TOWN OF BANNER ELK
NORTH CAROLINA

ZONING ORDINANCE

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SECTION 100 AUTHORITY AND ENACTMENT CLAUSE
The Town Council of Banner Elk, North Carolina, in pursuance with the authority granted by the General Statutes of North Carolina, particularly Chapter 160A-381, Article 19, and the authority vested in the Town of Banner Elk by its 1911 Charter, as amended, hereby ordains and enacts into law the following articles and sections.

SECTION 101 SHORT TITLE
This ordinance shall be known and may be cited as “The Zoning Ordinance of the Town of Banner Elk, North Carolina, and the Area Comprising its Extraterritorial Jurisdiction”.

SECTION 102 JURISDICTION
The provisions of this ordinance shall be applicable to all land within the corporate limits of the Town of Banner Elk, North Carolina, and within the territory beyond such corporate limits as now or hereafter fixed as the extraterritorial jurisdiction. The extraterritorial jurisdiction boundary is established on a map entitled "Official Zoning Map, Town of Banner Elk, North Carolina, and the Area Comprising its Extraterritorial Jurisdiction."

SECTION 103 SEVERABILITY
Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid such declaration shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 104 CONFLICTING REGULATIONS
In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare of the Town of Banner Elk, N.C. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances of the Town, or any easements, covenants or other agreements between parties. However, if the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances of the Town, or with easements, covenants or agreements between parties, the more restrictive or that imposing the higher standards shall govern.

SECTION 105 TRANSITIONAL PROVISIONS
Any violation of any previous ordinance of the Town of Banner Elk shall continue to be a violation under this ordinance and shall be subject to the penalties set forth at the time of the violation, unless the use, development, construction or other activity is clearly consistent with the express terms of this ordinance.

SECTION 106 COMPLETION OF DEVELOPMENT PLANS
Any building or development for which a permit was issued prior to the effective date of this ordinance or any amendment thereto, may be completed in conformance with the issued permit and other applicable permits and conditions.

Any type of land development application which has been officially filed with the appropriate town official prior to the effective date of this ordinance or any amendment thereto; may continue to be processed under the land use rules and regulations in effect prior to said date. The application process must be complete within one (1) year of said date. If the application process is not completed within the specified time, then the application process may be completed only in strict compliance with the requirements of this ordinance.

SECTION 107 TIME LIMIT ON PERMITS AND APPLICATIONS

Any permit or approval shall be good for two years from the date it was issued. In extenuating circumstances where the use cannot commence, the time limit may be extended by reapplication and approval by the Planning Board. A time limit exception exists for developments which have earned a vested right as per NCGS 160A-385.1. (Added 9-14-09)

SECTION 200 DEFINITIONS

In this ordinance, words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular. The word "shall" is always mandatory. The word "lot" includes the word "plot" or "parcel." The word "building" includes the word "structure." The word "person" includes a firm, association, organization, partnership, trust company or corporation, as well as an individual. The word "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. The word "map", "zoning map", or "Banner Elk Zoning Map" shall mean the "Official Zoning Map of the Town of Banner Elk, North Carolina, and the Area Comprising its Extraterritorial Jurisdiction."

Except as specifically defined herein, all words used in this ordinance shall have their customary dictionary definitions. For the purpose of this ordinance, certain words or terms used herein are defined as follows:

Accessory dwelling. A Dwelling Unit that is accessory, supplementary, and secondary to the principal Dwelling Unit that may be constructed as an addition to the principal structure or as an accessory to the principal structure. An Accessory Dwelling is detached from the principal Dwelling Unit.
Accessory, Building. A subordinate building detached from, but located on the same lot as the principal building, the use of which is incidental and accessory to that of the principal building.
Accommodation. A room or a portion of a room within a building intended to be rented as a unit or a portion of a unit for temporary lodging. A room or a partitioned sleeping area designed or intended to sleep up to three persons shall constitute one accommodation or lodging unit. When sleeping areas are designed or intended to sleep more than three persons, an accommodation shall be considered a sleeping room or area for each three (3) persons, or fraction thereof. There shall be a minimum of sixty (60) square feet of gross floor area in each bedroom or sleeping area for each intended occupant, exclusive of bathrooms, closets, or hallways.
Active Recreation Area. Open Space improved with facilities for active recreation, such as a playground, a park, a picnic area etc.
Addition. An extension or increase in Floor Area or height of a Building or Structure.
Administrator. The officer charged with the authority and duty to administer this Ordinance.
Anchor Business. An anchor business is a tenant with an established business that would assist in drawing individuals and shoppers to the Incubator. (Modified 03-11-13)
Appeal. A request for a review of the Administrator's interpretation of any provision of this Ordinance or a request for a determination that there is error in an order, requirement or decision made by the Administrator pursuant to this Ordinance.
Applicant. Any person or his/her duly authorized representative who submits an Application as defined herein.
Application. A request for approval for any subdivision plat, site plan, master land use plan, site specific development plan, conditional use permit, rezoning, conditional use district, sign or zoning compliance permit.
Assisted Living Facilities. An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency, through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has the choice of any provider, and the housing management may not be combine charges for housing and personal care services. All residents, or their compensatory agents, through informed consent, of entering into a contract

