) is carried on, not for commercial purposes, but as a hobby such as the raising of show and hunting dogs.
- 42.44 Lot. A parcel of land occupied or capable of being occupied by a main building or group of main buildings and accessory buildings, together with such yards, open spaces, lot width and lot area as are required by this ordinance, and having not less than the minimum required frontage upon a street, either shown on a plat of record, or considered as a unit of property and described by metes and bounds.
- 42.45 Lot Coverage. The area of a lot covered by a building or buildings, expressed as a percentage of the total lot area.
- 42.46 Lot, Corner. A lot which occupies the interior angle at the intersection of two street lines which make an angle of more than 45 degrees and less than 135 degrees with each other. The street line forming the least frontage shall be deemed the front of the lot except where the two street lines are equal, in which case the owner shall be

required to specify which is the front when requesting a zoning compliance permit.

- 42.47 Lot Depth. The mean horizontal distance between the front and rear lot lines.
- 42.48 Lot of Record. A lot which is part of a subdivision, a plat or which has been recorded in the office of the Burke County Register of Deeds or a lot described by metes and bounds, the description of which has been so recorded at the County Courthouse.
- 42.49 Lot Width. The distance between side lot lines measured at the building setback line.
- 42.50 Major Watershed Variance. A variance that results in any one or more of the following:
- A. the complete waiver of a management requirement;
  - B. the relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard;
  - C. the relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.
- 42.51 Minor (Watershed) Variance. A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor up to five (5) percent of any buffer, density, or built-upon requirement under the high density option; or that results in a relaxation, by a factor up to ten (10) percent, of any management requirement under the low density option.
- 42.52 Manufactured Home. A manufactured housing unit, completely or partially assembled in a manufacturing plant, designed for transportation from a manufacturing plant, either on its own chassis or in sections, and placement on a temporary, semi-permanent or permanent foundation. It shall also comply with the National Mobile Home Construction and Safety Standards adopted by the U.S. Department of Housing and Urban Development (adopted in July 15, 1976) and meet the setup and appearance criteria established by Article IX of this Ordinance. For the purpose of this ordinance manufactured homes are further classified as follows:
- (1) Class B Manufactured Home. A multi-sectional manufactured home that meets or exceeds the construction standards established by the U.S. Department of Housing and Urban Development (HUD) that were in effect at the time of construction. The majority of these homes were built after July 15, 1976. These homes are often called “double-wide manufactured homes.”

(2) Class C Manufactured Home. A manufactured home that meets or exceeds the construction standards established by the U.S. Department of Housing and Urban Development (HUD) that were in effect at the time of construction. The majority of these homes were built after July 15, 1976. These homes are usually called “single-wide manufactured homes.” They are often referred to as “mobile homes” or “trailers”.

(3) Class D Manufactured Home. A manufactured home which was constructed prior to the establishment of any construction standards by the U.S. Department of Housing and Urban Development (HUD). All of these homes were built prior to July 15, 1976. They are often referred to as “mobile homes” or “trailers”. Class D manufactured homes are not permitted to be placed anywhere in the Town of Rutherford College.

- 42.53 Manufactured Home Park. Land used or intended to be used, leased or rented for occupancy by two (2) or more manufactured homes which are mounted on wheels, anchored in place by a foundation or other stationary support, to be used for living purposes and accompanied by automobile parking space and incidental utility structures and facilities required and provided in connection therewith. This definition shall not include sales lots on which unoccupied manufactured homes are parked for purposes of inspection and/or sale.
- 42.54 Manufactured Home Stand. That part of an individual lot which has been reserved for the placement of one manufactured home unit.
- 42.55 Medical Offices. A facility providing medical, psychiatric, or surgical service for sick or injured persons exclusively on an out-patient basis, including emergency treatment, diagnostic services, training, administration, and services to outpatients, employees, or visitors.
- 42.56 Minor Watershed Variance. A watershed variance that does not qualify as a major variance.
- 42.57 Mixed-use Structure. A building containing residential in addition to non-residential uses permitted in the zone.
- 42.58 Modular Home. A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two or more sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the North Carolina State Building Code), or a series or panels or room sections transported on a truck

and erected or joined at the building site.

- 42.59 Motel. A building in which lodging or board and lodging are provided for transient guests and offered to the motoring public for compensation in which ingress and egress to and from all rooms are made primarily direct from an exterior walkway rather than from an inside lobby.
- 42.60 Multi-Family Dwelling. A building designed for and containing three or more dwelling units.
- 42.61 Nonconforming Use. A building or land lawfully occupied by a use that does not conform with use regulations of the district in which it is located.
- 42.62 Non-Residential Development. All development other than residential development, agriculture and silviculture.
- 42.63 Open Space. Any front, side or rear yards, courts, usable open space provided about a building in order to meet the requirements of this Ordinance.
- 42.64 Open Storage. Unroofed storage area, whether fenced or not.
- 42.65 Overlay District. An area where certain additional requirements are superimposed upon a base zoning district or underlying district and where the requirements of the base or underlying district may or may not be altered.
- 42.66 Park. A noncommercial, not-for profit facility designed to serve the recreation needs of the residents of the community. Such facilities include subdivision recreation facilities (neighborhood parks), community parks, regional parks, and special use facilities, all as described in the recreation and open space element of the [comprehensive plan]. Such facilities may also include but shall not be limited to school and religious institution ballfields, football fields, and soccer fields, if they meet the above definition. Commercial amusement facilities, such as water slides, go-cart tracks, and miniature golf courses shall not be considered parks.
- 42.67 Parking Space. A storage space of not less than 9 feet by 18 feet for one automobile plus the necessary access space.
- 42.68 Parking Lot. Any designated area designed for temporary accommodation of motor vehicles of the motoring public in normal operating conditions whether for a fee or as a service.
- 42.69 Planned Unit Development (PUD). A form of development characterized by a unified site design for a number of housing units, clustering of buildings and

providing common open space, density increased, mixed uses and a mix of building types. It permits the planning of a project and a calculation of densities over the entire development rather than on an individual lot-by-lot basis. The site must include two or more principal buildings. Such development shall be based on a plan which allows for flexibility of design most available under normal district requirements.

- 42.70 Principal Building. A building in which is conducted the main or principal use of the lot on which said building is situated.
- 42.71 Protected Area. Area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as the area five miles upstream and draining to water supply reservoirs, or ten miles upstream and draining to water intakes located in streams or rivers, or to the ridge line of the watershed, whichever comes first.
- 42.72 Recycling Establishment. An establishment for the processing (separation and/or recovery) or collection of recyclable materials from solid wastes. Recycling of oil or other liquids may also occur.
- 42.73 Sewerage System, Public. A system serving two or more connections. Plans for public and community sewer systems must be approved by the Division of Environmental Management, North Carolina Department of Natural Resources and Community Development.
- 42.74 Sewerage System, Individual. An individual septic tank system of sewage disposal. Individual sewage disposal systems must be installed and maintained in accordance with the Division of Health Services, North Carolina Department of Human Services, "Rules and Regulations Governing the Disposal of Sewage from any Residence, Place of Business or Place of Public Assembly in North Carolina" and the regulations of the County Board of Health.
- 42.75 Signs. Any form of publicity, visible from any public highway directing attention to an individual activity, business, service, commodity or product and conveyed by means of word, figures, numerals, lettering, emblems, devices, designs, trademarks, or trade names or other pictorial matter designed to convey such information and displayed by means of bills, panels, posters, paints, or other devices erected on an open framework or attached or otherwise applied to posts, stakes, poles, buildings, or other structures or supports.

Sign, On-Site. A sign which directs attention to a business, profession, commodity, service or entertainment sold or offered upon the premises where such sign is located or to which it is attached.

**Sign, Off-Site.** A sign which directs attention to a business, commodity, activity, service or product not necessarily conducted, sold or offered upon the premises where such sign is located.

**Sign Area.** Sign area shall be measured by the smallest square, rectangle, triangle, circle or combination thereof, which will encompass the entire advertising copy area, excluding architectural trim and structural members. In computing area, only one side of a double-faced sign shall be considered.

- 42.76 Single-family Dwelling. A building designed for and containing one dwelling unit.
- 42.77 Skilled Nursing or Other Assisted Living Facilities. A home for the aged or ill persons in which three (3) or more persons not of the same immediate family are provided with food, shelter and care for compensation; but not including hospitals, clinics, or similar institutions devoted primarily to diagnosis and treatment.
- 42.78 Street (Road, Lane, Way, Terrace, Drive). A dedicated, recorded and accepted public right-of-way for vehicular traffic which affords the principal means of access to abutting properties.
- 42.79 Structure. Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent location on the ground.
- 42.80 Structural Alterations. Any change on the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any structural change in the roof, or dimensions or the rooms therein.
- 42.81 Subdivision. All divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose (whether immediate or future) of sale, lease, legacy or building development; it includes all divisions of land involving a new street to which the public has access (whether public or private) or a change in an existing street, and includes re-subdivision and, where appropriate to the context, relates to the process of subdividing or to the land or area subdivided; provided, however, that the following are not included within this definition:
- A. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of these regulations; and
  - B. The division of land into parcels of five acres or more where no new street is involved.

- 42.82 Variance. The term "Variance" shall mean a modification of the literal provisions of the Zoning Ordinance granted when strict enforcement of the Zoning Ordinance would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted.
- 42.83 Water Dependent Structure. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.
- 42.84 Water System, Public. Water supply systems serving ten (10) or more connections are classified as a public water supply by State law. Plans and specifications must be approved by the Sanitary Engineering Section, Division of Health Services, North Carolina Department of Human Resources.
- 42.85 Water System, Semipublic. Water supply systems serving from two (2) to nine (9) connections, inclusive. This system may be regulated by the County Board of Health, and plans should be approved by the Burke County Health Department.
- 42.86 Water System, Individual. A drilled or bored well or spring which serves a single connection. Individual water supply systems should be located, constructed and operated in accordance with the Division of Health Services, North Carolina Department of Human Resources.
- 42.87 Watershed. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)
- 42.88 Watershed Administrator (Zoning Enforcement Officer). An official designated by the Town of Rutherford College responsible for administration and enforcement of this Ordinance.
- 42.89 Watershed Variance. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this Ordinance.
- 42.90 Yard. An open space on the same lot with a principal building, unoccupied and unobstructed from the ground upward.

Yard, Front. An open space on the same lot with a principal building, between the front line of the building (exclusive of steps) and the front property or street right-of-

way line and extending across the full width of the lot.

**Yard, Rear.** An open, unoccupied space extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

**Yard, Side.** An open, unoccupied space situated between the side line of the building and adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard.

- 42.91 Zoning Enforcement Officer. Town of Rutherford College official charged with the responsibility of enforcing this Ordinance.
- 42.92 Zoning Permit. Permit issued by the Zoning Enforcement Officer indicating that a proposed use is in compliance with requirements of this Ordinance.

**ARTICLE V**

**ESTABLISHMENT OF DISTRICTS**

Section 51. Use District

For the purpose of this ordinance, the Town of Rutherford College, North Carolina is hereby divided into districts designated as follows:

R-20	Residential District
R-15	Residential District
O-I	Office and Institutional District
CB	Central Business District
HB	Highway Business District
GM	General Manufacturing District
OD-M	Malcolm Boulevard Overlay District

Section 52. District Boundaries

The boundaries of the districts are shown on the map accompanying this Ordinance and made a part thereof entitled "Official Zoning Map, Town of Rutherford College. "The zoning map and all the notations, references and amendments thereto, and other information shown thereon are hereby made a part of this Ordinance the same as if such information set forth on the map were all fully described as set forth herein. The zoning map properly attested is posted at the Rutherford College Town Hall Planning Office, and is available for inspection by the public.

Section 53. Due Consideration Given to District Boundaries

In the creation of this Ordinance of the respective districts, careful consideration is given to the general suitability of each and every district for the particular uses and regulations applied thereto, and the necessary and property grouping and arrangement of various uses and densities of population in accordance with a well-considered comprehensive plan for the physical development of the Town.

Section 54. Rules Governing Boundaries

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

54.1 Where district boundaries are indicated as approximately following the center lines of streets and highways, street lines, or railroad right-of-way lines or such lines

extended, such center lines, street lines, or railroad right-of-way lines shall be construed to be such boundaries.

54.2 Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be said boundaries.

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

54.4 Where a District boundary line divides a lot in single ownership, the district requirements for the least restrictive portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line. The term "least restrictive" shall refer to zoning restrictions, not lot or tract size.

## ARTICLE VI

### USE REQUIREMENTS BY DISTRICT

Within the districts indicated on the zoning map, no building or land shall be used, and no building shall be erected or altered which is intended or designed to be used in whole or in part, for any use other than those listed as permitted for that district in this Article and the following *Table of Permitted Uses*. The *Table of Permitted Uses* is intended for quick reference of the use requirements for the districts. Please refer to the individual district sections for detailed requirements.

<i>Table of Permitted Uses</i>						
<i>x - permitted by right CU - conditional use, requires Board of Adjustment approval</i>	Low Density Residential	High Density Residential	Office/ Institutional	Central Business	Highway Business	General Manufacturing
Use	<b>R-20</b>	<b>R-15</b>	<b>O/I</b>	<b>CB</b>	<b>HB</b>	<b>GM</b>
Single family dwelling	x	x	x	x	x	x
Modular homes	x	x	x	x	x	x
Duplexes		x	x	x	x	x
Multi-family dwellings		x	x	x	x	x
Manufactured homes		CU				
Manufactured home parks		CU				
Mixed Use Buildings			CU	CU	CU	CU
Accessory uses & buildings (see Section 82)	x	x	x	x	x	x
Home occupations (see Section 84)	x	x	x	x	x	x
Agriculture (Non-Commercial)	x	x	x	x	x	x
Agriculture (Commercial)	CU	CU	CU	CU	CU	CU
Animal hospitals, veterinary offices & clinics (no outside kennels)			CU	CU	x	x
Animal pound or shelter					CU	CU
Appliance repair (no front yard storage) (see Section 140.7)				x	x	x
Athletic fields and similar outdoor facilities	CU	CU	x	x	x	x
Auto, boat, recreation vehicle and motorcycle sales					x	x
Automobile accessories sales				x	x	x
Automobile body shops (see Section 140.7)					x	x

Automobile service & repair (see Section 140.7)					x	x
Bakery (production & distribution)				CU	x	x
Coffee/Bakery shop			CU	x	x	x
Banks & other financial establishments			CU	x	x	x
Barbershops, salons & spas			x	x	x	x
Bed & breakfast	x	x	x	x	x	x
Boat service & repair (see Section 140.7)					x	x
Bus station					x	x
Car wash					x	x
Cemeteries	CU	CU	CU	CU	CU	CU
Child Care Facility			x	x	x	x
Child Care Home			x	x	x	x
Churches & other places of worship	CU	CU	CU	x	x	x
Clubs & lodges	CU	CU	CU	x	x	x
Commercial indoor recreation establishments			CU	CU	CU	CU
Commercial outdoor recreation establishments			CU	CU	CU	CU
Community centers	CU	CU	x	x	x	x
Public community swimming pools	CU	CU	x	x	x	x
Concrete or paving materials plant						x
Convenience store (with gas) or gas station				CU	x	x
Convenience store (without gas)				x	x	x
Drug stores & pharmacies				x	x	x
Dry cleaning				x	x	x
Emergency response facilities	CU	CU	x	x	x	x
Family campgrounds	CU	CU				
Family care homes			x	x	x	x
Fishing lakes	CU	CU				
Florist				x	x	x
Funeral homes & mortuaries				x	x	x
Government facilities			x	x	x	x
Group home developments	CU	CU				
Group Project Commercial				CU	CU	CU
Group Project Industrial						CU
Hatcheries						CU
Heavy equipment service & repair (see Section 140.7)					x	x
Heavy equipment sales & rental					x	x
Hospitals			CU	CU		
Hotels, inns & motels					x	x
Institutional facilities, such as libraries & other nonprofits			x	x	x	x
Laundromat				CU	x	x
Manufacturing (less than 25,000 sqft gfa)					x	x

Manufacturing (greater than 25,000 sqft gfa)						x
Material & equipment storage					CU	CU
Medical offices			x	x	x	x
Mini-storage					x	x
Movie theaters					x	x
Museums & art galleries	CU	CU	x	x	x	x
Offices, business, professional & public			x	x	x	x
Parking lot					x	x
Performing theaters					x	x
Photography services			x	x	x	x
Photography, dance, art & music studios			x	x	x	x
PUD (see Section 85)	CU	CU	CU	CU	CU	CU
Playgrounds	x	x	x	x	x	x
Printing & copy services			x	x	x	x
Public facilities, such as utilities lines & pump stations	x	x	x	x	x	x
Public or private parks	x	x	x	x	x	x
Radio & TV broadcasting					x	x
Radio, TV & computer repair				x	x	x
Recycling establishment (see Section 140.7)						x
Restaurants (with drive thru)				CU	x	x
Restaurants (without drive thru)				x	x	x
Retail sales (less than 3,000 sqft gfa)			CU	x	x	x
Retail sales & shopping centers (3,000-10,000 sqft gfa)				x	x	x
Retail sales & shopping centers (greater than 10,000 sqft gfa)					x	x
Schools & colleges	CU	CU	CU	CU	CU	CU
Sexual oriented establishment (see Section 83)					CU	CU
Skilled nursing and other assisted living facilities			CU	CU	x	x
Telecommunication Towers	CU	CU	CU	CU	CU	CU
Towing service (see Section 140.7)					x	x
Warehousing & distribution (25,000 sqft gfa or less)					x	x
Warehousing & distribution (greater than 25,000 sqft gfa)					x	x
Wholesale establishments (25,000 sqft gfa or less)					x	x
Wholesale establishments (greater than 25,000 sqft gfa)						x

**Section 61. R-20 Residential District**

The regulations of this district are intended to provide for low density residential development, and to insure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at sufficiently low densities to provide a healthful environment.

Within the R-20 Residential District, the following uses shall only be permitted:

A. R-20 Principal Uses:

- (1) Single-family dwellings
- (2) Single-family modular homes
- (3) Non-commercial Agricultural Uses
- (4) Home Occupations (See Section 84)
- (5) Bed and Breakfast
- (6) Playgrounds
- (7) Public or private parks
- (8) Public works and public utility facilities such as distribution lines, transmission lines and towers, electric substations, water tanks and towers, pumping stations, water treatment plants, sewage lagoons and plants, telephone exchanges, and fire stations, provided:
  - (a) Such facilities are essential to the service of the immediate area.
  - (b) No vehicles or materials shall be stored in the premises and no offices shall be permitted, except in the case of fire stations, water treatment plants, sewage lagoons and plants.
  - (c) All buildings and facilities shall be set back at least twenty (20) feet from all property lines, and shall be designed and landscaped in such a way as to blend in with the surrounding area.
  - (d) All dangerous apparatus shall be enclosed by a chain-link fence at least eight (8) feet in height.

- (e) There shall be a densely planted and maintained buffer strip along the rear and side lot lines. No such buffer shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining lots.
- (9) Customary accessory uses and structures including private garages, carports, parking decks, swimming pools and other accessory structures (See Section 82).

