

**THE ZONING ORDINANCE
OF THE
TOWN OF HIGHLANDS
STATE OF NORTH CAROLINA**

Current through July 6, 2011

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ARTICLE 100: PREAMBLE AND GENERAL REGULATIONS

Section 101. Preamble and enactment clause.

The Legislature of the State of North Carolina has, in Article 8, Section 174, General Ordinance Authority, and Section 175, Enforcement; Article 19, Part 1, Extra-territorial Jurisdiction, Part 3, Zoning, Part 3(b), Historic Properties, Part 4, Open Space, Part 7, Appearance Regulations, and Part 8, Section 458.2, Mountain Ridge Protection; and Article 21, Chapter 143, Watershed Protection Rules, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Board of Commissioners of the Town of Highlands, a corporate municipality of the State of North Carolina, does hereby ordain and enact into law the following sections as the Zoning Ordinance of the Town of Highlands, State of North Carolina, 1970 (and all subsequent amendments thereto).

Section 102. Short title.

This Ordinance shall be known and may be cited as "The Zoning Ordinance of the Town of Highlands, State of North Carolina."

Section 103. Jurisdiction.

The provisions of this Ordinance shall apply within the entire corporate limits of the Town of Highlands ("the Town") and the entire extraterritorial area as may hereafter be brought within the purview of this article pursuant to law, which area of application shall be defined and established on the map entitled "Zoning Map of the Town of Highlands, North Carolina" ("the Zoning Map"), which is adopted simultaneously herewith or as the same may be amended from time to time. The Zoning Map and all explanatory matter thereon accompanies and is hereby made a part of this Ordinance and, together with a copy of this Ordinance, shall be permanently kept on file in the office of the Town Clerk. The provisions of this Ordinance relating to Watershed Protection Rules shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission within the corporate limits of the Town of Highlands, as defined and established on the Zoning Map as Watershed Overlay Districts.

Section 103(A). Extraterritorial Jurisdiction.

(A) Statutory authorization and purpose. The Legislature of the State of North Carolina has in Article 19 of Chapter 160A, Sections 360 and 362 developed a procedure for local governments to establish an extraterritorial jurisdiction within one mile of its corporate jurisdiction. The purpose of this ordinance is to establish an extraterritorial jurisdiction for the Town of Highlands (hereinafter "ETJ")

(B) ETJ boundary description. The ETJ boundary is drawn in accordance with the guidelines set forth in G.S. 160A-360(b). The boundary is shown on the attached map entitled, "ZONING MAP OF THE TOWN OF HIGHLANDS, NORTH CAROLINA", which is adopted simultaneously herewith. In cases where the boundary line follows a roadway, the centerline of said roadway shall be the ETJ boundary. In cases where the boundary line follows a property boundary line, said property line shall be the ETJ boundary. In cases where the boundary line follows a national forest boundary line, said national forest line shall be the ETJ boundary. In all cases where the ETJ boundary cannot be determined, the line shall extend along the nearest roadway centerline or property boundary line.

(C) Public record. The official copy of this ordinance and map shall be on record in the office of the Town Administrator and shall be available for public inspection during normal business hours at the Town office. The Town Administrator shall cause a certified copy of this ordinance and map to be recorded in the office of the Register of Deeds of Jackson and Macon Counties.

(D) Effective date. This Ordinance shall become effective upon adoption.

Section 104. Relationship to Land Use Plan.

It is the intention of the Board of Commissioners that this Ordinance implement the planning policies adopted by the Board for the Town and its extraterritorial planning area, as reflected in the Highlands Land Use Plan, 1989-2009. While the Board reaffirms its commitment that this Ordinance and any amendment to it be in conformity with adopted planning policies, the Board hereby expresses its intent that neither this Ordinance nor any amendment hereto may be challenged on the basis of any alleged nonconformity with the Plan.

Section 105. Exemptions.

Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any county ordinance or regulation pertaining thereto; nor shall any

provision of this Ordinance amend, modify, or restrict any provisions of the Code of Ordinances of the Town of Highlands, North Carolina; however, the adoption of this Ordinance shall and does amend by substitution in the entirety "The Zoning Ordinance of the Town of Highlands, North Carolina, 1970," and the further amendments and provisions of that ordinance adopted; and any and all ordinances, resolutions, and regulations in effect in the Town as of the time of the adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance or to conflict with any of its provisions; and further, that any court decision holding any portion of this Ordinance invalid shall not affect the corresponding provision of the original ordinance that this Ordinance seeks or purports to amend.

Section 106. Use districts.

For the purpose of this Ordinance, the area within the jurisdiction of this Ordinance is divided into the following designated use districts:

Identifier	Description
R-1	(Section 201) R-1 Residential District
R-2	(Section 202) R-2 Residential District
R-3	(Section 203) R-3 Residential District
B-1	(Section 204) B-1 Business District
B-2	(Section 205) B-2 Business District
B-3	(Section 206) B-3 Business District
B-4	(Section 207) B-4 Business District
GI	(Section 208) Governmental/Institutional District
WS-II-CA	(Section 209) WS-II-CA Watershed Overlay District
WS-III-CA	(Section 210) WS-III-CA Watershed Overlay District
WS-III-BW	(Section 211) WS-III-BW Watershed Overlay District

Section 107. District boundaries.

Boundaries of the use districts are as shown on the Zoning Map.

Section 108. Interpretation of district boundaries.

(A) Unless otherwise indicated upon the zoning map, district boundary lines shall follow:

- (1) The municipal corporate limits or the limits of the jurisdiction of

this Ordinance, whichever may encompass a larger area;

(2) The center lines of streets, stream beds, ridge lines; or,

(3) Lot lines as established on the map of the Town as recorded in Plat Book 1, at Page 104, and Plat Book 1, at Page 141, of the Macon County Registry, or with the lot lines of any parcel of land now defined among the Macon County public records.

(B) Where district boundaries are not clearly indicated on the Zoning Map, the same shall be located on the ground by use of a scale upon the Zoning Map or, alternately, by appeal to the Board of Adjustment.

(C) Where uncertainty exists as to the boundaries of any Watershed Overlay District, as shown on the Zoning Map, the foregoing rules shall apply.

Section 109. Non-conforming lots.

(A) Any single lot, as defined by this Ordinance, that does not meet the minimum density requirements of this Ordinance, may nevertheless be used as a building site, provided that the lot was in existence at the time of the adoption of this Ordinance, or, alternatively, complied with the single-family site density requirements of this Ordinance in effect at the time it was recorded, as evidenced by a recorded plat or as described in a conveyance recorded among the public records of Macon County.

(B) In addition to the foregoing, any single lot, as defined by this Ordinance, that is located within a Watershed Overlay District, and which equals or exceeds the minimum lot size for the overlay district, may be used as a building site. However, if a single lot does not equal or exceed the minimum lot size for said Watershed Overlay District, then it may be developed only if the resulting development does not exceed the built-upon limits for the overlay district.

Section 110. Non-conforming uses, buildings and premises, and manufactured homes; existing development and reconstruction in watershed overlay districts; watershed lot density and build-upon limits.

(A) Non-conforming uses. The lawful use of any building or premises at the time of the enactment of this Ordinance, or immediately preceding any applicable amendment thereto, may be continued even though the use does not conform with the provisions of this Ordinance, under the following conditions.

(1) A non-conforming use may not have its use changed to another

non-conforming use.

(2) A non-conforming use may not be re-established after its discontinuance for a period of twelve (12) consecutive months. If the discontinuance of the use is caused by damage from an unintentional fire or other natural disaster, then the building in which the use is located may be repaired and/or reconstructed and the use may thereby be re-established provided:

(a) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage. "Initiated," as used in this section, shall mean the actual installation of building materials or demolition in preparation for such installation. "Initiated" shall not include placement or storage of building materials, surveying, or other activities in anticipation of or related to such actual installation or demolition. "Completed," as used in this section, shall mean the issuance of a Certificate of Compliance in accordance with this Ordinance.

(b) The total built-upon area may not be increased, nor the setbacks extended, beyond those of the original building, except in conformance with this Ordinance.

(3) A non-conforming use may be expanded, notwithstanding the foregoing provision, by an increase in size of the building in which the use is located, or by extending the use to an additional building or buildings on the same property, only upon issuance of a Special Use Permit in accordance with this Ordinance.

(B) Non-conforming buildings and premises. Buildings and premises (including parking areas and other parts thereof) which existed at the time of the enactment of this Ordinance, or immediately preceding any applicable amendment thereto, shall be deemed in compliance herewith, except in the following cases:

(1) Additions. If an addition is made to any existing building or premises, such addition shall comply with the current provisions of this Ordinance.

(2) Alterations, repairs, or rebuilds. Non-conforming buildings may be altered or repaired, but such buildings shall not be enlarged or expanded except in conformance with this Ordinance. Non-conforming buildings that are destroyed or condemned may not be rebuilt or repaired except in conformance with this Ordinance.

(3) Change of use. If the use of a building changes so that the requirements for the new use are in any way more stringent than the requirements for the previous use of the building, such building and premises shall be made to conform to the current requirements of this Ordinance.

(4) Discontinuance of use. If the use of any building or premises has been discontinued for a period of twelve (12) consecutive months, the use shall not be re-established until said building and premises shall be made to conform as much as possible to the current requirements of this Ordinance. Conformance herewith shall not be required as relates to existing building size, in cases where it is not reasonable or practical to do so. The Zoning Board of Adjustment shall have the authority to grant a variance from the requirements of this Ordinance in accordance with Section 602.3 in individual cases where, owing to special conditions, a literal enforcement of the provisions herein will result in practical difficulties or unnecessary hardship.

(C) Non-conforming manufactured homes. Manufactured homes, as defined by this Ordinance, which existed at the time of the enactment of this Ordinance, or immediately preceding any applicable amendment thereto, shall be deemed in compliance herewith in any zoning district. In addition, non-conforming manufactured homes may be replaced one (1) time with a manufactured home of equivalent size on the same site, provided the replacement trailer has been constructed after July 1, 1976, and all of the following conditions are met:

(1) The unit is occupied by persons owning the land on which the unit is located.

(2) The tongue, axles, removable towing apparatus, and transporting lights are removed after final placement on the site.

(3) A continuous, permanent masonry curtain wall or foundation, unpierced except for ventilation and covered access, is installed under the unit.

(4) The exterior siding consists predominantly of horizontal or vertical vinyl, aluminum, wood, or hardboard siding.

(D) Existing Development in Watershed Overlay Districts. Existing development on single lots in watershed overlay districts which do not equal or exceed the minimum lot size for the overlay district, and which existed at the time of the enactment of this Ordinance or immediately preceding any applicable amendment thereto, shall be deemed in compliance herewith. Additional development shall be permitted on such lots only if it does not result in the overall built-upon area for the lot exceeding the built-upon limits for the overlay district.

(E) Reconstruction in Watershed Overlay Districts. Notwithstanding paragraph (D) of this Section, 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, 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.

(F) Watershed lot density and built-upon limits. Watershed overlay lot size and built-upon limits shall be determined based on the portion of the lot that is not underwater.

Section 111. Required yards and other spaces.

No part of a yard, open space, off-street parking space, or loading area required in connection with any building, structure, or use by this Ordinance shall be considered to be part of a required yard, open space, off-street parking space, or loading area for any other building, structure, or use.

Section 112. Vision clearance.

Driveways shall, whenever possible, be located so that drivers of vehicles can see far enough in both directions to be able to safely enter the highway. No obstruction to vision, such as a fence, wall, shrub, or sign shall be permitted within ten (10) feet of the driveway (See Appendix A). No driveway shall be permitted within twenty (20) feet of an intersection.

Section 113. Computation of fractional requirement for families.

If computing the number of families permissible on any parcel of property yields a fraction of a family under this Ordinance, the total number of families permissible on the parcel shall be rounded and equivalent to the nearest integer.

Section 114. Outdoor Display of Merchandise Prohibited.

Intent and purpose: The purpose of this section is to enhance the economic vitality of established commercial areas by permitting the display of merchandise in outdoor areas under uniform standards. These standards address aesthetics, safety and other matters of public concern, and thereby promote the general welfare of the Town. Outdoor displays of merchandise shall be designed, operated and maintained in a neat and

orderly manner so to be compatible in appearance with the existing scale and character of the Town of Highlands. This section shall not apply to retail plant nurseries.

(A) Definitions.

(1) “Outdoor display” shall mean the placing or placement of merchandise in the Outdoor Area adjacent to a commercial establishment, for the purpose of the sale of such goods to the public in the ordinary course of business.

(2) “Outdoor Area” – Any area outside the limits of the building, as defined by Article 1000 of this Code, and including the roof.

(B) Regulations within B-1 and B-2 zoning districts:

(1) Outdoor displays, as defined herein, shall be allowed only upon compliance with the provisions of this section.

(2) Outdoor displays shall be allowed only as an accessory use to operating retail businesses, and only pursuant to a valid outdoor display permit.

(3) Outdoor displays shall be permitted only on the private property of the permit holder in areas immediately adjacent and contiguous to the front or side facades of the associated commercial building.

(4) No clothing or other wearing apparel may be displayed outdoors.

(5) No merchandise with wind movable parts may be displayed outdoors.

(6) No signage associated with an outdoor display may be displayed outdoors.

(7) No material classified as “highly flammable” under County, State, Federal, or other Town ordinances may be displayed outdoors. Firewood and propane cylinders shall not be considered “highly flammable” for purposes of this ordinance.

(8) No material classified as a Hazardous Household Product as per the North Carolina Cooperative Extension Service, Publication Number HE-368-1 dated March 1996, or the most current publication of said document, may be displayed outdoors.

(9) Outdoor displays shall meet all applicable fire, health, building and handicapped access requirements and regulations. Entrances and/or exits to all buildings shall be maintained free and clear of merchandise or other items, including but not limited to items hung on doors or at entryways.

(10) The full width or a minimum of five (5) feet, whichever is smaller, of a private sidewalk which is open to the public, shall be kept clear of outdoor displays.

(11) Outdoor display permits shall be issued by the Zoning Administrator. The permit shall be issued to the commercial business and is not transferable.

(12) The application for a permit for outdoor display shall be on a form promulgated by the Zoning Administrator. The following information, and any other information requested by the Zoning Administrator, shall be supplied by the applicant at the discretion of the Zoning Administrator:

- (a) The name, address and phone number of the commercial establishment.
- (b) The name, address and phone number of the business owner.
- (c) A recent survey of the subject property, showing the proposed area for the outdoor display and the location of existing public and private sidewalks and walkways.
- (d) A description of the general nature of the items to be displayed.
- (e) A recent photograph from all adjacent streets of the subject property and the adjoining properties with the same street frontage.

(C) Additional Regulations within B-3, B-4 and B-5 ETJ zoning districts:

The following regulations shall apply in the B-3, B-4 and B-5 ETJ zoning districts in addition to those required under Section 114(B) above.

(1) Outdoor displays shall be limited to an area within twenty-five (25) feet of the front or the side of the principal commercial structure.

(2) Outdoor displays shall not be allowed within twenty-five (25) feet of the edge of pavement of any Town, State or Federal roadway, or within ten (10) feet of the back edge of a public sidewalk, if applicable.

Section 115. Slope Development Standards.

The following requirements apply to all new construction where the footprint of the construction is situated on a slope greater than 30%. No development shall be undertaken that increases the surface runoff reaching adjacent or surrounding property as a consequence of the development.

(A) Surface runoff shall be controlled onsite by implementing one or more NCDWQ approved Best Management Practices. Approved BMPs include bio-retention areas and rain gardens, infiltration trenches and wells, level spreaders and riparian buffers, reinforced grassy swales, and riprap. The owner/builder shall include both

temporary and permanent site specific BMPs on the site plan.

(B) In addition to practices as may be required in paragraph(A) of this Section, wire backed silt fencing shall be installed on the downhill periphery of any area of disturbed earth. The fencing shall extend a minimum of twenty-four inches above ground with the bottom of the fence buried six-nine inches below ground on the uphill side of the fence and packed down to prevent blowouts. For heavy runoff areas, bales of straw may be required in conjunction with the silt fencing. Silt fencing shall be installed immediately following tree removal and before earth is disturbed. Silt fences shall be maintained throughout construction until the disturbed area is stabilized with permanent ground cover approved by the Watershed Administrator.

(C) In addition to practices as may be required in paragraph(A) of this Section, driveways must be roughed-in prior to the start of construction including appropriate, installed BMPs and a binder coat of asphalt applied to the driveway surface for the duration of the construction. Completed driveways must be paved with asphalt or concrete. Driveways longer than 45 feet may require one or more cross driveway water traps with grates that direct the stormwater runoff to an approved BMP such as a rain garden or infiltration system."

Section 116 Minimum Standards for Habitability

116.1. Findings and intent.

The Town Council finds that uninhabited structures, when allowed to fall into such a state of disrepair as defined within this ordinance, create a hazard to the public health, safety and welfare of the residents of the town, due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. 160A-441, it is the intent of this ordinance to provide for the repair, closing or demolition of any such uninhabited structures in accordance with the same provisions and procedures as are set forth by law for the repair, closing or demolition of dwellings unfit for human habitation.

116.2. Enforcement

The code enforcement officer is hereby designated as the town officer to enforce the provisions of this division.

116.3. Powers of the code enforcement officer.

(A) The code enforcement officer is authorized to exercise such powers as may be necessary to carry out the intent and the provisions of this division, including the

following powers in addition to others granted:

(1) Investigate the condition of uninhabited buildings within the town in order to determine which structures are in violation of this division.

(2) Enter upon premises for the purposes of making inspections.

116.4. Standards for enforcement.

(A) Any uninhabited structure within the town shall be deemed in violation of this division whenever such structure constitutes a hazard to the health, safety or welfare of the town citizens as a result of:

- (1) The attraction of insects or rodents.
- (2) Conditions creating a fire hazard.
- (3) Dangerous conditions constituting a threat to children.
- (4) Frequent use by vagrants as living quarters in the absence of sanitary facilities.

(B) In making the preliminary determination of whether or not an uninhabited structure is in violation of this division, the code enforcement officer may, by way of illustration and not limitation, consider the presence or absence of the following conditions:

(1) Holes or cracks in the structure's floors, walls, ceilings or roof which might attract or admit rodents and insects, or become breeding places for rodents and insects.

(2) The collection of garbage or rubbish in or near the structure which might attract rodents or insects, or become breeding places for rodents and insects.

(3) Violations of the state building code, the state electrical code or the fire prevention code which constitute a fire hazard in such structure.

(4) The collection of garbage, rubbish or combustible material which constitute a fire hazard in such structure.

(5) The use of such structure or nearby grounds or facilities by children as a play area.

(6) Violations of the state building code which might result in danger to children using the structure or nearby grounds or facilities as a play area.

(7) Repeated use of such structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking or eating.

116.5. Procedure for enforcement.

(A) Preliminary investigation; notice; hearing. Whenever a petition is filed with the code enforcement officer by at least five legal residents of the town and/or legal residents residing within the Town of Highlands zoning jurisdiction charging that any structure exists in violation of this division or whenever it appears to the code enforcement officer, upon inspection, that any structure exists in violation hereof, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such structure a complaint stating the charges and containing a notice that a hearing will be held before the code enforcement officer at a place therein fixed, not less than ten nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such structure. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.

(B) Procedure after hearing. If, after notice and hearing, the code enforcement officer determines that the structure under consideration is an uninhabited structure and in violation of this article in accordance with the standards herein set forth, he or she shall record at the Macon County or Jackson County (as appropriate) Register of Deed a Lis Pendens and shall state in writing his findings of fact in support of such determination, stating whether said uninhabited structure is deteriorated or dilapidated, and shall issue and cause to be served upon the owner thereof an order:

(1) If the repair to correct unsafe conditions of said uninhabited structure bringing it up to the standards described in the North Carolina State Building Code can be made at a reasonable cost in relation to the present value of the structure, the order shall require the owner, within a specified period of time, to repair such a structure so as to render it in compliance with the order of the code enforcement officer. Such order may also direct and require the owner to vacate and close the structure until the repairs have been made and/or the unsafe and dangerous character of such structure has been corrected.

(2) If the repair of said uninhabited structure bringing it up to the

standards described in the North Carolina State Building Code cannot be made at a reasonable cost of the present value of the structure, the order shall require the owner, within a specified period of time either to repair such structure so as to bring it into compliance with the standards described in the North Carolina State Building Code or to demolish and remove such structure.

(3) Upon a finding that the structure has been brought into or found to be in compliance with this Ordinance, it shall be the duty of the Code Compliance Officer to have any Lis Pendens filed in relation to the matter removed.

116.6. Appeal to Board of Adjustment

Appeals may be taken from any decision or order of the code enforcement officer under Section 16.5 to the Zoning Board of Adjustment, in accordance with the procedures specified in G.S. 160A-446.

116.7. Procedure for Enforcement Upon Noncompliance by Owner

(A) If the owner fails to comply with an order to repair the structure, the code enforcement officer may:

(1) Cause such structure to be repaired, and pending such repairs, may order such structure vacated and closed.

(2) Cause to be posted on the main entrance of any structure so closed, a placard with the following words: "Notice is hereby given that this building is in an unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally; and may be dangerously infested with rodents or insects. Said building has been condemned under the building laws of the State of North Carolina."

(B) If the owner fails to comply with an order to remove or demolish the structure, the code enforcement officer may:

(1) Cause such structure to be removed or demolished.

(2) Cause to be posted, pending removal or demolition, on the main entrance of any structure a placard with the following words: "Notice is hereby given that this building is in an unsafe and hazardous condition; may constitute a fire hazard by reasons of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally; and may be dangerously infested with rodents or insects. Said building has been condemned

under the building laws of the State of North Carolina.”

(C) Duties of code enforcement officer. The duties of the code enforcement officer set forth in subsections 16.7(A) and 16.7(B) shall not be exercised until the Town Council, by ordinance, shall have ordered the hearing officer to proceed to effectuate the purpose of this article with respect to the particular structure which the officer shall have found to be in violation of this article. No such ordinance shall be adopted to require demolition of a structure until the owner has first been given a reasonable opportunity to bring it into conformity with this article. Such ordinances shall be recorded in the Office of the Register of Deeds of Macon or Jackson County (as appropriate) and shall be indexed in the name of the property owner in the grantor index. Upon adoption by the Town Council of an ordinance authorizing and directing the property owner to do so, as provided by G.S. 160A- 443(5) and this ordinance, the code enforcement officer shall issue an order for removal or demolition and proceed to cause such structure to be removed or demolished, as directed by the ordinance of the board and shall cause to be posted on the main entrance of such structure a placard prohibiting the use or occupation of the structure. Use or occupation of a building so posted shall constitute a misdemeanor.

(D) Petition to superior court by owner. Any person aggrieved by an order issued by the code enforcement officer under Section 16.7 of this ordinance shall have the right, within 30 days after issuance of the order, to petition the superior court for a temporary injunction restraining the code enforcement officer pending a final disposition of the cause, as provided by G.S. 160A-446(f).

116.8. Methods of service of complaints and orders.

Complaints or orders issued by the code enforcement administrator pursuant to this division shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence, the code enforcement administrator shall make an affidavit to that effect, and the serving of such complaint or order upon such person may be made by publication in the manner prescribed in the North Carolina Rules of Civil Procedure. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order. Failure on the part of any owner or party in interest to receive or have served upon him any complaint, notice or order herein provided for shall not affect or invalidate the proceedings with respect to any other owner or party in interest or any other person.

116.9. Costs and lien on premises.

As provided by G.S. 160A-446(6), the amount of the cost of any removal or demolition caused to be made or done by the code enforcement administrator pursuant to this division shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by the general statutes.

116.10. Alternative remedies.

Neither this division nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this division by criminal process, and the enforcement of any remedy provided in this division shall not prevent the enforcement of any other remedy or remedies provided in this division or in other ordinances or laws.

ARTICLE 200: DISTRICT REGULATIONS.

Section 201 R-1 Residential District.

201.1. General description.

The R-1 Residential District is exclusively a low-density residential district for single-family dwellings with customary accessory outbuildings, together with such other related uses which are of a residential character or contribute to the residential character of the district.

201.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the R-1 Residential District.

201.3. Permitted uses.

Within the R-1 Residential District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

- (A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance (but expressly excluding manufactured homes).

(2) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. Outbuildings for the storage of tractors, lawnmowers, and similar equipment for the care or cultivation of property may be constructed on vacant lots subject to issuance of a Zoning Certificate. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(B) Parks and playgrounds.

(C) Golf and tennis clubs, together with such grounds, administrative offices, clubhouses, storage buildings, and other facilities customarily associated with such uses.

201.4. Uses permitted upon issuance of a Special Use Permit.

The following uses may be permitted in the R-1 Residential District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500:

(A) Churches and other places of public worship.

201.5. Minimum residential lot size and width.

Minimum lot size: 33,000 square feet per family*

Minimum lot width at building line: 100 feet

*Except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands.

*Except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement

201.6. Setbacks.

No building within the R-1 Residential District may be erected within twenty-five feet of the right-of-way line of any public or private road, nor within ten feet of the

property line of an adjoining ownership; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty-five feet of the road centerline of a North Carolina or U. S. primary route, nor within forty feet of the road centerline of any other public or private road.

For the purpose of this Section, the setback distance shall be measured horizontally from the right-of-way line, road centerline, or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

The building setbacks in an approved cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands shall be not less than five (5) feet from the property line of another lot in said cluster development, and not less than one hundred (100) feet from the right-of-way of any street other than a street in the cluster development.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

201.7. Structure height.

No structure located within the R-1 Residential District shall have more than three habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

201.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the R-1 Residential District.

201.9. Off-street parking and loading.

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the R-1 Residential District.

201.10. Prohibited uses.

Commercial activities shall not be permitted in the R-1 District except as otherwise expressly allowed herein. Activities prohibited by this provision shall include, by way of example and not by way of limitation, the following: the use of short-term rental property or the short-term rental of property for weddings, receptions, or other gatherings of more than 20 persons. `Short-Term' shall mean, for the purposes of this section only, less than three months."

Section 202 R-2 Residential District.

202.1. General description.

The R-2 Residential District is a medium-density residential district for single-family dwellings, with customary accessory outbuildings, including manufactured homes and home occupations, together with such other related uses which are of a residential character or contribute to the residential character of the district. Tourist homes and private schools are permitted as Special Uses.

202.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the R-2 Residential District.

202.3. Permitted uses.

Within the R-2 Residential District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance.

(2) Manufactured homes, as defined by this Ordinance, provided they have been constructed after July 1, 1976, and all of the following conditions are met:

(a) The unit is occupied by persons owning the land on which the unit is located.

(b) The tongue, axles, removable towing apparatus, and transporting lights are removed after final placement on the site.

(c) A continuous, permanent masonry curtain wall or foundation, unpierced except for ventilation and covered access, is installed under the unit.

(d) The finished width of the base unit is not less than twenty-four (24) feet.

(e) The pitch of the roof has a minimum vertical rise of one foot for each four feet of horizontal rise (1:4) and the roof is finished with shingles.

(f) The exterior siding consists predominantly of horizontal or vertical vinyl, aluminum, wood, or hardboard siding.

(3) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(4) Customary incidental home occupations, as defined by this Ordinance, provided the only external evidence of the occupation is a sign complying with Section 405.2(A)(2).

(B) Parks and playgrounds.

(C) State-owned research and education-related institutions, together with those structures customarily associated with such uses, or as may be necessary for the operation thereof in furtherance of the research or educational functions being pursued within the institution. A Special Use Permit shall be required for all new construction, including additions to existing buildings. (See Section 501[R])

(D) Golf and tennis clubs, together with such grounds, administrative offices, clubhouses, storage buildings, and other facilities customarily associated with such uses.

202.4. Uses permitted upon issuance of a Special Use Permit.

The following uses may be permitted in the R-2 Residential District after review,

approval, and the issuance of a Special Use Permit in accordance with Article 500:

- (A) Private schools.
- (B) Tourist homes, in accordance with the specific requirements of Section 504.
- (C) Churches and other places of public worship.

202.5. Minimum residential lot size and width.

Minimum lot size: 22,000 square feet per family*

Minimum lot width at building line: 70 feet

*Except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands.

*Except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement

202.6. Setbacks.

No building within the R-2 Residential District may be erected within twenty-five feet of the right-of-way line of any public or private road, nor within ten feet of the property line of an adjoining ownership; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty-five feet of the road centerline of a North Carolina or U. S. primary route, nor within forty feet of the road centerline of any other public or private road.

For the purpose of this Section, the setback distance shall be measured horizontally from the right-of-way line, road centerline, or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

The building setbacks in an approved cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands shall be not less than five (5) feet from the property line of another lot in said cluster development, and not less than one hundred (100) feet from the right-of-way of any street other than a street in the cluster development.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

202.7. Structure height.

No structure located within the R-2 Residential District shall have more than three habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

202.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the R-2 Residential District.

202.9. Off-street parking and loading

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the R-2 Residential District.

Section 203 R-3 Residential District.

203.1. General description.

The R-3 Residential District is a high-density residential district for single-family dwellings, with customary accessory outbuildings, including home occupations, together with such other related uses which are of a residential character or contribute to the residential character of the district. Multi-family dwellings are permitted as a Special Use.

203.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the R-3 Residential District.

203.3. Permitted uses.

Within the R-3 Residential District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance.

(2) Manufactured homes, as defined by this Ordinance, provided they have been constructed after July 1, 1976, and all of the following conditions are met:

(a) The unit is occupied by persons owning the land on which the unit is located.

(b) The tongue, axles, removable towing apparatus, and transporting lights are removed after final placement on the site.

(c) A continuous, permanent masonry curtain wall or foundation, unpierced except for ventilation and covered access, is installed under the unit.

(d) The finished width of the base unit is not less than twenty-four (24) feet.

(e) The pitch of the roof has a minimum vertical rise of one foot for each four feet of horizontal rise (1:4) and the roof is finished with shingles.

(f) The exterior siding consists predominantly of horizontal or vertical vinyl, aluminum, wood, or hardboard siding

(3) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(4) Customary incidental home occupations, as defined by this Ordinance, provided the only external evidence of the occupation is a sign complying

with Section 405.2(A)(2).

203.4. Uses permitted upon issuance of a Special Use Permit.

The following uses may be permitted in the R-3 Residential District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500:

(A) Multi-family dwellings, including apartments, condominiums, cooperatives, and any other legally recognized form of ownership for similar dwellings, in accordance with the specific requirements of Section 502.

(B) Churches and other places of public worship.