and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multi-unit assisted housing with services programs are required to register with the Division of Health Service Regulation and to provide a disclosure statement. The disclosure statement is required to be part of the annual rental contract that includes a description of the following requirements: emergency response system, charges for services offered, limitation of services, limitation of tenancy, resident responsibilities, financial/legal relationship between housing management and home care or hospice agencies, a listing of all home care or hospice agencies and other community services in the area, an appeal process, and a procedure for required initial and annual resident screening and referrals for services. (Added 02-09-2009)

Automated Teller Machine (ATM), Walk-up. A computer-controlled terminal associated with a financial institution, not accessible by motorized vehicle, through which a customer may make deposits, withdrawals, or other transactions. Other terms sometimes used to describe such terminals are customer-bank communication terminal (CBCT) and remote service unit (RSU).

Automated Teller Machine (ATM), Drive-up. A computer-controlled terminal associated with a financial institution, accessible by motorized vehicle, through which a customer may make deposits, withdrawals, or other transactions. Other terms sometimes used to describe such terminals are customer-bank communication terminal (CBCT) and remote service unit (RSU).

Automotive Repair. The repair, rebuilding, or reconditioning of motor vehicles or parts thereof, including collision service, painting, and steam cleaning vehicles.

Automobile Wrecking, Junk and Salvage Yards. An enclosed area that stores wrecked motor vehicles or parts to motor vehicles that are collected, stored, salvaged or sold.

Barber Shop/Beauty Shop. An establishment that provides services generally involving the cutting and styling of hair, and including customary accessory uses such as manicure work, facial treatment, the sale and fitting of wigs, the sale of hair treatment products, and spa treatments.

Bed and Breakfast Home. A private home offering bed and breakfast to eight or less persons per night for a period of less than a week.

Bed and Breakfast Home/ Village. A private home with up to three auxiliary cottages offering bed and breakfast to sixteen or less persons per night for a period of less than a week.

Bed and Breakfast Inn. A residential building which may include one accessory building that contains not more than twelve (12) guest rooms that offers bed and breakfast accommodations to at least nine (9) but not more than twenty (20) persons per night for a period of less than one week; provided that the business:

a.) Does not serve food or drink to the public for pay;
b.) Serves only the breakfast meal, and that meal is served only to overnight guests of the business;
c.) Includes the price of breakfast in the room rate;
d.) The owner or manager shall permanently reside in the business complex or premises.

Bed and Breakfast Inn/ Village. A residential building which may include one accessory building and up to three auxiliary cottages that contains not more than twelve (12) guest rooms that offers bed and breakfast accommodations to at least nine (9) but not more than thirty (30) persons per night for a period of less than one week; provided that the business:

a). Does not serve food or drink to the public for pay;
b). Serves only the breakfast meal, and that meal is served only to overnight guests of the business;
c). Includes the price of breakfast in the room rate;
d). The owner or manager shall permanently reside in the business complex or premises.

Beverage Shop. A place of business such as a coffee shop, soda shop, or juice bar that serves beverages, and where seating is provided for the consumption of said beverages.