B. Conditional Uses:

The following uses shall be permitted subject to a Board of Adjustment review and approval:

- 1) A temporary structure or dwelling for emergencies or for construction purposes, provided permits for such uses shall be issued for periods not to exceed six (6) months, but may be renewed for one additional six (6) month period.
- 2) Athletic fields and similar outdoor facilities
- 3) Cemeteries
- 4) Commercial Agricultural Uses
- 4) Churches & other places of worship
- 5) Group home developments
- 6) Museums & art galleries
- 7) Planned Unit Developments (see Section 85)
- 8) Community centers, clubs and lodges, golf courses, community swimming pools, fishing lakes, family campgrounds, and other similar recreation uses.
- 9) Telecommunication towers (see Article XI)

C. Accessory Uses:

- (1) Customary accessory buildings or uses, provided such shall be permitted only in a rear yard and shall be situated not less than ten (10) feet from any property line; and further provided that in the case of corner lots such buildings or structures shall be set back at least twenty-five (25) feet from any side line right-of-way line (See Section 82).

E. Dimensional Requirements:

Within an R-20 District as shown on the zoning map, the following dimensional requirements shall be complied with:

- (1) Minimum required lot width: Average of one hundred (100) feet.
- (2) Minimum required front building setback line: thirty (30) feet from edge of ROW.
- (3) Minimum required side yard: fifteen (15) feet each. Corner lots must have an additional ten (10) feet along the side street line from edge of ROW.
- (4) Minimum required rear yard: forty (40) feet.
- (5) For purposes of computing the size of lots in R-20, the lot area may include public road rights-of-way and private road easements; provided, said rights-of-way and easements shall not exceed thirty feet in overall width for purposes of lot area computation.

F. Minimum Lot Sizes and Maximum Lot Coverage:

- (1) Lots recorded prior to October 1, 1993 to be used for single family purposes **or** where the development does not require a Sedimentation/Erosion Control Plan under State law:

Minimum required lot area for  
each dwelling unit: 20,000 square feet;

Maximum permissible lot coverage by principal and accessory buildings shall not exceed 50% of the total lot area.

- (2) Lots recorded after October 1, 1993 to be used for single family purposes where the development requires a Sedimentation/Erosion Control Plan under State law:

Minimum required lot area for  
each dwelling unit: 21,780 square feet (1/2 acre)

Maximum permissible lot coverage by principal and accessory buildings shall not exceed 50% of the lot area.

- (3) Lots to be used for multi-family where the development does not require a Sedimentation/Erosion Control Plan under State law:

Minimum required lot area for the first dwelling unit: 20,000 square feet

Minimum required lot area for each additional unit: 10,000 square feet

Maximum permissible lot coverage by principal and accessory buildings shall not exceed 50% of the lot area.

(4) Lots to be used for multi-family where the development requires a Sedimentation/Erosion Control Plan under State law:

a. OPTION 1:

Minimum required lot area for each dwelling unit: 21,870 square feet (1/2 acre)

Maximum permissible lot coverage by principal and accessory buildings shall not exceed 50% of the lot area.

b. OPTION 2:

Minimum required lot area for the first dwelling unit: 20,000 square feet

Minimum required lot area for each additional unit: 10,000 square feet

Maximum permissible impervious coverage as defined in this Ordinance shall not exceed 36% of the total lot area, or 24% of the total lot area if the lot abuts a curb and gutter street system or if the lot is located within the WS-4 critical area.

**Section 62. R-15 Residential District**

The R-15 Residential District is established as a district in which the principal use of the land is for low density residential and agricultural purposes and to provide and protect low density residential areas for those desiring that type of environment. These districts are intended to insure that residential development having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment.

Within the R-15 Residential District, the following uses shall only be permitted:

A. R-15 Principal Uses:

- (1) All uses permitted in the R-20 Residential District.
- (2) Multi-family dwellings.
- (3) Condominiums.
- (4) Individual mobile homes, as defined in Section 42 of this Ordinance, and subject to the provisions of Section 98.

B. Conditional Uses:

The following uses shall be permitted subject to a Board of Adjustment review and approval:

- (1) All conditional uses permitted in the R-20 Residential District.

C. Accessory Uses:

Same as set forth under the R-20 Residential District, Section 61-C.

E. Dimensional Requirements:

Within an R-20 District as shown on the zoning map, the following dimensional requirements shall be complied with:

- (1) Minimum mean lot width: one hundred (100) feet.
- (2) Minimum required front building setback line: twenty-five (25) feet from edge of ROW.

- (3) Minimum required side yards for the principal building shall be at least fifteen (15) feet from property line or edge of ROW.
- (4) Minimum required rear yard shall be twenty percent (20%) of the mean lot depth, provided that such yard need not exceed thirty (30) feet.
- (5) Height of buildings shall not exceed thirty-five (35) feet unless the depth of the front and total width of the side yards required herein shall be increased by one (1) foot for each two (2) feet, or fraction thereof, of building height in excess of thirty-five (35) feet.
- (6) For purposes of computing the size of lots in R-15, the lot area may include public road rights-of-way and private road easements; provided, said rights-of-way and easements shall not exceed thirty feet in overall width for purposes of lot area computation.

F. Minimum Lot Sizes and Maximum Lot Coverage:

Development activities that do not require a Sedimentation/ Erosion Control Plan under State law are subject only to the requirements of subsections (1) and (3) below:

- 1. Lots recorded prior to October 1, 1993, to be used for single family dwellings with public water and dependent on septic tanks for sewage disposal:

Minimum required lot area for each dwelling unit: 15,000 square feet;

Maximum permissible lot coverage by principal and accessory buildings shall not exceed 50% of the lot area.

- 2. Lots recorded after October 1, 1993, to be used for single family or multi-family dwellings with public water and dependent on septic tanks for sewage disposal:
  - a. OPTION 1:

Minimum required lot area for each dwelling unit: 14,520 square feet (1/3 acre), **or** 21,780 sq. ft. (1/2 acre) if the lot abuts a curb and gutter street system or if the lot is located in the WS-4 critical area.

Maximum permissible lot coverage by principal and accessory buildings shall not exceed 50% of the total lot area.

b. OPTION 2:

Minimum required lot area for  
the first dwelling unit: 15,000 square feet

Minimum required lot area for  
each additional unit: 5,000 square feet

Maximum permissible impervious coverage as defined in this Ordinance shall not exceed 36% of the total lot area, or 24% of the total lot area if the lot abuts a curb and gutter street system or if the lot is located in the WS-4 critical area.

- (3) Lots recorded after October 1, 1993, to be used for single family or multi-family dwellings with public water and dependent on septic tanks for sewage disposal:

Minimum required lot area for  
the first dwelling unit: 15,000 square feet

Minimum required lot area for  
each additional unit: 5,000 square feet

Maximum permissible lot coverage by principal and accessory buildings shall not exceed 50% of the total lot area.

**Section 63. O-I Office and Institutional District**

The regulations of this district are intended to provide for the conversion of older homes into office or apartment structures where such are appropriate and to provide a buffer between purely business and purely residential areas.

Within an O-I Office and Institutional District the following uses shall be permitted:

A. Principal Uses:

- (1) Any use permitted in the R-15 Residential District, except individual mobile homes and mobile home parks.
- (2) Barbershops, salons & spas
- (3) Child Care Facility
- (4) Child Care Home
- (5) Community centers
- (6) Dairy bars and ice cream
- (7) Public community swimming pools
- (8) Emergency response facilities
- (9) Family care homes
- (10) Government facilities
- (11) Institutional facilities, such as libraries & other nonprofits
- (12) Medical offices
- (13) Museums & art galleries
- (14) Offices, business, professional & public
- (15) Photography services
- (16) Photography, dance, art & music studios

- (17) Printing & copy services
- (18) Customary accessory uses and structures when located on the same lot as the principal structure, excluding, however, open storage.

B. Conditional Uses:

The following uses shall be permitted subject to a Board of Adjustment review and approval:

- (1) Accessory buildings in the nature of guest cottages for private residential purposes.
- (2) Animal Hospitals or Veterinary Clinics, but excluding open kennels on the premises
- (3) Athletic fields and similar outdoor facilities
- (4) Coffee/Bakery shop
- (5) Banks & other financial establishments
- (6) Commercial indoor recreation establishments
- (7) Commercial outdoor recreation establishments
- (8) Hospitals
- (9) Mixed Use Buildings
- (9) Retail sales (less than 3,000 sqft gfa)
- (10) Skilled nursing and other assisted living facilities
- (11) The conversion of any residential structure so as to provide additional dwelling units shall be permitted only if each resulting dwelling unit has a minimum of six hundred and fifty (650) square feet of usable floor area and adequate private sanitary facilities.
- (12) Mixed uses, i.e., buildings erected for both dwelling and business purposes, provided such buildings shall be furnished with side yards on each side of the building measuring not less than eight (8) feet in width, provided, however, that this regulation shall not apply to the street side of a corner lot.

- (13) A temporary structure or dwelling for emergencies or for construction purposes, provided, further, permits for such uses shall be issued for periods not to exceed six (6) months, but may be renewed for one additional six (6) month period.

C. Accessory Uses:

- (1) Customary accessory buildings or uses, provided such shall be permitted only in a rear yard and shall be situated not less than ten (10) feet from any property line; and further provided that in the case of corner lots such buildings or structures shall be set back at least (40) feet from any side line right-of-way line.

D. Off-Street Parking Requirements:

See Article XIII for parking requirements.

E. Dimensional Requirements:

- (1) Minimum required lot width: one hundred (100) feet.
- (2) Minimum required front building setback line: Thirty (30) feet.
- (3) Minimum required side yard: fifteen (15) feet. Corner lots must have an additional ten (10) feet along the side street line. Where a lot abuts a residential district, an eight (8) foot high planted buffer strip is required except in the case of where a lot abuts a public street.
- (4) Minimum required rear yard: twenty-five (25) feet. Where a lot abuts a residential district, an eight (8) foot high planted buffer strip is required except in the case of where a lot abuts a public street.
- (5) All buildings (except church spires, flagpoles, antennas, chimneys, or similar accessories to structures), more than thirty-five (35) feet in height from the foundation of the building measured at the center of the structure, shall be required to increase the original side yard requirement by one (1) foot for every additional foot of height.

F. Minimum Lot Sizes and Maximum Lot Coverage:

Within the O-I Office and Institutional District the minimum lot size shall be ten thousand (10,000) square feet, and principal and accessory buildings can cover 40% of the lot area. However, if the development activity requires a Sedimentation/Erosion

Control Plan, the maximum permissible impervious surface coverage, as defined in this Ordinance, shall not exceed 36% of the total lot area, or 24% of the total lot area if the lot abuts a curb and gutter street system, or if the lot is located in the WS-4 critical area.

**Section 64. C-B Central Business District**

The regulations of this district are intended to provide Rutherford College with compact and efficient retail shopping, consumer services, financial and governmental center.

The following uses shall only be permitted:

**B. Principal Uses:**

- (1) All uses permitted in the O-I Office and Institutional District.
- (2) Appliance repair (no front yard storage)
- (3) Automobile accessories sales
- (4) Coffee/Bakery shop
- (5) Banks & other financial establishments
- (6) Churches & other places of worship
- (7) Clubs & lodges
- (8) Convenience store (without gas)
- (9) Drug stores & pharmacies
- (10) Dry cleaning
- (11) Florist
- (12) Funeral homes & mortuaries
- (13) Laundromat
- (14) Publishing establishments
- (15) Radio, TV & computer repair
- (16) Restaurants (without drive thru)
- (17) Retail sales (less than 3,000 sqft gfa)

- (18) Retail sales & shopping centers (3,000-10,000 sqft gfa)
- (19) Theatres housed in a permanent indoor structure.
- (20) Customary accessory uses and structures when located on the same block as the principal structure, excluding, however, open storage, provided:
  - (a) Such facilities are essential to the service of the immediate area.
  - (b) No vehicles or materials shall be stores on the premises and no offices shall be permitted, except in the case of fire stations, water treatment plants, sewage lagoons and plants.

B. Conditional Uses:

The following uses shall be permitted subject to a Board of Adjustment review and approval:

- (1) All uses conditional uses permitted in the O-I Office and Institutional District.
- (2) Bakery (production & distribution)
- (3) Convenience store (with gas) or gas station
- (4) Group Project Commercial
- (5) Restaurants (with drive thru)

C. Off-Street Parking and Loading Requirements:

See Article XIII for parking requirements.

D. Dimensional Requirements:

Within any C-B Central Business District as shown on the Zoning Map, the following dimensional requirements shall be complied with:

- (1) Residences shall comply with the dimensional requirements of R-15 Residential District.
- (2) Minimum square footage for a commercial structure: none required.

- (3) Minimum front yard setback: Thirty (30) feet.
- (4) Minimum required side yard: fifteen (15) feet. Corner lots must have an additional ten (10) feet along the side street line. Where a commercial use abuts a residential district, commercial buildings shall maintain a ten (10) foot side and rear setback as well as an eight (8) foot high planted buffer strip. No such buffer strip, however, shall extend nearer to a street right-of-way line than the established building setback line of the adjoining lots.
- (5) Minimum required rear yard: twenty-five (25) feet. Where a lot abuts a residential district, an eight (8) foot high planted buffer strip is required except in the case of where a lot abuts a public street.
- (6) Height of buildings shall not exceed eighty (80) feet.

E. Minimum Lot Sizes and Maximum Lot Coverage:

Within the CB Central Business District the minimum lot size shall be ten thousand (10,000) square feet, and principal and accessory buildings can cover 40% of the lot area. However, if the development activity requires a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this Ordinance, shall not exceed 36% of the total lot area, or 24% of the total lot area if the lot abuts a curb and gutter street system, or if the lot is located in the WS-4 critical area.

### **Section 65. H-B Highway Business District**

The H-B Highway Business Districts are located on major thoroughfares and collector streets in the Rutherford College Planning area. They are intended to provide for offices, personal services, and the retailing of durable and convenience goods for the community. Because these commercial uses are subject to public view and are important to the economy of the community, they should have ample parking, controlled traffic movement, and suitable landscaping.

Within the H-B Highway Business District, the following uses shall only be permitted:

A. H-B Principal Uses:

- (1) All uses permitted in the C-B Central Business District
- (2) Animal hospitals, veterinary offices & clinics (no outside kennels)
- (3) Auto, boat, recreation vehicle and motorcycle sales
- (4) Automobile body shops (see Section 140.7)
- (5) Automobile service & repair (see Section 140.7)
- (6) Bakery (production & distribution)
- (7) Boat service & repair (see Section 140.7)
- (8) Bus station
- (9) Car wash
- (10) Convenience store (with gas) or gas station
- (11) Heavy equipment service & repair (see Section 140.7)
- (12) Heavy equipment sales & rental
- (13) Hotels, inns & motels
- (14) Laundromat
- (15) Manufacturing (less than 25,000 sqft gfa)

- (16) Mini-storage
- (17) Movie theaters
- (18) Parking lot
- (19) Performing theaters
- (20) Radio & TV broadcasting
- (21) Restaurants (with drive thru)
- (22) Retail sales & shopping centers (greater than 10,000 sqft gfa)
- (23) Skilled nursing and other assisted living facilities
- (24) Towing service with (see Section 140.7)
- (25) Warehousing & distribution (25,000 sqft gfa or less)
- (26) Warehousing & distribution (greater than 25,000 sqft gfa)
- (27) Wholesale establishments (25,000 sqft gfa or less)

B. Conditional Uses:

The following uses shall be permitted subject to a Board of Adjustment review and approval:

- (1) All uses permitted in the C-B Central Business District.
- (2) Customary accessory uses and structures when located on the same lot as the main structure, excluding open storage.
- (3) Bowling alleys and skating rinks, miniature golf courses, riding stables, and other commercial recreational facilities.
- (4) Animal pound or shelter
- (5) Material & equipment storage
- (6) Sexual oriented establishment (see Section 83)

- (7) Any lawful retail, service, repair or wholesaling use not specifically referred to in this section.

C. Dimensional Requirements:

Within the H-B Highway Business District, as shown on the Zoning Map, the following dimensional requirements shall be complied with:

- (1) The minimum lot width shall be 100 feet.
- (2) Minimum front yard setback: fifty (50) feet. Off street parking as required by this Ordinance may be permitted in required yards but shall not be closer than ten (10) feet from the front property line or any dedicated street or railroad right-of-way line.
- (3) Minimum required side yard setbacks shall be at least fifteen (15) feet; a side yard of twenty (20) feet is required on the street side of a corner lot. Furthermore, buildings used for residential purposes shall comply with the dimensional requirements of the R-15 Residential District; buildings used wholly or in part for permitted non-residential uses shall meet the dimensional requirements for the use district in which they are located. Furthermore, upon any side or rear lot line which abuts a residential district there shall be a densely planted and maintained buffer strip. No such buffer, however, shall extend nearer to a street right-of-way line than the established building setback line of the adjoining residential lots, and no buffer shall be required upon any yard which abuts a public street.
- (4) Minimum rear yard setback: thirty (30) feet.
- (5) No buildings shall exceed fifty (50) feet in height unless the depth of the required front yard and the total width of the required side yard shall be increased by one (1) foot for each two (2) feet, or fraction thereof, of building height in excess of fifty (50) feet.

D. Off-Street Parking and Loading Requirements:

See Article XIII for parking requirements.

E. Minimum Lot Sizes and Maximum Lot Coverage:

Within the H-B Highway Business District there is no minimum lot size, and principal

and accessory buildings can cover 50% of the lot area. However, if the development activity requires a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this Ordinance, shall not exceed 36% of the total lot area, or 24% of the total lot area if the lot abuts a curb and gutter street system, or if the lot is located in the WS-4 critical area.

**Section 66. G-M General Manufacturing District**

This district provides a place for the location of manufacturing and other uses which would be inimical or incompatible with general business areas. It is not intended to permit in this district any use which is inherently obnoxious to urban areas because of noise, odors, smoke, light, dust, or the use of dangerous materials.

A. Permitted Uses: The following uses shall be permitted in G-M General Manufacturing Districts:

- (1) Any use permitted in the H-B Highway Business District.
- (2) Any lawful retail, service, repair or wholesaling use not specifically referred to in this section. (see Section 140.7)
- (3) Gasoline, oil or fuel storage above ground.
- (4) Mixing plants for concrete or paving materials.
- (5) Stone crushing, cutting and polishing.
- (6) Wholesale and warehouse establishments(greater than 25,000 sqft gfa), except for the storage of dangerous or offensive items such as uncured hides and explosives.
- (7) Recycling establishment (see Section 140.7)
- (8) Manufacture, processing, or fabrication (greater than 25,000 sqft gfa) of the following products:
  - (a) Wood and wood products, including furniture.
  - (b) Textiles.
  - (c) Metals and metal products.
  - (d) Household appliances.
  - (e) Glass.
  - (f) Electric and electronic products.
  - (g) Foods and food products, not including abattoirs and slaughterhouses.

- (h) Bedding, carpets, and pillows.
  - (i) Animal feeds.
  - (j) Ice.
  - (k) Leather goods, not including the processing or storage of raw hides.
  - (l) Machine tools.
  - (m) Paints.
  - (n) Pottery, porcelain and vitreous china.
  - (o) Soap, detergent and washing compounds.
  - (p) Rubber products, including the processing or manufacture of rubber.
  - (q) Paper products, not including the manufacturing or processing of paper.
  - (r) Plastics.
  - (s) Furniture.
  - (t) Building materials.
- (9) Customary accessory uses and structures, including open storage, provided the area devoted to open storage is enclosed by a fence at least six (6) feet in height.