203.5. Minimum residential lot size and width.

Minimum lot size: 22,000 square feet per family*

Minimum lot width at building line: 70 feet**

*Except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands, and except that multi-family dwellings in this district shall be permitted a minimum lot size of 11,000 square feet per family in accordance with Section 502.6.

*Except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement.

**Except that the minimum lot width shall not apply to multi-family dwellings in this district.

203.6. Setbacks.

No building within the R-3 Residential District may be erected within twenty-five feet of the right-of-way line of any public or private road, nor within ten feet of the property line of an adjoining ownership; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty-five feet of the road centerline of a North Carolina or U. S. primary route, nor within forty feet of the road centerline of any other public or private road.

For the purpose of this Section, the setback distance shall be measured horizontally from the right-of-way line, road centerline, or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors,

windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

The building setbacks in an approved cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands shall be not less than five (5) feet from the property line of another lot in said cluster development, and not less than one hundred (100) feet from the right-of-way of any street other than a street in the cluster development.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

203.7. Structure height.

No structure located within the R-3 Residential District shall have more than three habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

203.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the R-3 Residential District.

203.9. Off-street parking and loading

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the R-3 Residential District.

Section 204 B-1 Business District.

204.1. General Description.

The B-1 Business District is the central business area located along Main Street and Fourth Street, and is primarily a "walking district" for specialized retail use, office, and incidental apartments. Places of assembly such as restaurants, auction houses, and

theaters are permitted as Special Uses.

204.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the B-1 Business District.

In addition, the size of any new commercial building constructed in this zoning district, and in the case of an addition, the resultant gross floor space of the entire building, shall not exceed a ratio of one square foot of gross floor space per one square foot of building lot.

204.3. Permitted uses.

Within the B-1 Business District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance (but expressly excluding manufactured homes).

(2) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops.

(3) Apartments located within, and incidental to, a building used primarily for commercial uses. More than one apartment may be located within a building of mixed occupancy, in conformance with the residential density as defined by Section 204.5; however, notwithstanding Section 502.1 of this Ordinance, the building shall not be considered "multi-family."

(B) Parks and playgrounds.

(C) Any retail or wholesale business not requiring a Special Use permit pursuant to Section 204.4, provided that the same shall have a minimum of 800 square feet of floor space if located in a new building or in an existing building in which the number of business occupants is increased as a result of remodeling, and provided the same shall not be accessed by drive-through windows, and including auction houses, art galleries, bakeries, clothing stores, delicatessens, drug stores, flower shops, garden supply centers, hardware stores, and pet shops (except veterinaries, kennels, or animal

shelters).

(D) Any retail service business not requiring a Special Use Permit pursuant to Section 204.4, provided that the same shall have a minimum of 800 square feet of floor space if located in a new building or in an existing building in which the number of business occupants is increased as a result of remodeling, and including banks and similar financial institutions, barber shops, beauty shops, laundry and dry cleaning establishments, libraries, museums, newspaper offices, repair shops, and small woodworking, cabinet, or similar shops having motor-driven tools not exceeding two horsepower. Automatic Teller Machines, whether attached to building walls or free-standing, shall not be subject to the minimum of 800 square foot of floor space required by this Section.

(E) Professional offices or studios, including those of accountants, architects, artists, attorneys, contractors, dentists, engineers, insurance agents, land surveyors, musicians, photographers, physicians, real estate brokers, and surveyors.

204.4. Uses permitted upon issuance of a Special Use Permit.

The following uses may be permitted in the B-1 Business District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500:

(A) All new commercial construction, additions to existing commercial property, and remodeling of existing commercial buildings which would result in an increase in the number of business occupants in the buildings.

(B) Places of entertainment, including indoor theaters, dance halls, skating rinks, and bowling alleys.

(C) Restaurants, as defined by this Ordinance.

(D) Private social clubs, in accordance with the specific requirements of Section 503.

(E) Churches and other places of public worship.

204.5. Minimum residential lot size and width.

Minimum lot size: 2,400 square feet per family*

Minimum lot width at building line: 60 feet**

*Except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of

land granted within the easement.

****Except that the minimum lot width shall not apply to incidental apartments permitted in 204.3(A)(3)**

204.6. Setbacks.

Buildings within the B-1 Business District are not required to be set back from the right-of-way line of any public or private road, nor the property line of an adjoining ownership, and, in addition, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on public property in this district in accordance with Section 2601 of the North Carolina State Building Code.

204.7. Structure height.

No structure within the B-1 Business District shall have more than two habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

204.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the B-1 Business District.

204.9. Off-street parking and loading

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance.

However, no uses within the B-1 Business District--including those Special Uses identified in Section 205.4--shall be subject to the off-street parking and loading requirements in that section, except for single family dwellings, including incidental apartments.

Section 205 B-2 Business District.

205.1. General Description.

The B-2 Business District is the business area immediately adjacent to the B-1 Business District, accessible both by walking and by automobile, and primarily for retail,

office, and incidental apartments. Restaurants, hotels, service stations, and similar uses are permitted as Special Uses.

205.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the B-2 Business District.

205.3. Permitted uses.

Within the B-2 Business District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance (but expressly excluding manufactured homes).

(2) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(3) Apartments located within, and incidental to, a building used primarily for commercial uses. More than one apartment may be located within a building of mixed occupancy, in conformance with the residential density as defined by Section 205.5; however, notwithstanding Section 502.1 of this Ordinance, the building shall not be considered "multi-family."

(4) Customary incidental home occupations, as defined by this Ordinance, provided the only external evidence of the occupation is a sign complying with Section 405.2(A)(2).

(B) Parks and playgrounds.

(C) Any retail or wholesale business not requiring a Special Use permit pursuant to Section 205.4, provided that the same shall have a minimum of 800 square

feet of floor space if located in a new building or in an existing building in which the number of business occupants is increased as a result of remodeling, and provided the same shall not be accessed by drive-through windows, and including auction houses, art galleries, bakeries, clothing stores, delicatessens, drug stores, flower shops, garden supply centers, hardware stores, and pet shops (except veterinaries, kennels, or animal shelters).

(D) Any retail service business not requiring a Special Use Permit pursuant to Section 205.4, provided that the same shall have a minimum of 800 square feet of floor space if located in a new building or in an existing building in which the number of business occupants is increased as a result of remodeling, and including banks and similar financial institutions, barber shops, beauty shops, funeral homes, laundry and dry cleaning establishments, libraries, museums, newspaper offices, repair shops, and small woodworking, cabinet, or similar shops having motor-driven tools not exceeding two horsepower. Automatic Teller Machines, whether attached to building walls or free-standing, shall not be subject to the minimum of 800 square foot of floor space required by this Section.

(E) Professional offices or studios, including those of accountants, architects, artists, attorneys, contractors, dentists, engineers, insurance agents, land surveyors, musicians, photographers, physicians, real estate brokers, and surveyors.

(F) Government buildings of any kind.

(G) Outdoor storage yards containing materials for sale for businesses such as building supply centers, lumber yards, and hardware stores, provided the following conditions are met:

(1) No salvaged, discarded, junk, or other similar material awaiting salvage, recycling, or disposal shall be placed in an outdoor storage yard;

(2) No material shall be placed in an outdoor storage yard which could be moved by the elements out of the storage yard;

(3) No paper, rags, cloth, or other fibers may be stored in an outdoor storage yard;

(4) All materials in outdoor storage yards shall be stored within a chain-link or similar fence;

(5) All such storage yards which adjoin or are visible from a public road shall be screened from view by appropriate fencing or landscaping in accordance with Appendix D of this Ordinance.

205.4. Uses permitted upon issuance of a Special Use Permit.

The following uses may be permitted in the B-2 Business District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500:

(A) All new commercial construction, additions to existing commercial buildings, and remodeling of existing commercial buildings which would result in an increase in the number of business occupants in the buildings.

(B) Crafts fairs, flea markets, and other similar transient retail businesses.

(C) Places of entertainment, including indoor theaters, dance halls, skating rinks, and bowling alleys.

(D) Hotels and motels.

(E) Restaurants, as defined by this Ordinance.

(F) Service or fuel stations.

(G) Private schools.

(H) Day care centers, as defined by this Ordinance.

(I) Private social clubs, in accordance with the specific requirements of Section 503.

(J) Tourist homes.

(K) Churches and other places of public worship.

205.5. Minimum residential lot size and width.

Minimum lot size: 6000 square feet per family*

Minimum lot width at building line: 60 feet**

*Except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement.

**Except that the minimum lot width shall not apply to incidental apartments permitted in 205.3(A)(3)

205.6. Setbacks.

Buildings within the B-2 Business District are not required to be set back from the right-of-way line of any public or private road, nor the property line of an adjoining ownership, and, in addition, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on public property in this district in accordance with Section 2601 of the North Carolina State Building Code.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

205.7. Structure height.

No structure within the B-2 Business District shall have more than two habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

205.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the B-2 Business District.

205.9. Off-street parking and loading

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the B-2 Business District.

Section 206 B-3 Business District.

206.1. General Description.

The B-3 Business District is the outlying business area along the main highways, accessible primarily by automobile, for larger retail uses such as shopping centers, office, and incidental apartments. Motels, restaurants, service stations, and uses such as

storage warehouses, auto sales, and heavy machinery storage are permitted as Special Uses.

206.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the B-3 Business District.

206.3. Permitted uses.

Within the B-3 Business District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance (but expressly excluding manufactured homes).

(2) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(3) Apartments located within, and incidental to, a building used primarily for commercial uses. More than one apartment may be located within a building of mixed occupancy, in conformance with the residential density as defined by Section 206.5; however, notwithstanding Section 502.1 of this Ordinance, the building shall not be considered "multi-family."

(4) Customary incidental home occupations, as defined by this Ordinance, provided the only external evidence of the occupation is a sign complying with Section 405.2(A)(2).

(B) Parks and playgrounds.

(C) Any retail or wholesale business not requiring a Special Use permit pursuant to Section 206.4, provided that the same shall have a minimum of 800 square

feet of floor space if located in a new building or in an existing building in which the number of business occupants is increased as a result of remodeling, and provided the same shall not be accessed by drive-through windows, and including auction houses, art galleries, bakeries, clothing stores, delicatessens, drug stores, flower shops, garden supply centers, and hardware stores. Pet shops, veterinary clinics, kennels, or animal shelters shall be permitted provided they have no outdoor facilities for animals.

(D) Any retail service business not requiring a Special Use Permit pursuant to Section 206.4, provided that the same shall have a minimum of 800 square feet of floor space if located in a new building or in an existing building in which the number of business occupants is increased as a result of remodeling, and including banks and similar financial institutions, barber shops, beauty shops, funeral homes, laundry and dry cleaning establishments, libraries, museums, newspaper offices, repair shops, and small woodworking, cabinet, or similar shops having motor-driven tools not exceeding five horsepower. Automatic Teller Machines, whether attached to building walls or free-standing, shall not be subject to the minimum of 800 square foot of floor space required by this Section.

(E) Professional offices or studios, including those of accountants, architects, artists, attorneys, contractors, dentists, engineers, insurance agents, land surveyors, musicians, photographers, physicians, real estate brokers, and surveyors.

(F) Government buildings of any kind.

(G) Outdoor storage yards containing materials for sale for businesses such as building supply centers, lumber yards, and hardware stores, provided the following conditions are met:

(1) No salvaged, discarded, junk, or other similar material awaiting salvage, recycling, or disposal shall be placed in an outdoor storage yard;

(2) No material shall be placed in an outdoor storage yard which could be moved by the elements out of the storage yard;

(3) No paper, rags, cloth, or other fibers may be stored in an outdoor storage yard;

(4) All materials in outdoor storage yards shall be stored within a chain-link or similar fence;

(5) All such storage yards which adjoin or are visible from a public road shall be screened from view by appropriate fencing or landscaping in accordance with Appendix D of this Ordinance.

206.4 Uses permitted upon issuance of a Special Use Permit.

The following uses may be permitted in the B-3 Business District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500:

(A) All new commercial construction, additions to existing commercial property, and remodeling of existing commercial buildings which would result in an increase in the number of business occupants in the buildings.

(B) Crafts fairs, flea markets, and other similar transient retail businesses.

(C) Places of entertainment, including indoor theaters, dance halls, skating rinks, and bowling alleys.

(D) Hotels and motels.

(E) Restaurants, as defined by this Ordinance.

(F) Automotive and heavy machinery sales and service centers or stations.

(G) Service or fuel stations.

(H) Private schools.

(I) Day care center, as defined by this Ordinance.

(J) Private social clubs, in accordance with the specific requirements of Section 503.

(K) Tourist homes.

(L) Self-service storage facilities.

(M) Flammable liquid storage facilities.

(N) Churches and other places of public worship.

206.5. Minimum residential lot size and width.

(A) Minimum lot size: 6,000 square feet per family for incidental apartments permitted pursuant to Section 206.3(A)(3); 22,000 square feet per family for all other single-family residences. Except that when an easement on the property is dedicated to

the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement.

(B) Minimum lot width at building line: 60 feet*

*Except that the minimum lot width shall not apply to incidental apartments permitted in 206.3(A)(3)

206.6. Setbacks.

No building within the B-3 Business District may be erected within twenty-five feet of the right-of-way line of any public or private road, nor within ten feet of the property line of an adjoining ownership; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty-five feet of the road centerline of a North Carolina or U. S. primary route, nor within forty feet of the road centerline of any other public or private road. However, no setback shall be required from dead end service drives or alleyways serving commercial businesses for loading, unloading, and employee parking within the B-3 Business District, nor shall a setback be required for gazebos used for public purposes upon resolution of the Board of Commissioners of the Town of Highlands.

For the purpose of this Section, the setback distance shall be measured horizontally from the right-of-way line, road centerline, or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

206.7. Structure height.

No structure within the B-3 Business District shall have more than two habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

206.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the B-3 Business District.

206.9. Off-street parking and loading

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the B-3 Business District.

Section 207 B-4 Business District.

207.1. General Description.

The B-4 Business District is a light commercial business district, located close to the central business districts in Town, and serving as a "buffer zone" between the B-3 Business District and residential areas. It includes small, low-impact, light commercial uses such as professional offices and gift shops.

207.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the B-4 Business District.

207.3. Permitted uses.

Within the B-4 Business District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance (but expressly excluding manufactured homes).

(2) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is

parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(3) Single apartments located within, and incidental to, a building used primarily for commercial uses.

(4) Customary incidental home occupations, as defined by this Ordinance, provided the only external evidence of the occupation is a sign complying with Section 405.2(A)(2).

(B) Parks and playgrounds.

(C) Any single retail or wholesale business not requiring a Special Use permit pursuant to Section 207.4, provided that the same shall have a minimum of 800 square feet of floor space if located in a new building or in an existing building in which the number of business occupants is increased as a result of remodeling, and a maximum of 2000 square feet of floor space; shall be located in a single building and, if located on a lot more than 22,000 square feet in area, not exceeding a ratio of one building for every 22,000 square feet of lot size; provided the same shall not be accessed by drive-through windows; and including art galleries, bakeries, clothing stores, delicatessens, flower shops, and other small gift or novelty shops.

(D) Any single retail service business not requiring a Special Use Permit pursuant to Section 207.4, provided that the same shall have a minimum of 800 square feet of floor space if located in a new building or in an existing building in which the number of business occupants is increased as a result of remodeling, and a maximum of 2000 square feet of floor space; shall be located in a single building and, if located on a lot more than 22,000 square feet in area, not exceeding a ratio of one building for every 22,000 square feet of lot size; and including banks and similar financial institutions, barber shops, beauty shops, and museums. Automatic Teller Machines, whether attached to building walls or free-standing, shall not be subject to the minimum of 800 square foot of floor space required by this Section.

(E) Single professional offices or studios, provided that the same shall not exceed 2000 square feet of floor space; shall be located in a single building and, if located on a lot more than 22,000 square feet in area, not exceeding a ratio of one building for every 22,000 square feet of lot size; and including offices of accountants, architects, artists, attorneys, contractors, dentists, engineers, insurance agents, land surveyors, musicians, photographers, physicians, real estate brokers, and surveyors.

207.4. Uses permitted upon issuance of a Special Use Permit.

(A) All new commercial construction and additions to existing commercial property.

(B) Tourist homes.

(C) Churches and other places of public worship.

207.5. Minimum residential lot size and width.

Minimum lot size: 22,000 square feet per family*

Minimum lot width at building line: 70 feet**

*Except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement.

**Except that the minimum lot width shall not apply to a single incidental apartment, as permitted in 207.3(A)(3).

207.6. Setbacks.

No building within the B-4 Business District may be erected within twenty-five feet of the right-of-way line of any public or private road, nor within ten feet of the property line of an adjoining commercial ownership, nor within twenty feet of the property line of an adjoining residential ownership; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty-five feet of the road centerline of a North Carolina or U. S. primary route, nor within forty feet of the road centerline of any other public or private road.

For the purpose of this Section, the setback distance shall be measured horizontally from the right-of-way line, road centerline, or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

207.7. Structure height.

No structure within the B-4 Business District shall have more than two habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

207.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the B-4 Business District.

207.9. Off-street parking and loading.

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the B-4 Business District.

207.10. Landscaping buffer.

In addition to any landscape areas and landscape strips required for parking lots, pursuant to Paragraphs (10) and (11) of Appendix A attached hereto, and any landscape plan required pursuant to Section 702.2(A), a ten-foot wide landscaping buffer shall be provided between any new building or parking area constructed in this zoning district, or any existing building converted to a commercial use, and (1) the property line of an adjoining residential ownership, and (2) the right-of-way line of any public or private road. For permitted uses, plans for the landscaping buffer shall be approved by the Zoning Administrator; for uses permitted upon issuance of a Special Use Permit, such plans shall be approved by the Zoning Board of Adjustment.

New plantings in the landscaping buffer shall be reasonably maintained and attended for a period of not less than eighteen (18) months to promote successful establishment thereof. When any trees or shrubs in such areas die, as determined by the Zoning Administrator, they must be replaced during the next suitable planting season. To protect and preserve the natural environment and beauty of the Town of Highlands, any new landscaping is encouraged to consider the list of recommended locally adapted and native species identified in Appendix D of this Ordinance.

Section 208 GI Governmental/Institutional District.

208.1. General Description.

The GI Governmental/Institutional District includes property owned by governmental entities, such as the Town of Highlands and Macon County or property owned by nonprofit visual art organizations as defined by IRS Code Section 501(c)(3). It includes the Town Warehouse site; the Community Building and Town Ball Park; the Recreation Park and Wastewater Treatment Plant; the block containing the Town Hall, Highlands Community Playhouse, Fire Department, Police Department/Macon County EMT buildings; the Highlands School property; the Bascom-Louise Gallery property; and any other such properties which may heretofore be designated for similar uses.

208.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the GI Governmental/Institutional District.

208.3. Permitted uses.

Within the GI Governmental/Institutional District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

- (A) Parks and playgrounds.
- (B) Government buildings of any kind.
- (C) Public schools.
- (D) Nonprofit visual art centers.

208.4. Uses permitted upon issuance of a Special Use Permit.

The following uses may be permitted in the GI Governmental/ Institutional District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500:

- (A) Private schools.
- (B) Day care center, as defined by this Ordinance.
- (C) Churches and other places of public worship.

208.5. Minimum residential lot size and width.

No residential uses are permitted in the GI Governmental/ Institutional District.

208.6. Setbacks.

No building within the GI Governmental/Institutional District may be erected within twenty-five feet of the right-of-way line of any public or private road, nor within ten feet of the property line of an adjoining ownership, except that on the site of the Town Hall property, circumscribed by Oak Street, Maple Street, and Fourth Street, there shall be no setback from Fourth Street or Oak Street; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty-five feet of the road centerline of a North Carolina or U. S. primary route, nor within forty feet of the road centerline of any other public or private road.

For the purpose of this Section, the setback distance shall be measured horizontally from the right-of-way line, road centerline, or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

208.7. Structure height.

No structure within the GI Governmental/Institutional District shall have more than two habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet, except that the Town high school gymnasium height shall not exceed forty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

208.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the GI Governmental/Institutional District, except that certain types of government signs are exempt from these regulations pursuant to Section 402(A) and Section 402(B) of this

Ordinance.

208.9. Off-street parking and loading

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the GI Governmental/Institutional District.

Section 209 WS-II-CA Watershed Overlay District.

209.1. General description.

The WS-II-CA Watershed Overlay District is an overlay district located within the Critical Area of a Public Water Supply Watershed designated WS-II by the N.C. Environmental Management Commission in order to maintain a predominately undeveloped land use intensity pattern.

209.2. General regulations.

In addition to the general regulations set forth in Article 100 of this Ordinance, the Watershed Protection Rules set forth in this Section shall apply in the WS-II-CA Watershed Overlay District.

209.3. Minimum lot size.

Single family residential development in the WS-II-CA Watershed Overlay District shall not exceed one dwelling unit per two (2) acres on a project by project basis. No residential lot shall be less than two (2) acres, except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands, or when a portion of the property is dedicated to the Town of Highlands for the Highlands Greenway, in which case the lot size may be reduced by an amount equal to the area dedicated to the Town of Highlands on that lot.

209.4. Permitted uses.

Within the WS-II-CA Watershed Overlay District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Residential development, including both single family and other residential.

(B) Non-residential development, with the exception of the storage of toxic and hazardous materials (unless a spill containment plan is implemented). New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

209.5. Built-Upon limits.

(A) Single family residential uses on lots that do not meet the minimum lot size, as defined in Section 209.3, shall not exceed a maximum of six percent (6%) built-upon area, as defined by this Ordinance.

(B) Other residential uses shall not exceed a maximum of six percent (6%) built-upon area, as defined by this Ordinance, on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) Non-residential development shall not exceed a maximum of six percent (6%) built-upon area, as defined by this Ordinance.

(D) All lots meeting or exceeding the minimum lot size, as defined by Section 209.3, shall not exceed a maximum of fifty percent (50%) built upon area, as defined by this Ordinance.

209.6. Buffer Areas.

(A) Within the WS-II-CA Watershed Overlay District, a minimum fifty (50) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, as defined by this Ordinance, 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. Trails and paths constructed within the Highlands Greenway, as shown on the Town of Highlands Greenway Plan Map, shall be provided with a minimum twenty (20) foot vegetative buffer between the perennial stream and the nearest edge of the Greenway. Such buffers shall be composed of any of the recommended locally adapted and native species identified in Appendix D

of this Ordinance. Surfaces of trails and paths may be a maximum of ten (10) feet in width, and may consist of asphalt or any other impermeable or permeable surfaces. These trails and paths must possess a cross slope of two percent (2%) directed away from the perennial waterways to which they are adjacent. In addition, to insure proper stormwater runoff, catch basins with drains and underground culverts may be required.

Section 209(A). WS-II-BW Watershed Overlay District.

209 A.1. General description.

The WS-II-BW Watershed Overlay District is an overlay district located within the Balance of the Watershed C.C., that portion of the watershed outside the Critical Area C.C. of a Public Water Supply Watershed designated WS-II by the N.C. Environmental Management Commission to maintain a low to moderate land use intensity pattern.

209 A.2. General regulations.

In addition to the general regulations set forth in Article 100 of this Ordinance, the Watershed Protection Rules set forth in this Section shall apply in the WS-II-BW Watershed Overlay District.

209 A.3. Minimum lot size.

Single family residential development in the WS-II-BW Watershed Overlay District shall not exceed one (1) dwelling unit per acre on a project by project basis. No residential lot shall be less than one (1) acre, except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands, or when a portion of the property is dedicated to the Town of Highlands for the Highlands Greenway, in which case the lot size may be reduced by an amount equal to the area dedicated to the Town of Highlands on that lot.

209 A.4. Permitted uses.

Within the WS-II-BW Watershed Overlay District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

- (A) Residential development, including both single family and other residential.
- (B) Non-residential development, with the exception of the storage of toxic and

hazardous materials (unless a spill containment plan is implemented). New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

209 A.5. Built-Upon limits.

(A) Single family residential uses on lots that do not meet the minimum lot size, as defined in Section 209A.3, shall not exceed a maximum of twelve percent (12%) built-upon area, as defined by this Ordinance.

(B) Other residential uses shall not exceed a maximum of twelve percent (12%) built-upon area, as defined by this Ordinance, on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) Non-residential development shall not exceed a maximum of twelve percent (12%) built-upon area, as defined by this Ordinance. However, when approved as a special non-residential intensity allocation (SNIA), non-residential uses may be permitted up to a maximum of seventy percent (70%) built-upon area, as defined by this Ordinance, in up to five percent (5%) of the balance of the watershed which is outside the critical area. The Watershed Administrator is authorized to approve SNIA's consistent with the provisions of this Ordinance. Projects must minimize built-upon surface area, direct storm water away from surface waters, and incorporate Best Management Practices to minimize water quality impacts.

(D) All lots meeting or exceeding the minimum lot size, as defined by Section 209A.3, shall not exceed a maximum of fifty percent (50%) built upon area, as defined by this Ordinance.

209 A.6. Buffer Areas.

(A) Within the WS-II-BW Watershed Overlay District, a minimum fifty (50) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps. Desirable artificial stream bank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, as defined by this Ordinance, 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. Trails and paths constructed

within the Highlands Greenway, as shown on the Town of Highlands Greenway Plan Map, shall be provided with a minimum twenty (20) foot vegetative buffer between the perennial stream and the nearest edge of the Greenway. Such buffers shall be composed of any of the recommended locally adapted and native species identified in Appendix D of this Ordinance. Surfaces of trails and paths may be a maximum of ten (10) feet in width, and may consist of asphalt or any other impermeable or permeable surfaces. These trails and paths must possess a cross slope of two percent (2%) directed away from the perennial waterways to which they are adjacent. In addition, to insure proper stormwater runoff, catch basins with drains and underground culverts may be required.

Section 210 WS-III-CA Watershed Overlay District.

210.1. General description.

The WS-III-CA Watershed Overlay District is an overlay district located within the Critical Area of a Public Water Supply Watershed designated WS-III by the N.C. Environmental Management Commission in order to maintain a low to moderate land use intensity pattern.

210.2. General regulations.

In addition to the general regulations set forth in Article 100 of this Ordinance, the Watershed Protection Rules set forth in this Section shall apply in the WS-III-CA Watershed Overlay District.

210.3. Minimum lot size.

Single family residential development in the WS-III-CA Watershed Overlay District shall not exceed one dwelling unit per one (1) acre on a project by project basis. No residential lot shall be less than one (1) acre, except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands, or when a portion of the property is dedicated to the Town of Highlands for the Highlands Greenway, in which case the lot size may be reduced by an amount equal to the area dedicated to the Town of Highlands on that lot.

210.4. Permitted uses.

Within the WS-III-CA Watershed Overlay District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Residential development, including both single family and other residential.

(B) Non-residential development, with the exception of the storage of toxic and hazardous materials (unless a spill containment plan is implemented). New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

210.5. Built-Upon limits.

(A) Single family residential uses on lots that do not meet the minimum lot size, as defined in Section 210.3, shall not exceed a maximum of twelve percent (12%) built-upon area, as defined by this Ordinance.

(B) Other residential uses shall not exceed a maximum of twelve percent (12%) built-upon area, as defined by this Ordinance, on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) Non-residential development shall not exceed a maximum of twelve percent (12%) built-upon area, as defined by this Ordinance.

(D) All lots meeting or exceeding the minimum lot size, as defined by Section 210.3, shall not exceed a maximum of fifty percent (50%) built upon area, as defined by this Ordinance.

210.6. Buffer Areas.

(A) Within the WS-III-CA Watershed Overlay District, a minimum fifty (50) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, as defined by this Ordinance, 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. Trails and paths constructed within the Highlands Greenway, as shown on the Town of Highlands Greenway Plan Map, shall be provided with a minimum twenty (20) foot vegetative buffer between the perennial stream and the nearest edge of the Greenway. Such buffers shall be composed of any of the recommended locally adapted and native species identified in Appendix D

of this Ordinance. Surfaces of trails and paths may be a maximum of ten (10) feet in width, and may consist of asphalt or any other impermeable or permeable surfaces. These trails and paths must possess a cross slope of two percent (2%) directed away from the perennial waterways to which they are adjacent. In addition, to insure proper stormwater runoff, catch basins with drains and underground culverts may be required.

Section 211 WS-III-BW Watershed Overlay District.

211.1. General description.

The WS-III-BW Watershed Overlay District is an overlay district located within the Balance of the Watershed C.C., that portion of the watershed outside the Critical Area C.C. of a Public Water Supply Watershed designated WS-III by the N.C. Environmental Management Commission in order to maintain a low to moderate land use intensity pattern.

211.2. General regulations.

In addition to the general regulations set forth in Article 100 of this Ordinance, the Watershed Protection Rules set forth in this Section shall apply in the WS-III-BW Watershed Overlay District.

211.3. Minimum lot size.

Single family residential development in the WS-III-BW Watershed Overlay District shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than one-half (2) acre, except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands, or when a portion of the property is dedicated to the Town of Highlands for the Highlands Greenway, in which case the lot size may be reduced by an amount equal to the area dedicated to the Town of Highlands on that lot.

211.4. Permitted uses.

Within the WS-III-BW Watershed Overlay District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

- (A) Residential development, including both single family and other residential.
- (B) Non-residential development, with the exception of the storage of toxic and

hazardous materials (unless a spill containment plan is implemented). New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

211.5. Built-Upon limits.

(A) Single family residential uses on lots that do not meet the minimum lot size, as defined in Section 211.3, shall not exceed a maximum of twenty-four percent (24%) built-upon area, as defined by this Ordinance.

(B) Other residential uses shall not exceed a maximum of twenty-four percent (24%) built-upon area, as defined by this Ordinance, on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) Non-residential development shall not exceed a maximum of twenty-four percent (24%) built-upon area, as defined by this Ordinance. However, when approved as a special non-residential intensity allocation (SNIA), non-residential uses may be permitted up to a maximum of seventy percent (70%) built-upon area, as defined by this Ordinance, in up to five percent (5%) of the balance of the watershed which is outside the critical area. The Watershed Administrator is authorized to approve SNIA's consistent with the provisions of this Ordinance. Projects must minimize built-upon surface area, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts.

(D) All lots meeting or exceeding the minimum lot size, as defined by Section 211.3, shall not exceed a maximum of fifty percent (50%) built upon area, as defined by this Ordinance.