Bicycle Sales and Repair. A place of business that will sell and or repair bicycles. A bicycle is defined as any light framed form of conveyance consisting of wheels, a seat, handlebars and brakes which is not powered by a gasoline motor. (Added 2-11-08)

Brewery - An establishment primarily engaged in the wholesale production and distribution of beer, ale, porter and other fermented malt beverages. Areas for demonstration, education or tasting are included in this definition and are incidental to the primary use of producing beverages in accordance with State ABC permits. (Added 02-11-2013)

Brewpub – A combination of brewery and restaurant that serves food while brewing beer on premises and selling ¼ of its brew to patrons. (Added 02-11-2013)

Buffer Yard. A planting yard that serves as a visual separation between uses and should be densely planted. (Added 12-08-08)

Building. Any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind, including sheds, carports, garages, guest cottages, and other outbuildings, and also including any extension or extrusion of the building such as balconies, decks, and porches.

Building, Customary Accessory. A detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot therewith.

Building, Principal. A building in which is conducted the principal uses of the lot on which said building is located.

Business - Convenience. Commercial establishments that generally serve day-to-day needs of a residential neighborhood, including drugstores, tobacco shops, newsstands, bakeries, confectionaries, delicatessens, meat and produce markets, food stores with less than 8,000sf in floor area. May be combined with the sale of gas and petroleum products.

Business - General. Commercial establishments that, in addition to serving day-to-day commercial needs of a community, also supply the more durable and permanent needs of a whole community, including supermarkets, department stores, discount stores, variety stores, hardware and garden supply stores, apparel and footwear stores, florists, gift shops, jewelry stores, book and stationary stores, specialty shops, sporting goods stores, furniture and home furnishing stores, automotive supply stores, and appliance stores.

Business Services. Any profit-making activity that renders services primarily to other commercial or industrial enterprises, or which services and repairs appliances and/or machines in homes and businesses.

Commercial Campgrounds. A minimum of a three (3) acre parcel of real estate located in the R-1and R-C where tents and pop-up campers are used by visitors to Banner Elk with a maximum length of stay being no more than ten (10) days in any thirty day period and requiring a Conditional Use Permit as provided in Section 902 of this Ordinance. (Added 10-16-07)

Community Event. An event within the Town of Banner Elk or the ETJ staged for the local community which centers on some unique aspect of the community. The event shall be open to al citizenry of Banner Elk and its planning jurisdiction and provides significant economic benefit to the Town as a whole, portraying or placing the Town in a positive light. (Added 09-14-09)

Canopy. A structure constructed of rigid material, including, but not limited to metal, wood, concrete, plastic or glass, which is attached to and supported by a building or by columns, poles, or braces.

Conditional Use. A use of land, buildings, or structures that is identified in this ordinance as a use that because of its inherent nature, extent and external effects, requires special care in the control of its location, design, and methods of operating in order to ensure protection of the public health, safety, and welfare.

Conditional Use Permit. A permit issued by the Board of Adjustment that authorizes the recipient to make use of property in accordance with the requirements of this Ordinance as well as any additional requirements imposed by the Board of Adjustment.

Craft Brewer/Brewery – A production facility that produce at least 2,000,000 US barrels per year. This use would only be located in an industrial zoning jurisdiction. (Added 02-11-2013)

Customary Incidental Home Occupations. Any use conducted entirely within a dwelling and

carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof, and in connection with which there are no retail sales or display on the premises and no person not a resident on the premises is employed specifically in connection with the activity, except that not more than one (1) assistant may be employed by the following home occupations: lawyer, physician, dentist, osteopath and chiropractor. Provided, further, that no mechanical equipment is installed or used except such as is normally used for domestic or professional purposes, and that not over twenty-five percent (25%) of the total floor space of any structure is used for home occupations.

Distillery - This industry comprises establishments primarily engaged in one or more of the following: (1) distilling potable liquors (except brandies); (2) distilling and blending liquors; and (3) blending and mixing liquors and other ingredients. The Process will be limited to: manufacturing, production, distillation, packaging and distribution of spirituous liquor. Because spirituous liquor is the end product, "distillery" would not include industrial distilleries, such as for the production of ethanol for use as a fuel. (Added 02-11-2013)

Distressed Business: Businesses who have been competing in a commercial environment for longer than one year and are unable to illustrate any signs of profit or growth, or can prove that they are in a position to lose their business entirely. The Admissions Committee of the Incubator shall determine the validity of proof. (Added 09-10-2012)

Dormitory, College and Institutional. A building used as living quarters for members of a student body; an accessory use for colleges, boarding schools, orphanages, or other similar institutions.

Double-Wide Manufactured Home/Building. A double-wide mobile unit is two or more separate mobile homes or buildings which are designed to be connected on a site to form a single structure for one or more housing or non-residential uses. The exterior dimensions of the double-wide mobile unit when assembled for use shall be not less than 32'x 24'. The structure shall be placed on a permanent, enclosed, masonry foundation, with the wheels and pulling tongue removed.