B. Conditional Uses:

The following uses shall be permitted subject to a Board of Adjustment review and approval:

- (1) Manufacturing uses not otherwise named herein which come within the spirit or intent of this zoning district.
- (2) Planned Development-Manufacturing.

C. Accessory Uses:

(1) Accessory uses and buildings which are clearly incidental to a permitted use and which will not create a nuisance or hazard.

D. Off-Street Parking and Loading Requirements:

See Article XIII for parking requirements.

E. Dimensional Requirements:

Within any G-M General Manufacturing District as shown on the Zoning Map, the following dimensional requirements shall be complied with:

- (1) Minimum required building setback line: twenty-five (25) feet.
- (2) Minimum side and rear yards: ten feet. However, where a lot abuts a residential district, there shall be a ten (10) foot high densely planted buffer strip. No such buffer, however, shall extend nearer to a street right-of-way line than the established building setback line of the adjoining residential lots. No buffer shall be required upon a side or rear yard that abuts a public street.

F. Minimum Lot Sizes and Maximum Lot Coverage:

Within the G-M General Manufacturing District there is no minimum lot size and development activities can cover 100% of the lot area. However, if the development activity requires a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this Ordinance, shall not exceed 36% of the total lot area, or 24% of the total lot area if the lot abuts a curb and gutter street system, or if the lot is located in the WS-4 critical area.

## **Section 67. OD-M Malcolm Boulevard Overlay District**

The regulations of this district are intended to accommodate future widening of Malcolm Boulevard (SR 1001) from the Catawba River to Interstate 40 and to better increase the aesthetic values of Malcolm Boulevard as the major thoroughfare through the Town.

**67.1 Purposes.** The Malcolm Boulevard Overlay District is designed to create an aesthetically pleasing corridor along Malcolm Boulevard in keeping with the Town's policy of protecting our safe, family-friendly, attractive, predominately residential environment. This District is intended to protect properties adjacent to the roadway from the noise, activity, light and dust of vehicular traffic by requiring building setbacks and landscaping along the corridor. The Malcolm Boulevard Overlay District does not affect land use regulations or development standards of the underlying Zoning Districts except as specified in this section.

The specific purposes of the OD-M District are:

- 1) to insure compatibility with any future widening of Malcolm Boulevard;
- 2) to encourage appropriate residential and commercial development;
- 3) to preserve, enhance and improve the visual quality, function, safety and enjoyment of the Malcolm Boulevard corridor;
- 4) to promote orderly development and safe and efficient movement of traffic;
- 5) to preserve and enhance the streetscape along Malcolm Boulevard, and
- 6) to preserve, enhance and improve the Malcolm Boulevard corridor as a major thoroughfare through a predominately residential area.

### **67.2 District Boundaries.**

- a. The Malcolm Boulevard Overlay District shall extend along Malcolm Boulevard from the Town's Northern-most boundary to the I-40 interesection, including any Extraterritorial Jurisdictions in the northern part of Town.
- b. The width of the Malcolm Boulevard Overlay District shall include the entire area of all lots adjoining either side of Malcolm Boulevard.

**67.5 Principal Uses.** Any permitted or conditional use allowed in the underlying general zoning district or parallel conditional use district shall be permitted in the OD-M district. In addition, all such permitted and conditional uses shall also meet all requirements of the OM-D district. Where the requirements of the OD-M district are more restrictive than in the underlying district, the regulations of the OD-M district shall prevail.

**67.6 Setbacks.** Minimum required front yard setback: 30 ft. measured from existing right-of-way.

67.7 Sign Standards. To reduce clutter, improve visual impact, and enhance safety. Signs shall be in accordance with Article XII – Sign Regulations for the underlying zoning district, with the following exceptions.

Prohibited signs:

- Billboards
- Any sign attached to trees or utility poles.
- Abandoned or dilapidated signs.
- More than two temporary signs per lot except for political signs.

**67.8 Development Standards**

(A) The following standards to apply to every non-residential principal structure located inside the OD-M district:

(1) The proposed location of all proposed structures shall be shown on the site plans. For buildings located within the Overlay District (OD), the site plan shall include exterior facades of the proposed buildings (and/or additions) and all other information necessary to show compliance with this section.

(2) Where the façade of any principal structure is visible from a public road, metal materials shall constitute less than 50% of the entire area of such façade.

(3) Windows and building entrances shall comprise at least 50% of the first floor length of any principal structure. On any ground floor level, any window or door shall be horizontally separated by no greater than 15 feet from the nearest other such window or door in the same façade level. If the principal structure contains a second or higher story, each such story shall contain windows that are spaced in a manner complementary to the second story of nearby buildings.

(4) The exterior color finish of all building facades visible from the street shall be of low reflectance, subtle or neutral earth tone colors. High intensity colors, metallic colors, black or fluorescent colors shall be prohibited.

(B) Except for single- and two-family dwellings, all streets, driveways, sidewalks, parking areas and other common areas and facilities shall be lighted where necessary to insure the security of property and the safety of persons using the facilities. In no case shall sources cause direct light or glare upon adjacent property or constitute a hazard to motorists using public streets. Exterior lighting on any lot shall be designed and directed so that light is confined primarily to that lot.

**67.9 Exceptions.**

(1) If the Planning Board deems it impractical for a developer to comply with portions of this subchapter, the Planning Board shall have the authority to modify or elect not to apply portions of this subchapter so long as the modification or deletion of a requirement does not constitute a variance.

(2) Any nonconforming structure existing before the adoption of this ordinance shall be allowed to expand as long as the new construction falls within existing setbacks.

**ARTICLE VII****GENERAL PROVISIONS****Section 71**    Application.

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located.

**Section 72**    Reduction of Lot and Yard Areas Prohibited.

No yard or lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth herein, except for street widening. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

**Section 73**    Relationship of Building to Lot.

Every building hereafter erected, moved or structurally altered shall be located on a lot of record and in no case shall there be more than one principal building and its customary accessory buildings on any lot of record, except in the case of a specially designed complex of institutional buildings, cluster housing, multi-family residential areas, planned unit developments, and Group Projects Commercial and Industrial in an appropriate zoning district.

**Section 74**    Nonconforming Uses.

After the effective date of this Ordinance, existing structures, or the uses of land or structures which would be prohibited under the regulations for the district in which it is located (if they existed on the adoption date of this Ordinance), shall be considered as nonconforming. Nonconforming structures or uses (as defined in Section 42.61 of this Ordinance) may be continued provided they conform to the following provisions:

**74.1.**    Continuing Nonconforming Uses of Land.

- 1)    Extensions of Use. Nonconforming uses or land shall not hereafter be enlarged or extended in any way.
- 2)    Change of Use. Any nonconforming uses of land may be changed to a conforming use, or with the approval of the Board of Adjustment, to any use more in character with the uses permitted in the district in question.

- 3) Cessation of Use. When nonconforming uses of land are discontinued for a continuous period of one hundred eighty (180) days the property involved may thereafter be used only for conforming purposes. All nonconforming uses of land involving minor structures such as junkyards, signs, or any nonconforming uses similar to those enumerated, shall be eliminated within two years from the date of adoption of this Ordinance. A record of these nonconforming uses shall be compiled by the Planning Board and kept on permanent file in the Town Hall. Involved property owners shall be notified of this provision within six (6) months of the adoption of this Ordinance.

74.2. Continuing the Use of Nonconforming Buildings.

- 1) Extensions of Use. Nonconforming buildings and nonconforming uses of buildings shall not hereafter be enlarged. Additionally, no nonconforming structure or use may be enlarged or altered in any way which increases its dimensional deficiencies.
- 2) Change of Use. The lawful use of a building existing at the time of the adoption of this Ordinance may be continued although such use does not conform with the provisions of this Ordinance, and such building may be reconstructed or structurally altered and nonconforming use therein changed subject to the following regulations:
  - a) The order of classification of uses from highest to lowest for the purpose of this section shall be as follows: single family residential uses, multi-family residential uses, commercial uses and industrial uses as permitted by this Ordinance.
  - b) A nonconforming use may be changed to a use of higher classification but not to a use of lower classification, nor shall a nonconforming use be changed to another use of the same classification unless the new use shall be deemed by the Board of Adjustment, after public notice and hearing, to be less harmful to the surrounding neighborhood, from the standpoint of the purposes of this Ordinance, than the existing nonconforming use.
  - c) A nonconforming commercial or industrial use may not be extended, but the extension of a use to any portion of a building, which portion is at the time of the adoption of this Ordinance primarily or designed for such nonconforming use, shall not be deemed to be an extension of a nonconforming use.
  - d) Nor shall the building be enlarged, unless the use therein is changed to a conforming use, provided however, that a nonconforming building damaged by fire, explosion, tornado, earthquake, or similar uncontrollable cause to the extent of not more than sixty percent (60%) of its assessed value at the time of the damage may be repaired or rebuilt within one year of the date of such

damage, but not thereafter. Such determination shall be made by the Board of Adjustment.

- e) Nevertheless, the erection of a single-family dwelling unit shall be permitted on any lot of record which contains an area or width less than that required for a single-family dwelling in the district in which such lot is located. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership on the effective date of this ordinance. Variance of any district regulations other than area and/or width shall be obtained only through the action of the Board of Adjustment.

- 3) Cessation of Use. If active operations are discontinued for a continuous period of one hundred eighty (180) days with respect to a nonconforming use of a building, such nonconforming use shall thereafter be occupied and used for a conforming use. A period, however, between tenants or occupant shall not be construed to mean discontinuance.

74.3. Continuing the Nonconforming Use of Manufactured Homes and Manufactured Home Parks.

- 1) Extension of Use. Nonconforming Manufactured Homes and Manufactured Home Parks existing at the time of the adoption of this Ordinance shall be allowed to continue to their present existence. Existing mobile home parks shall not hereafter be enlarged or extended in any way.
- 2) Replacement of Manufactured Homes in Existing Manufactured Home Parks. Manufactured Home Parks that are operating as existing parks as of the effective date of this ordinance may continue to operate. The replacement of Non-Conforming Manufactured Homes in Manufactured Home Parks is allowed and must meet the criteria of Section 74 of this Ordinance.
- 3) Nonconforming manufactured homes, however, may be replaced provided that the new or replacement manufactured home is a Class B manufactured home as defined in the Town's Zoning Ordinance, is not more than seven (7) years old, and meets all other standards for manufactured homes outlined within Section 89 of the Town's Zoning Ordinance.

Section 75. Amortization

The following uses, if they are nonconforming, shall be terminated and all outside storage or junk removed within three years:

- 75.1 Junk yards not located in a G-M General Manufacturing District.

75.2 The provisions of Section 75.1 shall not be applicable; provided, that the following conditions pertaining to junk yards herein are met.

- (1) The junk or salvage yard area must comply with all setback requirements for the G-M General Manufacturing District.
- (2) A natural buffer, consisting of a double row of evergreen trees which will reach at least ten (10) feet in height within three (3) years and be of sufficient density to provide a reasonable visual buffer or a ten (10) foot high view-obscuring fence shall be placed between the site and all streets, roads or highways and surrounding property within sight distance of the junk yard. This requirement may be waived or modified by the Board of Adjustment if it can find that the intent of this section is met by existing topographic conditions or vegetation. Junk or salvage shall not be piled higher than the height of the fence, nor against the fence.
- (3) All materials shall be required to be stored in such a manner as to prevent the breeding or harboring of rats, insects, or other vermin. Where necessary, this shall be accomplished by enclosures in containers, storage of materials above ground, separation of types of materials, preventing the collection of stagnant water, extermination procedures or other means.

Section 76 Interpretation of District Regulations

- 76.1 Uses not designated as permitted by right or as a conditional use approved by the Board of Adjustment shall be prohibited. Additional uses in character with the district may be added to the Ordinance by amendment.
- 76.2 The regulations set forth by this ordinance shall be minimum regulations. If the district requirements set forth in this Ordinance are at a variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher standard shall govern.
- 76.3. Unless the restrictions established by covenants for the land are prohibited by or are contrary to the provisions of this Ordinance, nothing herein contained shall be construed to render such covenants inoperative.

## Section 77 Exemptions and Modifications

### 77.1 Lot of Record.

Where the owner of a lot of official record in any residential district at the time of the adoption of this Ordinance or his successor in title does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this Ordinance, such a lot may be used as a residential building site provided, however, that the requirements of the district are complied with or a variance is obtained from the Board of Adjustment.

Notwithstanding the foregoing, whenever two or more adjoining vacant lots of record are in single ownership at any time after the adoption of this Ordinance and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as a single lot or several lots which meet the minimum requirements of this Ordinance for district in which such lots are located.

Every lot to be built upon shall abut by at least 37.5 feet a public street or other public way and no dwelling shall be placed or built upon a lot which does not abut upon a public street or other public way by the same distance, with the exception of Section 77.2 below.

### 77.2 Provisions for landlocked lots.

Existing landlocked lots within the residential zoning districts, defined as a lot that does not abut a public street and therefore does not meet the requirements that the lot have a minimum frontage on a public street of thirty seven and one-half (37.5) feet, may be developed for one single family dwelling unit if the lot otherwise meets the zoning requirements of the zone in which the lot is located provided that the lot has a recorded easement of ingress and egress to and from a public street which is appurtenant to the lot and which meets the following requirements:

- A. A private easement with a minimum continuous width of twenty (20) feet is acquired from intervening property owners;
- B. The recorded documents creating the easement shall specify that the public service, utility and emergency personnel and vehicles shall have the freedom of ingress and egress from the landlocked property;
- C. The recorded documents shall also specify that public utilities (water, sewer, electricity, telephone, cable, etc.) may be located within the easement;
- D. The recorded documents shall include a maintenance agreement specifying the party responsible for maintaining the easement and its traveled surface;
- E. The easement must have an all weather surface of gravel, concrete or asphalt with a

minimum continuous width of ten (10) feet to ensure access of public service, utility, and emergency personnel and vehicles;

- F. Easements existing prior to the adoption of this Ordinance with widths less than 20 feet may be used to access landlocked lots provided that such easements abut a public street or way.
- G. Subdivision of landlocked parcels will require the provision of a publicly dedicated street constructed to the Town Standards and must meet all the requirements of the Town's Subdivision Regulations.

#### 77.3 Front Yard for Dwellings.

The front yard requirements of this Ordinance for dwellings shall not apply to any lot where the average setback of existing buildings located wholly or in part within 100 feet on either side of the proposed dwelling and on the same side of the street in the same block and use district as such lot is less than the minimum required front yard depth. In such case, the setback on such lots may be less than the required setback but not less than the average of the existing setbacks on the aforementioned lots, or a distance of 10 feet from the street right-of-way, whichever is greater.

#### 77.4 Height Limitation.

The height limitations of this Ordinance shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy; monuments, water towers, observation towers, transmission towers, chimneys, smokestacks, conveyors, flagpoles, radio towers, television towers, masts, aerials and similar structures, except as otherwise noted in the vicinity of airports.

#### 77.5 Visibility of Intersections.

On a corner lot in any residential district, no planting, structure, sign, fence, wall or obstruction to vision more than three feet in height measured from the center line of the street or road shall be placed or maintained within the triangular area formed by the intersecting street or road right-of-way lines and a straight line connecting points on said street or road right-of-way line each of which is 35 feet distance from the point of intersection.

**ARTICLE VIII**

**SPECIAL REGULATIONS**

Section 81 Accessory Uses and Structures

- A. Swimming pools are considered an accessory structure.
- B. The following structures are not permitted as an accessory structure in any district.
  - 1) Manufactured homes
  - 2) Tractor trailer containers, tractor trailer beds or similar structures that were originally designed for the transportation of goods.
- C. Open metal (aluminum or steel) carports are permitted as an accessory structure and shall meet the requirements for accessory structures in the zoning district in which it is located.
- D. Accessory structures in the residential districts shall comply with the following requirements.
  - 1) No accessory building shall be erected in any required front or side yard, with the exception of attached garages provided the following conditions are met:
    - a) The front wall of the garage does not extend beyond the primary front wall of the principal structure.
    - b) The garage is separated from the principal structure according to fire code regulations.
    - c) The garage is constructed of similar materials to match the principal structure.
  - 2) In case of a corner lot, no accessory building shall extend beyond the front yard line of the lots in the rear.
  - 3) Accessory structures shall be setback at least twenty (20) feet from any street line and shall be setback at least ten (10) feet from any lot line, not a street line.
  - 4) No accessory building shall be constructed upon a lot until the construction of the principal structure is complete.

- E. Accessory structures in non-residential districts shall comply with the following requirements.
- 1) Accessory structures are permitted only in the rear yard.
  - 2) Accessory structures shall be at least five (5) feet from any other accessory building on the same lot.
  - 3) In case of a corner lot, no accessory building shall extend beyond the front yard line of the lots in the rear.
  - 4) Accessory structures shall be setback at least twenty (20) feet from any street line and shall be setback at least ten (10) feet from any lot line, not a street line.
  - 5) No accessory building shall be constructed upon a lot until the construction of the principal structure is complete.

#### Section 82 Adult Establishments

(A) It is recognized that there are some uses of property which, because of their very nature, are recognized as having characteristics which impose adverse effects on the neighborhood in which the use is located. Regulations are necessary to minimize the adverse effects and to prevent a particular area subject to the zoning jurisdiction of the town from a concentration of the uses. It is not the intent of this section to conflict with state laws regulating adult establishments, but rather to regulate the location of adult establishments whose material or activities are legal.

(B) An Adult Establishment can include any structure or use of land that is defined in G.S. § 202.10 and/or including the following:

- (a) Adult Bookstore
- (b) Adult Picture Theater
- (c) Adult Mini-Picture Theater
- (d) Adult Drive-in Theater
- (e) Adult Cabaret
- (f) Adult Massage Parlor

(C) An adult establishment use shall only be allowed as a conditional use in the Highway Business (HB) and General Manufacturing (GM) districts.

(D) There shall be a spacing of 1,500 feet between adult establishment uses. The 1,500-foot distance shall be measured on a straight line from property line to property line, with no consideration as to intervening structures, roads or land forms.

- (E) No adult establishment shall be located within 1,500 feet of a church, public or private school, child day care or nursery school, or public park. The 1,500-foot distance shall be measured on a straight line from property line to property line, with no consideration as to intervening structures, roads or land forms.
- (F) The minimum setbacks, maximum building height and all other dimensional requirements shall be the same as for uses in the highway business district.
- (G) The amount of parking spaces required shall be the same as for all other commercial uses. Parking areas shall only be located in the front of the principal building.
- (H) There shall be no screening or buffers allowed in any form except when the property abuts a residentially zoned property on the side or rear.
- (I) Signs allowed shall be in compliance with highway business district sign regulations. Any ground, wall, canopy or projection sign shall contain only the name of the establishment. It shall not contain any advertising nor identification of any product, service and the like.
- (J) Customer or member entrances shall only be in the front of the building facing the street. No side or rear entrances shall be allowed for use by anyone patronizing an adult business.
- (K) No printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the establishment.
- (L) There shall not be more than one adult business use, either the same or another use, located on the same property, building or structure.
- (M) Other applicable regulations contained in this Ordinance shall be in effect.