211.6. Buffer Areas.

(A) Within the WS-III-BW Watershed Overlay District, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, as defined by this Ordinance, 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. Trails and paths constructed

within the Highlands Greenway, as shown on the Town of Highlands Greenway Plan Map, shall be provided with a minimum twenty (20) foot vegetative buffer between the perennial stream and the nearest edge of the Greenway. Such buffers shall be composed of any of the recommended locally adapted and native species identified in Appendix D of this Ordinance. Surfaces of trails and paths may be a maximum of ten (10) feet in width, and may consist of asphalt or any other impermeable or permeable surfaces. These trails and paths must possess a cross slope of two percent (2%) directed away from the perennial waterways to which they are adjacent. In addition, to insure proper stormwater runoff, catch basins with drains and underground culverts may be required.

Section 212 Municipal Corporation and Public Utilities Companies; Wireless Communications.

(A) In addition to the permissible uses authorized within designated districts, the construction, installation, or operation of facilities necessary to furnish public utility services or municipal services by the Town or by any public utility company serving or franchised to serve the community shall be permitted in every district.

(B) Wireless communications facilities, as defined herein, shall be permitted in every zoning district, provided they meet the requirements of Article 900.

Section 213 B-5 ETJ Mixed Use District.

213.1. General Description.

The purpose of the B-5 ETJ Mixed Use District is to manage development along the primary highways into Highlands to protect and enhance the natural beauty of these corridors. This zoning district permits mixed retail, commercial and residential uses such as small shopping centers, offices and incidental apartments. Motels, restaurants, service stations, and uses such as multifamily dwellings, storage warehouses and heavy machinery storage are permitted as Special Uses.

213.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the ETJ Mixed Use District.

213.3. Uses not requiring a Special Use Permit.

Within the ETJ Mixed Use District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered,

unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance.

(2) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water or sewerage, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(3) Apartments located within, and incidental to, a building used primarily for commercial uses. More than one apartment may be located within a building of mixed occupancy, in conformance with the residential density as defined by Section 213.5(A); however, despite Section 502.1 of this Ordinance, the building shall not be considered "multi-family."

(4) Home-based businesses, as defined by this Ordinance.

(B) Non-commercial parks and playgrounds.

(C) Government buildings of any kind.

(D) Commercial uses:

(1) Retail or wholesale businesses without drive-through windows including auction houses, art galleries, bakeries, clothing stores, delicatessens, drug stores, flower shops, garden supply centers, and hardware stores. Pet shops, veterinary clinics, kennels, or animal shelters shall be permitted provided they have no outdoor facilities for animals.

(2) Retail service businesses including banks and similar financial institutions, barber shops, beauty shops, funeral homes, laundry and dry cleaning establishments, museums, repair shops, and small woodworking, cabinet or similar shops having motor-driven tools not exceeding five horsepower.

(3) Professional offices or studios including those of accountants, architects, artists, attorneys, contractors, dentists, engineers, insurance agents, land surveyors, musicians, photographers, physicians, real estate brokers, and surveyors.

(4) Each business shall have a minimum of 800 square feet of floor space if located in a newly constructed building or in an existing building in which the number of business occupants is increased as a result of remodeling. Each professional office or studio shall have a minimum of 400 square feet of floor space if located in a newly constructed building or in an existing building in which the number business occupants is increased as a result of remodeling. The maximum foundation footprint for all new commercial construction in the ETJ Mixed Use District shall not exceed 15,000 square feet per building.

(E) Outdoor storage yards containing materials for sale such as building or construction supply centers, lumber yards, and hardware stores, provided the following conditions are met:

(1) No salvaged, discarded, junk, or other similar material awaiting salvage, recycling, or disposal shall be placed in an outdoor storage yard;

(2) No material shall be placed in an outdoor storage yard which could be moved by the elements out of the storage yard;

(3) No paper, rags, cloth, or other fibers may be stored in an outdoor storage yard; and,

(4) All such storage yards which adjoin or are visible from a public road and adjoining property shall be screened from view by appropriate fencing or an opaque, ten-foot wide landscaping buffer comprised of existing native plants and trees, augmented as necessary in accordance with Appendix D of this Ordinance. For uses permitted by Special Use Permit, buffer landscaping plans shall be approved by the Zoning Board of Adjustment. For permitted uses, buffer landscaping plans shall be approved by the Zoning Administrator.

213.4. Uses requiring a Special Use Permit.

The following uses may be permitted in the ETJ Mixed Use District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500. The maximum foundation footprint for all new commercial construction in the ETJ Mixed Use District shall not exceed 15,000 square feet per building.

(A) All new commercial construction, additions to existing commercial property, and remodeling of existing commercial buildings which would result in an increase in the number of business occupants in the buildings.

(B) Arts and crafts fairs and other similar transient retail businesses.

(C) Places of entertainment, including indoor theaters, dance halls, skating rinks, and bowling alleys.

(D) Hotels and motels.

(E) Restaurants, as defined by this Ordinance.

(F) Automotive and heavy machinery service centers or stations.

(G) Service or fuel stations with or without convenience stores.

(H) Private schools.

(I) Day care centers, as defined by this Ordinance.

(J) Private social clubs.

(K) Bed and breakfast homes, see Section 504.

(L) Storage facilities.

(M) Flammable liquid storage facilities.

(N) Churches and other places of public worship.

(O) Multi-family dwellings, including apartments, condominiums, cooperatives, and any other legally recognized form of ownership for similar dwellings.

(P) Supermarkets.

213.5. Minimum residential lot size and width.

(A) 6,000 square feet per family for incidental apartments permitted by Section 213.3(A)(3).

(B) 11,000 square feet per family for multifamily dwellings in accordance with Section 502.6, except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement.

(C) 22,000 square feet per family for all other single family dwellings, except that when an easement on the property is dedicated to the Town of Highlands for

the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement.

(D) Minimum lot width at building line is 60 feet.**

**Except that the minimum lot width shall not apply to incidental apartments permitted by 213.3(A)(3) and multi-family dwellings permitted by 213.4(O).

213.6. Setbacks.

No building within the ETJ Mixed Use District may be erected within twenty (20) feet of the right-of-way line of any public or private road, nor within ten (10) feet of the property line of an adjoining ownership; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty (50) feet of the road centerline of a North Carolina or U.S. primary route, nor within forty (40) feet of the road centerline of any other public or private road. However, no setback shall be required from dead end service drives or alleyways serving commercial businesses for loading, unloading, and employee parking within the ETJ Mixed Use District.

Right-of-way setbacks from a North Carolina or U.S. primary route shall be maintained as green buffers comprised of existing native plants and trees, augmented as necessary in accordance with Appendix D of this Ordinance. Use of the right-of-way setback buffer area shall be limited to roadway access to the property from the North Carolina or U.S. primary route. For uses permitted by Special Use Permit, buffer landscaping plans shall be approved by Zoning Board on recommendation of the Appearance Commission. For permitted uses, buffer landscaping plans shall be approved by the Zoning Administrator.

For the purpose of this Section, the setback distance shall be measured horizontally from the edge of the right-of-way line, road centerline or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

213.7. Structure height.

No structure within the ETJ Mixed Use District shall have more than two habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

213.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the ETJ Mixed Use District.

213.9. Off-street parking and loading.

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the ETJ Mixed Use District.

Section 214 R-4 ETJ Residential District.

214.1. General description.

The R-4 ETJ Residential District is a low to medium density residential district for single-family dwellings, with customary accessory outbuildings, including home occupations, together with such other related uses which are of a residential character or contribute to the residential character of the district.

214.2. General Regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the R-4 ETJ Residential District.

214.3. Permitted uses.

Within the R-4 ETJ Residential District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

- (A) Single-family dwellings, including the following:
 - (1) Modular homes, as defined by this Ordinance.

(2) Manufactured homes, as defined by this Ordinance, provided they have been constructed after July 1, 1996, and all of the following conditions are met:

(a) The unit is occupied by persons owning the land on which the unit is located.

(b) The tongue, axles, removable towing apparatus, and transporting lights are removed after final placement on the site.

(c) A continuous, permanent masonry curtain wall or foundation, unpierced except for ventilation and covered access, is installed under the unit.

(d) The finished width of the base unit is not less than twenty-four (24) feet.

(e) The pitch of the roof has a minimum vertical rise of one foot for each four feet of horizontal rise (1:4) and the roof is finished with shingles.

(f) The exterior siding consists predominantly of horizontal or vertical vinyl, aluminum, wood, or hardboard siding

(3) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(4) Home-based businesses, as defined by this Ordinance.

(B) Non-commercial parks and playgrounds.

214.4. Uses permitted by Special Use Permit.

The following uses may be permitted in the R-4 ETJ Residential District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500:

(A) Private schools.

- (B) Bed and breakfast homes, see Section 504.
- (C) Churches and other places of public worship.

214.5. Minimum residential lot size and width.

(A) Minimum lot size for parcels situated in whole or in part in a Highlands Watershed Overlay District shall meet or exceed the minimum parcel size permitted by the applicable Watershed Overlay District, except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement.

(B) Minimum lot size for parcels not situated in a Highlands Watershed Overlay District is 22,000 square feet per single family dwelling, except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands, and except that when an easement on the property is dedicated to the Town of Highlands for the Highlands Greenway, the minimum lot size may be reduced by the amount of land granted within the easement.

- (C) Minimum lot width at building line is 70 feet.

214.6. Setbacks.

No building within the R-4 ETJ Residential District may be erected within twenty-five (25) feet of the right-of-way line of any public or private road, nor within ten (10) feet of the property line of an adjoining ownership; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty-five (55) feet of the road centerline of a North Carolina or U. S. primary route, nor within forty (40) feet of the road centerline of any other public or private road.

For the purpose of this Section, the setback distance shall be measured horizontally from the right-of-way line, road centerline, or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

The building setbacks in an approved cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands shall be not less than five (5) feet from the property line of another lot in said cluster development, and not less than one hundred (100) feet from the right-of-way of any street other than a street in the cluster development.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

214.7. Structure height.

No structure located within the R-4 ETJ Residential District shall have more than three habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

214.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the R-4 ETJ Residential District.

214.9. Off-street parking and loading.

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the R-4 ETJ Residential District.

Section 215 R-1-ETJ Residential District.

215.1. General description.

The R-1-ETJ Residential District is exclusively a low-density residential district for single-family dwellings with customary accessory outbuildings, together with such other related uses which are of a residential character or contribute to the residential character of the district.

215.2. General regulations.

The general regulations set forth in Article 100 of this Ordinance apply to the R-1-ETJ Residential District.

215.3. Permitted uses.

Within the R-1-ETJ Residential District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered, unless otherwise provided in this Ordinance, except for one or more of the following purposes:

(A) Single-family dwellings, including the following:

(1) Modular homes, as defined by this Ordinance (but expressly excluding manufactured homes).

(2) Any customary accessory outbuildings appurtenant to single-family dwellings, including private garages and non-commercial buildings such as greenhouses and workshops. Outbuildings for the storage of tractors, lawnmowers, and similar equipment for the care or cultivation of property may be constructed on vacant lots subject to issuance of a Zoning Certificate. In addition, not more than one camping trailer, motor home, or similar recreational vehicle may be parked by any property owner on his own property, provided that it is not occupied, not connected to any water, sewerage, or power supply, and is parked within applicable setback lines. This provision shall not apply to trailer parks, whether or not the property is being used for a conforming or for a permissible non-conforming use.

(3) Home-based businesses, as defined by this Ordinance.

(B) Parks and playgrounds.

(C) Golf and tennis clubs, together with such grounds, administrative offices, clubhouses, storage buildings, and other facilities customarily associated with such uses.

215.4. Uses permitted upon issuance of a Special Use Permit.

The following uses may be permitted in the R-1-ETJ Residential District after review, approval, and the issuance of a Special Use Permit in accordance with Article 500:

(A) Churches and other places of public worship.

215.5. Minimum residential lot size and width.

Minimum lot size: 33,000 square feet per family*

Minimum lot width at building line: 100 feet

*except within a cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands.

215.6. Setbacks.

No building within the R-1-ETJ Residential District may be erected within twenty-five feet of the right-of-way line of any public or private road, nor within ten feet of the property line of an adjoining ownership; if no right-of-way line is defined among the public records of Macon County, North Carolina, no building may be erected within fifty-five feet of the road centerline of a North Carolina or U. S. primary route, nor within forty feet of the road centerline of any other public or private road.

For the purpose of this Section, the setback distance shall be measured horizontally from the right-of-way line, road centerline, or adjoining property line to the nearest projection of the building, including any eave, dormer, deck, or other part attached thereto and any portion of the building located below grade. However, doors, windows, marquees, canopies or fixed awnings, and movable metal or canvas awnings shall be permitted to encroach on the setback area.

The building setbacks in an approved cluster development pursuant to Section 409.3 of the Subdivision Regulations of the Town of Highlands shall be not less than five (5) feet from the property line of another lot in said cluster development, and not less than one hundred (100) feet from the right-of-way of any street other than a street in the cluster development.

Where an easement has been granted to the Town of Highlands for the purpose of extending the Highlands Greenway, the Greenway easement or the portion of the lot dedicated as a part of the Greenway shall not affect required setbacks from property lines, provided, however, that if the easement is terminated under Section 709II, Paragraph (D)(2), the setback requirements shall again apply except as to improvements completed or substantially completed prior to such termination.

215.7. Structure height.

No structure located within the R-1-ETJ Residential District shall have more than three habitable stories, exclusive of basement, nor shall the height of the structure exceed thirty-five feet. For the purpose of this provision, the height of the structure shall be the vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure.

215.8. Sign regulations.

The sign regulations set forth in Article 400 shall apply to the R-1-ETJ

Residential District.

215.9. Off-street parking and loading.

The minimum requirements for off-street parking and loading are set forth in Article 300 of this ordinance. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses in the R-1-ETJ Residential District.

215.10. Prohibited uses.

Commercial activities shall not be permitted in the R-1-ETJ District except as otherwise expressly allowed herein. Activities prohibited by this provision shall include, by way of example and not by way of limitation, the following: the use of short-term rental property or the short-term rental of property for weddings, receptions, or other gatherings of more than 20 persons. 'Short-Term' shall mean, for the purposes of this section only, less than three months."

ARTICLE 300: OFF-STREET PARKING AND LOADING.

Section 301 Applicability.

Off-street automobile storage or parking and loading areas shall be provided on every parcel on which any of the following uses are hereafter established. All automotive parking spaces, parking lots, and driveway entrances required by this Ordinance shall conform to the standards described in Appendix A and attached hereto.

Section 302 Parking Schedule.

The number of off-street parking spaces provided shall be at least as great as the number specified in the formula below for various uses. When application of the formula results in a fractional space requirement, the next larger space requirement shall prevail.

PARKING SCHEDULE

<u>Residential Uses</u>	<u>Required Parking</u>
Any residential use consisting of one or more dwelling units.	Two (2) Spaces for each dwelling unit, except that where more than six (6)

	dwelling units are constructed as a multi-family use, one and two-thirds (1-2/3) parking spaces shall be provided for each dwelling unit.
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<p><u>Residential Uses</u></p> <p>Hotels and motels</p> <p>Tourist Homes</p>	<p><u>Required Parking</u></p> <p>One (1) space for each accommodation, plus one (1) space per ten (10) spaces for employee parking.</p> <p>One (1) space for each accommodation, plus two (2) spaces for the owner or operator.</p>
<p><u>Public and Semi-Public Uses</u></p> <p>Hospitals and clinics</p> <p>Funeral parlors</p> <p>Churches, spiritual institutions</p> <p>Places of assembly or recreation without fixed seats</p> <p>Schools, elementary, junior high</p> <p>Day care centers</p>	<p><u>Required Parking</u></p> <p>One (1) space for each bed.</p> <p>One (1) space for each four (4) seats in chapel or parlor.</p> <p>One (1) space for each four (4) seats in the principal assembly room. This parking requirement shall not apply to churches located on Main Street.</p> <p>One (1) space for each two hundred (200) square feet of gross floor space available for patron use.</p> <p>One (1) space for each classroom and administrative office.</p> <p>One (1) space for each four (4) pupils or participants.</p>

<p>Schools, senior high</p> <p>Public buildings.</p> <p>Private social clubs.</p> <p>Libraries</p> <p><u>Business Uses</u></p> <p>Physicians' and dentists' offices</p> <p>Professional and business offices</p> <p>Banks, savings and loans associations, thrift institutions</p> <p>Retail stores and shops of all kinds, except for furniture and carpet stores</p> <p>Furniture and carpet stores</p> <p>Barber and beauty shops</p>	<p>One (1) space for each classroom and administrative office, plus one (1) space for each twenty (20) seats, one (1) space for each four hundred (400) square feet of area used for public assembly, whichever is greater.</p> <p>One (1) space for each two hundred (200) square feet of gross floor space.</p> <p>One (1) space for each three (3) members.</p> <p>One (1) space for each five hundred (500) square feet of gross floor space.</p> <p><u>Required Parking</u></p> <p>Five (5) spaces per physician or dentist.</p> <p>One (1) space for each two hundred and fifty (250) square feet of gross floor space.</p> <p>One (1) space for each two hundred (200) square feet of gross floor space, plus one (1) space for each two (2) employees. A credit of two (2) spaces shall be given for each drive-through window.</p> <p>One (1) space for each two hundred and fifty (250) square feet of gross floor space.</p> <p>One (1) space for each one thousand (1000) square feet of gross floor space, plus four (4) spaces.</p> <p>One-and-a-half (1.5) spaces for each</p>
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<p>Car sales, house and truck trailer sales, outdoor equipment and machinery sales, commercial nurseries</p> <p>Restaurants</p> <p>Service stations.</p> <p>Crafts fairs, flea markets, and other similar transient retail businesses.</p> <p><u>Shopping Centers</u></p> <p>Residential</p> <p>Outdoor seating for restaurants</p> <p>All other permitted uses</p> <p><u>Wholesale, Manufacturing, and Industrial Uses</u></p> <p>Wholesale, manufacturing, and industrial uses.</p>	<p>chair, excluding waiting or drying chairs.</p> <p>One (1) space for each four hundred (400) square feet of sales area, indoor and outdoor.</p> <p>One (1) space for each three (3) seats, plus one (1) space for each two (2) employees on shift of greatest employment.</p> <p>Three (3) spaces for each lubrication rack or service bay, plus one (1) space for each employee</p> <p>Three (3) spaces per merchant or sales booth, whichever is greater.</p> <p><u>Required Parking</u></p> <p>Two (2) spaces per dwelling units</p> <p>One (1) space for every three seats</p> <p>One (1) space per 250 square feet of gross floor space</p> <p><u>Required Parking</u></p> <p>One (1) space for each two (2) employees, plus one (1) space for each vehicle used directly in conducting the use.</p>
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Section 303 Loading Schedule.

Every parcel on which a sales business, trade, or industrial use is hereafter established shall provide an area for the loading and unloading of vehicles off the street. The area shall have access to an alley or, if there is no alley, to a street, and shall have minimum dimensions of twelve (12) feet by forty (40) feet. Such area may be located within an access aisle or other off-street area, provided it is accessible to delivery vehicles. The number of off-street loading and unloading areas required on any parcel shall be determined according to the use for which the parcel is to be placed, all pursuant to the following schedule:

LOADING SCHEDULE

<u>Type of Use</u>	<u>Required Loading</u>
Retail business use.	One (1) area for each five thousand (5000) square feet of gross floor area.
Wholesale and industrial uses.	One (1) area for each ten thousand (10,000) square feet of gross floor area.
Truck terminals.	Sufficient space to accommodate the maximum number of trucks to be stored or to be loading or unloading at the terminal at any one time.

Section 304 General Provisions.

(A) Each parcel abutting a thoroughfare maintained by the North Carolina Highway Department shall be provided with adequate space for turning so that no vehicle shall be required to exit from the premises by backing into the thoroughfare.

(B) All off-street parking spaces required by this Ordinance shall be provided on the same parcel of property on which the principal use is conducted, except as permitted under Section 305 of this Ordinance.

(C) Any required non-residential parking spaces may extend up to one hundred twenty (120) feet into a residential district, provided that they:

(1) Adjoin a commercial or industrial district;

(2) Have their only access to or front upon the same street as the parcel in the commercial or industrial district for which the parking is being provided;

(3) Are separated from abutting properties in the residential district by a dense ten-foot wide evergreen buffer strip.

(D) Commercial trailers may be parked on private property only in the following cases:

(1) When the trailer is being temporarily used in connection with an on-going construction project.

(2) When the trailer is being loaded, unloaded, or temporarily used for storing materials for a business, and is also located in the rear of the principal building (that is, at the opposite side of the main entrance) in which the business is located. If located other than in the rear of the building, the trailer may not be parked on said premises for a period of time longer than 48 hours.

Section 305 Use of Public On-Street Parking by Restaurants

Section 305.1. Purpose.

The Town of Highlands finds that the use of public on-street parking and dual-use parking by restaurants in the B-2 and B-3 zoning districts is an efficient method of meeting the unique parking needs of the Town's restaurants. The Town of Highlands further finds that the regulation of such parking as set forth in this Section will promote the public, health, safety and welfare of all of the people of the Town of Highlands.

Section 305.2. Definitions.

The following definitions shall apply only to the provisions of Section 305 of this Ordinance:

- (A) "Public Parking Space". Any parking space, not governed by hourly parking restrictions, which is located on a public street and duly marked by the Town of Highlands for public parking, located within 300 feet from the restaurant's main entrance, as measured by the shortest walking distance along existing sidewalks and designated crosswalks.
- (B) "Dual-use Parking Space". Any parking space that is shared by a restaurant and one or more other existing use(s), which is located no more than 500 feet from the restaurants' main entrance, as measured by the shortest walking distance along existing sidewalks and designated crosswalks, and which is not separated from the restaurant by NC 106 or US 64, unless a marked and signalized crosswalk is provided for safe pedestrian access.

Section 305.3. General Regulations.

- (A) Public Parking Spaces and Dual-Use Parking Spaces may be used to increase the number of seats allowed for restaurants only in the B-2 and B-3 zoning districts, and only upon full compliance with the provisions of Section 305 of the Zoning Ordinance of the Town of Highlands.
- (B) Restaurants shall be limited to the use of a combined total of twelve (12) parking spaces, in any combination, of Public Parking Spaces and Dual-Use Parking Spaces, for the purposes set forth in this Section 305.
- (C) A maximum of three (3) additional seats will be allowed for each Public Parking Space and each Dual-Use Parking Space.
- (D) Public Parking Spaces shall continue to be available for unrestricted use by the public unrelated to restaurant purposes and no restaurant shall be allowed to limit or attempt to limit the use of any Public Parking Space to its customers, employees, visitors, or vendors.
- (E) This Section shall not be construed to increase the maximum number of seats allowed for any restaurant under applicable building and fire safety codes.
- (F) Before any restaurant is allowed additional seats under this Section, it shall first submit an application in a format specified by the Planning and Development Department and receive written approval of such application by the Zoning Administrator.
- (G) Along with the applications required pursuant to this Section, each restaurant shall submit an application for an amended special use permit under Section 501. No application under this Section shall be granted unless and until the restaurant applies for and obtains an amended special use permit.

Section 305.4. Public Parking Spaces Allowed for Restaurants Under Certain Conditions.

Upon approval of the application required under this Section, restaurants shall be allowed to increase seating as set forth in this Section.

- (A) An application for the use of Public Parking Spaces for the purposes of this Section shall contain at least the following information:
 - (1) A survey or site plan drawn to a scale of not less than 1"=30', and showing or containing the following information:

- (a) the floorplan of the restaurant, showing existing and proposed seating areas (both indoor and outdoor);
 - (b) a notation of the existing square feet of the interior area of the restaurant;
 - (c) adjacent street names;
 - (d) existing parking (both public and private);
 - (e) location of Public Parking Spaces requested to be utilized;
 - (f) identification of land uses of adjacent properties;
 - (g) the Macon County property identification number of the restaurant parcel;
 - (h) the street address of the restaurant;
- (2) A statement of the number of employees on the restaurant's largest shift.
- (3) Any other related information requested by the Zoning Administrator shall be supplied by the applicant as part of the application.

(B) If the restaurant is located in a shopping center or unified development, the following additional information shall be provided with the Public Parking Spaces application and shown on the site plan:

- (1) the location of all common parking areas;
- (2) the total number of common parking spaces;
- (3) the location of all parking spaces in the common parking area that are allocated to the restaurant;
- (4) the number of parking spaces in the common parking area that are allocated to the restaurant;
- (5) the area, in square feet, of all other uses in the shopping center;
- (6) the parking requirements of all other uses in the shopping center.

(C) The Town reserves the right to move, eliminate and alter, in its sole discretion, any Public Parking Spaces, regardless of the existence of any pending or approved applications under this Section. If any Public Parking Space previously designated under this Section becomes unavailable to a restaurant, the allowable seating in the restaurant shall be reduced at the ratio of three (3) seats for every one (1) Public Parking Space lost. No vested rights shall be acquired by any restaurant under this Section.

Section 305.5. Dual-Use Parking Spaces for Restaurants.

Upon approval of the application required under this Section, restaurants shall be allowed to increase seating as set forth in this Section.

(A) An application for the use of Dual-Use Parking Spaces shall contain the following:

- (1) A parking study prepared by the applicant, at the applicant's expense, which shall contain the following information:
 - (a) A site plan, to scale, showing the location of the following:
 - (b) all parking spaces on the property owned by the restaurant;
 - (c) all parking spaces to be designated as Dual-Use Parking Spaces;
 - (d) the schedule when the Dual-Use Parking Spaces will be used; and
 - (e) all Public Parking Spaces, as defined herein, whether or not such Public Parking Spaces are the subject of an application under this Section.
 - (2) A statement, with supporting information, showing that the sharing of the Dual-Use Parking Spaces will not result in conflicting or overlapping usage of the parking facilities.
 - (3) A lease, for a term of at least 10 years, between the owner of the real property where the restaurant is located and the owner of the property where the proposed Dual-Use Parking Space is located, allowing for parking under the provisions of this Section, and providing for termination upon changes in schedules of use (by lessor or lessee) such that there is substantial conflicting or overlapping usage; and
 - (4) Any other related information deemed necessary by the Planning Director.
- (B) In the event of a termination, for any reason, of the lease required for herein, the approval of the restaurant's application shall be suspended, and the restaurant shall be required to show, within 30 days, that it has, under this Section or otherwise, parking spaces sufficient for the number of seats under the generally applicable parking regulations. This showing can be made by the restaurant's reduction in the number of seats. Failure of the restaurant to make such showing shall result in a revocation of the restaurant's zoning certificate.
- (C) All Dual-Use Parking Spaces will be clearly marked with appropriate signage to indicate the times that parking is allowed for the restaurant.

ARTICLE 400: SIGN REGULATIONS

Section 401 Purpose.

The Town of Highlands is located in a unique mountain and natural scenic setting. It serves as a gateway to a mountain recreational area. The visual beauty of the mountains is a major factor in attracting vacationers, summer residents, and new residents to the area.

It is, therefore, the desire and purpose of the Board of Commissioners of the Town of Highlands to regulate signs and outdoor advertising throughout the zoning jurisdiction of the Town of Highlands; to limit the size, height, and location of signs and outdoor advertising erected therein; to eliminate hazards to pedestrians and motorists brought about by distracting sign displays; to ensure orderly development; to protect and stabilize property values; to preserve the scenic natural environment by allowing signs which are consistent with an attractive Town appearance; to promote public health, prosperity, safety, and welfare; and to establish procedures through which these purposes can be fulfilled.

Section 402 Exempt signs.

The following signs, as defined by this Ordinance, are exempt from the requirements herein.

(A) All classes of government signs including but not limited to traffic, health and public safety; crime control and prevention; official notices or advertisements related to any court action; the location of underground utilities; historical markers or monuments; any other community service sign approved by the Town of Highlands.

(B) Flags, badges, or insignia of government or any charitable, civic, fraternal, patriotic, religious or other non-profit organization.

(C) Temporary lighting and displays as part of customary holiday decorations, provided strings of lights may only be installed between November 15 and January 15 each year, and must be removed at the end of that period.

(D) Signs posted on private property related to trespassing or public safety, such as danger from animals.

(E) Signs denoting a product being sold out of a vending machine, telephone booth, or newspaper stand, and actually located on same.

(F) Signs displayed on the inside of a business that are not visible from any public street or walkway.

(G) Signs attached to commercial vehicles.

(H) For sale signs on private vehicles.

(I) Names and lettering on mail boxes and newspaper tubes.

(J) Manufacturer's signs displaying brand names or emblems located on gasoline pumps at service stations.

Section 403 Prohibited Signs.

The following signs, as defined by this Ordinance, are prohibited.

(A) Off-premise Signs, Including Outdoor Advertising Signs. Any sign which is not located on the premises that it identifies or advertises, with the exception of name plate signs permitted in Sections 402(I) and 404.2(E), political signs permitted in Section 404.1(H), signs on Public Information Centers per Section 405.2(F), and signs identifying businesses in shopping centers located other than at the actual building frontage of the individual business per Section 405.2(D)(2) and 405.2(E)(2). Outdoor advertising signs permitted prior to May 7, 1986 by the State of North Carolina under the Outdoor Advertising Control Act shall be non-conforming in accordance with Section 407.4.

(B) Roof Signs. Any signs which are erected on a roof or which extend in height above the parapet or roof line, as defined by this Ordinance, of the building on which the sign is erected.

(C) Simulated Traffic Signs and Obstructions. Any sign which may be confused with or obstruct the view of any authorized traffic signal or traffic sign, as defined by this Ordinance, extend into the public right-of-way, obstruct the sight distance triangle, as defined by this Ordinance, at any street intersection, or in any way constitute a hazard to traffic.

(D) Building Obstructions. Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress for any building.

(E) Signs posted within Public Rights-of-Way. Any sign, other than governmental signs described in Section 402(A), private residential signs described in Section 402(I), and real estate signs permitted in Section 404.1(C), posted on utility poles, on other officially placed signs, or on trees, rocks, ground, etc. within the public right-of-way. In the event a right-of-way is not defined among the public records of Macon County, this prohibition shall apply to an area within fifteen (15) feet of the edge of the wear surface of any public thoroughfare.

(F) Portable Signs. Any sign that is not permanently affixed to a building, stationary structure, or the ground. This shall not apply to Government signs described in Section 402(A), to commercial vehicle signs described in Section 402(G), or to vehicle

for sale signs described in Section 402(H).

(G) **Message Board Signs.** Any sign that uses changeable lettering or numbering, with the exception of church signs described in Section 404.2(A), service station signs described in Section 404.2(D), movie theater marquees described in Section 404.2(F), and restaurant message boards described in Section 404.2(G).