Driveway. A private access to one or two proposed or recorded lots. A driveway may be

a. paved or unpaved, platted or described by metes and bounds, or may be otherwise described
b. or shown as an easement or right-of-way. Any drive, access, road, easement or right-of-way
c. proposed to serve more than two lots shall be defined as a public or private street.

Dwelling Unit. A building, or portion thereof; providing complete and permanent living facilities for one (1) family.

Dwelling, Multi-Family. A building arranged or designed to be occupied by two (2) or more families living independently of each other.

Dwelling, Single-Family. A building arranged or designed to be occupied by one (1) family.

Emergency and Civil Services. Organizations that ensure public safety and health by addressing different emergencies. Some of these agencies exist solely for addressing certain types of emergencies while others deal with ad hoc emergencies as part of their normal responsibilities. Many of these agencies engage in community awareness and prevention programs to help the public avoid, detect, and report emergencies effectively. There are three main emergency services: Police, Fire Department, and Emergency Medical Services. A few civil service examples would be: Public Utilities, Social Services, Disaster Relief, Animal Control, and Forestry Service.

Erosion and Sediment Control Plan. A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

Extraterritorial Jurisdiction (ETJ). The area officially defined as the zoning jurisdiction beyond the Corporate Limits of Banner Elk and defined on the Official Zoning Map, subject to the zoning laws to the Town. (Added 09-14-09)

Family. One or more persons occupying the premises and living as a single housekeeping unit, but not including a group occupying a lodging house, club, fraternity house, or similar type

dwelling.

Family Care Home. An adult care home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons. (Source: NCGS § 168-21)

Gasoline Service Station. An establishment where gasoline and other petroleum products are sold as a principal use of the property. Light maintenance activities such as engine tune-ups, lubrication, and minor repairs may also be provided if incidental to such a principal use. Service stations do not include premises where heavy automobile maintenance activities such as engine overhauls, automobile painting, and bodywork are conducted. May or may not be combined with a convenience store.

Geological Hazard Indicators. A condition or series of conditions from which a reasonable inference may be drawn that a particular tract of land may have qualities of instability or danger which require further investigation and possible remediation. Such indicators may include, but are not limited to one or more of the following: fault zone cataclasite (broken) rocks, pre-existing landslide deposits or indicators, day lighting, foliations or zones of likely debris flow deposits, properties along a fault line, rock fall areas, or areas with exposure to radon gas or arsenic in the water.

Geotechnical Engineer: A North Carolina licensed engineer that has documented experience of at least five years in the proactive field of geotechnical engineering.

Greenway. A corridor of open protected space, usually located adjacent to natural features; that is managed for conservation and/or recreational purposes. (Added 09-14-09)

Halfway House. A home of not more than the number of persons a bed can be provided for who have demonstrated a tendency towards alcoholism, drug abuse, mental illness, or antisocial or criminal conduct, together with not more than two (2) persons providing supervision and other services to such persons, a total of whom live together as a single housekeeping unit. (Added 09-14-09)

Height Limitation, Building. The vertical distance from the mean elevation of the finished grade along the highest ridge of the building. The calculation for the maximum height allowed for any structure located under the footprint of a building is 35 feet and is measured by delineating the smallest rectangle which can enclose the building footprint and averaging the elevations taken at the midpoint of each side of the rectangle as indicated in a drawing.

Historical Marker: A display of lettering, words, symbols, emblems, objects, pictures, or any combination thereof used to distinguish or honor the historic significance or its historic association with events or person(s) from the past subject to the approval of the historical content by the Historical Preservation Committee. (Added 07-14-08)

Hotel. A building used as temporary, a period of less than four consecutive months, lodging for compensation and consisting of more than ten (10) accommodations. All accommodations shall have primary access from a common entrance and associated lobby area. In addition to the principal building there may be freestanding accommodations that are accessed separately, so long as they are managed by the same hotel management company responsible for the principal building. If meals and related services are offered to those lodging in the hotel then they shall also be offered to the general public in a traditional restaurant setting, provided necessary permits and licensures are obtained from agencies responsible to assure public health, safety and welfare. A component of this definition, Hotel, shall include the potentiality of a Condominium Hotel whereby less than all of the accommodations may be owned by various entities which shall have the ability to place those accommodations into a rental pool to be rented and managed by a hotel management company. For accommodations in a Condominium Hotel there is no prescribed length of stay by a patron or owner provided that a majority of the accommodations are available for rental for at least six (6) months in a calendar year in the hotel rental pool. (Amended 06-11-2007)

Impervious Surface. Any surface that impedes the natural percolation of water into the soil.