### Section 83 Home Occupations.

A home occupation is permitted accessory to any dwelling unit (except manufactured housing) in accordance with the following requirements:

- A. The home occupation must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling.
- B. A home occupation conducted in an accessory structure shall be housed only in a garage or other accessory structure typically associated with a dwelling.
- C. The use shall employ no more than one person who is not a resident of the dwelling.
- D. A home occupation housed within the dwelling shall occupy no more than twenty-five (25%) percent of the total floor area of the dwelling.

- E. Signage shall be provided according to Article XII.
- F. There shall be no visible outside display of stock in trade which is sold on the premises.
- G. There shall be no outdoor storage or visible evidence of equipment or materials used in the home occupation, excepting equipment or materials of a type and quantity that could reasonably be associated with the principal residential use.
- H. Operation of the home occupation shall not be visible from any dwelling on an adjacent lot, nor from a street.
- I. The home occupation shall not utilize mechanical, electrical, or other equipment which produces noise, electrical or magnetic interference, vibration, heat, glare, or other nuisances outside the dwelling or accessory structure housing the home occupation.
- J. Home occupations shall be limited to those uses which do not draw clients to the dwelling on a regular basis.
- K. All home occupations shall require a zoning permit. Permits are not transferable from person to person or from address to address.
- L. Home occupations shall not be open to the public at times earlier than 8:00 a.m. nor later than 9:00 p.m.
- M. Home occupations shall comply with all local, state, and federal regulations pertinent to the activity pursued, and the requirements of or permission granted by this section shall not be construed as an exemption from such regulations.
- N. The following uses are permitted in a home occupation:
- Architectural, drafting, and graphic services;
  - Art restoration;
  - Art/photography studio;
  - Beauty salons;
  - Child Care Home;
  - Consulting offices;
  - Contracting offices;
  - Data processing;
  - Dressmaking, sewing, and tailoring;
  - Electronic assembly and repair;
  - Engineering services;
  - Financial planning and investment services;
  - Flower arranging;
  - Gardening and landscaping services;

- Home crafts;
- House cleaning services;
- Insurance sales broker;
- Interior design;
- Jewelry making and repair;
- Locksmith;
- Mail order (not including retail sales from the site);
- Real estate sales broker;
- General sales representative;
- Tutoring;
- Furniture upholstery.
- Any use not listed, but meeting the requirements of A-M.

M. The following uses are prohibited in a home occupation:

- Appliance and small engine repair;
- Auto repair, major and minor;
- Auto painting;
- Carpentry/cabinet making;
- Dance studios;
- Furniture construction;
- Machine shops;
- Rental businesses;
- Tow truck services;
- Welding shops;

#### Section 84 Planned Unit Development.

The planned unit development concept offers developers the possibility of more efficient and flexible methods for developing property, and provides residents of the project with larger open spaces for recreation and other activities properly related to residential uses. The Town Council may approve this form of development in the districts that allow it as a permitted or conditional use, provided:

- 84.1 Such project is an integrated plan designed for the primary purpose of residential or mixed use.
- 84.2 The site for the total project is at least 4 acres and at least 2 principal buildings are included in the plans.
- 84.3 That the total parcel of land is under single ownership or control, and there is reasonable assurance that the project can be successfully completed and maintained, including care and maintenance of all common open space, recreation space, and other common land area.

- 84.4 The preliminary plan for the proposed planned unit development shall first be submitted to the Rutherford College Planning Board for its review and recommendation to the Town Council. Such recommendations may include, but shall not be limited to, provisions for additional utilities, drainage, landscaping, lighting, and streets and access ways.
- 84.5 The applicant must resubmit the plan to the Planning Board if changes were recommended by the Town Council. If the plan is rejected by the Town Council, the applicant will not receive consideration of the same plan for a period of 12 months. The applicant can, however, appeal to Superior Court.
- 84.6 All principal buildings and accessory buildings or uses abutting the property lines of the project must meet the minimum yard requirement of the district where the project is located for all yards abutting said property lines. All height requirements shall be met for the district where the project is located.
- 84.7 The overall use of the area for buildings shall be no more than 25% of the total land area.
- 84.8 Density of development may be calculated over the entire development rather than on an individual lot-by-lot basis, and can be no higher than what is permitted in the district in which the development is located.
- 84.9 Off-street parking shall be provided at a ratio of two spaces per dwelling.
- 84.10 All streets and parking areas shall be constructed and paved according to the standards of the Town of Rutherford College.
- 84.11 The procedure for approval of a planned unit development shall consist of the submission of a design plan to the Rutherford College Planning Board showing how the requirements of Subsections 84.1 through 84.4 above will be met. Following study and recommendations by the Planning Board, the plan must be submitted to the Town Council for final approval. Failure of the Planning Board to act on the plan within 60 days shall constitute a favorable recommendation to the Town Council. An approved project must be started within 12 months after final approval and must be completed within a reasonable time.

Section 85 Provisions for Group Projects Commercial and Industrial.

In the case of two (2) or more buildings to be constructed on a plot of ground at least two (2) acres not subdivided into the customary streets and lots and which will not be subdivided, the application of the terms of this Ordinance may be permitted as a conditional use by the Board of Adjustment in a

manner that will be in harmony with the character of the neighborhood provided:

- A. Such uses are limited to those permitted within the zoning district in which the project is located. In no case shall the Board authorize a use prohibited in the district in which the project is to be located.
- B. The overall intensity of land use is no higher and the standard of open space is no lower than that permitted in the district in which the project is located.
- C. The distance of every building from the nearest property line shall meet the front, rear and side yard requirements of the district in which the project is located.
- D. The building heights do not exceed the height limits permitted in the district in which the project is located.
- E. If the property lies within or abuts upon a residential district there shall be a buffer along the rear and/or side lines abutting the residential lots in conformance with (Article IV) of this Ordinance.
- F. All parking, loading and sign requirements are subject to the applicable provisions of the respective zoning districts and other sections of this Ordinance.

**ARTICLE IX****MOBILE HOMES AND MOBILE HOME PARKS**Section 91. General Provisions

Mobile homes, because of their use, transportability, manufacture and manner of construction, location and susceptibility for use in high density concentration tend to place inhabitants of mobile homes in an unfavorable position to obtain services necessary for a safe and healthful living environment. It is the purpose of this subsection to provide protection to the public against unwise and hazardous mobile home development and provide a reasonably safe and sound environment for mobile home inhabitants and to:

1. Promote public health, safety and orderly residential development;
2. Prevent overcrowding of the land;
3. Provide adequate open space to ensure privacy, natural light and ventilation for each mobile home;
4. Provide sufficient open space for outdoor uses essential to the mobile home;
5. Ensure the furnishing of adequate water supply and sewage disposal systems; and
6. To provide an acceptable environment for small communities of mobile homes.

Mobile home parks are, therefore, strictly regulated with respect to their location, installation, provisions for services, privacy and additional specific regulation contained herein.

Section 92. Permit for Mobile Home Parks Required

It shall be unlawful for any person to construct, maintain, or use any lot or other parcel of land within the jurisdiction of the Town of Rutherford College for a mobile home park until application has been made and a permit therefore has been issued by the Town Council. The Town Council shall, prior to issuing a permit, determine if all requirements of this ordinance have been complied with. A mobile home park permit may be revoked by the Town Council upon a finding of fact that a violation of the requirements of this ordinance exists. Provided, the owner, lessor, or other responsible person is notified in writing of such violation and after the expiration of five (5) days from the date of such written notice. It shall be unlawful for any person, firm, or corporation to continue to operate such mobile home park after one (1) permit therefore, as required herein, has been revoked by the Town Council.

### Section 93. Conflict with Health Department Regulations

In the event the State or County Board of Health has adopted regulations governing mobile homes or mobile home parks, the requirements of the State or County Health Department, whichever is more stringent, shall govern.

### Section 94. Utilities Required

94.1 Water Supply. An adequate and safe supply of water shall be readily available at the mobile home park site. This requirement shall be deemed to have been met:

- (1) When an approved connection is made to the municipal water system, or
- (2) When an independent water supply has been approved by the State Board of Health.

94.2 Sanitary Sewer. Each individual mobile home premises be required to have a connection with a municipal sanitary sewer system. This requirement shall be deemed to have been met:

- (1) When an approved connection is made to the municipal sewer system, or
- (2) When a sewerage treatment facility is provided and approved by the County Health Department, or the North Carolina Department of Water Resources.

### Section 95. Site Requirements

Mobile home parks shall comply with the area, location and other dimensional requirements of this section. Prior to granting a permit for a mobile home park, the owner or developer shall submit the location of the boundaries of the mobile home park property, proposed vehicle exits, entrances and off-street parking spaces, mobile home space layout and such other information as the Town Council may deem necessary in order to determine if all requirements of this and other applicable ordinances are to be met. Site requirements for all mobile home parks shall be as follows:

95.1 The minimum size lot, tract or parcel of land to be used for mobile home parks shall not be less than two (2) acres, and such site shall have an average width of not less than two hundred (200) feet. In no event shall more than four (4) mobile homes be located on an area of one (1) acre.

95.2 The minimum size mobile home site area or separate lot to be occupied by one (1) mobile home shall be forty (40) feet by one hundred (100) feet and such site shall be identified by markers placed at each corner.

95.3 No mobile home shall be placed within fifteen (15) feet of its individual mobile home site lot line as established in Subsection 95.2 above, or within thirty (30) feet of any other mobile home end-to-end.

95.4 No mobile home shall be located within thirty-five (35) feet of any street or exterior boundary line of the mobile home park.

95.5 Two (2) off-street automobile parking spaces shall be provided on the site in an approved manner for each separate mobile home unit. Such off-street parking spaces shall be set aside in a location convenient to the occupants of the mobile home units and shall have ingress and egress by means of a public way. Where parking areas are provided adjacent to a public street, ingress and egress thereto shall be made accessible only through driveways or openings not exceeding twenty-five (25) feet in width at the curb line of the street.

95.6 Minimum required lot area for each dwelling unit: 4,000 square feet

Maximum permissible impervious coverage as defined in this Ordinance shall not exceed 36% of the total lot area, or 24% of the total lot area if the lot abuts a curb and gutter street system or if the lot is located within the WS-4 critical area.

Section 96. Facilities Required

Each mobile home park shall provide minimum facilities for mobile home occupants as follows:

96.1 Enclosed bathroom facilities shall be constructed which have an approved connection the required on-site water and sanitary sewer facilities, and such facilities shall be designed in order that two (2) wash basins, two (2) toilets and one (1) shower are available for each four (4) mobile homes the park is designed to accommodate, and separate facilities shall be provided for both men and women. The bathroom structure and all plumbing installations shall conform to the applicable State or Town of Rutherford College building and plumbing codes or County Health Department.

In lieu of installing toilet facilities as required above, a separate sewer connection for each mobile home space within the mobile home park shall be constructed, provided each mobile home shall be required to make a separate connection with such sanitary sewer facilities immediately upon occupying a mobile home site. A minimum four (4) inch connection shall be required and shall have approved

fittings to insure a watertight connection and means for capping or closing such connection when it is not in use.

In lieu of the wash basin and shower facilities required above, approved water connection may be made to each mobile home, provided each mobile home is connected to the sanitary sewer system in a manner provided for herein.

96.2 Garbage and Trash Containers. One (1) garbage and trash container (30 gallons each maximum capacity) shall be provided for each mobile home. Containers shall be placed on racks which are approved by the County Health Department and such racks shall be located within the mobile home park at a point which is readily accessible for collection. The owner of the park or his authorized agent shall be responsible for containers, collection, and disposal at least once a week.

96.3 Driveways. Access driveways shall be constructed within mobile home parks when mobile homes are to be located more than one-hundred (100) feet from a public street or off-street parking space. Other approved access driveways may be constructed at the option of the owner. All driveways shall be graded to a width of twenty-five (25) feet for two-way drives. All driveways shall be kept opened and shall be constructed and maintained in such manner as to be passable to vehicular traffic under all weather conditions.

#### Section 97. General Sanitation

It shall be the duty and responsibility of the owner or his authorized agent to keep the mobile home park in a reasonable clean and sanitary condition at all times, and to maintain and keep in good repair all required mobile home parks facilities. All waste water from washing machines and other similar sources shall be discharged into the sanitary sewer system and under no circumstances shall such wastes be discharged on the ground or in streams.

#### Section 98. Provisions for Manufactured Homes on Individual Lots.

The purpose of these regulations is to promote sound neighborhood development and appearance, protect community property values, and to preserve the integrity and character of neighborhoods. Class B manufactured homes (as defined in Section 42) are permitted on individual lots in the R-15 District under the following conditions:

- (A) The lot must be recorded as an individual lot in the Burke County Register of Deeds.
- (B) If municipal utilities are not available, the well and/or septic tank must be approved by the Burke County Health Department.
- (C) All yard dimensional requirements for the respective district must be met.

- (D) The lot must front on a public street or approved private street and said street frontage will be considered the front of the lot. In cases where a private street is proposed to be used, the zoning enforcement officer may require that a recorded right of way exist to serve the property and the street is paved or graveled in a manner that will facilitate safe and efficient vehicular traffic.
- (E) The manufactured home must meet or exceed the construction standards established by the U.S. Department of Housing and Urban Development (HUD) that were in effect at the time of construction. These standards became effective on July 15, 1976.
- (F) All Class B manufactured homes (as defined in Section 42) shall be multi-sectional, not single wides. Class B manufactured homes shall be at least twenty (20) feet wide. Class C manufactured homes are permitted on individual lots only as a hardship case as provided for in Section 61. Class D manufactured homes (as defined in Section 42) are not permitted on individual lots.
- (G) The length-width ratio of the manufactured home shall not have a length exceeding three and one-half (3.5) times the width.
- (H) All homes must measure at least 1.150 square feet of enclosed and heated living space.
- (I) The pitch of the main roof of the building shall have a minimum rise of one (1) foot for every three (3) feet of horizontal run.
- (J) The roof shall be finished with a type of shingle that is commonly used in standard residential construction.
- (K) All roof structures shall provide an eave protection of no less than six inches which may include a gutter.
- (L) The exterior siding shall consist predominately of vinyl or aluminum siding (whose reflectivity does not exceed that of gloss white paint), wood, or hardboard, comparable in composition, appearance and durability to the exterior siding used in standard residential site-built construction.
- (M) A continuous foundation enclosure, unpierced except for required ventilation and access shall be installed in accordance with State Building Codes. The enclosure shall consist of brick, concrete or block. If any masonry other than brick is used, it must be painted in color similar to that of brick. All materials necessary to complete the enclosure shall be located on the site at the time of final inspection by the Burke County Building Inspections Department.

(N) Permanent steps shall be constructed at all entrances to the manufactured home. A permanent deck, porch or entrance patio measuring at least eight (8) feet by ten (10) feet shall be constructed at the front entrance and a similar structure measuring at least six (6) feet by ten (10) feet at the rear entrance. All stairs, porches, decks, patios and other entrances shall be attached securely to the home, anchored firmly to the ground, and shall be constructed in accordance with the N.C. State Building Code. Steps constructed from loose stacked materials shall not be construed as properly installed. All decks, porches, patios, and stairs shall be constructed using treated wood, masonry or brick.

(O) The running lights, the moving hitch and undercarriage chassis shall be removed upon final placement of the unit.

(P) At least two standard nine (9) by eighteen (18) feet off-street parking spaces shall be provided. The spaces shall not be closer than fifteen (15) feet from the road or right-of-way in order to protect sight distances of the driving public. A driveway of at least ten feet wide shall be paved or graveled with not less than four (4) inches of crushed stone on a well compacted sub-base.

(Q) All areas not used for parking, the manufactured home, accessory buildings or required decks shall be grassed or otherwise suitably landscaped to prevent erosion. except for agriculture, no exposed soils shall remain after one (1) year from the date the zoning permit is issued.

(R) All manufactured homes shall be placed on the lot in harmony with the neighboring built structures. Where there are no neighboring site built homes for comparison, it shall be sites with the front running parallel to the lot frontage. For other odd lots, the home shall be located as determined by the Zoning Enforcement Officer in harmony with surrounding structures.

(S) Each of the setup requirements in this Section shall be completed within thirty (30) days after the final inspection by the Burke County Building Inspection Department. An extension of up to sixty (60) days may be granted by the Town Council if a personal or financial hardship is shown to exist. If no extension is requested or the extension expires with no progress in completing the requirements of this Section, the Town may use any and all remedies listed in Article XV to enforce the requirements.

**ARTICLE X****WATERSHED PROTECTION**100.1 Authority and Enactment.

The Legislature of the State of North Carolina has, in Chapter 160A, Ordinance 19, Planning and Regulation of Development; and in Chapter 143, Ordinance 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Town of Rutherford College, North Carolina ("the Town"), does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Rutherford College, North Carolina.

100.2 Jurisdiction.

The provisions of this Ordinance shall apply within the overlay zones designated as a Public Water Supply Watershed as defined and established on the "Official Zoning Map of Rutherford College, North Carolina" ("the Zoning Map"), such overlay zones being adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the office of the Town Clerk.

100.3 Exceptions to Applicability.

- (A) Development activities that do not require a Sedimentation/Erosion Control Plan are exempt from the requirements of this Section.
- (B) Existing development, as defined in this Ordinance, is not subject to the requirements of this Ordinance. Existing development is defined as those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:
  - (1) having expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
  - (2) having an outstanding valid building permit as authorized by NCGS 153A-344.1 and NCGS 160A-385.1; or

- (3) having an approved site specific or phased development plan as authorized by NCGS 153A-344.1 and NCGS 160A-385.1.
- (C) Expansions to structures classified as existing development must meet the requirements of this Ordinance; however, the built-upon area of the existing development is not required to be included in the density calculations.
- (D) Reconstruction of Buildings or Built-Upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential redevelopment, provided:
  - (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
  - (2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.
- (E) If a non-conforming lot of record is not contiguous to any other lot owned by the same part, then that lot of record shall not be subject to the development restrictions of this ordinance if it is developed for single family purposes.

#### 100.4 Cluster or Planned Unit Development.

Cluster or Planned Unit Development is allowed in all Watershed Areas under the following conditions:

- (A) Development activities shall comply with the requirements of Sections 84 and Section 85 of this Ordinance.
- (B) All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- (C) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the deeds.

100.5 Buffer Areas Required.

- (A) A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated in the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial stream bank or shoreline stabilization is permitted.
- (B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increase in impervious area, and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices, defined as a structural or nonstructural management-based practice used singularly or in combination to reduce non-point source inputs receiving waters in order to achieve water quality goals.

100.6 Watershed Administrator and Duties Thereof.

The Rutherford College Town Council shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this Ordinance as follows:

- (A) The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.
- (B) The Watershed Administrator shall serve as staff to the Watershed Review Board.
- (C) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Water Quality Section; of the Division of Environmental Management.
- (D) The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full zoning and police power of the Town of Rutherford College. The Watershed Administrator, or his duly authorized representative,

may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.

- (E) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted each calendar year to the Water Quality Section, of the Division of Environmental Management on or before January first of the following calendar year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

100.7 Appeal from the Watershed Administrator.

- (A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Board of Adjustment.
- (B) An appeal from a decision of the Watershed Administrator must be submitted to the Board of Adjustment within thirty (30) days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.
- (C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.
- (D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

100.8 Establishment of Watershed Review Board.

There shall be and hereby is created the Watershed Review Board consisting of the same membership as the Rutherford College Town Council. Terms for members of the Watershed Review Board shall coincide with the membership terms for Town Council.