(H) **Animated and Moving Signs.** Any moving sign or device to attract attention, all or any part of which moves by any means, including fluttering, rotating, or otherwise moving devices set in motion by the atmosphere, or by mechanical means, such as pennants, flags, propellers, or discs, whether or not any said device has a written message; traditional barber poles located at barber shops, however, shall not be prohibited.

(I) **Flashing Signs.** Any sign or device displaying flashing lights, intermittent lights, or lights of changing degrees of intensity. Time and/or temperature signs, however, are permitted in commercial zones, provided that time and temperature displays alternate on no less than a five-second cycle and meet all other requirements of wall or free-standing signs in Section 405.2.

(J) **String and Tube Lighting.** Any illuminated tubing or string of lights whatsoever in commercial zoning districts, except for customary holiday decorations described in Section 402(C).

(K) **Oversized Product Facsimiles.** The display of letters, logos, trademarks, emblems, pictures, etc. on oversized facsimiles or three dimensional structures, such as chicken buckets, human figures, cans, or other containers or lettering.

(L) **Internally illuminated signs.** Any sign whose light source is within the sign, with the sign having a transparent or translucent background or cover which silhouettes opaque or translucent letters or designs.

(M) **Neon Signs.** Any sign illuminated in whole or in part by neon lighting.

(N) **Illuminated Signs in Proximity to Residential Zoning Districts.** Any sign, with the exception of those permitted for subdivisions or multi-family developments per Section 405.2(A)(1), which is illuminated between the hours of 12:00 midnight and 6:00 a.m. if located within 300 feet of a residential zoning district, or between the hours of 8:00 p.m. and 7:00 a.m. if located within 100 feet of a residential zoning district.

Section 404 Regulated Signs not requiring a permit

The following signs are permitted without a sign permit, provided they conform to the requirements of this Article.

404.1. Temporary signs.

(A) One temporary sign for church functions, not exceeding 42" in height nor nine (9) feet in surface area, and located on church property.

(B) Commercial signs on the interior of glass, provided they do not exceed 20% of the area of any given window or glass door, and are not illuminated except by normal interior business lighting or by soft indirect lighting of an entire window unit. Signs described in Section 404.1(D) and 404.2(C), displays of merchandise in windows, and photographs of homes or other properties in the windows of real estate offices may be placed in commercial windows in addition to the 20% area restriction.

(C) One temporary on-premise sign advertising the rent, sale, or lease of a commercial or residential property, provided that the surface area does not exceed four (4) square feet in surface area per building and the sign is not illuminated. Such signs may not be erected within ten (10) feet of the wear surface of any public or private road; however, if the setback requirement cannot be met, the sign shall comply with Section 405.1(B).

(D) Signs sponsored by municipal, school, civic, and other non-profit organizations, provided that the signs are only displayed in commercial zones, have a maximum surface area of nine (9) square feet, are posted in either in commercial windows or in a secure fashion on private property, and are posted not more than thirty (30) days prior to a scheduled event and removed within 24 hours after the event.

(E) Signs advertising the sale of produce out of a home garden on the premises where the produce is being sold, not to exceed three non-illuminated signs per premises, provided that such signs do not exceed four (4) square feet in surface area per sign face, are not placed within the public right-of-way or within fifteen (15) feet of any road wear surface if no right-of-way is defined, and shall be displayed only from March through October.

(F) Residential yard sale signs, provided they do not exceed four (4) square feet in surface area per sign face, and the maximum time for display does not exceed forty-eight (48) hours.

(G) Signs used prior to and during construction to identify the name of a new project and/or the principle contractor or developer, provided they meet the following requirements:

(1) Each project site shall have no more than one identification sign with one sign face.

(2) Identification signs shall be either attached to the building under construction or affixed to a secure temporary post, and located out of the public right-of-way or beyond fifteen (15) feet of any road wear surface if no right-of-way is defined.

(3) Identification signs shall be no greater than four (4) square feet in residential zoning districts and sixteen (16) square feet in commercial zoning districts.

(H) Political signs, as defined by this Ordinance, provided they are not illuminated, are not placed within the public right-of-way or within fifteen (15) feet of any road wear surface if no right-of-way is defined, do not exceed sixteen (16) square feet in surface area per sign face, and do not constitute a hazard to pedestrian or vehicular traffic.

404.2. Permanent signs.

(A) One permanent sign for churches, not exceeding sixteen (16) square feet per sign face nor more than eight (8) feet in height, and either non-illuminated or indirectly illuminated, as defined by this Ordinance, by white lighting only. Church signs may be of a message-board type that use changeable lettering.

(B) Private commercial traffic signs, as follows:

Signs indicating the location of entrances or exits. Such signs may not exceed two (2) square feet in surface area, may be erected no closer than three (3) feet to the wear surface of the thoroughfare, may not exceed a height of 42" or impair sight distance, and shall be located immediately adjacent to the entrances or exits. Such signs may include the name and logo of the business, not to exceed one-third of the total surface area, and shall be limited to one sign per entrance or exit.

(2) Signs indicating general traffic information. Such signs shall not be in the right-of-way of any public or private road and may not exceed two (2) square feet in surface area. Such signs shall include handicap, parking, loading zone, traffic flow, and similar signs.

(C) Private commercial signs indicating charge card information or general instructions, restriction, etc., provided that they shall be limited to not more than three (3) per business site, shall not display the name of the business, and shall not exceed one square foot in surface area. Such signs may be attached to a building and/or an existing permitted free-standing sign.

(D) Signs for service stations, or any businesses selling gasoline, in addition to signs permitted in Section 405.2(B) and 405.2(C), as follows:

(1) One gasoline price sign located and secured to each pump island, not exceeding four (4) square feet per sign face and eight (8) square feet per sign total;

(2) Signs located at each pump island indicating self-service and full-service operation, not exceeding four (4) square feet per sign face;

(3) One North Carolina inspection sign at any location on the business premises, not exceeding four (4) square feet per sign face.

(E) Individual nameplate signs for residences, provided they do not exceed two (2) square feet per sign face and are placed no closer than three (3) feet to any road wear surface. In addition to containing the name of the resident, such signs may refer to home occupations carried on within the place of residence per Section 202.3(A)(4), 203.3(A)(4), 205.3(A)(4), and 206.3(A)(4), provided they comply with Section 405.2(A)(2). Name-plate signs may be posted off-premise, either singly or together on a secure display structure, at the main entrance or road leading to a residential area, provided they are placed no closer than three (3) feet to any road wear surface.

(F) Movie theater marquees containing changeable lettering or numbering, provided such signs shall be considered part of the aggregate surface area based on building frontage for the movie theater per Section 405.2(B)(1) or Section 405.2(D)(2)(a).

(G) Restaurant message boards on the wall or in a window, as close to the main entrance of a restaurant as possible, containing changeable lettering or numbering, provided such signs shall be considered part of the aggregate surface area based on building frontage if on the wall per Section 405.2(B)(1) or Section 405.2(D)(2)(a), or part of the maximum permissible area allowed on window glass per Section 404.1(B).

Section 405 Regulated Signs requiring a permit

405.1. Temporary signs.

The following temporary signs, as defined by this Ordinance, are permitted, subject to the issuance of a permit by the Zoning Administrator. Applications for temporary sign permits shall be made on the proper form obtainable at the Town Office; permit fees may be set at the discretion of the Board of Commissioners, as set forth in the Fee Schedule maintained in the Town Office by the Town Clerk.

(A) Temporary signs, flags, or banners advertising the initial openings of business establishments or special sales, not to exceed four (4) signs per year, are permitted provided the location of such signs is approved by the Zoning Administrator and provided there shall be a minimum of thirty (30) days between display of such signs. Such signs shall not exceed sixteen (16) square feet in surface area on one side and shall not be displayed longer than ten (10) days.

(B) Real estate signs which cannot comply with the ten (10) foot setback requirement described in Section 404.1(C) shall be permitted in the setback area, provided each sign satisfies each of the following conditions:

(1) The difficulty in erecting the sign to meet the setback requirement is due to topographical factors;

(2) The sign cannot be erected anywhere on the property to satisfy the ten (10) foot setback requirement;

(3) The sign, when erected, will not impair sight distance.

(C) (1) Planned development signs, shall be allowed subject to the following applicable standards:

(a) One sign shall be allowed along the street utilized as the project's main entrance. One additional sign shall be allowed along each other public street adjacent to the project, but only if there is a minimum of eighty (80) feet of street frontage on said street.

(b) The maximum area per sign shall not exceed twenty-four (24) square feet;

(c) Signs shall not be placed within a dedicated street right-of-way;

(d) Signs shall be a minimum of ten (10) feet from the street's edge of pavement.

(e) Signs located within ten (10) feet and fifteen (15) feet of the street's edge of payment shall be allowed one (1) sign face. Signs located a distance of greater than fifteen (15) feet from the street right-of-way may have up to two (2) sign faces, each face not exceeding twenty-four (24) square feet.

(f) The maximum height of the sign shall not exceed ten (10) feet.

(g) The maximum area of sign face relating to sales contract information or identification of real estate firms or agents shall not exceed twenty-five (25) percent of each individual sign face. The 25% maximum area is per sign face. When multiple faces or signs are allowed by this ordinance, the individual maximums per sign face may not be used in a cumulative manner to increase the area beyond 25% on any face or for a cumulative visual impact greater than 25% of the maximum sign face size.

(i) Individual real estate signs, permitted under Section 405.1(B), shall not be allowed in conjunction with or as a supplement to temporary development signs, or be located within visual proximity of temporary development signs.

(2) Planned development signs shall be allowed by granting of a temporary sign permit by the Zoning Administrator.

(a) A permit shall be issued only upon proof of a building permit having been issued by the Macon County Building Department for the development of common or community facilities to include but not limited to entrance features, or other facilities relating to the overall development; or final plat approval by the Town of Highlands.

(b) The term of the temporary sign permit shall be a period of three (3) years from the date of issuance of the permit.

(c) A permit may be renewed for one additional two (2) year period by application to the Zoning Administrator.

(i) Removal shall be contingent upon the continuance of the sign(s) meeting all requirements of this ordinance; continuance of active development and marketing efforts by the developer; and continued maintenance of the development.

(d) Applications shall be on a form provided by the Zoning Administrator.

(e) An application fee shall be required as designated on the Town of Highlands schedule of fees.

(f) Prior to being issued by the Zoning Administrator, the application shall be reviewed and recommendations made by the Town of Highlands Appearance Commission.

(3) Sign removal shall be required on the following time frames:

(a) Single-family residential subdivision: Within thirty (30) days after the sale of ninety (90) percent of homes or lots; or upon expiration of the permit or permit renewal, whichever comes first.

(b) Multi-family residential developments: Within thirty (30) days after the initial sale of ninety (90) percent of the units; or upon expiration of the permit or permit renewal, whichever occurs first.

(c) Other planned developments: Within thirty (30) days after issuance of certificates of occupancy of sixty (60) percent of all units or installation of permanent development signs, whichever occurs first.

After further discussion it was decided to delete from Section 2 (c)(i) the following wording and the continuance of an active building permit.

405.2. Permanent signs.

The following permanent signs, as defined by this Ordinance, are permitted, subject to the issuance of a permit by the Zoning Administrator. Applications for permanent sign permits shall be made on the proper form obtainable at the Town Office, and shall include the name of the owner of the sign and the property, a drawing of the sign indicating its size and height, a site plan indicating its location on the business premises and relation to any adjacent rights-of-way, method of illumination, and whatever other information the Zoning Administrator deems necessary to ensure compliance with these regulations. Fees for Sign Permits may be set at the discretion of the Board of Commissioners, as set forth in the Fee Schedule maintained in the Town Office by the Town Clerk. With the exception of outdoor advertising signs, any substantial change in the copy of a sign, such as change of the name of a business, shall require application for a new Sign Permit at the prevailing permit fee; no permit shall be issued in the event of such a change in copy unless the sign complies with the current provisions of this Article.

(A) Residential Zoning Districts.

(1) Each subdivision or multi-family development, as defined by this Ordinance, is permitted one (1) free-standing sign at each major entrance, not to exceed two (2) free-standing signs for the entire subdivision or multi-family development. Such signs shall be adequately secured; shall not be located within any public right-of-way, nor within fifteen (15) feet of the wear surface of any public thoroughfare if no right-of-way is defined among the public records of Macon County; shall not exceed six (6) feet in height; shall not exceed twenty-four (24) square feet in surface area per sign face; and may be either non-illuminated or indirectly illuminated, as defined by this

Ordinance, by white lighting only.

(2) Home occupations, as defined by this Ordinance, are permitted one sign not exceeding four (4) square feet in surface area per sign face, which may be free-standing, wall, or hanging in type.

(3) Tourist homes permitted by Section 504 are permitted one sign not exceeding four (4) square feet in surface area per sign face, which may be free-standing, wall, or hanging in type.

(B) Single Businesses in the B-1 Business District.

Each single business in the B-1 Business District, not located in a shopping center, is permitted the following signs:

(1) One or more wall signs, as defined by this Ordinance, provided that the total aggregate surface area does not exceed a ratio of one-half (1/2) square foot for each one (1) linear foot of building frontage, as defined by this Ordinance, nor a maximum of thirty-two (32) square feet for any single sign. Consistent with section 403(B), no sign placed under these circumstances shall project above the mansard roof or project more than twelve (12) inches from the building wall at the base of the sign.

(2) One hanging sign, as defined by this Ordinance, provided a clearance of at least seven (7) feet is established between the bottom of the sign and any pedestrian walking surface. Such signs may extend no more than four (4) feet from the right-of-way line over the walking surface, and may not exceed eight (8) square feet in surface area per sign face.

(C) Single Businesses in the B-2, B-3, and B-5 Business Districts.

Each single business in the B-2, B-3, and B-5 Business District, not located in a shopping center, is permitted the following signs:

(1) One free-standing sign, provided it shall not be located within any public right-of-way, nor within fifteen (15) feet of the wear surface of any public thoroughfare if no right-of-way is defined among the public records of Macon County; shall not exceed eight (8) feet in height; and shall not exceed thirty-two (32) square feet in surface area per sign face. Businesses which adjoin more than one of the four major highways serving Highlands--US-28, NC-106, US-64E, and US-64W--and which are served by entrances from said highways, shall be permitted two (2) free-standing signs thirty-two (32) square feet in surface area per sign face, one on each highway.

(2) A choice between wall signs or one hanging sign meeting the requirements of Section 405.2(B), paragraphs (1) and (2).

(D) Shopping Centers in the B-1 Business District.

(1) Each shopping center, as defined by this Ordinance, in the B-1 Business District is permitted one wall sign, as defined by this Ordinance, identifying the shopping center, provided it does not exceed thirty-two (32) square feet in total surface area. Such sign may also contain the names of the individual businesses in the shopping center.

(2) Each individual business located in a shopping center, as defined by this Ordinance, in the B-1 Business District shall be permitted the following:

(a) One or more wall signs, as defined by this Ordinance, provided that the total aggregate surface area does not exceed a ratio of one-half (1/2) square foot for each one (1) linear foot of building frontage, as defined by this Ordinance, nor a maximum of thirty-two (32) square feet for any single sign. Consistent with section 403(B), no sign placed under these circumstances shall project above the mansard roof or project more than twelve (12) inches from the building wall at the base of the sign. Individual businesses which are not readily visible from the main thoroughfare on which the shopping center is located may locate any portion of their wall signs on another exterior wall of the shopping center facing the thoroughfare.

(b) One hanging sign, as defined by this Ordinance, provided a clearance of at least seven (7) feet is established between the bottom of the sign and any pedestrian walking surface. Such signs may extend no more than four (4) feet from the building wall over the walking surface, and may not exceed eight (8) square feet in surface area per sign face.

(E) Shopping Centers in the B-2, B-3, and B-5 Business Districts.

(1) Each shopping center, as defined by this Ordinance, in the B-2, B-3, and B-5 Business Districts is permitted one free-standing sign identifying the shopping center, provided it shall not be located within any public right-of-way, nor within fifteen (15) feet of the wear surface of any public thoroughfare if no right-of-way is defined among the public records of Macon County; shall not exceed ten (10) feet in height; and shall not exceed sixty-four (64) square feet in surface area per sign face. Such sign may also contain the names of the individual businesses in the shopping center. Shopping centers which adjoin more than one of the four major highways serving Highlands--US-28, NC-106, US-64E, and US-64W--and which are served by entrances from said highways, shall be permitted two (2) free-standing signs sixty-four (64) square feet in surface area per sign face, one on each highway.

(2) Each individual business located in a shopping center, as defined by this Ordinance, in the B-2 and B-3 Business Districts shall be permitted wall signs and one hanging sign meeting the requirements of Section 405.2(D)(2), paragraphs (a) and (b).

(F) Single Businesses in the B-4 Business Districts.

Each single business in the B-4 Business District is permitted the following signs:

(1) One free-standing sign, provided it shall not be located within any public right-of-way, nor within fifteen (15) feet of the wear surface of any public thoroughfare if no right-of-way is defined among the public records of Macon County; shall not exceed six (6) feet in height; and shall not exceed twenty-four (24) square feet in surface area per sign face.

(2) A choice between wall signs or one hanging sign meeting the requirements of Section 405.2(B), paragraphs (1) and (2).

(G) Public Information Centers.

The Town may establish public information centers in commercial zoning districts. At these locations, limited space may be provided for one (1) year periods, as space allows, for directional signs and/or maps; signs sponsored by municipal, school, civic, and other non-profit organizations described in Section 404.1(D); and temporary commercial signs. Any business unable to display a sign due to space limitations shall be given priority over other signs in subsequent display periods. The design, content, and size of such signs shall be approved by the Zoning Administrator.

Section 406 Sign Construction, Design, and Maintenance.

(A) All signs, except those protected by glass or other transparent cover, shall be constructed of materials that will not rapidly deteriorate, fade, fall apart, or in any way become a hazard to the public health, safety, and general welfare.

(B) Any sign permitted under this Ordinance must comply with applicable requirements of the N. C. State Building Code, National Electrical Code, and other applicable federal, state, or local codes.

(C) Every sign and its supports, frames, guys, anchors, and electrical equipment shall be securely fastened and placed to withstand adverse weather conditions.

(D) All signs, unless otherwise stated or implied, shall have no more than two faces, displayed on opposite sides and without a space or angled projection to one another. Said signs shall have the same message and general design on both faces.

(E) All signs shall be kept free from defective or missing parts or peeling paint. The Zoning Administrator shall possess the authority to order the painting, repair, or alteration of a sign which constitutes a hazard to the public health, safety, or general welfare by reason of inadequate maintenance, dilapidation, or obsolescence. Notice of such repair shall be given to the owner by personal service or registered mail, return receipt requested.

(F) The immediate premises around a sign shall be kept free from litter and debris. However, no person other than persons authorized by the Town shall damage, trim, destroy, or remove trees, shrubs, or other vegetation located within the public right-of-way of any street or road for the purpose of increasing or enhancing the visibility of a sign; nor shall such work be performed on property that is not under the ownership or control of the person performing or responsible for such work, unless done pursuant to the express authorization of the person owning the property where such trees or shrubs are located.

Section 407 Non-conforming signs.

407.1. General.

Any permanent sign legally in existence prior to the effective date of this Ordinance, or any applicable amendment thereto, which does not satisfy the requirements of this ordinance, is declared non-conforming. The eventual elimination, as expeditiously and fairly as possible, of non-conforming signs is as much a subject of health, safety, and welfare as is the regulation of new signs.

407.2. Conformance required.

All non-conforming signs in existence prior to the effective date of this Ordinance shall either be made to conform to all provisions of this Ordinance or shall be removed within seven (7) years after the enactment of this Ordinance, unless explicitly prohibited by federal or state law. All non-conforming signs made non-conforming by an amendment to this Ordinance shall either be made to conform to all provisions of this Ordinance or shall be removed within three (3) years after the date of such amendment, unless explicitly prohibited by federal or state law.

Any sign that does not conform at the end of the aforesaid period shall be considered an illegal sign and must be removed by the owner at that time.

407.3. Alterations and repairs to non-conforming signs.

Non-conforming signs shall not be moved, altered, enlarged, or changed in any manner to increase the degree of non-conformity. Ordinary maintenance, such as re-painting or repairing, shall be permitted for non-conforming signs. However, no substantial change in the copy of the sign, such as change of the name of a business, shall be permitted, with the exception of outdoor advertising signs. Moreover, if, within any twelve month period, alterations or repairs are anticipated to cost in excess of fifty percent of the physical value of the existing sign, such sign shall be removed or made to conform with the current regulations of this ordinance.

407.4. Outdoor advertising signs.

(A) This article in part carries forward by enactment some of the provisions of "An Ordinance Providing for Regulation of and Controlling Signs in the Town of Highlands," adopted January 1, 1984, and subsequently amended. It is not the intention of the Board of Commissioners by this Ordinance to repeal that prior Ordinance, as amended, but rather to re-enact and continue in force without interruption certain provisions thereof, so that all rights and liabilities which have accrued thereunder shall be preserved and may be enforced. The enactment of this Ordinance shall not affect any action, suit, or proceeding instituted or pending at this time under that prior Ordinance, as amended.

(B) All outdoor advertising signs in existence within the corporate limits of the Town of Highlands prior to the effective date of this Ordinance, as amended, have been declared non-conforming, have been amortized, and are subject to removal pursuant to Section 9 of "An Ordinance Providing for Regulation of and Controlling Signs in the Town of Highlands," adopted January 1, 1984, as amended, unless such declaration is explicitly prohibited by federal or state law.

(C) All outdoor advertising signs legally in existence within the extraterritorial jurisdiction of the Town of Highlands, as may hereafter be brought within the purview of this article pursuant to law, are hereby declared non-conforming, unless such declaration is explicitly prohibited by federal or state law, and shall be removed by the owner within three (3) years after such area shall be brought within the purview of this article.

Section 408 Illegal Signs.

408.1. Discontinuance of use.

Whenever the use of a building or premises is discontinued by a business for reasons other than a normal seasonal shutdown for a period of thirty (30) days, any signs pertaining to that business shall be removed within thirty (30) days of the discontinuance of use. The Zoning Administrator shall notify the owner at the last known address that said signs are in violation of this Ordinance and must be removed within thirty (30) days; any signs not removed within that period shall be removed by the Town at the owner's expense.

408.2. Signs located within a public right-of-way.

Any sign, consistent with Section 403(E), except as permitted by Sections 402(I), 404.2(B), and 404.2(E), which is found to be located within a public right-of-way shall be removed by its owner within thirty (30) days of written notice thereof. If ownership of a sign cannot be reasonably established, a notice shall be attached to the sign by the Zoning Administrator stating the need to remove it within thirty (30) days; otherwise, the Town shall remove the sign. Temporary signs shall be removed by the Town upon discovery.

408.3. Signs erected without a permit.

The owner of any sign, as defined by this Ordinance, that has been erected without a permit in accordance with Section 405.1 and 405.2 of this Ordinance shall obtain a permit for the sign and otherwise ensure that it complies with these regulations within twenty-four (24) hours of notification by the Zoning Administrator that the sign has been illegally erected, or shall cause such sign to be removed. If the sign has not been removed within twenty-four (24) hours of notification, it may be removed and confiscated by the Zoning Administrator at the owner's expense.

ARTICLE 500: SPECIAL USES.

Section 501 General.

501.1. Applicability.

A special use permit shall be required for each of the following uses:

(A) All new commercial construction, additions to existing commercial property, and remodelling of existing commercial buildings which would result in an increase in the number of business occupants in the buildings.

- (B) Crafts fairs, flea markets, and other similar transient retail businesses.
- (C) Places of entertainment, including indoor theaters, dance halls, skating rinks, and bowling alleys.
- (D) Hotels and motels. (See Section 508)
- (E) Restaurants. (See Section 507)
- (F) Automotive and heavy machinery sales and service centers or stations.
- (G) Service or fuel stations.
- (H) Private schools not accredited by the State of North Carolina and not offering a full-time academic curriculum.
- (I) Day care centers, as defined by this Ordinance.
- (J) Multi-family dwellings of any kind. (See Section 502)
- (K) Private social clubs. (See Section 503)
- (L) Tourist homes. (See Section 504)
- (M) Self-service storage facilities. (See Section 505)
- (N) Flammable liquid storage facilities. (See Section 506)
- (O) Churches and other places of public worship.
- (P) Places of adult entertainment, as defined by this Ordinance. (See Section 509)
- (Q) Wireless communications facilities subject to Zoning Board of Adjustment approval. (See Section 510)
- (R) State-owned research and education-related institutions. (See Section 202.3[C])
- (S) Nonprofit visual art centers. (See Section 511)
- (T) Electronic Gaming Operations (See Section 512)

501.2. Application; Review by Appearance Commission Required.

(A) All applications for a special use permit shall accompany or precede the application for a zoning certificate (as provided in Section 702) or a certificate of compliance (as provided in Section 703, as applicable).

(B) Prior to the consideration of any application for Special Use Permit under Article 500 of this Ordinance, the Zoning Board of Adjustment shall require that an applicant submit such an application to the Appearance Commission for review and recommendation, per Section 803.5 of this Ordinance. Special Uses which do not involve any change in the appearance of a building or premises shall not be required to be reviewed by the Appearance Commission. The Commission shall review an application at its next regularly scheduled meeting, not to exceed thirty (30) days after the date of application, and shall submit its report to the Zoning Board prior to the Zoning Board's next meeting. The Zoning Board shall not deny any application, however, on the basis of a negative recommendation from the Appearance Commission. In reviewing the application, the Appearance Commission may consider building design, relationship of building to site, relationship of project to adjoining area, landscape and site treatment, signs, lights, street hardware, miscellaneous structures, maintenance, and any other considerations it feels reasonably affect the appearance of the project.

501.3. Procedure.

(A) All applications for a special use permit shall be addressed and submitted to the Zoning Board of Adjustment and shall be delivered to the office of the Zoning Administrator. Applications for a special use permit shall be made on the proper form obtainable from the Zoning Administrator and shall include the following information:

(1) A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; the identity of neighboring properties; any adjacent streets, designated as public or private; any existing or proposed structures, showing setbacks to rights-of-way and property lines; parking areas showing the number and arrangement of parking spaces and driveway entrances; utilities and surface water drainage; and significant natural features, such as wooded areas, streams, ponds, or marshes. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(2) Elevations and a floor plan, indicating dimensions of the building, gross floor space, number of seats, or any other applicable information.

(3) A complete and detailed description of the use proposed, together with

any other pertinent information which the applicant feels would be helpful to the Zoning Board in considering the application.

(4) A plan showing the size, type, and location of any signs proposed to be erected in conjunction with the use.

(5) A complete construction schedule, including the date upon which construction is expected to begin and the date within which it is expected to be completed.

The Zoning Board of Adjustment may, in its sole discretion, waive the foregoing requirements where, for example, only minor construction, minor changes to parking areas, or changes only to the use of existing buildings is contemplated.

(B) Upon receipt of an application for a special use permit, the Zoning Board of Adjustment shall call a public hearing and shall give notice as required by law. At the hearing, the applicant or designated representative thereof shall appear for the purposes of offering testimony and recommendations as to the application, and 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.

(C) The Zoning Board of Adjustment may, at its discretion, submit to the Planning Board for its recommendation any special use permit applications received.

(D) The Zoning Board of Adjustment shall grant and issue the special use permit if and only if it finds the following:

(1) The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

(2) The use meets all required conditions and specifications;

(3) The use will not substantially injure the value of adjoining or abutting property or, in the alternative, the use is a public necessity; and

(4) The location and character of the use, as developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the Town and its environs.

If, in the opinion of the Zoning Board of Adjustment, any one of the above conditions shall not be met, the Board shall deny the application.

(E) Within seven (7) days after making the decision required of it, the Zoning Board of Adjustment shall issue its written ruling, either granting or denying the special use permit, and deliver copies thereof to the Zoning Administrator and the Town Clerk. The Zoning Administrator will send a copy of the written ruling to the applicant or his representative, but the failure to do so shall not affect the ruling.

(F) All construction approved pursuant to a Special Use Permit shall be completed in accordance with the construction schedule submitted in paragraph (5) of Section 501.3(A), as approved by the Zoning Board of Adjustment. In the event that a significant departure from the construction schedule occurs during a project, the applicant may appear before the Board and request an amendment of the Special Use Permit. The Board may extend the construction schedule only upon a finding that delays in construction have been caused by, or are expected to be caused by, circumstances beyond the control of the applicant. Unless the construction scheduled is extended by amendment of the Special Use Permit, failure to complete construction within the approved time shall be considered a violation of the Special Use Permit, and subject to the sanctions provided in Sections 707 and 708 hereof.

501.4. Additional conditions as to use.

In addition to any other requirements provided by this Ordinance, the Zoning Board of Adjustment may, in issuing a special use permit, designate additional conditions and requirements in connection with the application as will, in its opinion, assure that the use in its proposed location 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 and also on the certificate of the special use permit (or on the plans submitted therewith). All conditions so imposed shall run with the land and shall be binding upon the original applicant, as well as the applicant's heirs, successors, or assigns, during the continuation of the use conditionally permitted or any similar use.

501.5. Sanctions.

In the event of failure to comply strictly with the plans, documents, and other assurances submitted and approved with the application, or in the event of failure to comply with any conditions imposed upon the special use permit as provided in subsection 501.4, the permit shall thereupon immediately become void. No zoning certificate for further construction or certificate of compliance under the special use permit shall be issued, and all improvements to the land which were the subject of the application shall thereupon be regarded as non-conforming and shall be subject to the sanctions provided in Sections 707 and 708 hereof.

501.6. Expiration of Special Use Permits.

A special use permit issued in accordance with this Section shall expire if a zoning certificate or Certificate of Compliance for such use is not obtained by the applicant within six (6) months from the date of the decision. If, after commencing work under a Special Use Permit and prior to completion of the entire project, work is discontinued for a period of twelve (12) months, the Special Use Permit shall become void, and no work may be performed until a new Special Use Permit has been issued. If, after issuance of a Certificate of Compliance for a Special Use Permit, that use is discontinued for a period of twelve (12) consecutive months, the Special Use Permit shall become void, and the use may not be re-established until a new Special Use Permit has been issued. When a Special Use Permit expires, the Zoning Board shall treat re-application for a new Special Use Permit in the same manner as any other application, and the provisions of this Ordinance currently in effect shall be applicable.