100.9 Powers and Duties of the Watershed Review Board and Board of Adjustment.

- (A) The Board of Adjustment shall be responsible for reviewing and hearing all minor and major watershed variance cases. When hearing minor variance cases, the Board shall proceed as provided in Article XVI of the Zoning Ordinance for zoning variances.
- (B) When a variance is considered the Board shall notify each municipality with jurisdiction in the area and the entity using the watershed for consumption, ten(10) days in advance.
- (C) If the application calls for the granting of a major watershed variance, and if the Board of Adjustment decides in favor of granting the major watershed variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:
  - (1) The variance applications;
  - (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.
- (D) The preliminary record shall be sent to the Environmental Management Commission for its review as follows:
  - (1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. If the commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision,

including such conditions and stipulations, granting the proposed variance.

- (2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

- (E) Approval of all development greater than the low density option shall be the authority of the Watershed Review Board subject to the requirements of Section 100.11.

100.10 Appeals from the Watershed Review Board or Board of Adjustment.

Appeals from the Board of Adjustment must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.

100.11 High Density Development Standards.

The Watershed Review Board may approve high density development proposals consistent with the following standards:

Where new development requires a Sedimentation/Erosion Control Plan and exceeds either 2 dwelling units per acre, 24% built-upon area (or 3 dwelling units per acre or 36% built-upon area for projects without curb and gutter street system in the WS-4-PA), engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area in the WS-4-Protected Area and 50% in the WS-4-Critical Area.

100.12 High Density Development Permit Application.

- (A) A High Density Development Permit shall be required for new development exceeding the requirements of the low density option.
- (B) Application for a High Density Development Permit shall be addressed and submitted to the Town Council through the Watershed Administrator.

Application for a High Density Development Permit shall be made on the proper form and shall include the following information:

- (1) A completed High Density Development Permit Application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;
  - (2) Ten (10) reproducible copies of the development plan within the drainage basin including the applicable information listed in Appendix A: Application Forms, Subdivision Plat Checklist and detailed information concerning built-upon area;
  - (3) Ten (10) reproducible copies of the plans and specifications of the stormwater control structure consistent with Section 100.13;
  - (4) When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate State or local agency;
  - (5) Permit Application Fees consistent with Section 100.16;
- (C) Prior to taking final action on any application, the Board or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit.
- (D) Public Hearing. Upon receipt of a completed application, the Town Council shall hold a public hearing. Notice of the hearing shall be published in a newspaper of general circulation at least seven days prior to the date of the hearing. The notice shall state the location of the building, lot or tract in question, the intended use of the property, the need for engineered stormwater controls and the time and place of the hearing. At the hearing, the applicant or designated representative thereof shall appear for the purposes of offering testimony and recommendations concerning the application. The Board shall also allot reasonable time for the expression of views by any member of the public attending the meeting in person or represented by an attorney provided the testimony bears on the findings the Board must make.

- (E) The Town Council shall issue a High Density Development Permit within sixty-five (65) days of its first consideration upon finding that the proposal is consistent with the applicable standards set forth in the Watershed Protection Ordinance and the following conditions are met:
- (1) The use will not endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
  - (2) The use minimizes impacts to water quality through the Best Management Practices, cluster development, and/or maximum setbacks from perennial waters;
  - (3) The use is vital to the continued growth and economic development of the Town of Rutherford College.
  - (4) The use is consistent with the officially adopted land development plans for the Town of Rutherford College.

If the Town Council finds that any one of the above conditions is not met, the Board shall deny the application.

- (F) In addition to any other requirements provided by this Ordinance, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this Ordinance. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.
- (G) The Board shall issue a written ruling and make copies available at the office of the Watershed Administrator and the Town Clerk. If the Board approves the application based on its findings, such approval shall be indicated on the permit and all copies of the site plan and all copies of the plans and specifications of the stormwater control structure(s). A High Density Development Permit shall be issued after the applicant posts a performance bond or other acceptable security as required in Section 100.14(B)(1) and executes an Operation and Maintenance Agreement as required in Section 100.14(C). A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

100.13 Stormwater Control Structures.

- (A) All stormwater control structures shall be designed by a North Carolina registered professional engineer. Other stormwater systems shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers or landscape architects, to the extent that the General Statutes, Chapter 89A allow and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in General Statutes 89(C)-3(7).
- (B) All stormwater controls shall use wet detention ponds as a primary treatment system unless alternative stormwater management measures, as outlined in Section 100.13(C), are used. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Environmental Management. Specific requirements for these systems shall be in accordance with the following design criteria:
- (1) Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage run-off from a one-inch rainfall from the site above the permanent pool;
  - (2) The designed run-off storage volume shall be above the permanent pool;
  - (3) The discharge rate from these systems following the one-inch rainfall design storm shall be such that the run-off does not draw down to the permanent pool level in less than two (2) days and that the pond is drawn down to the permanent pool level within at least five (5) days;
  - (4) The mean permanent pool depth shall be a minimum of three (3) feet;
  - (5) The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;
  - (6) Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least thirty feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow through the filter for a ten-year, 24-hour storm with a ten-year, one-hour intensity with a slope of 5% or less. Vegetation in the filter shall be

natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics; and

- (7) All storm water control structures shall be enclosed by a fence with a minimum height of six (6) feet.
- (C) Alternative storm water management systems, consisting of one treatment option or a combination of treatment options, may be used. The design criteria for approval shall be 85 percent average annual removal of Total Suspended Solids. Also, the discharge rate shall meet one of the following criteria:
  - (1) the discharge rate following the 1-inch design storm shall be such that the runoff draws down to the pre-storm design stage within five days, but not less than two days; or
  - (2) the post development peak discharge rate shall equal the pre-development rate for the 1-year, 24 hour storm.
- (D) In addition to the vegetative filters required in Section 100.13(B)(6), all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within thirty (30) days after any land disturbance. Upon completion of the storm water control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in Section 100.14(C).
- (E) A description of the area containing the storm water control structure shall be prepared and filed consistent with Section 100.17(A and B), as a separate deed with the Burke County Register of Deeds along with any easements necessary for general access to the storm water control structure. The deeded area shall include the storm water control structure, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
- (F) Qualifying areas of the storm water control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute the built-upon area for any other site or area.

100.14 Posting of Financial Security Required.

- (A) All new storm water control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, reconstruction,

or repairs necessary for adequate performance of the storm water control structures.

- (B) Financial assurance shall be in the form of the following:
- (1) Security Performance Bond or other security. The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the Town of Rutherford College or placed in escrow with a financial institution designated as an official depository of the Town of Rutherford College. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the storm water control structure, as estimated by the applicant and approved by the Town. The total cost of the storm water control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and, grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.
  - (2) Cash or Equivalent Security Deposited After the Release of the Performance Bond. Consistent with Section 100.17(C)(1), the permit applicant shall deposit with the Town of Rutherford College either cash or other instrument approved by the Town Attorney that is readily convertible into cash at face value. The cash or security shall be in an amount equal to fifteen percent (15%) of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a ten (10) year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under Section 100.15(A). The amount shall be computed by estimating the maintenance cost for twenty-five (25) years and multiplying this amount by two fifths or 0.4.
- (C) Consistent with Section 100.12(G), the permit applicant shall enter into a binding Operation and Maintenance Agreement between the Town of Rutherford College and all interests in the development. Said Agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The Operation

and Maintenance Agreement shall be filed with the Burke County Register of Deeds by the Watershed Administrator.

- (D) Default under the performance bond or other security. Upon default of the permit applicant to complete and/or maintain the storm water control structure as specifically provided in the performance bond or other security, the Town of Rutherford College may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The Town of Rutherford College shall return any funds not spent in completing the improvements to the owning entity.
- (E) Default under the cash security. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the storm water control structure in accordance with the Operation and Maintenance Agreement, the Town of Rutherford College shall obtain and use all or any portion of the cash security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operation and Maintenance Agreement. The Town of Rutherford College shall not return any of the deposited cash funds.

100.15 Maintenance and Upkeep.

- (A) An operation and maintenance plan or manual shall be provided by the developer for each storm water control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the Operation and Maintenance Agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a storm water control structure to design specifications if a failure occurs.
- (B) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement to the stormwater control structure.
- (C) Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the storm water control structure. All improvements shall be made consistent with the approved plans and specifications of the storm water control structure and the operation and maintenance plan or manual. After

notification by the owning entity, the Town Engineer shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete said improvements.

- (D) Amendments to the plans and specifications of the storm water control structure and/or the operation and maintenance plan or manual shall be approved by the Town Council. Proposed changes shall be prepared by a North Carolina registered professional engineer and submitted to and reviewed by the Watershed Administrator prior to consideration by the Town Council.
  - (1) If the Town Council approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Office of the Watershed Administrator.
  - (2) If the Town Council disapproves the changes, the proposal may be revised and resubmitted to the Town Council as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
- (E) If the Town Council finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Burke County Register of Deeds, the Office of the Watershed Administrator and the owning entity.

100.16 Application and Inspection Fees.

- (A) Processing and inspection fees shall be submitted in the form of a check or money order made payable to the Town of Rutherford College. Applications shall be returned if not accompanied by the required fee.
- (B) A permit and inspection fee schedule, as approved by the Town of Rutherford College, shall be posted in the Office of the Watershed Administrator.
- (C) Inspection fees shall be valid for sixty (60) days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with Section 100.15(C), except in the case when a similar fee has been paid within the last sixty (60) days.

100.17 Inspections and Release of the Performance Bond.

- (A) The stormwater control structure shall be inspected by the Town, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide:
  - (1) The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the Register of Deeds;
  - (2) A certification sealed by an engineer or landscape architect (to the extent that General Statutes allow) stating that the stormwater control structure is complete and consistent with the approved plans and specifications.
  
- (B) The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Rutherford College Town Council at its next regularly scheduled meeting.
  - (1) If the Town Council approves the inspection report and accepts the certification, deed and easements, the Town shall file the deed and easements with the Burke County Register of Deeds, release up to seventy-five percent (75%) of the value of the performance bond or other security and issue and Certificate of Occupancy for the stormwater control structure.
  - (2) If deficiencies are found, the Town shall direct that improvements and inspections be made and documents corrected and submitted to the Town.
  
- (C) No sooner than one year after the filing date of the deed, easements, and maintenance agreement, the developer may petition the Town to release the remaining value of the performance bond or other security. Upon receipt of said petition, the Town shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition and findings to the Town Council.
  - (1) If the Town Council approves the report and accepts the petition, the developer shall deposit with the Town of Rutherford College a cash amount equal to that described in Section 100.14(B)(2), after which the Town Council shall release the performance bond or other security.

- (2) If the Town Council does not accept the report and rejects the petition, the Town shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.
- (D) A Certificate of Occupancy shall not be issued for any building within the permitted development until the Town Council has approved the stormwater control structure, as provided in Section 100.17(B).
- (E) All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental Management. Annual inspections shall begin within one year of filing date of the deed for the stormwater control structure.
- (F) In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Town shall inspect and approve the completed improvements.

100.18 Remedies.

- (A) If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Town may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$50 a day, institute actions or proceedings to restrain, correct, or abate the violations; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143 - 215.6(a). Each day the violation continues shall constitute a separate offense.
- (B) If the Watershed Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action

authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

100.19      Sanctions.

In addition to the remedies described in Section 100.18 of this Ordinance and consistent with G.S. 160A-175, the Rutherford College Town Council may seek enforcement of this Ordinance by assessing a civil penalty to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the Ordinance. Such violation may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The court may issue an injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of Civil Procedure in general and Rule 65 in particular. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith. Enforcement of this Ordinance may be by any one, all or a combination of the remedies authorized in this Ordinance. Each day's continuing violation shall be a separate and distinct offense.

100.20      Effective Date.

Section 100 of this Ordinance shall take effect and be in force on October 1, 1993.



## ARTICLE XI

### WIRELESS TELECOMMUNICATIONS

#### 110.1 Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the Town of Rutherford College's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The Town of Rutherford College finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset and significant benefit to the Town and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Section is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Town of Rutherford College.

#### 110.2 Title.

This section shall be known and cited as the Wireless Telecommunications Section for the Town of Rutherford College.

#### 110.3 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Any Conditional Use Permit issued under this section shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town.

#### 110.4 Definitions.

For purposes of this section, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and

words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. “Accessory Facility or Structure” means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. “Applicant” means any wireless service provider submitting an application for a Conditional Use Permit for Wireless Telecommunications Facilities.
3. “Application” means all necessary and appropriate documentation that an applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
4. “Antenna” means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town’s siting, building and permitting authority.
5. “Co-location” means the use of a tower or structure to support antennae for the provision of wireless services without increasing the height of the tower or structure.
6. “Commercial Impracticability” or “Commercially Impracticable” means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercial impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
7. “State” means the State of North Carolina.
8. “Completed Application” means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.
9. “Council” means the Rutherford College Town Council.
10. “FAA” means the Federal Aviation Administration, or its duly designated and authorized successor agency.
11. “FCC” means the Federal Communications Commission, or its duly designated and

authorized successor agency.

12. "Height" means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.
13. "NIER" means Non-Ionizing Electromagnetic Radiation
14. "Person" means any individual, corporation, estate, trust, partnership, Joint Stock Company, association of two (2) or more persons having a joint common interest, or any other entity.
15. "Personal Wireless Facility" See definition for 'Wireless Telecommunications Facilities'.
16. "Personal Wireless Services" or "PWS" or "Personal Telecommunications Service" or "PCS" shall have the same meaning as defined and used in the 1996 Telecommunications Act.
17. "Site, Telecommunications" See definition for Wireless Telecommunications Facilities.
18. "Conditional Use Permit" means the official document or permit by which an applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the Town.
19. "Stealth" or "Stealth Technology" means minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
20. "Telecommunications" means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
21. "Telecommunications Structure" means a structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities'.
22. "Temporary" means temporary in relation to all aspects and components of this section or something intended to, or that does, exist for fewer than 90 days.
23. "Wireless Telecommunications Facilities" means and includes a "Telecommunications Tower" and "Tower" and "Telecommunications Site" and "Personal Wireless Facility" means a structure, facility or location designed, or intended to be used as, or used to

support, antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Town's siting, building and permitting authority, excluding those used exclusively for the Town's fire, police or exclusively for private, non-commercial radio and television reception and private citizen's bands, amateur radio and other similar non-commercial telecommunications where the height of the facility is below the height limits set forth in this section.

#### 110.5 Overall Policy and Desired Goals for Conditional Use Permits for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the Town's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this section, the Town hereby adopts an overall policy with respect to a Conditional Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- 1) Implementing an Application process for person(s) seeking a Conditional Use Permit for Wireless Telecommunications Facilities;
- 2) Establishing a policy for reviewing and analyzing an application for, and issuing, a Conditional Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
- 3) Promoting and encouraging, wherever possible, alternatives to constructing new towers, including but not limited to the co-location of Wireless Telecommunications Facilities and mitigating the visual effect of a Wireless Telecommunications Facility to extent not commercially impracticable;
- 4) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology or camouflage techniques, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances; and
- 5) Assuring that any Wireless Telecommunications Facilities are designed and

constructed so as to be structurally sound and otherwise safe.

#### 110.6 Conditional Use Permit Application and Other Requirements.

A) All applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this section. The Board of Adjustment is the officially designated agency or body of the Town to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking conditional use permits for Wireless Telecommunications Facilities. The Board of Adjustment may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Board of Adjustment with respect to the granting or not granting, recertifying or not recertifying or revoking conditional use permits for Wireless Telecommunications Facilities.

B) An application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Town, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.

C) Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Town.

D) The applicant shall include a statement in writing:

1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the Town in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, State and Federal Laws, rules, and regulations;

2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the State.

E) No Wireless Telecommunications Facilities shall be installed or constructed until the application is reviewed and approved by the Town, and the Conditional Use Permit has

been issued.

F) No tower owner or manager shall be permitted to submit an application for a Conditional Use Permit for a tower if the tower owner does not have a signed agreement committing a commercial service provider to occupy space on the Tower.

G) All applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth. An authorized individual on behalf of the applicant shall sign the application. Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State. The application shall include the following information:

- 1) Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the Town. Such documentation shall include, but may not be limited to propagation studies of the proposed site and all existing, adjoining and proposed sites;
- 2) The name, address and phone number of the person responsible for preparing the application;
- 3) The name, address, and phone number of the property owner, service provider or operator, and the actual applicant, and to include the legal form of the applicant;
- 4) The postal address and tax map parcel number of the property;
- 5) The Zoning District or designation in which the property is situated;
- 6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
- 7) The location of nearest residential structure;
- 8) The location, size and height of all structures on the property which is the subject of the application;
- 9) The location, size and height of all proposed and existing antennae and all appurtenant structures;
- 10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- 11) The number, type and design of the tower(s) and antenna(s) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
- 12) The make, model and manufacturer of the tower and antenna(s);
- 13) A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- 14) The frequency, modulation and class of service of radio or other transmitting equipment;
- 15) The actual intended transmission and the maximum effective radiated power of the antenna(s);
- 16) Direction of maximum lobes and associated radiation of the antenna(s);

- 17) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
- 18) Certification that the proposed antenna(s) will not cause interference with other telecommunications devices;
- 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
- 20) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities on the proposed site;
- 21) For a new tower, a narrative explaining how the proposed facility is the least visually and physically intrusive means possible that is neither commercially nor technically impracticable, along with a photographic or other graphic representations of the proposed facility in color as may be deemed necessary.

H) In the case of a new tower, the applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the Town. Copies of written requests and responses for shared use shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.

I) The applicant shall certify that the Wireless Telecommunication Facility, foundation and attachments are designed and will be constructed to meet all local, Town, State and Federal structural requirements for loads, including wind and ice loads.

J) The applicant shall certify that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.

K) An applicant may be required to submit an Environmental Assessment Analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the pre-application meeting.

L) The applicant shall furnish a Visual Impact Assessment, which shall include:

- 1) A “ Zone of Visibility Map” which shall be provided in order to determine locations from which the Tower may be seen.
- 2) Pictorial representations of “before and after” views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands;

historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key viewpoints at a pre-application meeting.

- 3) An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
  - 4) The base of the tower, any guy wires, and any associated structures, walls or fences shall be surrounded by a landscaped buffer. A 10-foot buffer shall be provided between the tower and the property boundaries in all zones other than residential. In all residential zones, the buffer shall be a minimum of 25 feet in width.
    - a). The planting shall consist of deciduous or evergreen trees and evergreen shrubs. The trees shall be planted along the full length of the buffer strip in a triangular pattern with a maximum spacing of 25 feet on centers. The minimum height at planting for trees shall be six (6) feet and they shall have an expected minimum maturity height of 35 feet under normal growing conditions. There shall also be one (1) row of dense shrubs, spaced not more than eight (8) feet on centers. Shrubs shall be a minimum of two (2) feet high at planting and shall have a minimum expected maturity height of eight (8) feet under normal growing conditions. It is the intent of this section to encourage the use of existing vegetation in whole or in part to substantially meet this requirement.
- M) The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed Wireless Telecommunications Facilities.
- N) Any and all representations made by the applicant to the Town on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Town.
- O) All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all laws, sections, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- P) All applications shall contain a demonstration that the Facility be sited so as to have the least visually intrusive effect reasonably possible and thereby have the least adverse visual effect on the environment and the nature and character of the community, on existing vegetation, and on the residences in the area of the Wireless

Telecommunications Facility.

Q) Both the Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may required by the Town to the extent that it is not commercially impracticable or technically impracticable.

R) At a Wireless Telecommunications Site, an access road, turn around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

S) A person holding a Conditional Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted Wireless Telecommunications Facilities in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

T) A holder of a Conditional Use Permit granted under this section shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

V) An applicant shall submit to the Town the number of completed applications determined to be needed at the pre-application meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities and counties and to the Town Planning Department.

W) If a new tower is proposed, the application shall contain a commitment to design and construct the tower to accommodate at least five (5) additional commercial applications or service providers, assuming antenna arrays equivalent to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the

provisions of future shared use of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

- 1) The foreseeable number of FCC licenses available for the area;
- 2) The kind of Wireless Telecommunications Facilities site and structure proposed;
- 3) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
- 4) Available space on existing and approved towers.

X) The owner of the proposed new tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:

1. Respond within 60 days to a request for information from a potential shared-use applicant;
2. Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers, including a reasonable rate of compensation;
3. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay a reasonable rate of compensation. The rate may include, but not be limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
4. Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit for the tower.

Y) There shall be a site visit, if there has not been a prior site visit for the requested site in the preceding 12 months, and a pre-application meeting, both of which shall be prior to the submittal of any application, the purpose of which shall be to address issues which will help expedite the review and permitting process and any concerns regarding the site or the facility and the treatment of such. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

Z) The holder of a Conditional Use Permit shall notify the Town of any intended modification of a Wireless Telecommunication Facility and shall apply to the Town to modify, relocate or rebuild a Wireless Telecommunications Facility.

AA) In order to better inform the public, in the case of a new Telecommunication Tower, the applicant shall, prior to the public hearing on the application, hold a “balloon test”. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant seven (7) and 14 days in advance of the first test date in a newspaper with a general circulation in the Town. The applicant shall inform the Town, in writing, of the dates and times of the test, at least 14 days in advance. The balloon test shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 PM on the dates chosen. The primary date shall be on a weekend, but to prevent delays in the processing of the application, in case of poor weather on the initial date, the secondary date may be on a weekday.

BB) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support Wireless Facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

CC) Applications shall be submitted in a 3-ring binder. The application shall contain a Table of Contents, which shall list each section, and subsection and the issue required to be addressed. Requests for waiver shall be clearly set forth and indicated in the Table of Contents, with an explanation for the request for waiver contained in the appropriate section of the application. Each issue or matter addressed in the Ordinance that requires a response shall be set forth in a separate section, i.e. tab, in the application, including requests for waiver.

#### 110.7 Location of Wireless Telecommunications Facilities.

A) To protect the visual qualities of the center of the Town and to protect public safety, new towers shall be prohibited from the following areas:

- (1) Within 1,000 feet of each side of Malcolm Boulevard for the area beginning north of I-40 and extending to Talmon Street.
- (2) Within a 1,000 feet zone of the school property located on Honeycutt Drive.

B) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and six (6) being the lowest priority.

- 1) On existing towers or other structures without increasing the height of the tower or

structure;

- 2) On Town-owned properties;
- 3) On properties in areas zoned for General Manufacturing
- 4) On properties in areas zoned for Highway Business
- 5) On properties in areas zoned for Office-Institutional
- 6) On properties in areas zoned for Central Business
- 7) On properties in areas zoned Residential

C) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

D) An applicant may not defend or justify bypassing sites of a higher priority by claiming the site proposed is the only site leased or selected. All applications shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Town why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

E) Notwithstanding the above, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a negative effect on the nature and character of the community and neighborhood.

F) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

G) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an application for any of the following reasons.

- 1) Conflict with safety and safety-related codes and requirements;
- 2) Conflict with the historic nature or character of the community, a neighborhood or a historical district;
- 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;

- 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers;
- 5) Conflicts with the provisions of this Section.

110.8 Shared use of Wireless Telecommunications Facilities and other structures.

A) Locating on existing towers or others structures without increasing the height shall be preferred by the Town, as opposed to the construction of a new tower. The applicant shall submit a comprehensive report inventorying existing towers and other functionally suitable structures within four (4) miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an exiting tower or other suitable structure can not be used.

B) An application to co-locate on an existing tower or other suitable structure shall contain proof of the intent of the existing owner to permit its use by the applicant.

C) Such shared use shall consist of only the minimum antenna array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

110.9 Height of Telecommunications Tower(s).

A) The applicant shall submit documentation justifying the total height of any tower, facility and/or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

B) Unless otherwise granted relief or a waiver, the maximum permitted height of a new tower shall be no taller than the applicant service provider can prove is the minimum height necessary to provide service primarily to provide a balanced link (both up and down link) service in the area of no service. Such proof shall be provided using RF propagation studies showing the height of attachment of the array, the ERP (Effective Radiated Power) stated in watts, the direction or azimuth of each of the maximum lobes, any designed or intended pitch or down-tilt of any of the sector panels. At a minimum an applicant for a tower shall provide one set of RF propagation studies on clear acetate overly showing all existing sites adjacent to the search ring that shows the gap in coverage. Another set of propagation studies shall be provided showing the lowest height at which service can be provided in the search ring and another set shall be provided computed at 10 feet below the minimum height necessary to provide service in the search ring. The Town retains the right to determine the adequacy of the needed information provided as regards the determination of need for the requested height.

C) No tower constructed after the effective date of this Ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind as may be required by municipal, County, State, and/or any Federal statute, law, ordinance, code, rule or regulation.

110.10 Appearance and Visibility of Wireless Telecommunications Facilities.

A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by law.

B) Towers shall be galvanized and painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section and any conditions of the Conditional Use Permit.

C) If lighting is required, applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

110.11 Security of Wireless Telecommunications Facilities.

All Wireless Telecommunications Facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- 1) All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with.
- 2) Transmitters and telecommunications control points shall be installed such a manner that they are readily accessible only to persons authorized to operate or service them.
- 3) The base of tower facilities shall be enclosed by a decay resistant security fence or wall at least eight (8) feet in height unless the tower and all guy anchors are mounted entirely on a limited access building at least eight (8) feet in height.

110.12 Signage.

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted, unless required by applicable law, rule or regulation.

110.13 Lot Size and Setbacks.

All proposed towers and any other proposed Wireless Telecommunications Facility support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed tower or Wireless Telecommunications Facility structure plus 10% of the height of the tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

110.14 Retention of Expert Assistance and Reimbursement by Applicant.

A) The Town may hire any consultant and/or expert necessary to assist the Town in reviewing, analyzing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.

B) An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of a consultant and any expert evaluation and consultation to the Town in connection with the review of any application, including the construction and modification of the site, once permitted. The initial deposit shall be \$7,500.00, which deposit is not a fee. The placement of the \$7,500 with the Town shall precede the pre-application site visit and meeting. The Town will maintain a separate escrow account for all such funds. Consultants shall invoice the Town for services in reviewing the application, including the construction and modification of the site, once permitted, and the Town shall use this escrow to pay the consultant.

C) If at any time during the process the escrow account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.

D) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

110.15 Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities.

A) As of the effective date of this Ordinance, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of Wireless Telecommunications Facilities without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Conditional Use Permit shall be required for those non-commercial exceptions noted in the definition of Wireless Telecommunications Facilities in 110.4 of

this Section.

B) All Wireless Telecommunications Facilities existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility must comply with this Section, including making application for such modification.

110.16 Public Hearing and Notification Requirements.

A) Prior to the approval of any application for a Conditional Use Permit for Wireless Telecommunications Facilities, a public hearing shall be held by the Town, notice of which shall be published in the official newspaper of the Town no less than 10 calendar days prior to the scheduled date of the public hearing. In order that the Town may notify nearby landowners, the application shall contain the names and address of all landowners whose property is located within 1,500 feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.

B) There shall be no public hearing required for an application to co-locate on an existing tower or other structure, as long as there is no proposed increase in the height of the tower or structure, including attachments thereto.

C) The Town shall schedule the public hearing referred to in Subsection (A) of this section once it finds the application is complete, and the Town, at any stage prior to issuing a Conditional Use Permit, may require such additional information as is deemed reasonable necessary for an informed determination and decision to be made.

110.17 Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.

A) The Town will undertake a review of an application pursuant to this Section in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances involved, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.

B) The Town may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.

C) After the public hearing and after formally considering the application, the Town may approve, approve with conditions, or deny a Conditional Use Permit. In a case involving co-location, conditions of the Conditional Use Permit may be addressed as an administrative procedure not requiring Board action. The decision to grant or not grant a Conditional Use Permit shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.

D) If the Town approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the applicant shall be notified of such approval in writing within 10 calendar days of the Town's action, and the Conditional use Permit shall be issued within 30 days after such approval. Except for necessary building permits and subsequent Certificates of Compliance, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the Town, such as site plan or zoning approvals, shall be required by the Town for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.

E) If the Town denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the applicant shall be notified of such denial in writing within 10 calendar days of the Town's action.

110.18 Recertification of a Conditional Use Permit for Wireless Telecommunications Facilities.

A) Between 12 months and six (6) months prior to the five (5) year anniversary date after the effect date of the Conditional Use Permit and all subsequent five year anniversaries of the effective date of the original Conditional Use Permit for Wireless Telecommunications Facilities, the holder of a Conditional Use Permit for such Wireless Telecommunication Facilities shall submit a signed written request to the Town for recertification. In the written request for recertification, the holder of such Conditional Use Permit shall note the following:

- 1) The name of the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities;
- 2) If applicable, the number or title of the Conditional Use Permit;
- 3) The date of the original grant of the Conditional Use Permit;
- 4) Whether the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the Conditional Use Permit and if so, in what manner;
- 5) If the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified, then whether the Town approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
- 6) That the Wireless Telecommunications Facilities are in compliance with the Conditional Use Permit and compliance with all applicable codes, laws, rules and regulations;
- 7) Recertification that the tower and attachments both are designed and constructed and continue to meet all municipal, County, State and Federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a Professional Engineer licensed in the State, the cost of which shall be borne by the applicant.

B) If, after such review, the Town determines that the permitted Wireless

Telecommunications Facilities are in compliance with the Conditional Use Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Town issue a re-certification of the Conditional Use Permit for the Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted Wireless Telecommunications Facilities are not in compliance with the Conditional Use Permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Town may refuse to issue a recertification Conditional Use Permit for the Wireless Telecommunications Facilities, and in such event, such Wireless Telecommunications Facilities shall not be used after the date that the applicant receives written notice of the decision by the Town until such time as the facility is brought into compliance. Any decision requiring the cessation of use of the facility or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the facility.

C) If the applicant has submitted all of the information requested and required by this Section, and if the review is not completed, as noted in subsection (B) of this section, prior to the five (5) year anniversary date of the Conditional Use Permit, or subsequent five year anniversaries, then the applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Conditional Use Permit for up to six (6) months, in order for the completion of the review.

D) If the holder of a Conditional Use Permit for Wireless Telecommunications Facilities does not submit a request for recertification of such Conditional Use Permit within the timeframe noted in subsection (A) of this section, then such Conditional Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Conditional Use Permit, or subsequent five year anniversaries, unless the holder of the Conditional Use Permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the Town agrees that there were legitimately extenuating circumstances, then the holder of the Conditional Use Permit may submit a late recertification request or application for a new Conditional Use Permit.

#### 110.19 Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities.

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

- 1) such Conditional Use Permit shall be non-exclusive;
- 2) such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town.

- 3) such Conditional Use Permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Section after prior written notice to the holder of the Conditional Use Permit.

#### 110.20 Application Fee.

A) At the time that a person submits an application for a Conditional Use Permit for a new tower, such person shall pay a non-refundable application fee of \$5,000.00 to the Town. If the application is for a Conditional Use Permit for co-locating on an existing tower or other suitable structure, where no increase in height of the tower or structure is required, the non-refundable fee shall be \$2,500.00.

B) No application fee is required in order to rectify a Conditional Use Permit for Wireless Telecommunications Facilities, unless there has been a visible modification of the Wireless Telecommunications Facility since the date of the issuance of the existing Conditional Use Permit for which the conditions of the Conditional Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply.

#### 110.21 Performance Security.

The applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at their cost and expense, be required, jointly if appropriate, to execute and file with the Town a bond or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 and with such sureties as are deemed sufficient by the Town to assure the faithful performance of the terms and conditions of this Section and conditions of any Conditional Use Permit issued pursuant to this Section. The full amount of the bond or security shall remain in full force and effect throughout the term of the initial Conditional Use Permit. Either the continuation of the same security or the placement of a new one will be required as part of the required recertification and each period of recertification thereafter, unless the Town, in writing, permits a reduction in the amount or its elimination. The security for the last period of recertification shall remain in effect until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original Conditional Use Permit.

#### 110.22 Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

110.23 Annual NIER Certification.

The holder of the Conditional Use Permit shall, annually, certify to the Town that NIER levels at the site are within the threshold levels adopted by the FCC.

110.24 Liability Insurance.

A) A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below

- 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- 2) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;
- 3) Workers Compensation and Disability: Statutory amounts.

B) The Commercial General liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents and consultants as additional named insureds.

C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of the cancellation of the insurance.

E) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.

F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than 15 days after the grant of the Conditional Use Permit or any recertification of the Conditional Use permit, the holder of the Conditional Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

110.25 Indemnification.

A) Any application for Wireless Telecommunication Facilities that is proposed for Town property, pursuant to this Section, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and

all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities.

#### 110.26 Fines.

A) In the event of a violation of this Section or any Conditional Use Permit issued pursuant to this Section, the Town may impose and collect, and the holder of the Conditional Use Permit for Wireless Telecommunications Facilities shall pay to the Town, fines or penalties as permitted by State law.

B) A violation of this Section is hereby declared to be an offense, punishable by a fine not exceeding that which is permitted under State Law for conviction of a first offense. For conviction of a second offense, both of which were committed within a period of five years, the holder of a Conditional Use Permit issued under this Section may be sanctioned by a fine of not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors and for such purpose only all provisions of Law relating to misdemeanors shall apply to such violations. Each day after the first seven (7) days following notification that the violations continues, shall constitute a separate additional violation, punishable separately and individually.

C) Notwithstanding anything in this Section, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other sanctions or penalties, to evade or avoid compliance with this Section or any section of this Section. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The Town may also seek injunctive relief to prevent the continued violation of this Section, without limiting other remedies available to the Town.

110.27 Default and/or Revocation.

A) If Wireless Telecommunications Facilities are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Section or of the Conditional Use Permit, then the Town shall notify the holder of the Conditional Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this Ordinance, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Town may, at its sole discretion, order the violation remedied within 24 hours.

B) If, within the period set forth in Subsection (A) above, the Wireless Telecommunications Facilities are not brought into compliance with the provisions of this Section, or of the Conditional Use Permit, or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facilities into compliance, then the Town may revoke such Conditional Use Permit for Wireless Telecommunications Facilities, and shall notify the holder of the Conditional Use Permit within 48 hours of such action.

110.28 Removal of Wireless Telecommunications Facilities.

A) Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Wireless Telecommunications Facilities.

- 1) Wireless Telecommunications Facilities with a Conditional Use Permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
- 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
- 3) Wireless Telecommunications Facilities have been located, constructed or modified without first obtaining, the required Conditional Use Permit or modification thereof, or any other necessary authorization.

B) If the Town makes such a determination as noted in Subsection (A) of this section, then the Town shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within 48 hours that said Wireless Telecommunications

Facilities are to be removed, the Town may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.

C) The holder of the Conditional use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the Town.

D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within 90 days after the holder of the Conditional Use Permit has received notice, then the Town may order officials or representatives of the Town to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.

E) If, the Town removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within 10 days, then the Town may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.

F) Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more 90 days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Conditional Use Permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the Town. If such a plan is not developed, approved and executed within the 90 day time period, then the Town may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

#### 110.29 Relief.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Section may request such at the pre-application meeting, provided that the relief or exemption is contained in the original application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the

applicant to prove. The applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service providers.

110.30 Periodic Regulatory Review by the Town.

- A) The Town may at any time conduct a review and examination of this entire Section.
  
- B) If after such a periodic review and examination of this Section, the Town determines that one or more provisions of this Section should be amended, repealed, revised, clarified, or deleted, then the Town may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Town may repeal this entire Section at any time.
  
- C) Notwithstanding the provisions of Subsections (A) and (B) of this Section, the Town may at any time, and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Section.

110.31 Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
  
- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

110.32 Conflict with Other Laws.

Where this section differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, State or federal government, this section shall apply.

110.33 Effective Date.

This Section shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

110.34 Authority.

This section is enacted pursuant to applicable authority granted by the State and federal government.

**ARTICLE XII**

**SIGNS**

Section 120.1        Purpose. The purpose of this section is:

- A. To preserve the natural environment by allowing signs which are consistent with an attractive town appearance.
- B. To provide for the safety of vehicular traffic by limiting visual interference.
- C. To protect the general public from injury caused by distracting and/or improperly placed signs.
- D. To promote the general welfare of the Town of Rutherford College by providing a pleasing environmental setting.
- E. To protect property values and to promote the economic welfare of Rutherford College by encouraging visually appealing, non-distracting forms of information transfer.

Section 120.2        Administration.

No sign shall be constructed, enlarged, moved, replaced or altered until a zoning permit has been issued by the zoning enforcement officer, except for those signs specifically permitted in zoning districts without a zoning permit. All signs shall be constructed and installed in accordance with the applicable provisions of the North Carolina State Building Code and North Carolina State Electrical Code and shall obtain applicable permits prior to construction. The building inspector or zoning enforcement officer shall order the immediate removal of any signs or supporting structures that are not constructed or maintained safely in good repair in accordance with the provisions of this section or in accordance with the applicable provisions of the North Carolina State Building Code. Unauthorized signs posted in the public right-of-way may be removed by any member of the Town staff or the zoning enforcement officer without notice.

Section 120.3        Definition.

Any structure, object, device or part thereof which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. Signs do not include the flag or emblem of any nation, state, city or any fraternal, religious or civic organizations, works of art which in no way identify an object, person, institution,

organization, business, product, service, event or location by any means, or scoreboards located on athletic fields.

Section 120.4            Nonconforming signs.

Any sign existing on the effective date of this section which does not conform to the requirements set forth herein will be allowed to remain if in good repair but shall not be changed to another nonconforming sign. If a nonconforming sign is altered, removed, moved or changed in any way, the sign shall be brought into compliance with the regulations of this section.

Section 120.5            Removal of temporary obsolete signs.

Temporary signs shall be removed within forty-eight (48) hours after the termination of the advertised events. Property owners shall be responsible for the removal of obsolete signs.

Section 120.6            Measurement of sign area.

The area of a sign shall be measured to include the entire sign, including its display area, frame, border, incidental decoration and foundation of any kind except a pole. Where a sign consists of letters, figures or other devices individually mounted to a building wall, the sign area shall be the smallest circle or rectangle that can be inscribed around the sign. Only one (1) side of a double-faced sign shall be included in calculating the display area.

Section 120.7            Sign location.