501.7. Establishment of a Vested Right.

(A) An applicant for a Special Use Permit may also apply to establish a "vested right" in accordance with G. S. 160A-385.1. Such vested right shall confer upon the property owner the right to undertake and complete the development and use of the property under the terms and conditions of the Special Use Permit issued in conjunction therewith, and shall preclude any zoning action of the Town of Highlands which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in said Permit. The establishment of a vested right shall not preclude, however, the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use; nor shall it preclude the application of ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulation by the Town of Highlands, such as the North Carolina State Building Code. Otherwise, any applicable new or amended regulation shall become effective with respect to property for which a vested right has been established only upon the expiration or termination of the vested right in accordance with paragraph (C) of this Section.

(B) In order to establish a vested right, an applicant shall submit a "site specific plan" as defined by G. S. 160A-385.1(b). Such a plan is hereby defined as the information required by Section 501.3(A) of this Ordinance, and, specifically, paragraphs (1) through (4); none of these requirements may be waived. Each map, plat, site plan, or other document submitted evidencing a site specific plan shall contain the following notation: "APPROVAL OF THIS PLAN ESTABLISHES A VESTED RIGHT UNDER G.S. 160A-385.1. UNLESS TERMINATED AT AN EARLIER DATE, THE ZONING VESTED RIGHT SHALL BE VALID UNTIL (DATE)"

(C) A right which has been vested shall remain vested for a period of two (2)

years, and shall not be extended by any amendment or modification of the site specific plan approved by the Board. Notwithstanding Section 501.6 of this Ordinance, the Special Use Permit issued in conjunction with the vested right shall be valid during this entire period of time. A right which has been vested, together with the Special Use Permit which has been issued in conjunction therewith, shall expire or terminate as follows:

(1) At the end of the applicable vesting period with respect to buildings and uses for which no valid zoning certificate applications have been filed;

(2) With the written consent of the affected property owner;

(3) Upon findings, by Ordinance and after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed in accordance with said Permit;

(4) To the extent that the affected property owner receives compensation for all costs, expenses, and other losses incurred by the landowner--including, but not limited to, all fees paid in consideration of financing--and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval of said Permit, together with interest thereon at the legal rate until paid, but not including any diminution in the value of the property which is caused by such action;

(5) Upon findings, by Ordinance and after notice and a public hearing, that the property owner or his representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval by the Zoning Board of said Permit;

(6) Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in said Permit, in which case the Zoning Board may modify the affected provisions upon a finding, by Ordinance and after notice and a public hearing, that the change in State or federal law has a fundamental effect on the Permit.

(D) In all other respects, the provisions of this Ordinance governing application for a Special Use Permit shall apply to the establishment of a vested right. Specifically, no vested right may be established except upon the calling of a public hearing and giving of notice required by Section 501.3(B). The Zoning Board may also, in conjunction with the Special Use Permit issued together with the vested right, designate additional conditions and requirements in connection with the application in

accordance with Section 501.4. Nothing in this Section shall exempt the site specific plan from subsequent review by the Zoning Board to ensure compliance with the terms and conditions of the original approval, provided that such review is not inconsistent with the original approval. Nothing in this chapter shall prohibit the revocation of the original approval in accordance with Section 501.5, nor exempt the property owner from the penalties and remedies provided for in Sections 707 and 708.

Section 502 Multi-family buildings.

502.1. Definitions.

(A) **Multi-family building.** Any building, other than a motel, hotel, or tourist home as defined in this Ordinance, intended, designed, or used as a dwelling unit by two or more families or households living independently of each other and including permanent provisions for separate living, sleeping, eating, cooking, and sanitation facilities.

(B) **Family.** One or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage, or adoption, no such family shall contain over five (5) unrelated persons, and further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families."

(C) **Parcel.** Any parcel of real property within the jurisdiction of this Ordinance. An owner of a parcel may dedicate a portion thereof to multi-family purposes without dedicating the entire parcel if the portion qualifies for multi-family use within the requirements of Section 502.

(D) **Single-family unit.** The living area within a multi-family building that is designed, intended, or used for occupancy by one (1) family at a time.

502.2. Applicability.

Section 502 shall apply to the erection of multi-family buildings and to the conversion of existing buildings from non-residential to residential multi-family use. Whenever the term "construction" or "erection" occurs within this Ordinance, the context shall include the conversion of existing buildings to multi-family use.

502.3. Location.

Subject to the provisions of this Ordinance and other provisions of this Ordinance as may be applicable, multi-family buildings may be erected in areas zoned R-3 only.

502.4. Use.

A special use permit shall be required for the erection of any multi-family building or the conversion of any existing building to multi-family purposes.

502.5. Setbacks.

No multi-family building shall be erected within forty feet of the right-of-way of any public or private road, or, if no right-of-way is defined among the public records of Macon County, North Carolina, within fifty-five feet of the road centerline. No multi-family building shall be erected within forty feet of any adjoining parcel not being used for multi-family purposes or within thirty feet of any other multi-family building.

502.6. Parcel size, land utilization, building height.

(A) No multi-family building may be erected on any parcel having less than two (2) acres.

(B) The number of single-family units on a parcel shall not exceed one unit per 11,000 square feet of parcel area.

(C) No more than one-half of the total area of a parcel may be occupied by multi-family buildings.

(D) No multi-family building may be erected that shall exceed three habitable levels in height.

(E) The following requirements apply to multifamily zoned parcels situated along public streets and state roads in addition to other requirements that may apply:

(1) A green vegetative buffer with a minimum width of forty (40) feet contiguous with public road rights-of-way and adjoining property lines must be perpetually maintained and preserved by a conservation easement, by a duly recorded Aas built@ site plan or by a restrictive deed covenant. Desirable landscaping with locally adapted and native plant material is permitted to increase the density of an existing buffer. The sufficiency and composition of the buffer shall be determined by the Appearance Commission on a project by project basis in accordance with Appendix D of this Ordinance and shall be included in the Special Use Permit as a special condition.

(2) When a new multifamily building is constructed, it shall be the responsibility of the property owner to construct the sidewalks designated on the Town of Highlands Master Sidewalk Plan that adjoin his/her property in conformance with the

Master Sidewalk Plan and related ordinances.

(3) No driveways providing access to the property shall be located along the public streets or state roads unless permitted in writing by the Town of Highlands. Driveway access along state roads must also be permitted in writing by the North Carolina Department of Transportation.

502.7. Application for permit to construct or convert.

Any application for multi-family building or use shall be considered an application for a special use permit and shall be processed according to the provisions of Section 501. Each application shall contain the following:

(A) A current survey of the parcel as prepared by a registered land surveyor or professional engineer licensed and authorized to survey real property in North Carolina. The survey shall indicate the metes and bounds of the parcel, the total area of the parcel computed by D.M.D., and expressed in square feet, the location of all public and private roads, the location of all public utility easements within the parcel or located less than fifty (50) feet from it, the location of all streams and watercourses, and the names of all adjacent property owners.

(B) A complete set of the construction plans and specifications for each building to be erected upon the parcel, the plans to include a certification of an architect or professional engineer, duly licensed by the appropriate North Carolina authority, that the plans and specifications are in accordance with all existing building, electrical, plumbing, fire, and safety codes of North Carolina and any other authority having jurisdiction over the construction of buildings. The construction plans and specifications shall clearly state the total horizontal surface area of land occupied by the multi-family building and shall also disclose the measurements of building height.

(C) A complete site and landscape plan showing the perimeter of the parcel, the location of all proposed improvements thereon, the location of all existing improvements thereon that shall remain upon the parcel at the time construction is completed, and the location and description of all proposed landscaping improvements and all dimensions and measurements.

(D) A copy of the permit from the appropriate authority to construct or expand any water distribution or sewerage disposal system or, if applicable, a permit from the appropriate authority to connect to and use any existing public water supply or water treatment and disposal system.

(E) A certified or cashier's check in the amount of one hundred dollars

(\$100.00) as a non-refundable multi-family special use permit application fee.

. Section 503 Private social clubs

503.1. Definition.

A private social club or health club is any private association occupying or meeting regularly in a building owned or rented by said association for social or recreation purposes and offering membership to individuals. No residential use shall be permitted on the premises of a private social club other than one caretaker quarters. Such clubs shall include, but not be limited to, health clubs, private spas, and exercise centers.

503.2. Location.

Subject to the provisions of this Ordinance as may be applicable, private social clubs may be located in areas zoned B-1, B-2, and B-3 only.

503.3. Minimum parcel size.

The size of any parcel on which a private social club is located shall be based on membership in the club, and shall not be less than the following schedule:

0 - 50 members	-	22,000 square feet
51 - 75 members	-	33,000 square feet
76 - 100 members	-	1 acre
over 100 members	-	2 acres

503.4. Application for permit.

Any application for a private social club shall be considered an application for Special Use Permit and shall be processed according to the provisions of Section 501. Each application shall contain a current survey of the property showing the location on the site of all buildings or facilities; a complete description of all of the regular activities to be held at the club; a complete set of construction plans (if a new building) or floor plans (if an existing building converted to this use); and the maximum number of members who will be permitted to join the club. If the club desires to increase the membership over the number allowed in the original permit, then the club must re-apply, and both the minimum parcel size and the amount of parking provided under Article 300 must be large enough to accommodate the increase in membership.

503.5. Homeowners association exemption.

Notwithstanding subsection 503.2, any properly constituted homeowners or property association may organize such private social club without reference to zoning areas, so long as the membership of such association is limited to property owners holding lots, parcels, or similar divisions of land located within the boundaries of property for which the association is created.

Section 504 Tourist homes

504.1. Definition.

A tourist home shall include a building or part thereof, other than a motel or hotel, where sleeping accommodations are provided for occasional transient paying guests with daily charge; tourist homes shall include bed and breakfast homes or inns and country inns.

504.2. Location.

Subject to the provisions of this Ordinance, as may be applicable, tourist homes may be located in areas zoned R-2, R-4, B-2, B-3, and B-4 only.

504.3. Requirements.

No private home shall be converted to a tourist home as defined by this Ordinance until a Certificate of Compliance has been issued by the Zoning Administrator. The following conditions must be met before such a Certificate may be issued:

(A) The tourist home shall serve as the residence of the owner or operator, and only one tourist home may be operated by any one person at one time within the Town of Highlands.

(B) The tourist home may be identified only by a sign complying with Section 405.2(A)(3) of this Ordinance.

(C) No more than four (4) bedrooms may be provided for accommodations in any tourist home.

(D) All parking shall conform to Article 300 of this Zoning Ordinance, except that parking areas are not required to be paved in accordance with Appendix A.

(E) The building serving as the tourist home shall be inspected by the Macon

County Health Department to determine that it complies with the N. C. Division of Human Services "Rules Governing the Sanitation of Bed and Breakfast Homes, Section .2200 of the N. C. Administrative Code, Title 10, Chapter 10."

(F) The building serving as the tourist home shall be inspected by a building inspector authorized to perform building inspection under Volume I of the State Building Code, and certified by said inspector that it is of sound construction and has adequate exits.

Section 505 Self-service storage facilities

505.1. Definitions.

(A) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such for the purpose of storing and removing personal property.

(B) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized by him to manage the facility or to retrieve rent from an occupant under a rental agreement.

(C) "Occupant" means a person, his sublessee, successor, or assign, entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

505.2. Location.

Subject to the provisions of this Ordinance, as may be applicable, self-service storage facilities may be located in areas zoned B-3 and B-5 only.

505.3. Application.

Any application to construct self-service storage facilities shall be considered an application for a Special Use Permit and shall be processed according to the provisions of Section 501.

505.4. Requirements.

(A) The owner of every self-service storage facility shall be responsible for operating the facility in accordance with the North Carolina Self-Service Storage Facility Act.

(B) A self-service storage facility shall be used solely for the purpose of storage and for no other purpose whatsoever. No occupant shall use a self-service storage facility for residential or for retail business purposes.

(C) The storage of welding, flammable, explosive, or other inherently dangerous material is prohibited within any storage unit. Neither shall the occupant do any act or cause to be done any act which creates or may create a nuisance and/or hazard.

(D) All personal property stored at a self-service storage facility shall be entirely enclosed within individual storage spaces.

Section 506 Flammable liquid storage facilities

506.1. Definition.

A flammable liquid storage facility is any facility, wholesale or retail, where flammable liquids are stored in tanks of more than 1000 gallons aggregate storage capacity.

506.2. Location.

Subject to the provisions of this Ordinance as may be applicable, flammable liquid storage facilities may be located only in areas zoned B-3 and B-5.

506.3. Application for permit.

Any application for a flammable liquid storage facility shall be considered an application for a Special Use Permit and shall be processed according to the provisions of Section 501.

506.4. Requirements.

(A) All flammable liquid storage facilities shall comply with the standards of Pamphlet No. 58 of the National Board of Fire Underwriters dated July, 1969, as may be amended.

(B) All flammable liquid storage tanks shall be located a minimum of twenty-five feet from any exterior property line, and a minimum of one hundred feet from any exterior property line bordering a residential zoning district.

(C) As a prerequisite to the approval of a Special Use Permit, the Zoning Board

of Adjustment shall find that the use of the proposed site for flammable liquid storage will not endanger the safety of residential or other properties in the area, and that vehicular access to the storage facility will be provided from major thoroughfares and will not require the use of residential streets for access to the site.

(D) All flammable liquid storage facilities which adjoin or are visible from a public road shall be screened from view by appropriate fencing or landscaping approved by the Zoning Administrator.

Section 507 Restaurants

507.1. Definition.

(A) A restaurant is a place of business where food is prepared and served, and where seating is provided for the consumption of food.

(B) A business such as a bakery, delicatessen, or take-out pizza vendor, which prepares and sells food but at which food is not consumed on the premises, shall be considered a retail business rather than a restaurant under this Ordinance. However, if any seats are provided within such a place of business for the consumption of food, whether self-service or not, such business shall be considered a restaurant.

507.2. Location.

Subject to the provisions of this Ordinance, as may be applicable, restaurants may be located in areas zoned B-1, B-2, B-3, and B-5 only.

507.3. Application for permit.

Any application for a restaurant, or for permission to increase the seating in a restaurant, shall be considered an application for a Special Use Permit, or amendment of a Special Use Permit, and shall be processed according to the provisions of Section 501. However, an application to increase the amount of seating in a restaurant pursuant to Section 305 of the Ordinance shall not be considered an amendment of a Special Use Permit, and shall not be required to be processed under the provisions of Section 501.

507.4. Requirements.

(A) Restaurants shall be prohibited from selling take-out food from a drive-through window to customers in vehicles.

(B) Nothing in this Ordinance shall prevent a restaurant from preparing and

selling take-out food, provided customers actually approach or enter the restaurant on foot."

Section 508 Hotels and motels

508.1. Definition.

A hotel or motel is any building containing six or more guest rooms where temporary sleeping accommodations--and in some cases minimal eating and cooking facilities--are provided for guests on a daily or weekly basis.

508.2. Location.

Subject to the provisions of this Ordinance, as may be applicable, hotels or motels may be located in areas zoned B-2, B-3, and B-5 only.

508.3. Application for permit.

Any application for a hotel or motel, or for permission to increase the number of accommodations in a hotel or motel, shall be considered an application for a Special Use Permit, or amendment of a Special Use Permit, and shall be processed according to the provisions of Section 501.

508.4. Requirements.

(A) All accommodations in a hotel or motel shall be located on the same premises. In addition, each hotel or motel unit shall be provided with a minimum of two hundred and fifty (250) square feet of gross floor space.

(B) All off-street parking required by Section 302 for a hotel or motel shall be located on the same parcel of property as the accommodations.

(C) All hotels or motels shall be provided with those services customarily provided in hotels or motels, including linen service, maid service, and a lobby or office of adequate size on the same premises as the accommodations.

Section 509 Places of adult entertainment

509.1. Definition.

A place of adult entertainment is any place where one or more of the following activities take place:

(A) The serving of food or drink by topless waitresses;

(B) Topless dancing, go-go dancing, stripping, nude dancing, or similar entertainment or activities.

509.2. Location.

(A) Subject to the provisions of this Ordinance, as may be applicable, places of adult entertainment may be located in areas zoned B-1 only.

(B) No place of adult entertainment shall be located, in whole or in part, within two hundred (200) feet of the following:

(1) Any residential zoning district;

(2) Property on which any other place of adult entertainment is located;

(3) Property on which any church or other place of public worship is located.

509.3. Application for permit.

Any application for a place of adult entertainment shall be considered an application for a Special Use Permit and shall be processed according to the provisions of Section 501. Any existing business, such as a restaurant, in which any of the activities described in Section 509.1 is proposed, shall be considered a place of adult entertainment, and no such activities shall be permitted until an application for a Special Use Permit is processed according to the provisions of Section 501.

Section 510 Wireless communications facilities subject to Zoning Board of Adjustment approval

510.1. Definition.

Wireless communications facilities subject to Zoning Board of Adjustment approval are as defined in Article 900 of this Ordinance.

510.2. Application for permit.

Any application for wireless communications facilities subject to Zoning Board of Adjustment approval shall be processed according to the provisions of Section 501 and Section 908.

510.3. Requirements.

The Special Use Permit for wireless communications facilities subject to Zoning Board of Adjustment approval shall be granted if and only if it finds the following:

(A) The proposed wireless communication facility, if constructed and developed according to the submitted plan, will meet all health and safety standards for such facilities as may be promulgated by the Federal Communications Commission, the Federal Aviation Administration, or any other governmental agencies with appropriate jurisdiction over such matters.

(B) The proposed wireless communication facility, and all roads necessary to access the facility, if constructed and developed according to the submitted plan, will meet all requirements, conditions, specifications, and development standards of this Ordinance and all other ordinances of the Town.

(C) The proposed wireless communication facility, if constructed and developed according to the submitted plan, will not cause or create a substantial increase in traffic for the purposes of service of the facility or such noise as may violate any noise ordinance of the Town or Macon County.

(D) The height of the proposed wireless communication facility shall not exceed the height of the tallest tree within a 100-foot radius of the proposed wireless communication facility by more than ten (10) feet, or, in the absence of any tree within such a radius, a height of eighty (80) feet; and any tower to be part of the wireless communication facility will be designed to appear as a naturally occurring species of tree.

510.4. Tower Siting Conditions.

The Board of Adjustment may recommend alternative development criteria, impose conditions, or add restrictions on the application as it deems necessary to reduce or minimize any adverse effects and to enhance the compatibility of the wireless communication facility with the surrounding property, in accordance with the purposes and intent of this Ordinance, provided the alternative development criteria, conditions, or restrictions are reasonable and capable of being accomplished. The inclusion of additional conditions, development criteria, or restrictions shall be by specific inclusion in a motion for approval. Additional development conditions shall be based upon the purpose and goals of this Ordinance, and shall be reasonable and capable of being accomplished.

Section 511 Nonprofit Visual Art Centers

511.1. Definitions.

(A) Nonprofit visual art centers. Any visual art center funded by private donors and fees from visual art classes that is deemed to be nonprofit by the Internal Revenue Service in accordance with IRS Code Section 501(C)(3). Failure to maintain nonprofit status with the Internal Revenue Service automatically and immediately voids the visual art center special use permit.

(B) Parcel location and size. Any parcel of real property owned by a nonprofit visual art center situated within the Government-Institutional Zoning District may be used for non profit visual art center purposes provided the parcel size is not less than five (5) acres.

511.2. Applicability.

Section 511 shall apply to the erection of nonprofit visual art buildings and to the conversion of existing buildings to nonprofit visual art use. Whenever the term "construction" or "erection" occurs within this Ordinance, the context shall include the conversion of existing buildings to nonprofit visual art buildings.

511.3. Location.

Subject to the provisions of this Ordinance, and other provisions of this Ordinance as may be applicable, nonprofit visual art buildings may be erected only on property situated in the Government/Institutional Zoning District that is owned by the nonprofit visual arts center.

511.4. Use, land utilization, building height, roadway access.

(A) A special use permit shall be required for the erection of any visual art building or the conversion of any existing building to visual art center purposes.

(B) The primary use of the premises as a nonprofit visual art center may not be changed except by rezoning the property for use in accordance with the applicable provisions of this Ordinance.

(C) The total built-upon area shall be limited to seventy percent (70%) of the parcel size. Parking areas shall be included in the built-upon area, whether constructed of impervious or pervious materials.

(D) No visual art center building may be erected that exceeds two (2) habitable

stories, exclusive of basement and attic. Associated building usage shall include but not be limited to gallery space, classrooms, office space, dormitories for summer students and small retail shops. Retail sales on the property shall be limited to items usually and customarily sold by visual art centers.

(E) Primary pedestrian access and primary road access must be provided by the applicant directly from US 64/NC 28; or, from a public street that intersects US 64/NC 28 that is zoned for commercial use and complies with the Town of Highlands Subdivision Regulations, Appendix C: Road Specifications.

511.5. Application for permit to construct or convert.

Any application for nonprofit visual art center construction or use shall be considered an application for a special use permit and shall be processed according to the provisions of Section 501. Each application shall contain the following:

(A) A current survey of the parcel as prepared by a registered land surveyor or professional engineer licensed and authorized to survey real property in North Carolina. The survey shall indicate the metes and bounds of the parcel, the total area of the parcel computed by D.M.D., and expressed in square feet, the location of all public and private roads, the location of all public utility easements within the parcel or located less than fifty (50) feet from it, the location of all perennial streams and watercourses, and the names of all adjacent property owners.

(B) A complete set of the construction plans and specifications for each building to be erected upon the parcel, the plans to include a certification of an architect or professional engineer, duly licensed by the appropriate North Carolina authority, that the plans and specifications are in accordance with all existing building, electrical, plumbing, fire, and safety codes of North Carolina and any other authority having jurisdiction over the construction of buildings. The construction plans and specifications shall clearly state the total horizontal surface area of land occupied by the visual art center building and shall also disclose the measurements of building height.

(C) A complete site and landscape plan showing the perimeter of the parcel, the location of all proposed improvements thereon, the location of all existing improvements thereon that shall remain upon the parcel at the time construction is completed, and the location and description of all proposed landscaping improvements and all dimensions and measurements.

Section 512. Electronic Gaming Operations

512.1 Definition.

Any business enterprise, whether as a principal or an accessory use, where

persons utilize electronic machines, including, but not limited to computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. The term includes, but is not limited to internet sweepstakes, internet sweepstakes café, video sweepstakes, or cybercafes, which have a finite pool of winners. This does not include any lottery endorsed by the State of North Carolina.

512.2 Location.

Subject to the provisions of this Ordinance, *and subject to state law*, as may be applicable, electronic gaming operations may be located in areas zoned B-1, B-2, B-3, B-4, GI & B-5.

512.3 Application for permit.

Any application for an electronic gaming operation shall be considered an application for a Special Use Permit, and shall be processed according to the provisions of Section 501.

512.4 Requirements.

(A) Days/Hours of operation: businesses engaging in electronic gaming operations activities may operate from 8:00 am until 12:00 midnight each day, seven (7) days per week.

(B) The maximum number of *devices used*, (machines/terminals/computers *or combination thereof*) for any electronic gaming operations business is 10.

(C) Minimum parking spaces, where required by the zoning district: One (1) space for every two (2) terminals or one (1) space per every two hundred (200) square feet of total floor area, whichever is greater, and one (1) space per employee, *in addition to other parking requirements*.

(D) All applicable permits, including those for signage, must be issued to the applicant prior to the issuance of the special use permit and the opening of business.

(E) If food or beverage is served, the establishment must meet the requirements of the Macon County Health Department, including any and all necessary permits and/or licenses. No alcohol is to be brought in or sold for consumption in the establishment.

(F) The establishment must be a minimum of two hundred (200) feet from

any residential zoning district.

(G) The establishment must be a minimum of two hundred (200) feet from any established religious institution/synagogue, school, daycare center/home, library, public park, recreation area or motion picture establishment where “G” or “PG” rated movies are shown to the general public on a regular basis.

(H) The establishment must be a minimum of five hundred (500) feet from any other electronic gaming operation.

(I) Measurement of distance separation shall be in a straight line from the closest point of the buildings at which the electronic gaming operations business is located.

ARTICLE 600: BOARD OF ADJUSTMENT

Section 601 Establishment of the Zoning Board of Adjustment

601.1. Establishment.

(A) The establishment of the Zoning Board of Adjustment created by the Ordinance entitled The Zoning Ordinance of the Town of Highlands, 1970, is hereby re-affirmed.

(B) The Zoning Board of Adjustment shall consist of five (5) members, appointed for three-year terms. All members appointed as representatives of any extra-territorial area, either for regular terms or to fill the vacancies of any unexpired term, shall be appointed pursuant to N.C.G.S. 160A-362.

(C) The Board of Commissioners may, in its discretion, appoint alternate members to serve on the Zoning Board of Adjustment in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the Zoning Board of Adjustment and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

(D) Members of the Zoning Board of Adjustment shall serve without pay, but shall be reimbursed for any expenses incurred in pursuit of the Board's activities.

601.2. Jurisdiction and decisions of the Zoning Board of Adjustment.

The concurring vote of four-fifths of the Board shall be necessary to reverse any order, requirements, decision, or determination of the Zoning Administrator, or to grant any special use permit or variance. On all appeals, applications, and other matters brought before the Zoning Board of Adjustment, the Board shall inform all of the parties involved of its decisions and the reasons therefor in writing.

601.3. Proceedings of the Zoning Board of Adjustment.

The Zoning 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 Zoning Board of Adjustment. The Board shall adopt rules and by-laws in accordance with the provisions of this Ordinance and of Section 160A-388 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 602 Power and duties of the Zoning Board of Adjustment

602.1. Special Use Permits.

The Zoning Board of Adjustment shall have the power to issue Special Use Permits in accordance with Article 500.

602.2. Appeals.

(A) The Zoning Board of Adjustment shall have the power to hear appeals relating to the location of district boundaries in accordance with Article 108(B).

(B) The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made in the enforcement of this Ordinance, by either the Zoning Administrator or the Watershed Administrator. Appeals to the Zoning Board of Adjustment may be taken by any person aggrieved or by an officer, department, board, or bureau of the Town affected by a decision based on this Ordinance. Appeals shall be addressed and submitted to the Zoning Board of Adjustment and shall be delivered to the office of the Zoning Administrator; notice of appeal shall be filed within (10) regular business days after issuing the decision being appealed, and the appeal itself shall be

taken within thirty (30) days after the promulgation of the decision being appealed by filing a written appeal specifying the ground thereof on the proper form obtainable from the Zoning Administrator. All documents, pleadings, and transcripts or certified copies thereof, constituting the record upon which the action being appealed from was taken, shall forthwith be transmitted to the Zoning Board of Adjustment by the Zoning Administrator. Upon service of the notice of appeal, accompanied by the supporting documents, upon the Chairman or Vice-Chairman of the Zoning Board of Adjustment, the Board shall forthwith fix a date within a reasonable time thereafter for the hearing of the appeal or for a hearing upon any other matter properly referred to it; the Zoning Board of Adjustment shall call a public hearing, shall give due notice thereof to the parties in interest, and render a decision upon the same within a reasonable time after the hearing. At the hearing, any party may appear in person or be represented by his authorized agent or attorney.

602.3. Variances.

(A) The Zoning Board of Adjustment shall have the power to authorize upon appeal in specific cases a variance from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In Watershed Overlay Districts, this power shall extend only to the authorization of a minor variance, as defined by this Ordinance; the Board shall have the power to authorize a major variance, as defined by this Ordinance, only in accordance with paragraph (G) of this sub-section.

(B) All applications for variances shall be addressed and submitted to the Zoning Board of Adjustment and shall be delivered to the office of the Zoning Administrator. Upon receipt of an application for a variance, the Zoning Board of Adjustment shall call a public hearing and shall give notice as required by law. Applications for a variance shall be made on the proper form obtainable from the Zoning Administrator and shall include the following information:

(1) A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; the identity of neighboring properties; any adjacent streets, designated as public or private; any existing or proposed structures, showing setbacks to rights-of-way and property lines; parking areas showing the number and arrangement of parking spaces and driveway entrances; utilities and surface water drainage; and significant natural features, such as wooded areas, streams, ponds, or marshes. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(2) Elevations and a floor plan, indicating dimensions of the building, gross floor space, number of seats, or any other applicable information.

(3) A complete and detailed description of the use proposed, together with any other pertinent information which the applicant feels would be helpful to the Zoning Board in considering the application.

Some of these requirements may be waived as may be applicable, such as for changes of use in existing buildings involving no expansions in building or parking areas, etc.

(C) Before the Zoning Board of Adjustment may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

(a) If he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property.

(b) The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

(c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(d) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief.

(e) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(2) The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

That is, the applicant is not seeking to establish, to expand, or to extend in area a non-conforming use. Moreover, the existence of a non-conforming use in the same or in any other zoning district shall not constitute a reason for granting the requested variance.

(3) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would alter the essential character of the neighborhood, materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or general welfare.

(D) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this ordinance.

(E) The Zoning Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(F) A variance issued in accordance with this Section shall expire if a Zoning Certificate or Certificate of Compliance and/or, in a Watershed Overlay District, a Watershed Protection Permit and a Watershed Protection Occupancy Permit is not obtained by the applicant for such use within six (6) months from the date of the decision.

(G) If an application calls for the granting of a major variance, as defined by this Ordinance, the Zoning Board of Adjustment shall hear the application in accordance with Section 602.3(B), and shall either deny or grant the application according to the same criteria defined therein. If the Board decides in favor of granting a major variance, such variance shall only become effective upon the approval of the Environmental Management Commission, in accordance with the following procedure:

(1) The Board shall prepare a preliminary record of the hearing with all deliberate speed, and shall forward such record to the Environmental Management Commission for its review. The preliminary record of the hearing shall include, at minimum, (a) the variance application; (b) the hearing notices; (c) the evidence presented; (d) motions, offers of proof, objections to evidence, and rulings on them; (e) proposed findings and exceptions; and (f) the proposed decision, including all conditions proposed to be added to the permit.

(2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (b) 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 decision and send it to the Zoning Board of Adjustment.

(3) 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 decision and send it to the Zoning Board of Adjustment.

(4) Appeals from the Environmental Management Commission must be filed with the Superior Court within thirty (30) days from the date of the decision. The decision of the Superior Court will be in the manner of certiorari.

602.4. Public Health.

The Zoning Board of Adjustment shall have to power to institute appropriate action or proceeding to restrain, correct, or abate conditions and/or violations within a Watershed Overlay District, in accordance with Section 704.5(B) of this Ordinance.