- (1) For roadways maintained by the Town the minimum setback for all new signs shall be 10 feet as measured from the outer edge of the road. If an existing right-of-way is present that is equal to or exceeds 10 feet, all new signs must be placed just outside of the established right-of-way area.
- (2) For applicants seeking a sign permit along a state or federal road it shall be the responsibility of the applicant to obtain in writing from the NC Department of Transportation information on the width of the right-of-way area.
- (3) In the absence of a right-of-way determination by the NC Department of Transportation on any state or federal maintained road or in the event a dedicated right-of-way does not exist on a state or local road, newly permitted signs must be placed outside or behind any existing utility pole.
- (4) In the event a dedicated right-of-way for a state or federal road can not be determined and a utility pole is not present, the set back distance for new signs shall be a minimum of ten feet (10) from the edge of the roadway pavement or

outer edge of curbing.

Section 120.8        Illumination.

Where permitted, illuminated signs may be either directly lit from inside the sign or may have an indirect light source that shines on to the surface of the sign. Any illuminated sign shall be so designed or placed so as to prevent direct or reflected light from being cast upon adjacent properties, the public right-of-way or the night sky. Flashing, blinking or pulsating signs shall not be permitted except as part of a digital or LED (Light Emitting Diode) sign.

Section 120.9        Sign types.

- A.     Ground sign. A sign attached directly to the ground by means of one (1) or more upright pillars, braces, posts, poles or foundations placed directly upon or in the ground and not attached to any part of the building. Ground signs must conform to the following provisions:
- 1)     The maximum area for the sign is eighty (80) square feet.
  - 2)     No ground sign shall be more than sixteen (16) feet tall, measured from the natural ground line to the top of the sign frame.
  - 3)     The sign shall not be placed closer than ten (10) feet from the right-of-way line.
  - 4)     Only one (1) ground sign may be erected per building, regardless of the number of tenants, except as provided for in Section 120.10.
  - 5)     The sign may be illuminated.
- B.     Wall sign. A sign attached or painted directly on the building wall, generally on the façade, with the exposed display surface of the sign in a plane parallel to the wall. Wall signs must conform to the following provisions:
- 1)     The maximum area for the sign is one (1) square foot per lineal foot of building frontage.
  - 2)     No wall sign shall be mounted more than twenty (20) feet above the natural ground line.
  - 3)     One or more wall signs may be used on a building, as long as the total area of the signs does not exceed the maximum permitted.
  - 4)     On multiple-occupancy buildings, each occupant with a separate outside entrance serving the public may have a separate wall sign.
  - 5)     No part of a wall sign shall extend more than eighteen (18) inches from the wall.
  - 6)     The sign may be illuminated.
- C.     Projection sign. A hanging, suspended, shingle, blade or any other type of sign that is mounted to and projects perpendicularly from a building wall. Projection signs must conform to the following provisions:
- 1)     The maximum area for the sign is one (1) square foot per lineal foot of building frontage not exceeding forty (40) square feet.
  - 2)     The sign shall not project more than four (4) feet from the building.

- 3) The sign shall not extend higher than three (3) feet above the roof of the building.
  - 4) The sign shall have nine (9) or more feet of vertical clearance from the ground or sidewalk level.
  - 5) The sign may be illuminated.
- D. Roof sign. A sign which is attached to or painted on the roof of a building. Roof signs must conform to the following provisions:
- 1) The maximum area for the sign is one (1) square foot per lineal foot of building frontage not exceeding forty (40) square feet.
  - 2) The sign shall be placed a minimum of five (5) feet from the edge of the roof.
  - 3) The sign shall not exceed six (6) feet in height.
  - 4) Only one (1) roof sign shall be permitted per business.
  - 5) The sign may be illuminated.
- E. Canopy sign. A sign painted or otherwise affixed directly to a canopy or awning. The signage area shall not exceed twenty-five (25) square feet. The sign shall identify only the name of the business and logo and may be illuminated.
- F. Window sign. A sign directly attached to windows or doors. A business may use one or more window signs but the total sign area shall not exceed twenty-five (25) percent of the glass area. The sign may be illuminated.
- G. Temporary sign. A sign that is not permanently installed in the ground or affixed to any structure or building and designed to be mobile or movable. This includes, but is not limited to, portable signs, sandwich boards, banners, wire-frame signs or signs on parked vehicles. Temporary signs must conform to the following provisions:
- 1) The maximum area for the sign shall not exceed twenty-five (25) square feet.
  - 2) The sign is allowed without a permit but must be located in compliance with the provisions of Section 120.7.
  - 3) The sign must remain in good repair at all times.
  - 4) No sign exceeding four (4) square feet shall be placed closer than ten (10) feet to the right-of-way line. A sandwich board sign may be placed in on the sidewalk; however, any person erecting such a sign shall indemnify and hold harmless the Town of Rutherford College and its employees from any claims arising from the presence of the sign in the right-of-way.
  - 5) The sign may be illuminated.
- H. Off-premises sign. A sign, billboard or other permanent outdoor advertising structure that directs attention to a business, commodity or service sold, conducted or offered at a location other than the premises on which the sign is erected. Off-premises signs shall not be permitted in the town, except signs identifying the location of a church or house of worship. Such signs shall not exceed four (4) square feet and may not be illuminated. The continued

use of existing off-site outdoor advertising signs shall be allowed consistent with the provisions of Section 120.9(G).

- I. Subdivision/group development sign. A sign used to identify the entrance to a subdivision, planned unit development, apartment or townhouse complex, or other group development. The area of the face of the sign shall not exceed thirty-six (36) square feet but may be mounted on a larger masonry wall. The sign may be illuminated. There may be 1 (one) sign on either side of the entrance.
- J. Home occupation sign. A sign used to identify the location of a home occupation, day care or other business permitted in a residential zoning district. Home occupation signs must conform to the following provisions:
  - 1) The maximum area for the sign shall not exceed ten (10) square feet in area.
  - 2) The maximum height for the sign shall not exceed three (3) feet.
  - 3) The sign may be ground- or wall-mounted.
  - 4) The sign may not be illuminated.

Section 120.10      Number and type of permitted signs in non-residential zoning districts.

- A. A single-occupancy building in the CB, OI, HB, or GM zoning districts are permitted to choose three (3) signs from the following list: ground, wall, projection, canopy, window, roof or temporary. The selection of more than one (1) sign of each type is not permitted.
- B. Each business or entity in a multiple-occupancy building in the CB, OI, HB, or GM zoning districts are permitted to choose three (3) signs from the following list: ground (1 per building), wall, projection, canopy, window, roof or temporary. The selection of more than one (1) sign of each type is not permitted.
- C. In addition to the number of signs permitted in subsections (1) and (2) above, a building in the CB, OI, HB, or GM zoning districts, situated on a corner lot or a lot bounded by more than one street shall be permitted to choose one (1) additional sign per building front from the following list: ground, wall, projection, canopy, window, roof or temporary, provided that the additional sign area does not exceed the sign area permitted for the building front. Additional sign area shall be used specifically for the side or rear of the building and may be illuminated.

Section 120.11      Number and type of permitted signs in residential zoning districts.

- A. Any church or school located in a residential zoning district is permitted to choose three (3) signs from the following list: ground, wall, projection, canopy, window, roof or temporary. The selection of more than one (1) sign of each type is not permitted.

- B. In addition to the number of signs permitted in subsections (1) above, a church or school situated on a corner lot or a lot bounded by more than one street shall be permitted to choose one (1) additional sign per building front from the following list: ground, wall, projection, canopy, window, roof or temporary, provided that the additional sign area does not exceed the sign area permitted for the building front. Additional sign area shall be used specifically for the side or rear of the building and may be illuminated.
- C. Any business located in a residential zoning district is permitted to have one (1) home occupation sign.
- D. A subdivision or group development is permitted one (1) subdivision/group development sign\_per entrance. Subdivision or group development signs shall not be less than eight hundred (800) feet apart if located on the same street.

Section 120.12      Signs permitted in all zoning districts.

The following signs are permitted in all zoning districts without a zoning permit, provided they are kept in good condition, do not obstruct the visibility of the traveling public, are not located in the public right-of-way and comply with the provisions below:

- A. Any sign erected by a government agency to convey information about a public facility or service or to regulate, control or direct vehicular or pedestrian traffic. Such signs may be illuminated, flashing or moving as necessary for public safety.
- B. Signs which warn of safety hazards. Such signs may be illuminated.
- C. One (1) real estate sign per street frontage on property for sale, lease or rent. The sign(s) shall be a maximum of four (4) square feet in size in residential zoning districts and thirty-two (32) square feet in non-residential zoning districts. The sign(s) shall not be illuminated.
- D. Signs not exceeding four (4) square feet in area. Such signs shall not be illuminated.
- E. Construction site identification signs on active construction sites. The sign(s) shall be a maximum of four (4) square feet in size in residential zoning districts and thirty-two (32) square feet in non-residential zoning districts. The sign(s) shall not be illuminated and shall be removed within thirty (30) days of the completion of the project.
- F. Incidental signs not exceeding four (4) square feet in size or three (3) feet in height if located closer than five (5) feet from the right-of-way line. An incidental sign is defined as one which carries no advertising message, directs traffic flow, indicates the location of ingress and egress points, directs certain activities to certain areas (e.g. parking or waiting) or provides other incidental information. The sign(s) may be illuminated.

- G. Streamers, pennants, balloons and similar devices. Such devices shall not be illuminated.
- H. Political and election signs displayed on private property provided such signs shall not exceed sixteen (16) square feet in area and may not be illuminated. Such signs shall be removed within forty-eight (48) hours after the election or time which the purpose of the sign ceases to exist. Political signs shall not be located on public property, except at polling places on the day of the election, or in any right-of-way. Signs that do not conform to the terms of this section may be removed and discarded by the zoning enforcement officer without notice.

Section 120.13        Signs prohibited in all districts.

The following signs shall be prohibited in all districts:

- A. Signs or other devices that resembles traffic signals, traffic signs, emergency vehicle flashing lights, or which are likely to be misconstrued by the traveling public as being an official governmental sign or emergency warning.
- B. Animated, rotating or other moving or apparently moving signs.
- C. All other signs not expressly permitted by this ordinance.

The following chart details the sign regulations pertaining to each zoning district.

<b>Table of Sign Regulations</b>						
Zoning District	Type of Signs Permitted	Number of Signs Permitted	Maximum Area Permitted	Front Yard Requirement	Illumination Permitted	Notes
Central Business, Office/ Institutional, Highway Business, And General Manufacturing (as well as schools and churches located in Residential areas)	Ground Sign	1 (One of three)	80 Sq. Ft.	10' from behind public ROW	Direct or indirect light source (See 120.8)	Maximum Height 16' Maximum length 20'
	Wall Sign	1 (One of three)	1 Sq. Ft. per Lineal Foot of Building Frontage Maximum Size 40 sq.	N/A	Direct or indirect light source (See 120.8)	Maximum Height 20' Maximum Depth 18"
	Projection Sign	1 (One of three)	1 Sq. Ft. per Lineal Foot of Building Frontage Maximum Size 40 sq.	N/A	Direct or indirect light source (See 120.8)	9' of vertical clearance. Maximum Height 4'
	Roof Sign	1 (One of three)	1 Sq. Ft. per Lineal Foot of Building Frontage Maximum Size 40 sq.	N/A	Direct or indirect light source (See 120.8)	5' from edge of roof. Maximum Height 6'
	Canopy Sign	1 (One of three)	25 Sq. Ft.	N/A	Direct or indirect light source (See 120.8)	Only name and logo.
	Window Sign	More than 1.	Not to exceed 25% of glass area	N/A	Direct or indirect light source (See 120.8)	May attach to windows or doors.
Residential Zoning Districts	Home Occupation Sign	1 Ground or 1 Wall-mounted	10 Sq. Ft.	10' from behind public ROW	No illumination allowed	Maximum Height 3'
	Subdivision and Group Development Signs	1 on each side of entrance	36 Sq. Ft.	10' from behind public ROW	Direct or indirect light source (See 120.8)	May be mounted on masonry wall

**ARTICLE XIII**

**OFF-STREET PARKING, LOADING AND LANDSCAPING**

Section 130.1 Off-Street Parking Requirements.

There shall be provided at the time of the erection of any building, or at the time any principal building is enlarged or increased in capacity by adding dwelling units, guest rooms, seats, or floor area; or before conversion from one type of use or occupancy to another, permanent off-street paved parking spaces in the amount specified by this section. Such parking spaces may be provided in a parking garage or properly graded open space.

Section 130.2 Certification of Minimum Parking Requirements.

Each application for a zoning permit submitted to the zoning enforcement officer as provided for in this Ordinance shall include information as to the means of entrance and exit to such space. This information shall be in sufficient detail to enable the zoning enforcement officer to determine whether or not the requirements of this section are met.

Section 130.3 Minimum Off-Street Parking Requirements.

Parking shall be provided a rate indicated in the following *Table of Parking Ratios*

<i>Table of Parking Ratios</i>	
<b>Use</b>	<b>Parking Requirement</b>
Single family, two family, multi-family dwellings	2 per dwelling unit
Home Occupations	2 per dwelling unit, plus 1 per home occupation
Mixed Use Building	See subsection ---
Animal hospitals, veterinary offices & clinics	1 per 250 sqft gfa
Animal pound or shelter	1 per 350 sqft gfa
Appliance & Electronics repair	1 per 300 sqft gfa
Athletic fields and similar outdoor facilities	20 per field
Auto, boat, recreation vehicle and motorcycle sales	1 per 7,000 sqft of outdoor display, plus 1 per 250 sqft of indoor sales area, plus service & repair requirement if applicable
Automobile service, repair & body shops	3 per bay or similar facility
Bakery (production & distribution)	1 per 500 sqft gfa
Banks & other financial establishments	1 per 300 sqft gfa or 5 spaces, whichever is great

Barbershops & salons	2 per chair or station
Spas	1 per 250 sqft gfa
Bed & breakfast	1 per guest room, plus single family requirement
Boat service & repair	1 per service stall or similar facility
Bus station	1 per 200 sqft of waiting area
Car wash	2 per stall, plus 3 stacking spaces in front of stall
Cemeteries	1 per 250 sqft gfa of office
Churches & other places of worship	1 per 30 sqft of seating area, including balconies
Clubs & lodges	1 per 150 sqft gfa
Commercial indoor recreation establishments	1 per 300 sqft gfa
Commercial outdoor recreation establishments	1 per 200 sqft gfa, plus 1 per 550 sqft of site area open to public (excluding parking area)
Community centers	1 per 200 sqft gfa
Public community swimming pools	1 per 100 sqft of water surface area, plus 1 per 80 sqft of patio area
Convenience store or gas station	1 per 150 sqft gfa
Day care center	1 per 375 sqft gfa
Day care home (large)	1 per 5 children, plus single family requirement
Dry cleaning	1 per 300 sqft gfa
Emergency response facilities	1 per vehicle involved in operation, plus 1 per 300 sqft (excluding bays or service area)
Family campgrounds	1 per campsite
Family care homes	2 per dwelling unit
Funeral homes & mortuaries	1 per 200 sqft gfa
Golf courses	4 spaces per hole
Group home developments	1 per bedroom
Heavy equipment service & repair	3 per service bay or similar facility
Heavy equipment sales & rental	1 per 500 sqft gfa, plus 1 per 2,000 sqft of outdoor display
Hospitals	3 per bed
Hotels, inns & motels	1.25 per guestroom, plus 1 per 100 sqft of meeting, dining or banquet facilities
Institutional facilities, such as libraries & other nonprofits	1 per 300 sqft gfa
Junkyards	1 per 8,000 sqft of storage area
Kennels	1 per 300 sqft gfa
Laundromat	1 per 200 sqft gfa
Manufacturing & Industrial uses	1 per 800 sqft gfa

Mini-storage	1 per 25 storage units, plus office requirement
Movie theaters & performing theaters	1 per 3 seats
Museums & art galleries	1 per 700 sqft gfa
Offices, government, medical, business, professional & public	1 per 250 sqft gfa
Photography services	1 per 250 sqft gfa
Photography, dance, art & music studios	1 per 250 sqft gfa
Printing & copy services	1 per 250 sqft gfa
Public or private parks & playgrounds	1 per 3000 sqft of land area
Radio & TV broadcasting	1 per 400 sqft gfa
Railroad station	1 per 200 sqft of waiting area
Recycling establishment	2 per collection container, plus office requirement for office area
Restaurants (all types)	1 per 80 sqft gfa, including outdoor seating area
Retail sales	1 per 200 sqft gfa
Elementary & secondary schools	2.5 per room used for classroom or administration
High schools & colleges	7 per classroom
Shopping centers	see subsection --
Skilled nursing and other assisted living facilities	1 per 3 beds
Towing service	1 per 350 sqft gfa, plus 1 per 4,000 sqft of outdoor storage area
Warehousing & distribution	1 per 700 sqft gfa - if less than 50,000 sqft or 1 per 1000 sqft gfa - if equal to or greater than 50,000 sqft
Wholesale establishments	1 per 700 sqft gfa

### Section 130.5 Off-Street Loading and Unloading Spaces.

Every building or structure used for business, trade or industry hereafter erected shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley.

- A. Off-street loading and unloading spaces shall have access to an alley, or if there is no alley available, then to a street.
- B. Off-street loading and unloading spaces shall have a minimum dimension of 12 feet by 40 feet and overhead clearance of 14 feet in height above the alley or street grade.
- C. Loading and service areas shall be designed to ensure the safety of pedestrians and private property.
- D. Such areas shall have sufficient space to be properly accessed and the use of these areas shall not block public road rights-of-way nor hinder access or traffic flow.
- E. Loading and service areas should be designed out of view from public roads.

- Retail Operations: One loading space for each 5,000 square feet of gross floor area or fraction thereof
- Wholesale and industrial: One loading space for each 10,000 square feet of operations gross floor area or fraction thereof

Section 130.6 Shopping Center Parking Requirements.

Commercial developments with a mixture of tenants and uses shall provide parking according to the following standards.

- Shopping Centers with less than 20,000 square feet: 1 per 180 square feet of gross floor area.
- Shopping Centers with 20,000 to 50,000 square feet: 1 per 200 square feet of gross floor area.
- Shopping Centers with greater than 50,000 square feet: 1 per 225 square feet of gross floor area.

Section 130.7 Mixed Use Building Parking Requirements.

Buildings with a mixture of uses shall provide parking according to the following standards. The portion of the building used for residential purposes shall provide parking at the rate of two (2) spaces per dwelling unit. The portion of the building used for non-residential purposes shall provide parking according to the rates for the non-residential use, as listed in the “Table of Parking Ratios” above.

Section 130.8 Stacking/ Drive Thru Reservoir Requirements.

For uses utilizing drive-thrus stacking/ reservoir space shall be provided for a minimum of five (5) vehicles. For automatic teller machines stacking/ reservoir space shall be provided for a minimum of three (3) vehicles.

Section 130.9 Landscaping Requirements.

The following landscaping requirements shall apply:

- A. Within parking areas, tree planting areas shall be provided for every 10 parking spaces. Tree planting areas shall be at least eight (8) feet wide, a minimum of 200 square feet in area, include at least one (1) shade tree, and be designed to minimize damage to trees by parking or moving vehicles. The remaining area shall be landscaped with plantings (bushes, shrubs, flower beds, rain gardens). Pedestrian ways are permitted within parking landscaped areas but do not count towards the area requirement.