Section 603 Appeals from the Zoning Board of Adjustment

Appeals from the Zoning Board of Adjustment shall be taken to the appropriate Court of record, as provided by law.

ARTICLE 700: ADMINISTRATIVE AND LEGAL PROVISIONS

Section 701 Zoning Administrator

701.1. Appointment and removal.

The Board of Commissioners of the Town, shall, by vote of a majority of its members, appoint a Zoning Administrator, who shall be duly sworn in. The Zoning Administrator shall serve at the pleasure of the Board of Commissioners and may be removed from office without cause at any time upon the affirmative vote of a majority of the members of the Board.

701.2. Powers and duties.

The Zoning Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the Town. The Zoning Administrator, or his duly authorized representative, shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter upon any property, public or private, within the Town at any reasonable hour for the purpose of inspection, determining compliance with approved plans, investigating sites of any complaints or alleged violations of this Ordinance, conducting investigations as he may reasonably deem necessary, or for performing any other duty imposed upon him by this Ordinance or by the Board of Commissioners. No person shall refuse entry or access to the Zoning Administrator when entry is requested for purposes described in this Ordinance, nor shall any person obstruct, hamper, or interfere with the Zoning Administrator or his duly authorized representative while in the process of carrying out official duties.

701.3. Issuance of certificates.

The Zoning Administrator shall have the sole authority to issue Zoning Certificates and Certificates of Compliance for the construction, alteration, or moving of any structure or for the accomplishment of any other improvement or modification or change of use of real property subject to the jurisdiction of this Ordinance.

701.4. Appeals.

Any decision of the Zoning Administrator shall be subject to appeal by the applicant, or by any affected citizen or property owner, which appeal shall be made pursuant to Section 602.2.

701.5. Effective date of action.

In order to provide time for appeal as herein provided, the decision of the Zoning Administrator shall not become effective until the tenth (10) regular business day from the date of the issuance of a Zoning Certificate, or (in the case of the conversion of an existing structure to a new use) a Certificate of Compliance. In extraordinary circumstances in which life or property is threatened, the Zoning Board of Adjustment, upon proper findings of fact, may confirm the action of the Zoning Administrator within the ten (10) business day period. The action of the Zoning Board of Adjustment may be made upon those reasonable conditions that the Board deems necessary under the circumstances; however, the confirmation shall not preclude the right of appeal vested in citizens and owners.

701.6. Availability for duty.

The Zoning Administrator shall be available to receive applications during each regular business day. The Board of Commissioners shall have the authority to appoint a Deputy Zoning Administrator to serve in the place and stead of the Zoning Administrator for those times that the Zoning Administrator shall be on leave of absence.

Section 702 Zoning Certificate

702.1. Zoning Certificate required in any Zoning District.

(A) No person shall commence or proceed with construction of any new building, as defined herein, or with the reconstruction, alteration, repair, moving, or demolition of any existing building, prior to the issuance of a Zoning Certificate. Application for a Zoning Certificate shall be filed with the Zoning Administrator and may be made prior to or in conjunction with application for a permit under the North Carolina State Building Code; such application shall include the following information:

(1) A site sketch, drawn to a scale of at least one (1) inch to forty (40) feet, of the parcel of property showing its actual dimensions and indicating the size, location, and distance from property lines of the proposed building, any other existing building(s), and any other improvements proposed to be accomplished, including but not limited to driveways, sidewalks, and parking areas;

(2) A drawing of the proposed building drawn to scale and in sufficient clarity and detail to indicate the nature and character of the work to be done, and consisting at minimum of a floor plan and elevations of the building (except, however, that the Zoning Administrator may approve minor construction work without compliance with this requirement);

(3) The use to which the completed project shall be devoted; and

(4) Any other information the Zoning Administrator may deem reasonably necessary to evaluate the compliance of the applicant's proposal with the provisions of this Ordinance.

(B) The Zoning Administrator shall review each element of the application and if he is satisfied that the work described therein complies with the Zoning Ordinance, he shall issue a Zoning Certificate; said Certificate may be issued prior to or in conjunction with application for a permit under the North Carolina State Building Code. After a Zoning Certificate has been issued, no changes or deviations from the terms of the

application, plans, or permit shall be made until specific written approval has been obtained from the Zoning Administrator. If the Zoning Administrator finds the application to be deficient or the information contained therein to be contrary to the provisions of this Ordinance, he shall reject the application and deny the applicant's request for a Zoning Certificate in writing, setting forth the reasons for the rejection and denial.

(C) A Zoning Certificate shall expire six (6) months after the date of issuance if the work authorized has not been commenced. If after commencement the work is discontinued for a period of twelve (12) months, the Certificate shall immediately expire. Upon expiration, the Certificate shall become void, and no work may be performed until a new Certificate has been secured.

702.2. Additional requirements for Zoning Certificate in Commercial Zoning Districts.

In addition to the foregoing, the following provisions shall apply to issuance of a Zoning Certificate in any commercial zoning district.

(A) Development Activity.

(1) No person shall commence or proceed with any grading, excavating, or underbrushing whatsoever for a building project in any commercial zoning district prior to the issuance of a Zoning Certificate.

(2) Pursuant to an act of the General Assembly of North Carolina, Chapter 828, House Bill 1469, no person shall remove, destroy, or severely damage, so as to cause to die, any large or medium tree eight (8) inches or more in diameter in connection with a building project in any commercial zoning district prior to the issuance of a Zoning Certificate.

(3) Application for a Zoning Certificate shall include a landscape plan for the property to be developed. The landscape plan shall indicate the location and size of all existing trees and shrubs to be saved and all existing trees and shrubs to be newly planted; provided, however, that each landscape area, as defined by this Ordinance, of 2500 square feet must contain at least one large or medium canopy tree or, as an alternative, each landscape area of 900 square feet must contain at least one small flowering understory tree. For property of more than one-half acre, groups of existing trees or shrubs in close proximity that the owner plans to save may be designated on the plan by predominant type, estimated number, and average diameter. The Town of Highlands strongly encourages property owners to save any existing tree eighteen (18) inches or more in diameter whenever possible.

(4) The owner of any parcel of commercial property upon which any grading, excavating, or underbrushing is performed, or any trees are removed under a Zoning Certificate, shall agree under the terms of said Certificate that if said Certificate expires before completion of the project, then he shall immediately plant or cause to be planted at his expense such grass, ground cover, shrubbery, trees, or other landscaping measures or devices as may be necessary to: (a) stabilize any uncovered areas, and (b) restore the parcel of property as closely as possible to its condition prior to issuance of a Zoning Certificate. If the owner fails in the opinion of the Zoning Administrator to adequately stabilize and restore the parcel of property within a time that the Zoning Administrator deems just, feasible, and appropriate, (i.e., one planting period), then the Zoning Administrator is authorized to enter in and upon said property and plant or cause to be planted, at the owner's expense, by the attachment of a lien or from the building permit fees, such grass, ground cover, shrubbery, trees, or other landscaping measures or devices as the Zoning Administrator may deem necessary to accomplish this objective; provided, however, that each landscape area, as defined by this Ordinance, of 2500 square feet must contain at least one large or medium canopy tree or, as an alternative, each landscape area of 900 square feet must contain at least one small flowering understory tree. The owner shall agree and execute the appropriate documentation as prepared by the Zoning Administrator that the expense of such restoration shall be an encumbrance on the land binding subsequent owners of the property.

(5) Plantings shall be reasonably maintained and attended for a period of not less than eighteen (18) months to promote successful establishment thereof. When any trees or shrubs required by this Ordinance die, as determined by the Zoning Administrator, they must be replaced during the next suitable planting season.

(6) To protect and preserve the natural environment and beauty of the Town of Highlands, any landscaping plan is encouraged to conform to the list of recommended locally adapted and native species in Appendix D of this Ordinance.

(B) Non-Development Activity.

Where no commercial building project is planned or anticipated, no large or medium tree eight (8) inches DBH or more in diameter in any commercial zoning district shall be removed except upon issuance of a permit by the Zoning Administrator for one of the following reasons:

(1) when the tree is dead, diseased, infected, or infested; and

(2) when the tree, as a result of storm, fire, accident, or other acts of nature, places life, limb, or property in immediate jeopardy.

(C) Change in Color or Material of Building.

No person shall commence or proceed with the change or replacement of color or exterior material on any existing commercial building, as defined herein, prior to the issuance of a Zoning Certificate. Application for a Zoning Certificate shall be filed with the Zoning Administrator, and the required information shall include a sample of the proposed color or colors for the building and/or a description of the proposed material. The Zoning Administrator shall issue a Zoning Certificate if the change in color and/or exterior material generally conforms to the chart set forth in Appendix C of this Ordinance. Approved colors and materials need not match specific colors and materials in the chart, but the given shades or types shall fall within the parameters defined by the chart as determined by the Zoning Administrator.

702.3. Zoning Certificates for structures located within dedicated rights-of-way.

(A) Certain structures, as defined by this Ordinance, are permitted to be located within dedicated rights-of-way of public or private roads without the issuance of a Zoning Certificate, provided they can be easily dismantled and relocated; do not obstruct vision, or otherwise interfere with pedestrian or vehicular traffic; and do not interfere with the public health, safety, or welfare. Such structures shall include decorative wooden fences, mailboxes, reflectors or mirrors associated with driveways, and other small decorative objects associated with residences. No temporary structures are allowed within six (6) feet of the wear surface of a road.

(B) Structures which are permanent and substantial, and which cannot be easily dismantled and relocated, shall not be erected within the right-of-way of any public or private road without the issuance of a Zoning Certificate. Such structures shall include permanent walls, such as those constructed of rock or railroad cross-ties; pillars; fences and gates constructed of substantial material, such as chain-link or iron; residential parking decks, whether constructed of fill dirt and retaining walls, or other methods; and private foot-, golf-cart, or vehicular bridges or tunnels across rights-of-way. No Zoning Certificate shall be issued for such structures except upon resolution of the Board of Commissioners of the Town of Highlands and, in addition, the North Carolina Department of Transportation if the road is a part of the State-maintained system.

Section 702.4. Zoning Certificates for structures located in wetlands.

In addition to the requirements of Sections 702.1(A) of this Ordinance, the following provisions shall apply to issuance of a Zoning Certificate for development on wetlands.

(A) Application for a Zoning Certificate in areas deemed by the Zoning Administrator to be wetlands, as defined by this Ordinance, shall include indication on the required site plan of any wetlands on the property and any areas to be disturbed.

(B) If the application proposes the disturbance of any areas identified as wetlands, the Zoning Administrator shall not issue a Zoning Certificate until the applicant has submitted an application to the U. S. Army Corps of Engineers and received the appropriate permit from that organization.

Section 703 Certificate of Compliance

(A) A Certificate of Compliance shall be secured from the Zoning Administrator before the making of a permanent connection to electrical service, water service, or sewer service.

(B) If any repairs, improvements, or alterations shall be performed upon any premises for which a Zoning Certificate shall be issued, a Certificate of Compliance shall be secured from the Zoning Administrator within thirty (30) days from the completion thereof.

(C) The Certificate of Compliance shall certify that the Zoning Administrator has inspected the completed improvements and that the improvements, together with the proposed use thereof, are in conformity with the zoning certificate and the provisions of this Ordinance.

(D) No new building or part thereof may be occupied, and no addition or enlargement of any existing building may be occupied, and no existing building that has been altered or moved may be occupied until the Certificate of Compliance has been issued.

(E) The Zoning Administrator may, in his discretion, issue a Temporary Certificate of Compliance permitting occupancy of specified portions of an uncompleted building or project for a limited time, not to exceed six (6) months, if the Zoning Administrator finds that the portion of the building or project may safely be occupied prior to the final completion of the entire building or project. The Zoning Administrator may renew, at his discretion, the Temporary Certificate of Compliance for additional specified periods, each successive period not to exceed six (6) months.

Section 704 Watershed Administrator

704.1. Appointment and removal.

The Board of Commissioners of the Town, shall, by vote of a majority of its members, appoint a Watershed Administrator, who shall be duly sworn in. The Watershed Administrator shall serve at the pleasure of the Board of Commissioners and may be removed from office without cause at any time upon the affirmative vote of a majority of the members of the Board.

704.2. Powers and duties.

(A) 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 police power of the Town. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises to perform any duty imposed upon him by this Ordinance, provided the entry is made with proper notice and at reasonable hours.

(B) The Watershed Administrator shall keep records of all amendments to this Ordinance relating to Water Supply Watershed Protection, and shall provide copies of all such amendments upon adoption to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management.

(C) The Watershed Administrator shall keep records of the Town's utilization of the provision that a maximum of five percent (5%) of the non-critical area of the WS-III-BW watershed may be developed with non-residential development to a maximum of seventy percent (70%) built-upon surface area, pursuant to Section 211.6(C). Records for the watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, acres, site plan, use, stormwater management plan as applicable and inventory of hazardous materials as applicable.

(D) The Watershed Administrator shall keep a record of variances to this Ordinance relating to Water Supply Watershed Protection. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management on or before January 1st of each year for the previous calendar year, and shall provide a description of each project receiving a variance and the reasons for granting the variance.

704.3. Issuance of certificates.

The Watershed Administrator shall have the sole authority to issue Watershed Permits and Watershed Protection Occupancy Permits. A record of all permits shall be

kept on file and shall be available for public inspection during regular office hours of the Administrator.

704.4. Appeals.

Any decision of the Watershed Administrator shall be subject to appeal by the applicant, or by any affected citizen or property owner, pursuant to Section 602.2 of this Ordinance.

704.5. Monitoring of Land Use Activities.

(A) Watershed Administrator's Responsibility to Public Health, in general. No activity, situation, structure, or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety, and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(B) Abatement. The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality, and shall report all findings to the Zoning Board of Adjustment. The Watershed Administrator may consult with any public agency or official and request recommendations. Where the Zoning Board of Adjustment finds a threat to water quality and the public health, safety and welfare, it shall institute any appropriate action or proceeding to restrain, correct, or abate the condition and/or violation.

(C) Inspections and re-inspections. No Watershed Protection Occupancy Permit shall be issued until an inspection of the premises has been made by the Watershed Administrator. In addition, the Watershed Administrator shall periodically re-inspect the premises where Watershed Protection Permits have been issued in order to ensure compliance with this Ordinance, and particularly to ensure that required built-upon limits are not exceeded, and that no new development has occurred in required buffer areas.

Section 705 Watershed Protection Permit

(A) In addition to the requirements of Section 702, within any Watershed Overlay District defined by this Ordinance, no development shall occur, nor shall any building be erected, moved, enlarged or structurally altered, nor shall any building

permit be issued, nor shall any change in the use of any building or land be made, until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this ordinance.

(B) Application for a Watershed Protection Permit may be filed in conjunction with a Zoning Certificate; it shall be filed on the proper form obtainable from the Watershed Administrator, and shall include the following information:

(1) A site sketch, drawn to a scale of at least one (1) inch to forty (40) feet, of the parcel of property showing its actual dimensions and size, and showing the dimensions and size of all buildings, pavement, gravel roads, recreation facilities, or any other portion of a development that is impervious or partially impervious, with the total area of built-upon development calculated if applicable;

(2) The use to which the completed project shall be devoted; and

(3) Any other information the Watershed Administrator may deem reasonably necessary to evaluate the compliance of the applicant's proposal with the provisions of this Ordinance.

(C) A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

Section 706 Watershed Protection Occupancy Permit

(A) In addition to the requirements of Section 703, within any Watershed Overlay District defined by this Ordinance, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met prior to the occupancy or use of a building hereafter erected, altered, or moved, and/or prior to the change of use of any building or land. No Watershed Protection Occupancy Permit shall be issued until an inspection of the premises has been made by the Watershed Administrator pursuant to Section 704.5(C).

(B) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

(C) If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

Section 707 Enforcement

(A) **Complaints Regarding Violations.** Any person may file a written complaint with the Zoning Administrator whenever a violation of a provision of this Ordinance occurs or is alleged to have occurred. The Zoning Administrator shall properly record the complaint, promptly investigate it, and take action as provided this Ordinance.

(B) **Notice of Violation.** When the Zoning Administrator finds a violation of a provision of this Ordinance, it shall be his duty to issue the owner or occupant a "Notice of Violation" stating the following:

- (1) that the land, building, structure, sign or use is in violation of this Ordinance;
- (2) the nature of the violation, and citation of the Section of this Ordinance violated;
- (3) the measures necessary to remedy the violation; and
- (4) the time within which the violation must be corrected.

The Notice of Violation shall be in writing, and shall be delivered by certified or registered mail to the last known address of the owner or occupant, by personal service, or by posting conspicuously on the property. The owner or occupant shall remedy the violation within the time specified in the Notice of Violation. Appeals of the Notice of Violation may be taken to the Zoning Board of Adjustment in accordance with Section 701.4, and any further enforcement shall be stayed pending hearing of the appeal.

Section 708 Penalties and Remedies

Any or all of the following procedures may be used to enforce the provisions of this Ordinance.

(A) **Equitable Remedies.**

This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, including by way of example and not by way of limitation, the equitable remedies of injunction, abatement, mandamus, or temporary restraining order, pursuant to N.C.G.S. 160A-175(d).

(B) **Civil Penalties.**

Any person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty in accordance with the following procedures:

(1) **Responsible Parties.** The owner or occupant of any land, building, structure, sign, use of land, or part thereof, and any architect, builder, contractor, agent, or other person, who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the civil penalties and remedies provided herein.

(2) **Issuance of Citations.** No civil penalty shall be assessed under this Section until the person alleged to be in violation has been notified in accordance with Section 707(B), Notice of Violation. If after receiving a Notice of Violation the owner or other violator fails to correct the violation, a civil penalty shall be imposed in the form of a citation. Such citation shall be in writing; shall be delivered by certified or registered mail to the last known address of the owner or occupant, by personal service, or by posting conspicuously on the property; shall state the civil penalty to be imposed upon the violator; and shall direct the violator to pay the civil penalty within ten (10) business days of the date of the violation. The following language shall be placed on any citation issued and served pursuant to this Ordinance: "Failure to pay the civil penalty stated hereinabove, in addition to other remedies against you, shall subject you to the payment of reasonable attorney's fees, not to exceed 15% of the outstanding balance, including the principal amount of the penalty and interest accruing thereon."

(3) **Payment of Civil Penalties.** The schedule for civil penalties shall be set forth in the Fee Schedule maintained in the Town Office by the Town Clerk. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty. If the offender fails to pay the civil penalties within thirty (30) days after having been cited, the Town of Highlands shall recover the penalties in a civil action in the nature of debt. Assessment of civil penalties shall be stayed pending appeals taken to the Zoning Board of Adjustment in accordance with Section 701.4.

(4) **Civil penalties assessed for violations of this Ordinance shall constitute a lien against the property upon which the violation is, or has been, conducted.**

(C) **Criminal Penalties.**

The maximum fine for any violation of the Highlands Zoning Ordinance prosecuted pursuant to G.S. '14-4 shall be \$500.

(D) **Denial of Permit or Certificate.**

The Zoning Administrator may withhold or deny any permit, certificate, or other authorization on any land, building, structure, sign, or use in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

(E) Conditional Permit of Temporary Certificate.

The Zoning Administrator may condition the authorization of any permit or certificate upon the correction of a deficiency, or payment of civil penalties within a specified time.

(F) Stop Work Orders.

Whenever a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Zoning Administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with G.S. ' 160A-421.

(G) Revocation of Permits or Certificates.

The Zoning Administrator may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable State or local law may also be revoked.

(H) Institution of Action by the Board of Commissioners of the Town of Highlands.

If any building, structure, or facility is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, facility or land is used in violation of this Ordinance, the Board of Commissioners, in addition to all other remedies available either in law or in equity, may institute any appropriate action or 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.

Section 709 Amendments

I. Provisions of General Applicability

(A) This Ordinance, including the Zoning Map, may be amended from time to time by the Board of Commissioners, but no amendment shall become effective unless the Board of Commissioners first submits the proposed amendment(s) to the Planning Board for recommendation and comment. The Planning Board shall have thirty (30) days after any submission within which to provide a recommendation to the Board of Commissioners that addresses consistency with the current Land Use Plan and other matters deemed appropriate by the Planning Board, but a comment that a proposed amendment may not be consistent with the Land Use Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board. If the Planning Board fails to submit a report within the thirty (30) day period, it shall be deemed to have recommended adoption of the requested amendment. Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with the Land Use Plan and explaining why the Board considers the action taken to be reasonable and in the public interest.

(B) Any communication purporting to be a petition for a zoning amendment shall be regarded as mere notice to seek relief until it is made by formal application. Upon receipt of such communication, the interested party shall be supplied with the application form for presenting a formal petition. In no instance shall action be initiated by the property owner for a zoning amendment affecting the same parcel of property, or any part thereof, more often than once every twelve (12) months, except as permitted by Subsection 709(II)(B) of this Section.

(C) Before enacting an amendment to this Ordinance, the Board of Commissioners shall hold a public hearing thereon. Notice of the public hearing shall be given once a week for two (2) successive calendar weeks by publication in a newspaper having general circulation in the area. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing.

(D) All amendments to this Ordinance relating to Water Supply Watershed Protection must be filed with the N. C. Division of Environmental Management, N. C. Division of Environmental Health, and the N. C. Division of Community Assistance. Under no circumstances shall the Board of Commissioners adopt any amendments, supplements, or changes that would cause this ordinance to violate the watershed

protection rules as adopted by the N. C. Environmental Management Commission.

II. Conditional Zoning Districts

(A) Purpose.

(1) There are land uses of such nature that rezoning a property to a general use district designation that permits such a use(s) by right may not be appropriate for a particular property. The review process established by this section provides for the accommodation of such uses by permitting reclassification of a property into a "parallel" conditional zoning district in which site plans and individualized development conditions are imposed to ensure compatibility of the proposed use with the use and enjoyment of neighboring properties.

(2) A parallel conditional zoning district is a zoning district in which the permitted uses are of the same character or type, except as modified by the legislative decision creating the parallel district, as the uses permitted in the corresponding general use district having the same designation or name. Thus, a parallel conditional zoning district shall be identified by the same designation as the underlying general use district followed by the letters "CD", example: "R-3(CD)". Following adoption of a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate conditional district designation.

(B) Approval of conditional zoning districts.

Conditional zoning district decisions are legislative decisions subject to judicial review using the same procedures and standard of review as apply to general use zoning district decisions. When considering a petition for a conditional zoning district, the Board of Commissioners shall act in accordance with this Section. Notwithstanding the twelve (12) month prohibition in Subsection 709(I)(B) above, petitioner(s) may seek rezoning to a conditional zoning district or changes to an adopted conditional district until such time as the Board of Commissioners either denies or adopts the project as a conditionally zoned district.

(C) Petition submission requirements.

(1) Property may be rezoned to a conditional zoning district only in response to a petition executed and submitted by all the owners of all of the property to be included in the district. A petition for conditional zoning must include a site plan, drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. The following information must be provided on the site plan, if applicable:

(a) A boundary survey and vicinity map showing the property's total acreage, its zoning and watershed classification(s), the zoning setback lines, its general location in relation to major streets, the date, and north arrow;

(b) The location of stands of old growth trees, streams, marshes, wetlands, bogs, rivers, impoundments, large rock outcroppings or other significant geological features on the subject property;

(c) All existing easements, reservations, and rights-of-way;

(d) Areas in which structures will be located;

(e) Proposed use of all land and structures, including the number of residential units, the number of commercial buildings and the total square footage of any nonresidential development;

(f) All yards, buffers, screening, and landscaping required by these regulations or proposed by the petitioner(s);

(g) All existing and proposed points of access to public streets;

(h) The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development;

(i) Generalized traffic, parking, and circulation plans;

(j) Proposed phasing, if any; and,

(k) Project start and completion dates.

(2) The Town Planner has the authority to waive any application requirement where the type of use or scale of the proposal makes providing that information unnecessary or impractical.

(3) In addition to the foregoing petition requirements, the petitioner(s) shall submit a written statement with the petition analyzing the reasonableness of the proposed rezoning to a conditional zoning district. This statement shall address the compatibility of the proposed rezoning with the Land Use Plan, the proposed site and the surrounding area.

(4) In the course of evaluating the proposed use, the Town Planner, the

Planning Board, or the Town Board of Commissioners may request additional information from the petitioner.

(5) The site plan and any supporting text shall constitute part of the petition for all purposes under this Section.

(6) The Town Planner may require the petitioner to submit more than one copy of the petition and site plan for circulation to government agencies for review and comment.

(D) Approval of petition.

(1) When reviewing a petition for the reclassification of property to a conditional zoning district, proposed specific conditions to be applied to the proposed district may be submitted by the petitioner(s), the Town or its agencies, or any affected person, but only those conditions mutually approved by the Board of Commissioners and the petitioner(s) may be incorporated into this Ordinance and Zoning Map. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, storm water drainage, erosion control, watershed protection, density, setbacks, structure height, the provision for open space, and other matters that the Board of Commissioners may find appropriate or the petitioner(s) may propose. The petitioner(s) shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of Commissioners.

(2) A petition for reclassification of property to a conditional zoning district pursuant to this section, where such property is located partially or entirely within the Highlands Greenway, as shown on the "Town of Highlands Greenway Plan Map," shall not be granted without the dedication to the Town of Highlands of a recreation easement for a strip of property for said Greenway ranging between twenty-five (25) and fifty (50) feet in width, as determined to be necessary by the Town in its sole discretion, to promote the purposes of the Greenway project. Upon the effective date of a resolution of the Board of Commissioners that an easement dedicated to the Town of Highlands is no longer required for the Highlands Greenway, the easement shall terminate and the Town shall, upon request of the owner, and at the owner's expense, file in the Register of Deeds for Macon County an instrument providing for such termination as a matter of public record.

(E) Effect of approval.

(1) If property is rezoned to a conditional zoning district, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category and use, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning ordinance for the approved district and are binding on the property as an amendment to the Town Zoning Ordinance and Zoning Map.

(2) If property is rezoned to a conditional district, the petitioner shall comply with all requirements established in Section 500 for obtaining the applicable Special Use Permit and Section 702 for obtaining a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. A change of location of the structures may be authorized in accordance with Section 709(II)(F), as an administrative change to an approved conditional zoning district.

(3) An approved conditional zoning district establishes vested rights pursuant to N.C.G.S. Section 160A-385.1 for the period of two years from the date of approval by the Board of Commissioners, except that such vested rights may be altered as allowed by N.C.G.S. Section 160A-385.1(e). Vested rights shall remain effective beyond the end of the period of time established pursuant to this Section for any buildings or uses for which a valid building permit has been issued during the vested rights period, so long as such building permit is valid.

(F) Amendments to approved conditional district.

(1) Except as provided in subsection two (2) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to the Town Zoning Ordinance or Zoning Map and shall be processed in accordance with the procedures in this Section.

(2) The Planning Board shall have delegated authority from the Board of Commissioners to approve an administrative change to an approved site plan. However, the Planning Board shall have the discretion to decline to exercise the delegated authority either because of uncertainty regarding the change pursuant to the applicable standard(s) or because a formal rezoning petition before the Board of Commissioners is deemed appropriate under the circumstances. If the Planning Board declines to hear the proposed amendment, the applicant may file a formal rezoning petition with the Board of Commissioners.

(3) The request for an administrative amendment with the applicable fee shall be submitted in writing by the petitioner(s) to the Town Planner detailing the requested change(s). The petitioner(s) must timely provide requested additional information. An administrative change shall not be subject to a protest petition but

adjacent property owners must be notified of the pending amendment and the hearing date, time and place via first class mail at least fifteen (15) days prior to the hearing.

(4) The standard for approving or denying an administrative change shall be that the change does not significantly alter the site plan or its conditions and that the change does not have a significant impact on abutting properties. Any change that increases the intensity of the development is limited for nonresidential development to 10% of the approved requirement or 1,000 square feet, whichever is less. For residential development, increases in density are limited to 10% of the development or no more than 5 dwelling units, whichever is less. All decisions must be in writing stating the grounds for approval or denial. Upon approval of an administrative change by the Planning Board, the petitioner(s) must file a sufficient number of copies of a revised site plan with the changed conditions attached as deemed necessary by the Town Planner. Planning Board approval of an administrative change becomes final thirty (30) days after the decision.

(5) If the Planning Board approves the proposed change(s), adjacent property owners may appeal the decision to the Board of Commissioners. Appeals shall be addressed to the Board of Commissioners and must be filed in writing with the Town Planner's office within fifteen (15) days of the Planning Board decision. The appeal shall be heard by the Board of Commissioners at a regularly scheduled and published Town Board meeting within thirty (30) days of receipt of the appeal.

(G) Review of adopted conditional zoning districts.

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. The Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, it may recommend in writing to the Board of Commissioners that the property be classified to another district.

Section 710 Conflict with other laws

(A) Whenever the provisions of this Ordinance require more restrictive standards than are required in or under any statutes, the requirements of this Ordinance shall govern. Whenever the provisions of any statute require more restrictive standards than this Ordinance, the provisions of the statute shall govern.

(B) All provisions of that Ordinance known as "The Zoning Ordinance of the Town of Highlands, State of North Carolina," as amended, which was originally adopted

on April 6, 1970, is identified as Sections 12.61 through 12.104 in the Code of 1982, and which has been reprinted in pamphlet form by the Town; and all provisions of "An Ordinance Providing for Regulation of and Controlling Signs," as amended, which was originally adopted on January 1, 1984, and which has been reprinted in pamphlet form by the Town, are hereby repealed, with the exception of those provisions relating to outdoor advertising signs pursuant to Section 407.4, paragraphs (A) and (B), of this Ordinance.

Section 711 Severability

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

Section 712 Effective date

This Ordinance, and all subsequent amendments hereto, shall take effect and be in force from and after April 6, 1970.

ARTICLE 800: APPEARANCE COMMISSION

Section 801 Establishment of Appearance Commission

There is hereby created and established "The Town of Highlands Appearance Commission," hereinafter referred to as the "Commission," composed of seven members appointed by the Board of Commissioners of the Town of Highlands. The members of the Commission shall consist of the members of the Town of Highlands Planning Board.

Section 802 Membership and Organization

802.1. Membership and Terms of Office.

Where possible, appointments shall be made in such a manner as to maintain on the Commission at all times a majority of members who have had special training or experience in a design field such as architecture, landscape architecture, horticulture, city planning, or a closely related field. Members of the Commission shall serve without pay, but may be reimbursed for actual expenses incidental to the performance of their

duties within the limits of funds available to the Commission.