- B. A vegetative strip shall be provided between public right-of-ways and interior parking areas and where two parking areas abut. The vegetative strip shall be at least ten (10) feet wide and shall include a minimum of one (1) large canopy tree per fifty (50) feet. Grass, shrubs, bushes, flower beds, pedestrian amenities, decorative walls and fences, stormwater retention areas, and sidewalks may be placed in this area. Only where existing overhead utility lines prevent use of large maturing trees may small maturing trees be substituted. Landscaping may be provided within the required parking setback but shall not impede visibility at corners and intersections.

Section 130.10      General Parking Requirements.

The following general parking requirements shall apply:

- A. In all districts, parking is permitted within the required yards.
- B. No parking space shall be more than three hundred (300) feet from a building entrance.
- C. Parking areas shall provide spaces in sufficient number and design that are accessible for persons with disabilities in a manner compliant with the Americans with Disabilities Act (ADA) requirements or other federal, state and local laws.
- D. Parking shall not be closer than ten (10) feet from the front property line, any dedicated street or railroad right-of-way line. When no right of way exists, then a 50-foot distance will be used to determine the setback (25-feet on each side from the center of the road). This distance is measured from the middle of the existing road or street.
- E. Parking shall not be closer than five (5) feet from any side or rear property line, not a street line.
- F. Parking spaces shall be striped to designate stalls.
- G. Angle parking stall dimensions: 30-90 degree shall be a minimum eight (8) feet by eighteen (18) feet.  
         Parallel parking stall dimensions: shall be a minimum eight (8) feet by twenty-two (22) feet.
- H. Parking shall be accessed by adequate egress and ingress, drives, and maneuvering space.
- I. Parking egress and ingress, drives, and maneuvering space shall be paved with asphalt or concrete. Pervious paving, such as porous asphalt, porous concrete, or grass pave is permitted where appropriate as determined by a certified engineer.

- J. Parking areas shall be designed and constructed to dispose of all surface water accumulated within the area in a manner that will not contribute to the subsidence, erosion, or sedimentation of the development site or offsite
- K. To insure safe sight distances where streets intersect and where driveways intersect streets, a minimum clear vision area shall be provided at the corners of the intersections according to NCDOT standards. No structure, planting, sign, fence, wall or obstruction to vision that would impede visibility shall be established in the clear vision area. Grading of land may be required where topography impedes the required clear vision area.
- L. Vehicular access points to the development shall be designed according to NC DOT standards to encourage smooth traffic flow with minimum hazards to pedestrians, bicycles and vehicular traffic. Accommodations for controlled turning movements into and out of the development and improvement of the approach street shall be provided according to NC DOT requirements.
- M. Lighting shall be provided for the safety of individuals within the parking area. In order to reduce the impact of lighting on neighboring residential uses, potential safety hazards to the traveling public, and affect on viewsheds and nightscapes, lighting shall meet the following requirements:
  - 1) Exterior lighting shall be fully shielded and directed to avoid illuminating the night sky.
  - 2) Lighting shall not illuminate neighboring residential properties.
  - 3) Lighting shall not be directed towards or illuminate the I-40 Interstate right-of-way or be directed in a manner as to distract or harm the traveling public on road rights-of-way.
  - 4) On-site lighting may be used to accent architectural elements and provide safety and security on pedestrian walkways, at building entrances, and public areas between buildings, but shall not be used to illuminate entire portions of building(s).

In order to promote safety and security in developments, lighting should be used at intersections, development entrances, and in parking areas.

**ARTICLE XIV****BUFFERS AND SCREENING**

The purpose of this Article is to preserve and protect the health, safety, and general welfare of the residents of Rutherford College by promoting the environmental and public benefits of buffers. It is intended to improve compatibility and provide transition between different zoning districts and preserve the character and aesthetics of an area.

**Section 140.1**

Buffer strips shall be provided upon any side or rear lot line where non-residential use and/or non-residential zoning districts abut residential zones. No such buffer strip shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining lot and no such buffer shall be required upon any yard which abuts a public street.

**Section 140.2**

A buffer strip shall be at a minimum one of or equal to the following:

- A. A planting strip at least ten (10) feet in width, composed of deciduous or evergreen trees or a mixture of each, spaced not more than ten (10) feet apart and not less than one (1) row of dense shrubs, spaced not more than five (5) feet apart and five (5) feet in height after one (1) growing season;
- B. A six-foot high solid picket type fence with the pickets being placed facing the adjoining property;
- C. A six-foot high, open type fence with dense evergreen shrubs planted facing the adjoining property, spaced not more the five (5) feet apart and five (5) feet or more in height after two (2) growing seasons;
- D. A six-foot high chain link type fence with panel inserts;
- E. A six-foot high masonry, brick, or stucco wall;
- F. A earthen berm and planting combination, at least fifteen (10) feet in width, with the berm an average of three feet in height and dense plantings, which will, when combined with the berm, achieve a minimum height of eight (8) feet within two growing seasons;
- G. In lieu of compliance with the above buffer requirements, an applicant may submit to the Zoning Enforcement Officer, a detailed plan showing the retention of existing vegetation and natural forest growth that will satisfy one of the above requirements.

Section 140.3

Manufacturing and Industrial use and/or zoning shall maintain a fifteen (20) feet buffer strip and within the buffer strip there shall be planted a continuous screen of evergreen plants with an initial height of at least six (6) feet by natural growth within no later than a two (2) year period.

Section 140.4

Each site plan and application for zoning permit shall include information as to the location and type of buffer to be erected, where required.

Section 140.5

No structures, buildings, or parking may be located within buffer areas, with the exception of permitted signage, pedestrian amenities, and decorative elements.

Section 140.6

The buffer shall be maintained, and dead and diseased plants replaced by the owner or occupant of the premises. The outside storage of materials shall be prohibited in the area between the planted buffer and the residential district. The owner or occupant of the premises shall properly and continuously maintain this area.

Section 140.7 Screening.

- A. Non-residential uses with outdoor storage of materials, equipment, vehicles, etc shall provide screening according the following requirements.
  - 1) A six-foot high, fence with dense evergreen shrubs planted facing the adjoining property, spaced not more the five (5) feet apart and five (5) feet or more in height after two (2) growing seasons
  - 2) Storage of materials, equipment, vehicles, etc shall be located in the rear.
- B. Uses which provide dumpsters or similar trash containers shall provide screening according the following requirements, with the exception of single family residential uses and temporary construction dumpsters. However, upon completion of construction all construction dumpsters shall be removed.
  - 1) Dumpsters and similar trash containers shall be hidden by an opaque fence or wall of sufficient height to screen the container, but not less than six (6) feet in height.

- 2) The wall or fence shall enclose the dumpster on all four sides. Gates or doors for access on one side are permitted.
- 3) The fence or wall shall match the color and be constructed of materials similar to the main building.

**ARTICLE XV**

**ADMINISTRATION, ENFORCEMENT AND PENALTIES**

Section 151. Zoning Enforcement Officer

This ordinance shall be administered and enforced by the Zoning Enforcement Officer or his designated representative who shall be named by the Town Council, and is hereby empowered:

- 151.1 To issue a Zoning Compliance Permit when these regulations have been followed, or to refuse to issue the same in the event of noncompliance. Written notice of such refusal and reason therefore shall be given to the applicant.
- 151.2 To collect the designated fees as set forth in this ordinance for a Zoning Compliance Permit, variances, and appeals.
- 151.3 To make and keep all records necessary and appropriate to the office, including record of the issuance and denial of all Zoning Compliance Permits and of receipt of complaints of violation of this ordinance and action taken on the same.
- 151.4 To inspect any building and/or land to determine whether any violations of this ordinance have been committed or exist.
- 151.5 To enforce this ordinance and take all necessary steps to remedy any condition found in violation by ordering in writing the discontinuance of illegal uses or illegal work in progress and may institute mandamus, or other appropriate action; and
- 151.6 To keep the Board of Adjustment advised of all matters other than routine duties pertaining to the enforcement of this ordinance and to transmit all applications and records pertaining to appeals, variances, or requests for conditional use approval.

Section 152. Zoning Compliance Permit and Building Permit Required

Within the Town Limits of Rutherford College no building, sign or other structure shall be erected, moved, added to or structurally altered before a Zoning Compliance Permit has been issued by the Zoning Enforcement Officer of the Town of Rutherford College or designated representative and a building permit is issued by the Burke County Building Inspector.

### Section 153. Application for a Zoning Compliance Permit

Each application to the Zoning Enforcement Officer for a zoning permit shall be accompanied by plot plans in duplicate showing:

- A. The actual dimensions of the lot to be built upon,
- B. The size of the building to be erected,
- C. The location of the building on the lot,
- D. The location of existing structures on the lot, if any,
- E. The number of dwelling units the building is designed to accommodate,
- F. The approximate setback lines of buildings on adjoining lots,
- G. The intended use of the property,
- H. The Burke County Tax Map identification number of the property and a copy of the metes and bounds description of the lot of record,
- I. Such other information as may be essential for determining whether the provisions of this Ordinance are being observed.

Any zoning permit issued shall expire and be canceled unless the work authorized by it shall have begun within six (6) months of its date of issue, or if the work authorized by it is suspended or abandoned for a period of one (1) year. Written notice thereof shall be given to the persons affected, including notice that further work as described in the canceled permit shall not proceed unless and until another zoning permit has been obtained.

### Section 154. Fees

A fee of twenty-five dollars (\$25) is charged for the Zoning Compliance required by the Town of Rutherford College, prior to obtaining a Building Permit from Burke County. Burke County charges for the Building Permit.

### Section 155. Violation

Whenever, by the provision of this Ordinance, the performance of any act is required, or the performance of any act is prohibited, or whenever any regulation or limitation is imposed on the use

of any land and water, or on the erection of a structure, a failure to comply with such provisions shall constitute a violation of this Ordinance.

#### Section 156. Liability

The owner, tenant, or occupant of any land or structure, or part thereof, and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance shall be held responsible for the violation and be subject to the penalties and remedies provided herein.

#### Section 157. Procedure Upon Discovery of Violation

Upon the determination that any provision of this Ordinance is being violated, the Zoning Enforcement Officer shall send, within five (5) working days, a written notice by registered mail to the person(s) responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Zoning Enforcement Officer's discretion.

#### Section 158. Penalties

Any violation of this Ordinance or amendments thereto shall constitute a misdemeanor, and those convicted of such violation shall be punished as provided by G.S. 14-4 with a fine not exceeding fifty dollars (\$50) a day or by imprisonment not to exceed thirty (30) days.

#### Section 159. Remedies

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Ordinance or a regulation made under authority conferred by this Ordinance, the Zoning Enforcement Officer, in addition to other remedies, may institute any appropriate action on proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises.

**ARTICLE XVI****BOARD OF ADJUSTMENT**Section 161. Establishment of Board of Adjustment

A Board of Adjustment is hereby established. The Board shall consist of seven members; six members shall be residents of the Town of Rutherford College, and the other member shall be appointed as provided in Section 160A-362 of the General Statutes of North Carolina. Said Board shall be appointed by the Town Council for overlapping terms of three years. Initial appointment of the town members shall be as follows: One (1) member for a term of three (3) years, two (2) members for a term of two (2) years, and two (2) members for a term of one (1) year. Initial appointment for extraterritorial members shall be as follows: One (1) member for a term of three (3) years, and one (1) member for a term of two (2) years. Any vacancies in the membership shall be filled for the unexpired term in the same manner as the initial appointments. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board.

Section 162. Jurisdiction and Decision of the Board of Adjustment

The six (6) members appointed to the Board of Adjustment by the Town Council shall be residents and citizens of the Town of Rutherford College. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Building Inspector within the Town of Rutherford College, or to decide in favor of the applicant any matter upon which it is required to pass under the zoning ordinance or to effect any variation of such ordinance. On all appeals, applications and other matters brought before the Board of Adjustment, said Board shall inform in writing all parties involved of its decision and the reasons therefore.

Section 163. Proceedings of the Board of Adjustment

The Board of Adjustment shall elect a chairman and a vice-chairman from its members who shall serve for one (1) year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a municipal officer, an employee of the Town or a member of the Planning Board. The Board shall adopt rules and by-laws in accordance with the provisions of this ordinance and of Article 19, Chapter 160A, of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the chairman, and at such other times as the Board may determine. The chairman, or in his absence, the vice-chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public.

#### Section 164. Appeals, Hearings and Notice

Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, a department, board, or bureau of the Town of Rutherford College, affected by any decision of the Zoning Enforcement Officer or other Town official based on this ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the Zoning Enforcement Officer and with the Board of Adjustment a written notice of appeal specifying the grounds thereof. All papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted to the Board of Adjustment.

The Board of Adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it, and give due notice thereof to the parties in interest and decide the same within a reasonable time. Upon a hearing, any party may appeal in person, or by agent or by attorney.

#### Section 165. Stay of Proceedings

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Enforcement Officer and on due cause shown.

#### Section 166. Fees for Variances or Appeals

A fee of seventy-five dollars (\$75) shall be paid to the Town Clerk of the Town of Rutherford College, North Carolina, for each application for a variance, conditional use permit, or appeal, to cover the necessary administrative costs and advertising cost. If additional advertising costs, etc. arise, the cost will be paid by the applicant.

#### Section 167. Powers and Duties of the Board of Adjustment

The Board of Adjustment shall have the following powers and duties:

- 167.1 Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the Zoning Enforcement Officer in the enforcement of this Ordinance.
- 116.2 Conditional Uses: Condition Governing Application. To grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses as authorized by this ordinance and set forth as Conditional Uses under the various use districts. The Board shall not grant a conditional use permit unless and until:

167.21 A written application for a conditional use permit is submitted to the Zoning Enforcement Officer indicating the section of this ordinance under which the conditional use permit is sought.

167.22 A public hearing is held. Notice of such public hearing shall be posted on the property for which the conditional use permit is sought and in a local newspaper at least fifteen (15) days prior to the public hearing. This legal notice shall describe the request and appear at least once weekly for two (2) consecutive weeks prior to the public hearing.

167.23 The Board of Adjustment finds that in the particular case in question the use for which the conditional use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvement in the neighborhood. In granting such a permit the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this ordinance.

If at any time after a conditional use permit has been issued, the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such a use discontinued. If a conditional use permit is terminated for any reason it may be reinstated only after a public hearing is held.

167.3 Variances. To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. The existence of a non-conforming use of neighboring land, buildings or structures in the same district or of permitted or non-conforming uses in other districts shall not constitute a reason for the requested variance. Such variance may be granted in an individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:

167.31 There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or

topography that are not applicable to other lands or structures in the same district;

- 167.32 Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located;
- 167.33 A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located;
- 167.34 The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- 167.35 The special circumstances are not the result of the actions of the applicant;
- 167.36 The variance requested is the minimum variance that will make possible the legal use of the land, building or structure;
- 167.37 The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved.

#### Section 168. Appeal from the Board of Adjustment

Any person or persons, jointly or severally, aggrieved by any decision of the Board, any taxpayer, or any officer, department, board or bureau of the Town of Rutherford College, may, within thirty (30) days after the filing of the decision in the office of the Board, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal in whole or in part, specifying the grounds of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.

**ARTICLE XVII****AMENDMENTS**

The Town Council may amend, supplement or change the text regulations and zoning district lines according to the following procedures. Under no circumstances shall the Town Council adopt such amendments that would cause this Ordinance to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission. Amendments affecting the watershed protection portions of this Ordinance shall be filed with the North Carolina Division of Environmental Management, the North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

**Section 171. Action by the Applicant**

- 171.1 **Initiation of Amendments.** Proposed changes or amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, or by one or more owners or lessees of property within the area proposed to be changed or affected.
- 171.2 **Application.** An application for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be applied, and the names and addresses of the owner or owners of the property. Such application shall be filed at the Rutherford College Town Hall with the Zoning Enforcement Officer or a designated representative not later than three (3) weeks prior to the meeting at which the application is to be considered.
- 171.3 **Fee.** A fee of seventy-five dollars (\$75) shall be paid to the Town Clerk of the Town of Rutherford College, North Carolina, for each application for an amendment to cover the necessary administrative costs and advertising costs. If additional advertising costs, etc. arise, the cost will be paid by the applicant.

**Section 172. Action by the Planning Board**

The following action shall be taken by the Planning Board:

- 172.1 **Planning Board Consideration.** The Planning Board shall consider and make recommendations to the Town Council concerning each proposed zoning amendment. The Planning Board may hold separate public hearings or may sit concurrently with the public hearing held by the Town Council.

Section 173. Action by the Town Council

- 173.1 Town Council Consideration. The Town Council shall consider changes and amendments to this ordinance as often as necessary, provided, however, that should the Town Council deny a request for a zoning amendment, it shall not thereafter accept any other application for the same change of zoning district affecting the same property, or any portion thereof, until the expiration of one (1) year from the date of such previous denial.
- 173.2 Notice of Public Hearing. No amendment shall be adopted by the Town Council until after public notice and hearing. Notice of public hearing shall be published in a newspaper of general circulation in the Town of Rutherford College at least once a week for two (2) successive weeks prior to hearing. Notice may also be made by posting the property concerned or by mailing notices to the owners of surrounding property.
- 173.3 Town Council Action. Before taking such lawful action as it may deem advisable, the Town Council shall consider the Planning Board's recommendations on each proposed zoning amendment. If no recommendations are received from the Planning Board within thirty (30) days after public hearing by the Town Council, the proposed amendment shall be deemed to have been approved by the Planning Board.
- 173.4 Protests. In case, however, of a protest against such changes signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths (3/4) of all members of the Town Council.

No protest against any change in or amendment to the Zoning Map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, unless it shall have been received by the Town Clerk in sufficient time to allow the Town at least two normal working days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition (G.S. 160A-387). A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed amendment.

**ARTICLE XVIII****LEGAL STATUS PROVISIONS**Section 181. Conflict with Other Regulations

Whenever the regulations of this ordinance require a greater width of size of yards, or other open space, or require a lower height of buildings, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statutes, the regulations and requirements of this ordinance shall govern.

Whenever the provisions of any other statute require more restrictive standards than are required by this ordinance, the provisions of such statute shall govern.

Section 182. Town Attorney May Prevent Violation.

If any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any structure or land is used in violation of this Ordinance, the Zoning Enforcement Officer shall inform the Town Attorney. In addition to other remedies, the Town Attorney may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or restrain, correct or abate such violation, to prevent the occupancy of such structure or land or to prevent any illegal act, conduct, business or use in about the premises.

Section 183. Repeal of Existing Zoning Ordinance

All zoning ordinances or parts of same now in effect in the Town of Rutherford College are hereby repealed, provided, however, that all suits at law or in equity and/or all prosecutions resulting from the violation of any zoning ordinance heretofore in effect, which are now pending in any of the courts of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this ordinance but shall be prosecuted to their finality the same as if this ordinance had not been adopted; any and all violations of existing zoning ordinances, prosecutions for which have not yet been instituted, may hereafter be filed and prosecuted; and nothing in this ordinance shall be so construed as to abandon, abate, or dismiss any litigation or prosecution now pending, and/or which may have heretofore been instituted or prosecuted.

Section 184. Validity

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 185. Adoption Date

This ordinance shall take effect and be in force from and after its adoption by the Town Council of the Town of Rutherford College, North Carolina, this **5<sup>th</sup> day of April, 2010.**