802.2. Election of officers and conduct of meetings.

The Commission, within thirty days of its appointment, shall meet and elect a Chairman, Vice-chairman, Treasurer, and Secretary; the Secretary need not be a member of the Commission. It shall also adopt by-laws to govern the conduct of its business, and shall maintain a record of attendance, actions, findings, and recommendations, which record shall be open to the public. A quorum of four members shall be necessary to take any official action authorized or required by this Ordinance. The Commission shall meet whenever applications have been submitted for review, and shall hold at least eight meetings per year. All of its meetings shall be open to the public.

802.3. Appointing Committees.

The Commission may, from its own membership, establish any temporary or permanent committees needed to assist it in the study of specific questions and problems. The Commission may also recommend to the Board of Commissioners suitable arrangements for the procurement or provision of staff or technical services for the Commission.

Section 803 Powers and duties of the Commission

The Appearance Commission shall have the powers and duties enumerated in this Section.

803.1. General.

It shall be the responsibility of the Commission to initiate, promote, and assist in the implementation of programs of general community beautification in the Town of Highlands; seek to coordinate the activities of individuals, agencies, and public and private organizations whose plans, activities, and programs bear upon the appearance of the Town of Highlands; and provide leadership and guidance in matters of area or community design and appearance to individuals, agencies, and public and private organizations and agencies.

803.2. Making studies and preparing plans

It shall be the responsibility of the Commission to make studies of the visual characteristics and problems of the Town of Highlands, including surveys and inventories of an appropriate nature, and to recommend standards and policies of design for any project which bears upon the appearance of the Town of Highlands. The

Commission shall also prepare both general and specific plans for the improved appearance of the Town of Highlands. These plans may include the entire area or any part thereof, and may include private as well as public property. The plans shall set forth desirable standards and goals for the aesthetic enhancement of the Town of Highlands or any part thereof within its planning and zoning jurisdiction, including public ways and areas, open spaces, and public and private buildings and projects.

803.3. Promoting public interest and adherence to standards.

It shall be the responsibility of the Commission to promote public interest in and understanding of its recommendations, studies, and plans, and to that end to prepare, publish, and distribute to the public such studies and reports as will, in the opinion of the Commission, advance the cause of improved municipal appearance. The Commission shall seek voluntary adherence to the standards and policies of its plan.

803.4. Review of public projects.

The Commission shall request from the proper officials of any non-profit organization, public agency, or public body, including agencies of the state and its political subdivisions, the plans for its buildings, facilities, or projects to be located within the Town of Highlands. The Commission shall be empowered to review these plans and to make recommendations regarding their aesthetic suitability to the appropriate agency, or to the planning or governing board. All plans shall be reviewed by the Commission in a prompt and expeditious manner, and all recommendations of the Commission with regard to any public project shall be made in writing. Copies of the recommendations shall be transmitted to the planning or governing body of the Town of Highlands and to the appropriate agency.

803.5. Review of Special Use Permits.

Prior to the consideration of any application for Special Use Permit under Article 500 of this Ordinance, the Zoning Board of Adjustment shall require that an applicant submit such an application to the Appearance Commission for review and recommendation. Special Uses which do not involve any change in the appearance of a building or premises shall not be required to be reviewed by the Appearance Commission. The Commission shall review an application at its next regularly scheduled meeting, not to exceed thirty (30) days after the date of application, and shall submit its report to the Zoning Board prior to the Zoning Board's next meeting. The Zoning Board shall not deny any application, however, on the basis of a negative recommendation from the Appearance Commission. In reviewing the application, the Appearance Commission may consider building design, relationship of building to site, relationship of project to adjoining area, landscape and site treatment, signs, lights, street hardware, miscellaneous structures, maintenance, and any other considerations it

feels reasonably affect the appearance of the project.

803.6. Recommendation of Amendments of Ordinances.

The Commission may formulate and recommend to the Town of Highlands the adoption of amendments of this Ordinance, as well as any other local land-use ordinances, that will, in the opinion of the Commission, serve to enhance the appearance of the municipality and its surrounding areas.

803.7. Enforcement.

The Commission may direct the attention of the appropriate officials of the Town of Highlands to the needed enforcement of any ordinance that may in any way affect the appearance of the Town of Highlands.

803.8. Public hearings.

The Commission may conduct public meetings and hearings, giving reasonable notice to the public thereof.

803.9. Annual Report.

The Commission shall, no later than April 15 of each year, submit to the Board of Commissioners a written report of its activities, a statement of its expenditures to date for the current fiscal year, and its requested budget for the next fiscal year. All accounts and funds of the Commission shall be administered substantially in accordance with the requirements of fiscal standards of the Town of Highlands.

ARTICLE 900: WIRELESS COMMUNICATIONS

Section 901 Purpose

The Town of Highlands, while recognizing the unique character of the community, desires to encourage the orderly development of wireless communication technologies for the benefit of the Town and its citizens. As a matter of public policy, the Town aims to encourage the delivery of new wireless technologies throughout the Town while controlling the proliferation of communication towers. Such development activities will promote and protect the health, safety, prosperity and general welfare of persons living in the Town of Highlands.

It is, therefore, the desire and purpose of the Board of Commissioners of the

Town of Highlands to regulate wireless communication facilities throughout the zoning jurisdiction of the Town of Highlands. It is also the policy of the Town of Highlands to apply the standards enumerated herein to Town property located outside its zoning jurisdiction. The definitions and development standards set forth in this Article shall (1) apply to the installation, construction, attachment, removal, and alteration of facilities to accommodate wireless communication facilities; (2) provide the criteria for evaluating such proposed activities; and (3) provide a procedure for the suitability certification and accomplishing related purposes.

Specifically, the Wireless Communication Facility Development Standards are designed to achieve the following:

- (A) Provide a range of locations for Wireless Communication Facilities throughout the Town.
- (B) Encourage the location of Wireless Communication Facilities onto existing structures to reduce the number of new communication towers needed within the Town of Highlands.
- (C) Encourage co-location and site sharing of new and existing Wireless Communication Facilities.
- (D) Control the type of tower facility constructed when towers are permitted.
- (E) Establish adequate development and design criteria to enhance the ability of providers of telecommunications services to provide service to the community quickly, effectively, and efficiently.
- (F) Protect residential, historic preservation areas, and scenic corridors from the uncontrolled development of Wireless Communications Facilities by requiring reasonable siting conditions.
- (G) Promote the use of suitable lands for the location of wireless antennae, towers, and/or Wireless Communication Facilities.
- (H) Insure the harmonious, orderly and efficient growth and development of Wireless Communication Facilities within the Town.
- (I) Enhance the economy of the Town through the continued use of the Town's public resources.
- (J) Provide development standards for the development of Wireless Communication Facilities which are consistent with the requirements of the Federal

Telecommunications Act of 1996 and in the best interest of the future of the Town of Highlands.

(K) Provide clear performance standards addressing the siting of Wireless Communication Facilities.

(L) Streamline and expedite the permitting procedures to effect compliance with the Federal Telecommunications Act of 1996.

Section 902. Uses not covered, pre-existing facilities, amateur radio, relationship to other ordinance, airport zoning, building codes.

(A) Certain uses not covered by this Ordinance. Nothing in this Ordinance shall reduce any of the permitted uses within the Town of Highlands. Nothing in this Ordinance shall affect the right of a property owner to use or develop his or her property in accordance with the provisions thereof. Nothing in this Ordinance shall affect the right of a property owner to continue any legal non-conforming use, pursuant to Section 110 of this Ordinance.

(B) Pre-existing Wireless Communications Facility. Wireless Communications Facilities which were installed prior to the effective date of this Ordinance shall be considered as non-conforming (See Section 911).

(C) Amateur Radio Exclusion. This Ordinance shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator.

(D) Relationship to Other Ordinances. Except for Historic Districts, this Ordinance shall supersede all conflicting requirements of other ordinances regarding the locating and permitting of Wireless Communication Facilities.

(E) Airport Zoning. Any Wireless Communication Facility located or proposed to be located in airport areas governed by the Federal Aviation Administration shall also comply with the provisions of all applicable local, state, and federal airport regulations.

(F) Building Code. Construction of all Wireless Communication Facilities shall comply with the requirements of the North Carolina State Building Code and permitting process in addition to the requirements of this Section.

Section 903 Preferred Locations For Wireless Communication Facilities And Applicability

The following Wireless Communication Facilities may be allowed within the Town of Highlands:

(A) Wireless communications facilities subject to Zoning Administrator approval.

(1) Attachments to existing Support Structures or Attached Wireless Communication Facilities. Antenna attachments onto existing Support Structures or Attached Wireless Communication Facilities shall be permitted by administrative approval of the Zoning Administrator, subject to the development criteria of Section 904 of this Ordinance.

(2) Attachments on lands identified in Table A. Antenna attachments or Wireless Communication Facilities with support structures located on lands identified in Table A shall be permitted by administrative approval of the Zoning Administrator, subject to the development criteria of Section 904 of this Ordinance and with Table A:

TABLE A

Site	Name and Location	Zoning	Requirements
1	Town Hall Site	GI	80' Camouflage Monopole
2	Ravenel Ridge Water Tank	R-1	Attachments Only
3	Satulah Mountain Site	R-1	80' Camouflaged Monopole
4	Satulah Mountain Water Tank	R-1	Attachments Only
5	Upper Brushy Face Water Tank	R-1	Attachments Only
6	Hickory Hill Road Site	R-2	80' Camouflaged Monopole
7	Town Warehouse Site	GI	80' Camouflaged Monopole
8	Little Bearpen Water Tank	R-1	Attachments Only
9	Big Bearpen Water Tank and Tower	R-1	Attachments, Add To/Replace Tower

(B) Wireless communications facilities subject to Zoning Board of Adjustment approval.

(1) Attachments on lands not identified in Table A. Wireless Communication Facilities with support structures on lands not identified in Table A shall only be permitted by approval of the Zoning Board of Adjustment by means of a Special Use Permit.

(2) Applicants for facilities described in this paragraph shall provide the Town with adequate information to establish that the lands identified in Table A cannot be made suitable for wireless communication facility locations. Proposals shall not be approved unless the applicant can demonstrate that such facilities cannot be accommodated on existing or approved towers, buildings, or alternative structures within a one-half (1/2) mile search radius of the proposed wireless communications facility due to one or more of the following reasons:

(a) The planned equipment would exceed the structural capacity of the existing or approved tower, building or structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved tower, building, or structure cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.

(b) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower, building, or other structure, as documented by a qualified and licensed North Carolina engineer, and the interference cannot be prevented at a reasonable cost.

(c) Existing or approved towers, buildings, or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably, as documented by a qualified and licensed North Carolina professional engineer.

(d) Other unforeseen reasons make it infeasible to locate the planned telecommunication equipment upon an existing or approved tower, building, or other structure.

Section 904 Development Standards

Development standards for Wireless Communication Facilities will include the following:

(A) Height Standards. The following height standards shall apply to all Wireless Communications Facility installations:

(1) **Attached Wireless Communication Facilities.** Such facilities shall not add more than twenty (20) feet to the height of the existing building or structure to which it is attached (Attachment Structure). However, antenna attachments to existing communication towers shall not increase the height of tower above the maximum original permitted height of that tower.

(2) **Wireless Communication Facilities with Support Structures** identified in Table A. Such facilities shall have a maximum height as set out in Table A.

(3) **Wireless communications facilities subject to Zoning Board of Adjustment approval.** Such facilities shall be reviewed on a case by case basis as part of the Special Use Permit process. However, the height of such facilities should be consistent with the height standards indicated in Table A for similar properties in similar locations, and shall take into consideration ground elevations, topographical conditions, and other site development criteria within this Ordinance.

(B) **Setback Standards.** The following setback standards shall apply to all Wireless Communication Facility installations.

(1) **Attached Wireless Communication Facilities.** Attached Wireless Communications Facilities shall meet the setback provisions of the underlying zoning district in which they are located. However, an Attached Wireless Communication Facility Antenna Array may extend up to 30 inches horizontally

beyond the edge of the Attachment Structure so long as the Antenna Array does not encroach upon an adjoining parcel.

(2) **Wireless Communications Facilities with Support Structures.** Wireless Communications Facilities with Support Structure, although considered structures, shall meet the setback requirements for buildings in the underlying zoning district in which they are located.

(C) **Landscaping.** The following landscaping requirements shall be maintained by the applicant and shall apply to all Wireless Communications Facility installations.

(1) **New Construction.** New Wireless Communications Facilities with Support Structures and Attached Wireless Communication Facilities with new building construction shall be landscaped with a minimum landscaped area of ten (10) feet around the perimeter of the security fence meeting the following standards:

(a) **One row of evergreen trees with a minimum caliper of 2.5 inches shall be installed with a maximum spacing of fifteen (15) feet.**

(b) Evergreen shrubs capable of creating a continuous hedge and obtaining a height of at least five (5) feet shall be planted with a maximum spacing of five (5) feet. Plants shall be at least five (5) gallon container plants or 42 inches tall at the time of planting.

(c) All plants and trees shall be nursery-grown or field-tended and indigenous to this part of North Carolina and drought resistant, pursuant to but not limited to the list of recommended locally adapted and native species identified in Section 702.2(A)(6) of this Ordinance.

(2) Land Form Preservation. Existing mature tree growth and natural land form on the site shall be preserved to the extent feasible; provided however, that vegetation that causes interference with the antennas or inhibits access to the Equipment Facility may be trimmed or removed.

(3) Existing Vegetation. Existing vegetation on a Wireless Communication Facility site may be used in lieu of required landscaping where approved by the Zoning Administrator or the Zoning Board of Adjustment, as may be applicable.

(4) Minimum Site Disturbance. Grading for the new Wireless Communication Facility shall be minimized and limited only to the area necessary for the new facility.

(D) Aesthetics, Placement, Materials, and Colors. The following standards shall apply to all new antenna arrays and new wireless communications facilities:

(1) Antenna Array Attachments shall be designed so as to be compatible with the wireless communication facility to which it is to be affixed, including but not limited to matching the proposed array with existing structural design, facade colors, and camouflage technology.

(2) New Wireless Communication Facilities shall be designed to be compatible with existing structures and surroundings to the extent feasible. The proposed wireless communication facility should be consistent with the tower type and height standards indicated in Table A for similar properties in similar locations, including but not limited to considerations of scale and space of the immediate vicinity of the new facility, placement in a location which is consistent with proper functioning of the wireless communications facility, the use of compatible or neutral colors, and camouflage technology.

(E) Lighting. The following lighting requirements shall apply to all Wireless Communications Facility installations. Wireless Communications Facilities shall not be

artificially illuminated, directly or indirectly, except for the following:

(1) security and safety lighting of equipment buildings if such lighting is appropriately down shielded to keep light within the boundaries of the site and does not exceed 100 watts; and

(2) such illumination of the Wireless Communications Facility as may be required by the FAA or other applicable authority installed in a manner to minimize impacts on adjacent residences.

Unless otherwise required by the FAA or other applicable authority, the required light shall be red and a type of lens used to reduce ground lighting when the site is within one hundred (100) feet of a residential dwelling.

(F) Signage. Wireless Communications Facilities shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers and such other information as may be required by local, state, or federal regulations governing Wireless Communications Facilities.

(G) Fencing. Wireless Communications Facilities with Support Structures shall be enclosed by an opaque fence not less than six (6) feet in height, consisting of either chain-link with a fabric mesh or slatted wood. Security features may be incorporated into the buffer and landscaping requirements for the site. Nothing herein shall prevent fencing that is necessary to meet requirements of State or Federal agencies.

(H) Radio Frequency Emissions/Sound. The following radio frequency emissions standards shall apply to all Wireless Communications Facility installations:

(1) Radio Frequency Impact. The FTA gives the FCC jurisdiction of the regulation of Radio Frequency (RF) emissions, and Wireless Communications Facilities that do not exceed the FCC standards shall not be conditioned or denied on the basis of RF impact.

(2) FCC Compliance. In order to provide information to its citizens, copies of ongoing FCC information concerning Wireless Communications Facilities and RF emissions standards may be requested from time to time. Applicants for Wireless Communications Facilities shall be required to provide information with the application on the measurement of the effective radiated power of the facility and how this meets the FCC standards.

(3) Sound Prohibited. No unusual sound emissions such as alarms,

bells, buzzers or the like are permitted.

(I) **Structural Integrity.** Wireless Communications Facilities with Support Structures shall be constructed to the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antennas Towers and Antenna Support Structures" (or equivalent), as it may be updated and amended. Each Support Structure shall be capable of supporting multiple antenna arrays.

(J) **Co-location Support Structure Design.** All Wireless Communication Facilities with a support structure up to a height of one hundred and fifty (150) feet shall be engineered and constructed to accommodate at least three (3) antenna arrays. All Wireless Communication Facilities with a support structures greater than a height of one hundred and fifty (150) feet shall be engineered and constructed to accommodate at least 4 antenna array.

(K) **Co-location Agreement.** All applicants for Wireless Communications Facilities are required to submit a statement with the application agreeing to allow and reasonably market co-location opportunities to other Wireless Communications Facility users. The statement shall include the applicant's policy regarding co-location of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged other providers. The Co-location Agreement shall be considered a condition of issuance of a Tower Antenna Use Certificate (TAC). A TAC shall not be issued unless the applicant complies with the co-location policy outlined in Section 909 of this Ordinance.

Section 905 Temporary wireless communications facilities

Temporary wireless communications facilities may be permitted by the Zoning Administrator for a term not to exceed ninety (90) days. Once granted, a temporary Wireless Communications Facility permit may be extended for an additional ninety (90) days upon evidence of need by the applicant. In case of emergency (e.g., storm damage to an existing tower or other circumstances resulting in the interruption of existing service), the Administrative Review shall be expedited to the extent feasible.

Section 906 Application Process

(A) **Tower and Antenna Use Application Required.** No person, firm or corporation shall install or construct any Wireless Communication Facility unless and until a Tower Antenna Use Certificate (TAC) has been issued pursuant to the requirements of this ordinance. All Tower Antenna Use Applications, regardless of

Wireless Communication Facility type, shall include all of the requirements contained in this section.

(B) **Application Contents.** Each applicant requesting a TAC under this Ordinance shall submit a sealed complete set of drawings prepared by a licensed architect or engineer that will include a site plan, elevation view and other supporting drawings, calculations and other documentation showing the location and dimensions of the wireless communications facility and all improvements associated therewith, including information concerning specifications, antenna locations, equipment facility and shelters, landscaping, parking, access, fencing and, if relevant as determined by staff, topography, adjacent uses and existing vegetation. Applicants proposing to co-locate on an existing wireless communication facility shall include a Radio Frequency Intermodulation Study with their application.

(C) **Submission requirements.** Application for a TAC shall be submitted to the Town on forms prescribed by the Town. The application shall be accompanied by a site plan containing the information described above and a copy of the appropriate FCC license. Upon receipt of the application, the Zoning Administrator shall determine if it is subject to Zoning Administrator approval pursuant to Section 903(A), or to Zoning Board of Adjustment approval pursuant to Section 903(B), and shall process the application accordingly pursuant to Sections 907 and 908 of this Ordinance.

(D) **Application Fees.** A plan review fee of \$500 (for new facilities), or a Radio Frequency Intermodulation Study review fee of \$500 (for co-location applicants on existing facilities) shall accompany each application. These fees may be used by the Town to engage an engineer(s) or other qualified consultant(s) to review the technical aspects of the application and Radio Frequency Intermodulation Study (if required).

(E) **Additional Technical Assistance.** In the course of its consideration of an application, the Town may deem it necessary, in complex situations, to employ an engineer(s) or other consultant(s) qualified in the design and installation of wireless communication facilities to assist the Town in the technical aspects of the application. In such cases, any additional reasonable costs incurred by the Town not to exceed fifteen hundred dollars (\$1,500) for the technical review and recommendation shall be reimbursed by the applicant prior to final approval.

Section 907 Administrative Review Procedure

The following administrative review procedure shall apply to all wireless communications facility applications subject to Zoning Administrator approval pursuant to Section 903(A):

(A) **Review Authority.** Review of the Tower and Antenna Use Application (TAA) under this Section shall be conducted by the Zoning Administrator upon filing a TAA.

(C) **Review Criteria.** Each application shall be reviewed for compliance with the development standards specified in Section 904.

(D) **Timing of Decision.** The Zoning Administrator shall render a decision on the wireless communication facility application by written response to the applicant within thirty (30) business days after receipt of the complete application, except that an extension may be agreed upon by the applicant.

(E) **Application Denial.** If Administrative approval is not obtained or is denied due to noncompliance with the development criteria, the applicant may appeal the denial by the Zoning Administrator to the Zoning Board of Adjustment in accordance with Section 602.2 of this Ordinance.

(F) **Application Approval.** If the TAA together with all required addenda are in compliance with the development criteria and otherwise meets the requirements of this Section, the Zoning Administrator may approve the Tower Antenna Use Application, issue the TAC, and authorize issuance of the proper permits.

Section 908 Zoning Board of Adjustment Review Procedure

The following administrative review procedure shall apply to all wireless communications facility applications subject to Zoning Board of Adjustment approval pursuant to Section 903(B).

(A) **Review Authority.** The Zoning Board of Adjustment shall review all applications under this Section by means of the Special Use Permit process generally in accordance with Article 500 of this Ordinance, and specifically in accordance with Section 510. The Special Use Permit shall be granted when each of the Findings of Fact specified in Section 510 has been made by the Board of Adjustment.

(B) **Development Criteria.** In addition to Zoning Board of Adjustment review, each application shall be reviewed for compliance with the development standards specified in Section 904.

Section 909 Shared Facilities and Co-location Policy

All new Wireless Communication Facilities shall be engineered, designed, and

constructed to be capable of sharing the facility with other applicants, to co-locate with other existing wireless communication facilities, and to accommodate the future co-location of other wireless communication facilities. A TAC shall not be issued until the applicant proposing a new wireless communications facility shall demonstrate that it has made a reasonable good faith attempt to locate its Wireless Communication Facility onto an existing structure. Competitive conflict and financial burden alone are not deemed to be adequate reasons against co-location.

Section 910 Removal of Abandoned Support Structures

Any support structure that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the Town, at its election, may require the support structure owner to remove the support structure within ninety (90) days after notice from the Town to remove the support structure. If there are two or more users of a single support structure, this provision shall not become effective until all providers cease to use the support structure. If the owner of an abandoned support structure cannot be located or is no longer in business, the requirements of this section shall be the responsibility of the landowner on whose property the support is located.

Section 911 Non-conforming wireless communication facilities

Wireless Communication Facilities in existence on the date of the adoption of this Ordinance which do not comply with the requirements of this Ordinance are subject to the following provisions:

(A) Expansion. Non-conforming wireless communication facilities may continue in use for the purpose now used, but may not be expanded without complying with this Ordinance except as further provided in this Section.

(B) Additions. Non-conforming wireless communications facilities may add additional antennas (belonging to the same provider or other providers) subject to the Administrative Review Procedure set forth in Section 907.

(C) Repairs or Reconstruction. Non-conforming wireless communications facilities which become damaged due to any reason or cause may be repaired and restored to the former use, location, and physical dimensions subject to the provisions of this Ordinance; provided, however, that if the damage to the wireless communication facility exceeds 50% of replacement cost, said wireless communication facility may only be reconstructed or repaired in compliance with this ordinance.

(D) Any non-conforming wireless communications facility not in use for six (6)

months shall be deemed abandoned and all rights as a non-conforming use shall cease.

Section 912 Revocation of Tower And Antenna Use Certificates

(A) The approval of any Tower and Antenna Use Certificate issued pursuant to this Ordinance may be revoked after a hearing as provided hereinafter.

(B) If the Zoning Administrator finds that any permit holder has violated any provision of this Ordinance, or the conditions, restrictions, or additional development standards of an approved Special Use Permit, or has failed to make good faith reasonable efforts to provide or seek co-location, the Zoning Administrator shall notify the permit holder in writing that the TAC is revocable due to the permit holder's non-compliance with the conditions of the permit. The Zoning Administrator shall thereupon require the permit holder to correct the violation within a reasonable amount of time, and shall notify the permit holder, in writing, of the specific areas of non-compliance and specify the date by which such deficiencies must be corrected. The time for correction of deficiencies shall not exceed sixty (60) days. The permit holder shall provide the Town with evidence that the required corrective action has been taken.

(C) Should the permit holder fail to correct any deficiencies in the time required, the Board of Commissioners of the Town of Highlands shall convene a public hearing to consider revocation of the Tower Antenna Use Certificate. The hearing shall be conducted pursuant to notice by publication in a newspaper with general circulation in the Town not less than ten (10) days prior to the hearing and by written notice to the permit holder. At any such hearing, the permit holder may be represented by an attorney and may cross-examine opposing witnesses. Other interested persons may comment. The Board of Commissioners may impose reasonable restrictions with respect to time and procedure. The proceedings shall be recorded; provided, however, that stenographic services, if desired, shall be provided by the requesting party at that party's expense.

ARTICLE 1000: DEFINITIONS.

Section 1001 General

(A) Except as specifically defined within this section or elsewhere within this Ordinance, all words used in this Ordinance will be construed to have their customary dictionary definitions.

(B) Words used in the present tense shall include, where appropriate, the past

and future tense. Where appropriate, words in the singular shall include the plural and words used in the plural shall conversely include the singular.

(C) The word "shall" is always mandatory; the word "may" is permissive.

(D) 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."

Section 1002 Individual words or terms

For the purposes of this Ordinance, certain words or terms used herein are defined as follows.

- **Accommodation:** Any part of a building used as or constituting a unit used as temporary lodging for an individual or a single family. See also hotel, motel, and tourist home.
- **Antenna Array:** An Antenna Array is one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The Antenna Array does not include the Support Structure.
- **Apartment:** a dwelling unit as defined by this Ordinance.
- **Attached Wireless Communication Facility:** An Attached Wireless Communication Facility is an Antenna Array that is attached to an existing building or structure (Attachment Structure), which structures shall include but not be limited to utility poles, signs, water towers, rooftops, towers with any accompanying pole or device (Attachment Device) which attaches the Antenna Array to the existing building or structure and associated connection cables, and an Equipment Facility which may be located either inside or outside of the Attachment Structure.
- **Basement:** The lowest level of a building that is wholly or partly below ground. For the purposes of this Ordinance, a basement shall not be deemed a habitable story if it is 50% or more below grade, and is used only for storage and mechanical space; a basement that is less than 50% below grade, or is used for any other purpose, shall be deemed a habitable story.
- **Best Management Practices.** 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 in Watershed Overlay Districts.

- **Buffer Area.** An area of natural or planted vegetation in Watershed Overlay Districts through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized, and which provides for infiltration of the runoff and filtering of 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.
- **Building:** Any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind, including sheds, pole sheds and other open-walled buildings, carports, garages, guest cottages, and other outbuildings, and also including any extension and extrusion of the building such as balconies, decks, and porches. Satellite dish antennas shall be considered buildings under this Ordinance insofar as they shall be required to meet the setback requirement of the zoning district in which they are located.
- **Building frontage:** The distance which is occupied by a business or other activity, measured along the outside wall of the building side on which the main entrance of the business or other activity is located. If a business has a main entrance on a corner of a building, the building frontage shall be the width of the building parallel to the main street on which it is located.
- **Building wall:** An exterior bearing or non-bearing vertical structure encompassing the area between the final grade elevation and the eaves of a building, which is used as an enclosing wall for a building. A balcony, deck, awning, or porch is part of the building and may be considered as building wall space.
- **Built-upon area:** Built-upon area shall include that portion of a development project in Watershed Overlay Districts that is covered by impervious or partially impervious cover, including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)
- **Cluster Development.** A development pattern defined in the Subdivision Regulations of the Town of Highlands.
- **Co-location/Site Sharing:** Co-location/Site Sharing shall mean use of a common Wireless Communication Facility or common site by more than one wireless communication license holder or by one wireless license holder for more than one type of communications technology and/or placement of an antenna array on a

structure owned or operated by a utility or other public entity.

- **Critical Area.** The area in a Watershed Overlay District adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed, as defined on the Zoning Map.
- **Day care center:** An institution for the care or instruction of six or more unrelated children, but excluding family day care homes keeping less than six unrelated children (see Home occupations).
- **Development.** Any land disturbing activity in a Watershed Overlay District 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.
- **Dwelling unit:** A single residential unit where complete, independent living facilities--including provisions for living, sleeping, eating, cooking, and sanitation--are provided on a permanent basis.
- **Equipment Facility:** An Equipment Facility is any structure used to contain ancillary equipment for a Wireless Communication Facility which includes cabinets, shelters, a build-out of an existing structure, pedestals, and other similar structures.
- **Existing Development.** Those projects that have already been 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 or any applicable amendment thereto, based on at least one of the following criteria:
 - (A) substantial expenditures of resources (time, labor, and money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
 - (B) an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1); or
 - (C) 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), per Section 501.7 of this Ordinance.
- **FAA:** Federal Aviation Administration.
- **Family:** See Section 502.1.

- FCC: Federal Communications Commission.
- Flammable liquid storage facility: See Section 506.1.
- Free-standing sign: A sign that is not attached to or supported by any building. Such signs shall include ground signs, signs mounted on poles or other supports, and A-frame signs.
- FTA: Federal Telecommunications Act of 1996.
- Greenway or Highlands Greenway. An area for pedestrian use dedicated by easement to the Town of Highlands or dedicated by conservation easement to promote the purposes of the Highlands Greenway. Said map is adopted simultaneously herewith, may be amended from time to time in accordance with Section 706 of this Ordinance, and shall be permanently kept on file in the office of the Town Clerk.
- Gross floor space: The entire area of a building, including storage areas, garages, closets, hallways, and rest rooms, but excluding basement or attic storage areas not accessible to the public. Gross floor space shall be measured to the outside of exterior walls.
- Hanging sign: A sign attached to and suspended at right angles (unless on a corner) to the building, and extending down over a sidewalk or walkway.
- 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).
- Height: When referring to a Wireless Communication Facility, height shall mean the vertical distance measured from the base of the foundation of the tower to the highest point on the Wireless Communication Facility, including the antenna array and other attachments.
- Home occupation: An occupation actually pursued or carried on within a person's place of residence by himself or family members who reside there, as well as no more than one (1) person not a resident of the premises, and including professional offices of accountants, architects, artists, attorneys, beauticians, dentists, engineers, musicians, physicians, surveyors, and family day care homes keeping less than six unrelated children, but excluding veterinary services.
- Home-based businesses: Home-based businesses - as distinct from "home

occupations" defined elsewhere in this Ordinance - are certain occupations that may be pursued or carried on by the owner or lessee of a residence, or in a customary accessory outbuilding, under the following conditions:

- (A) The residence must be the primary residence of the owner or lessee.
- (B) The home-based business may only be pursued or carried on by the owner or immediate family members who reside on the property, as well as one (1) person who is not a family member or resident. The one other person as provided for herein shall mean an employee, a partner, or any other participant in the business.
- (C) Adequate off-street parking must be provided for the home-based business.
- (D) The home-based business may not create excessive noise, dust, smoke, vibration, smell, glare, electrical interference, traffic congestion, fire, chemical hazard, or any other type of nuisance.
- (E) A customary accessory outbuilding used for the home-based business may be located in the side or rear yard only.
- (F) Home-based businesses may be identified only with one sign not exceeding four (4) square feet in surface area per sign face nor illuminated in any way; such signs may be free-standing, wall, or hanging in type.
- (G) Home-based businesses may include, by way of example and not by way of limitation, the following: artist studios; studios of home crafters such as weavers, wood-turners, potters, cabinet or furniture makers, antique restorers, and upholsterers; writers; musician and music teachers; dancers and dance instructors; classes or studios for special instruction or counseling, provided no more than five (5) students per day or one (1) class per day are permitted; dressmakers or tailors; beauticians, provided that only one chair is permitted; computer programmers or business consultants; home caterers, provided the kitchen is approved by the Macon County Health Department; repair shops for small appliances; professional offices of accountants, architects, artists, attorneys, brokers, licensed counselors, dentists, engineers, insurance agents, physicians, real estate agents, surveyors, or salespersons where no retail or wholesale goods are exchanged; and family day care homes keeping less than six unrelated children.

(H) Home-based businesses may not include the following: veterinary services, including the boarding of animals; commercial uses such as retail, wholesale, or retail service businesses permitted in commercial zoning districts, or special uses permitted in commercial zoning districts; automotive repair garages; and heavy equipment depots.

(I) This Ordinance does not negate or preclude any covenants enforced in subdivisions.

- Hotel: See Section 508.
- Indirectly illuminated sign: A sign that is illuminated by a white light source that is shielded and directed solely at the sign face.
- Industrial Development. Any non-residential development in a Watershed Overlay District that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning, or developing any product or commodity.
- Landscape area: The area of a parcel of property that is not devoted to buildings, parking lots, sidewalks, or driveways.
- Lot: A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title.
- Major Variance. A variance in a Watershed Overlay District that results in any one or more of the following:
 - the complete waiver of a management requirement;
 - the relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard;
 - the relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.
- Manufactured home: A dwelling unit that is not constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for one- and two-family dwellings; is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis; and exceeds forty (40) feet in

length and eight (8) feet in width.

- **Minor Variance.** A variance that does not qualify as a major variance; one which, because of its limited scope, the Environmental Management Commission feels a local government like Highlands can be trusted to grant all by itself.
- **Mobile home:** A manufactured home as defined by this Ordinance.
- **Modular home:** A dwelling unit constructed in accordance with the construction standards of the North Carolina Uniform Residential Building Code for one- and two-family dwellings, and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly and placement on a permanent foundation. Without limiting the generality of the foregoing, a modular home may consist of two or more sections transported to the site on each's own chassis or steel frame, or a series of panels or room sections transported to the site on a truck and erected, assembled, or joined there.
- **Motel:** See Section 508.
- **Multi-family building:** See Section 502.1.
- **Non-residential Development.** All development in Watershed Overlay Districts other than residential development, agriculture, and silviculture.
- **Occupant:** See Section 505.1.
- **Outdoor advertising sign:** A standard structural poster panel or painted free-standing sign which is rented for purposes of conveying commercial information, knowledge, or ideas to the public about a subject unrelated to the premises upon which it is located.
- **Owner:** See Section 505.1.
- **Parcel:** See Section 502.1.
- **Permanent sign:** A sign that is used to inform or attract attention to a use, for the time that said use is in existence, in accordance with Section 405.2 of this Ordinance.
- **Person:** An individual, corporation, partnership, firm, association, trust, and any other legally recognized entity.
- **Planned development sign:** A temporary sign that pertains to the development of

a new subdivision, planned multifamily development, planned shopping center, industrial, office, or business park, or similar land parcel where an active building and development program is underway.

- **Political sign:** A sign attracting attention to political candidates or political issues, and including any lawful non-commercial message that does not direct attention to a business operated for profit or to a commodity or service for sale, and complies with all other requirements of this ordinance.
- **Premises:** A lot or parcel of land, together with any buildings located thereon.
- **Private social club:** See Section 503.1.
- **Private street:** A street not offered for dedication to the public, but having an established right-of-way used or intended to be used for vehicular traffic by more than one property. The term "street" shall also encompass "road." A driveway serving a single property shall not be considered a street.
- **Public street:** A street offered for dedication to the public. If located outside the corporate limits of the Town of Highlands, "public" means the State of North Carolina; if located within the corporate limits, "public" may mean either the State of North Carolina or the Town of Highlands.
- **Residential Development.** Buildings in Watershed Overlay Districts for residential use, such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., together with their associated outbuildings, such as garages, storage buildings, gazebos, etc., and including customary home occupations.
- **Restaurant:** See Section 507.1.
- **Right-of-way:** An area owned or maintained by the Town of Highlands or the North Carolina Department of Transportation for the placement of roads or utilities.
- **Roof line:** The edge of the roof around a building, where a building wall intersects the eave of a roof.
- **Self-service storage facility:** See Section 505.1.
- **Setback:** When referring to a Wireless Communication Facility, setback shall mean the required distance from the property line of the parcel on which the Wireless Communication Facility is located to the base of the Support Structure

and equipment shelter or cabinet where applicable, or, in the case of guy-wire supports, the guy anchors.

- **Shopping Center:** Four or more commercial establishments planned, constructed and managed as a single unit containing a minimum of five-thousand (5,000) gross square feet, and sharing common sidewalks, driveway entrances, or parking areas.
- **Sight distance triangle:** That area immediately adjacent to a street intersection encompassed by a triangle ten (10) feet back from the intersection on one street and thirty-five (35) feet back along the perpendicular street.
- **Sign:** A visual display designed to advertize, identify, direct, promote, or in any way attract attention to a product, service, business, event, person, or specific location.
- **Single-family unit:** See Section 502.1.
- **Structure:** Anything constructed or erected, including--in addition to buildings as defined by this Ordinance--walls, fences, gates, mailboxes, reflectors or mirrors associated with driveways, residential parking decks (whether constructed of fill dirt or retaining walls, or other methods), and private bridges or tunnels. Wireless communications facilities, as defined herein, shall be considered structures, and shall be regulated pursuant to Article 900.
- **Subdivision:** All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development, as defined more fully in Article VI of the Subdivision Regulations of the Town of Highlands, North Carolina.
- **Support Structure:** A Support Structure is a structure designed and constructed specifically to support an Antenna Array, and may include a monopole, self supporting (lattice) tower, guy-wire-support tower, and other similar structures. Any device (Attachment Device) which is used to attach an Attached Wireless Communication Facility to an existing building or structure (Attachment Structure) shall be excluded from the definition of and regulations applicable to Support Structures.
- **Surface area:** The entire display area of a sign, including any border or accessory area, but excluding any base supports, posts, roofs, or other structural elements provided they do not serve primarily to attract attention. In the case of three-dimensional letters or letters painted directly on a wall surface or awning, the

surface area shall be defined as the area within the perimeter of all the letters and/or logos, collectively. When lettering is highlighted by a border or decorative strip, then the surface area shall be defined as the entire highlighted area.

- **Temporary sign:** A sign that is permitted only for a designated period of time, in accordance with Section 405.1 of this Ordinance.
- **Temporary Wireless Communication Facility:** Temporary Wireless Communication Facility shall mean a Wireless Communication Facility to be placed in use for ninety (90) or fewer days.
- **Tourist home:** See Section 504.1.
- **Tower and Antenna Use Application (TAA):** A form provided to the applicant by the Town for the applicant to specify the location, construction, use, and compliance with the development standards of a proposed Wireless Communications Facility.
- **Tower and Antenna Use Certificate (TAC):** A TAA approved pursuant to this Ordinance. The term TAC shall be synonymous with a Special Use Permit issued in accordance with Section 510.
- **Toxic Substance.** Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth), or physical deformities in such organisms or their off- spring, or other adverse health effects.
- **Traffic sign:** A sign erected by Federal, State, or Municipal authority and regulating automobile, truck, bicycle, and pedestrian movement.
- **Wall sign:** A sign placed flat against, and projecting no more than twelve (12) inches from, a building wall, as defined by this Ordinance. Mansard roofs, or any roof portion thereof with an angle of sixty (60) degrees or more from the horizontal, shall be considered wall space for sign purposes.
- **Water Dependent Structure.** Any structure in a Watershed Overlay District the use of which requires access to, proximity to, or siting within surface waters to fulfill its basic purpose, including boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots,

and commercial boat storage areas. Care not water dependent structures.

- **Watershed.** The entire land area contributing surface drainage to a specific point (e.g. the water supply intake), defined as Watershed Overlay Districts on the Zoning Map.
- **Watershed Administrator.** The Watershed Administrator or his appointed designee.
- **Watershed Overlay District.** A zoning district implementing the requirements of Article 21, Chapter 143, Watershed Protection Rules, within areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission, and encompassing one or more underlying use districts. The regulations of a Watershed Overlay District supplement rather than supplant the regulations of the underlying use district; whenever the regulations in one district require more restrictive standards than in the other, the more restrictive standards shall apply.
- **Wetlands:** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
- **Wireless Communications:** Wireless Communications shall mean any personal wireless services as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services.
- **Wireless Communication Facility:** A Wireless Communication Facility is any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables, an Equipment Facility, and a Support Structure to achieve the necessary elevation.
- **Zoning districts:** Zoning districts established by this Ordinance and designated on the Zoning Map of the Town of Highlands.
- **Zoning Administrator:** The Zoning Administrator of the Town of Highlands or his appointed designee.

APPENDIX A: PARKING LOTS, DRIVEWAY ENTRANCES, AND SIDEWALKS

(1) **Surface.** All new parking areas for commercial buildings provided under Article 300 of this Ordinance shall be paved with a hard surface such as asphalt, concrete, or paving brick. The pavement shall be kept in good repair, and reasonably free from potholes or other deterioration of the surface.

(2) **Delineation of spaces.** Parking spaces shall be clearly marked by a single stripe 4" to 6" wide. Such stripes shall be re-painted within a reasonable time whenever they become so faded that they become difficult to see, or whenever the parking lot is re-surfaced. Re-painting of parking lots approved under this Ordinance where the parking lot has been re-surfaced, or re-configured, or where the original stripes can no longer be seen shall not be permitted except upon issuance of a Zoning Certificate.

(3) **Handicapped spaces.** In each new parking lot, at least one parking space, and not less than one space per 25 spaces, shall be provided for the handicapped. Such spaces shall be a minimum of 16'-0" wide, shall be clearly marked with a type R7-8 sign, shall be located adjacent to a curb cut and near the main public entrance of the building served by the parking lot, and shall in all other respects conform to Volume 1-C of the North Carolina State Building Code.

(4) **Alternative surface.** Unpaved parking areas shall be permitted as an alternative to pavement under the following conditions:

(a) The unpaved areas shall be constructed of a uniform surface of gravel over a base of coarse or crusher run gravel, and shall be adequate for the specific sub-soil type and site conditions. The design of the parking area, together with storm water drains if required, shall be approved by the Zoning Administrator or the Town Engineer. The finish surface shall at all times be kept free from ruts, potholes, or other irregularities by periodic scraping and addition of gravel when necessary.

(b) The driveway entrance between the thoroughfare and the parking area shall be paved with a hard surface such as asphalt, concrete, or paving brick;

(c) No portion of an unpaved parking area shall exceed a grade of seven (7%) percent.

(5) **Delineation of spaces.** Parking stalls in unpaved parking areas shall be delineated with concrete curb stops, railroad ties, or other suitable means approved by the Zoning Administrator. In addition, the dimensions of all unpaved parking spaces

and access aisles shall be 10% greater than the dimensions required in paved parking areas (see Table 1).

(6) **Handicapped spaces.** Handicapped parking spaces in unpaved parking areas shall be paved with a hard surface such as asphalt, concrete, or paving brick. Such spaces shall directly connect to the entrance of the building via sidewalks or ramps having a hard surface, and shall in all other respects conform to Volume 1-C of the North Carolina State Building Code.

(7) **Dimensions.** The dimensions of all paved parking spaces and access aisles provided under Article 300 of this Ordinance shall comply with the specifications set forth in Table 1. Alternative patterns of an equivalent area may be approved by the Zoning Administrator where site conditions necessitate.

(8) **Turning Space for State Roads.** Section 304(a): Each parcel abutting a thoroughfare maintained by the North Carolina Highway Department shall be provided with adequate space for turning so that no vehicle shall be required to exit from the premises by backing into the thoroughfare.

(9) **Driveways.** Driveways serving parking lots shall be so located that drivers of exiting vehicles can see far enough in both directions to be able to safely enter the highway. No obstruction to vision--such as a fence, wall, shrub, or sign-- shall be permitted within ten (10) feet of the driveway (Section 112), nor shall a driveway be permitted within twenty (20) feet of an intersection. Driveways shall not exceed fourteen (14) degrees in slope, and shall be at least twelve (12) feet in width for one-way driveways and twenty (20) feet in width for two-way driveways. One-way driveways shall be clearly marked with ENTER and EXIT signs complying with Section 404.2(B) of this Ordinance. A culvert of adequate size shall be installed whenever a driveway crosses a drainage ditch. Whenever a new driveway is installed where there is an existing curb cut, and the driveway does not use the existing curb cut, a new concrete curb cut and apron shall be installed and the old curb cut shall be abandoned and replaced with an appropriate curb and gutter and, if appropriate, a landscape strip and sidewalk.

(10) **Responsibility to construct sidewalk.** The Town of Highlands Master Sidewalk Plan" is adopted simultaneously herewith, may be amended from time to time in accordance with Section 706 of this Ordinance, and shall be permanently kept on file in the office of the Town Clerk. Whenever a new commercial building is constructed on property that adjoins a segment of "The Town of Highlands Master Sidewalk Plan" identified as "Future Commercial," it shall be the responsibility of the owner of the property to construct that segment of said sidewalk which adjoins his property. The sidewalk shall be of a type and design approved by the Town of Highlands, and shall be provided with curb cuts for handicap access at any driveways. (See Figure 3).

(11) Landscape areas. All new parking areas for commercial buildings provided under Article 300 of this Zoning Ordinance which contain more than five (5) parking spaces shall be provided with one or more landscape areas equal in area to not less than ten (10) percent of the total area of the parking lot, including parking spaces, access aisles, and that portion of the driveway entrance not located within public rights-of-way. Such landscape areas shall be located either adjacent to the parking lot or within the parking lot, but may not be located within any public right-of-way. Each landscape area shall be adequately covered with trees, shrubs, or a combination of both; provided, however, that any landscape area exceeding fifty (50) square feet in area must contain at least one tree. The planting of locally adapted and native material is strongly encouraged in landscape areas.

(12) Landscape strips. In addition to the landscape areas described above, all new parking areas for commercial buildings which contain more than forty (40) parking spaces shall be provided with a landscape strip five (5) feet in width between the parking lot and any adjoining public right-of-way. Each landscape strip shall be adequately covered with trees, shrubs, or a combination of both; provided, however, that any landscape strip exceeding twenty (20) feet in length must contain at least one tree for every twenty (20) feet of the landscape strip. As with landscape areas, the planting of locally adapted and native material is strongly encouraged in landscape areas.

APPENDIX B: RULES OF PROCEDURE FOR THE ZONING BOARD OF ADJUSTMENT

[NOTE: These Rules of Procedure may be amended only by the Zoning Board of Adjustment in accordance with Section IX]

I. General Rules.

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160A, Article 19, Part 3 of the General Statutes of North Carolina and by the Zoning Ordinance of the Town of Highlands. All members of the Board shall thoroughly familiarize themselves with these laws.

II. Officers and Duties.

A. Chairman. A chairman shall be elected by a minimum of four members of the Board of Adjustment from among its regular members. His term of office shall be

one year and until his successor is elected, beginning on July 1, and he shall be eligible for re-election. The Chairman shall decide upon all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chairman shall appoint any committees found necessary to investigate any matters before the Board.

B. Vice Chairman. A vice chairman shall be elected by the Board in the same manner and for the same term as the Chairman. He shall serve as acting Chairman in the absence of the Chairman, and at such times he shall have the same powers and duties as the Chairman.

C. Secretary. A secretary shall be elected by the Board, either from within or outside its membership, to hold office during the term of the Chairman and/or until a successor Secretary shall have been appointed. The Secretary shall be eligible for re-appointment. The Secretary shall be eligible for re-appointment. The Secretary, subject to the direction of the Chairman and the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall make a reasonable attempt to notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The Secretary shall keep in a permanent volume the minutes of every meeting of the Board. These shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote. If the Secretary is chosen from outside the membership of the Board, the Secretary shall not be eligible to vote upon any matter.

III. Alternate Members.

There shall be two alternate members of the Zoning Board. Alternate members of the Board shall be required to attend all meetings and hearings and shall be called upon to participate in the hearing of a case where a regular member is absent or excused because of financial or other interest. At any meeting or hearing in which they are called upon to participate, alternate members shall have the same powers and duties as regular members. Alternate members may vote at the election of officers and may participate and vote on all issues, except that they may not participate or vote during hearings unless substituting for a regular member.

IV. Rules of Conduct for Members and Alternates.

A. Faithful attendance at all meetings of the Board and conscientious

performance of the duties required of members and alternates of the Board shall be considered a prerequisite of continuing membership on the Board. Members and alternates will promptly notify the Zoning Administrator if they cannot attend a regular or special meeting, giving the reason for the absence. If a member has three consecutive absences or a total of four absences, for any reason, in a twelve month period, the member or alternate must resign from the Board.

B. No member or alternate shall participate in the hearing, consideration, or determination of any case in which the member has a personal or financial interest.

C. No Board member shall participate or vote in the hearing, consideration or determination of any case in which the member or alternate has discussed, or expressed individual opinions upon, any case with any parties thereto prior to the public hearing or determination of that case. Members, however, may receive and/or seek information pertaining to the case from any other member of the Board, from the Secretary, or from the Zoning Administrator prior to the hearing.

D. If there is a possible conflict regarding the Rules of Conduct, the member or alternate will ask to be excused from the hearing and will give the reasons. The member or alternate may be excused from the hearing with the concurrence of three other members.

E. Members and alternates of the Board may be removed for cause, including violation of the rules stated above. A member or alternate may be recommended for removal to the Town Board of Commissioners for a violation specified in the Rules of Conduct by a majority vote.

V. Meetings.

A. **Regular Meetings.** Regular meetings of the Board shall be held, at a time publicly scheduled and posted, in the conference room of the Town Hall; provided that meetings may be held at any other convenient place in the Town if directed by the Chairman in advance of the meeting.

B. **Special Meetings.** Special meetings of the Board may be called at any time by the Chairman. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given, by the Zoning Administrator or by the Chairman, to each member of the Board.

C. **Cancellation of Meetings.** Whenever there are no appeals, applications for

exceptions or variances, or other business for the Board, or whenever so many regular and alternate members notify the Zoning Administrator of inability to attend that a quorum will not be available, the Chairman may dispense with a regular meeting by giving written or oral notice to all members.

D. Quorum. A quorum shall consist of four (4) members of the Board. In the absence of a quorum, the Chairman may continue the meeting to a time when a quorum can be obtained. The Zoning Administrator will notify members and alternates when the meeting is to be continued.

E. Voting. All members shall vote on any issue, unless they have been excused prior to the meeting or hearing for one or more of the reasons listed in Section IV. The required vote to decide appeals and applications shall be as provided in Section VII(D), and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board. If a member or alternate did not attend the public hearing on an application or appeal, the member or alternate may vote on the matter only if he has reviewed the minutes and heard a recording of the hearing on the application or appeal.

F. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows:

- (a) a statement for the record of those members and alternates who are present or absent;
- (b) approval of minutes of previous meetings;
- (c) hearing of cases;
- (d) consideration and determination of cases heard;
- (e) unfinished business;
- (f) new business;
- (g) reports of committees.

The Board shall have the authority to re-arrange the order of business during the meeting or hearing.

VI. Appeals.

A. Types of Appeals. The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Zoning Ordinance of the Town of Highlands. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of the Ordinance and those based upon alleged hardship resulting from

strict interpretation of this Ordinance.

B. Procedure for Filing Appeals. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Zoning Administrator. All applications shall be made upon the form furnished for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

VII. Hearings.

A. Time. After receipt of notice of appeal, applications for variances, and applications for Special Use Permits, the Board Chairman shall schedule the time for a hearing, which shall be at a regular or special meeting within thirty-six (36) days from the filing of such notice or application.

B. Notice. The Board shall give public notice of the hearing in a newspaper published in Highlands by advertisement published at least seven (7) days prior to the date of the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.

C. Conduct of Hearing. Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows:

(a) the Chairman, or such person as he shall direct, shall give a preliminary statement of the case, and the Zoning Administrator shall give a staff report concerning:

(1) the adequacy of plans which have been submitted;
(2) the Zoning Ordinance requirements as they apply to the plans, including parking, setbacks, watershed, and any other requirements pertinent to the application;

(3) areas of concern that need to be addressed by the Board.

(b) the applicant and others supporting the application will be sworn in and respond to preliminary questions from the Chairman, and shall present the arguments in support of his application;

(c) persons opposed to granting the application shall be given the opportunity to present the argument against the application;

(d) both sides will be permitted to present rebuttals to opposing testimony;

(e) the Chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

D. Consideration and Determination of Cases Heard. During the consideration and determination of cases, discussion is limited to those who will be voting on the case. Questions that may arise may be asked if the hearing is re-opened. If answers to questions cannot be obtained by re-opening the hearing, the consideration and determination may be postponed until a later date.

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

VIII. Decisions.

A. Time. Decisions by the Board shall be made not more than thirty-six (36) days from the time of the hearing.

B. Form. Notice of the decision in a case, in the form of a written ruling, shall be given to the applicant by the secretary or the Zoning Administrator as soon as practicable after the case is decided. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary and the Chairman upon approval of the minutes by the Board. The record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision in an appeal may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. Where an exception, a special use permit, or a conditional use permit is granted, the record shall state in detail any facts supporting findings required to be made prior to the issuance of such permit. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance or an exception, special use permit, or conditional use permit.

C. Expiration of Permits. Unless otherwise specified, any order or decision or the Board granting an exception, special use permit, conditional use permit, or a variance shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within six (6) months from the date of the decision.

D. Voting at Hearings. The concurring vote of four-fifths (4/5) of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, to decide in favor of the applicant any matter upon which the Board is required by Ordinance to pass, or to grant a variance from the Ordinance provisions. Members shall not be excused from voting unless disqualified from participating in a case in accordance with Section V(E). Failure to vote by a member who has heard the case shall be recorded as an affirmative vote.

E. Public Record of Decisions. The decisions of the Board, as filed in its minutes and written ruling, shall be a public record, available for inspection at all reasonable times.

IX. Amendments.

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four (4) members of the Board, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

[NOTE: These Rules or Procedure were adopted by the Zoning Board of Adjustment on December 2, 1980, and have been amended, as recorded in the minutes of that Board and in accordance with Section IX, on the following dates: March 11, 1986; August 8, 1989; June 12, 1990; November 14, 1995; and August 8, 2000.]

APPENDIX C: APPROVED COLORS AND EXTERIOR MATERIALS FOR COMMERCIAL BUILDINGS

COLORS

In accordance with Section 702.2(C) of this ordinance, all colors for commercial buildings shall generally conform to the official Color Chart, which shall be maintained in the office of the Zoning Administrator. Approved colors need not match specific colors in the chart, but the given shades shall fall within the parameters defined by the chart as determined by the Zoning Administrator."

EXTERIOR MATERIALS

In accordance with Section 702.2(C) of this ordinance, all exterior materials for commercial buildings shall conform to the following standards; a maximum use of three of the materials shall be used over the entire building.

- A. Stucco, float finish, smooth or coarse, machine spray, dash & troweled, and limited to 30% on any one facade.
- B. Wood Clapboard, 5"+ to the weather
- C. Wood Shingles, 5"+ to the weather
- D. Wood Board or Batten Board, 8" to 12"
- E. Wood Shiplap Siding, 4"+ to the weather
- F. Unpolished natural regional stone w/ashlar or random ashlar pattern.
- G. Clay brick, antique or unglazed.
- H. Simulated Materials: Simulated permitted materials may be used, provided such materials are reviewed and approved by the Zoning Administrator.

APPENDIX D: BUFFERS AND APPROVED BUFFER MATERIALS

A. Intent.

A buffer is intended to provide adequate separation and screening from adjoining uses to enhance the visual image of the Town and promote public health, welfare and safety by:

1. Reducing noise pollution, air pollution and artificial light glare within the Town.
2. Increasing compatibility between abutting land uses and public rights-of-way by providing screening and buffers.

B. Definitions.

1. Buffer or Screen. The use of vegetation, berms, walls, fences or some combination thereof to visibly separate a use of property from another adjacent use.

2. Opaque Buffer. Excludes all visual contact screened by the buffer between the site interior to the buffer and the abutting lands except that the lowest one (1) foot of height may allow visual contact. The opaque portion of a buffer shall be opaque year-round.

C. Buffers.

Buffer plans shall be reviewed by the Appearance Commission and included in the special use permit as special conditions. The screen or buffer may be achieved with existing vegetation, landscaped rock or stone walls, fences, landscaped earthen berms, hedges, new landscaping or a combination of the aforementioned materials that provide an effective visual barrier during all seasons. The following standards shall apply to specific types of screen or buffer materials:

1. Existing vegetation: additional new screening may be required by the special use permit if existing vegetation consists of dead, damaged or unhealthy species; or, consists of a type or quantity of vegetation that does not provide the density to achieve a year-round screen.

2. New plant types shall consist of a combination of deciduous, coniferous, and ornamental trees and shrubs at a density that provides a year round screen and buffer. Suitable plant types shall be selected from the list of approved materials included with this Appendix.

The buffer area shall be a mixture of various trees and shrubs, with a minimum width of forty (40) feet or as required by this Ordinance. There shall be two (2) staggered rows of planting material placed five (5) feet on centers that are a minimum of six (6) feet in height when installed, and that are expected to achieve a height of eight to ten (8-10) feet within three years. Height is measured from the proposed average ground surface elevation immediately adjacent to the buffer. Landscaped earthen berms shall be constructed of clean, suitable native or borrow soil material. The finished slopes shall not exceed 1:3 (rise:run).

D. Maintenance

1. Buffers must be perpetually maintained and preserved by a conservation easement, by a duly recorded Aas built@ site plan or by a restrictive deed covenant. Buffers shall be maintained in a healthful and sound condition at all times to meet the

criteria of this section. Maintenance of buffers is a continuing special condition of the special use permit.

2. Vegetation that exists within the designated buffer areas of the property when the special use permit is reviewed by the Appearance Commission shall not be removed unless the Appearance Commission finds that (1) the majority of the existing vegetation is comprised of dead, damaged or undesirable tree and vegetative species, or (2) the removal of some or all of the existing vegetation is required for the installation of utilities, trails or planned roadway improvements.

E. List of Approved Materials.

(a) Large or medium hardwood canopy trees: Red Maple, Sugar Maple, Striped Maple, Yellow Birch, Sweet Birch, American Beech, Tulip Poplar, Sourwood, Sassafras, Shingle Oak, Chestnut Oak, Scarlet Oak, Northern Red Oak, White Oak, Black Gum, Black Locust, Black Walnut, Frasier Magnolia, Cucumber, Magnolia, White Ash, Black Cherry, American Chestnut, Chinquapin, Pignut Hickory, Mockernut Hickory, Red Hickory, American Basswood, and White Basswood.

(b) Large or medium evergreen canopy trees: White Pine, Pitch Pine, Table Mountain Pine, Virginia Pine, Balsam Fir, Red Spruce, Eastern Hemlock, and Carolina Hemlock.

(c) Small flowering understory trees: Downy Serviceberry, American Holly, Mountain Holly, American Hornbeam, Carolina Silverbell, Flowering Dogwood, Alternateleaf Dogwood, Silky Dogwood, Pagoda Dogwood, Fringe-Tree, Yellowleaf Hawthorn, Fanleaf Hawthorn, Dotted Hawthorn, Dwarf Hawthorn, American Mountain Ash, Persimmon, Eastern Red Cedar, Mountain Sweet Pepper Bush, Yellow Buckeye, Southern Crabapple, and Sweet Crabapple.

(d) Shrubs: Bristly Locust, Clammy Locust, Witch-Hazel, Smooth Sumac, Nine Bark, Lowbush blueberry, Highbush blueberry, Mountain Myrtle, Bushy St. Johnswort, Shrubby St. Johnswort, Eastern Sweetshrub, Smooth Azalea, Flame Azalea, Pinkshell Azalea, Pinxter Azalea, Catawba Rosebay Rhododendron (Maximum and Minus), Carolina Laurel, Mountain Laurel, Mapleleaf Viburnum, Southern Arrowwood, Possumhaw, Wild Hydrangea, Oakleaf Hydrangea, and Silverleaf Hydrangea.

F. List of Disallowed Materials.

(a) Trees: Tree-of-Heaven, Silk Tree), Princess Tree, Chinaberry Tree, Tallow Tree, Norway Maple, Paper Mulberry, White Mulberry, White Poplar, and Russian Olive.

(b) Shrubs: Silverthorn, Autumn Olive, Winged Burning Bush, Chinese Privet, Japanese Privet, Amur honeysuckle, Morrow's honeysuckle, Tatarian honeysuckle, Sweet-breath-of-spring, Bell's honeysuckle, Sacred Bamboo, Multiflora Rose, Macartney Rose, Cherokee Rose, Japanese Barberry, Japanese Knotweed, and Wineberry.

(c) Vines: Oriental Bittersweet, Climbing Yams, Winter Creeper, English Ivy, Japanese Honeysuckle, Kudzu, Common Periwinkle, Bigleaf Periwinkle, Chinese Wisteria, Japanese Wisteria, Mile-a-minute, and Porcelain Berry,

(d) Grasses: Giant Reed, Tall Fescue, Red Fescue, Cogongrass, Nepalese Browntop, Chinese Silvergrass, and Golden bamboo.