Incubator. Incubators are programs designed to accelerate and nurture entrepreneurs in the start-up of a business by providing hands-on management assistance, access to financial sources, and exposure to critical business or technical services, sharing of certain support

services, as well as various educational opportunities for developing businesses (added 06-11-2012, amended 03-11-2013)

Inventory. Merchandise that a vendor has on hand for sale. (Added 09-14-09)

Junk Yard. A lot, land or structure, or part thereof, used primarily for the collecting, storing, and sale of waste paper, rags, scrap metal, or discarded material; or for the collecting, dismantling, storage and/or salvaging of machinery or vehicles not in operating condition, and for the sale of parts thereof.

Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Lot, Depth of. The average distance between front and rear lot lines.

Lot, Width of. The distance between the side lot lines measured at the building line.

Lot of Record. A lot which is a part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds of Avery County, North Carolina, or a lot described by metes and bounds, the description of which has been so recorded.

Manufactured Building. A building mass-produced in a factory, either independent or a module for combination with other elements to form a building on site, and designed and constructed for transportation to a site for installation and use when connected to required utilities.

Manufactured Home. A structure, used or intended to be used as a Dwelling Unit, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401, et seq. (Source: The Uniform Standards Code for Manufactured Homes Act," NCGS § 143-145). For purposes of this Ordinance, a "manufactured home" does not include a structure which otherwise complies with this subsection, but which was built prior to June 15, 1976, which units shall be classified as "mobile homes." A manufactured home shall not be construed to be a travel trailer or other form of recreation vehicle; it shall not be used for storage or other unoccupied use.

Manufactured Home Park. Any premises where manufactured homes are parked for living and sleeping purposes, or any premises used or set apart for the purpose of supplying to the public parking space for manufactured homes for living and sleeping purposes, and which include any buildings, structures, vehicles, or enclosure used or intended for use as part of such mobile home park. Such areas, lot, parcel or tract is held in common ownership, and individual portions of said area, lot, parcel or tract are leased for the placement of manufactured homes as a primary residence.

Manufactured Home Site. A plot of ground within a manufactured home park designated for the accommodation and use of one single-wide manufactured home and containing all improvements and utility connections required under this ordinance and other applicable chapters of the town code.

Manufacturing and Processing Operations. An operation that manufactures, processes, creates, renovates, paints, cleans, assembles merchandise, goods, or equipment, or other industrial uses that have all operations and storage within enclosed structures.

Master Site Plan: A site plan that displays the entire tract to be developed including all boundaries, existing and proposed structures, bodies of water, topographic features, streets and roads, driveways, utilities, stormwater drain systems, walkways, landscaping, open space, forested/wooded areas, and all intended uses of the property.

Material Recovery Site. Is a specialized plant that receives, separates and prepares recyclable materials for marketing to end-user manufacturers.

Menu Signs. A sign that contains the name of the restaurant and the menu items offered. The sign may be fixed or changeable copy.

Microbrewery – A small establishment primarily engaged in the wholesale production and distribution of beer, ale, porter and other fermented malt beverages. Areas for demonstration, education or tasting are included in this definition and are incidental to the primary use of producing beverages in accordance with state ABC permits. A microbrewery produces less than 15,000 US barrels (460,000 US gallons) per year with 75% of its product sold outside the facility. It may have a tasting room and retail space for selling some beer to patrons of the site. Microbreweries usually concentrate on exotic or high quality beer. (Added 02-11-2013)

Miniature Golf Course. A small scale version of a regulation golf course played with golf balls and putters on a course featuring obstacles created by changes in the terrain or features using natural materials such as water, rocks and vegetation.

Mixed Use Development. Any combination of uses allowed as either permitted or conditional in the MU zoning category that compliment each other with one or more buildings on parcels of land that are substantially contiguous. (Amended 06-11-2007)

Mobile Building. A manufactured building constructed on a chassis and used for non-residential purposes. A mobile building shall be construed to remain a mobile building subject to all regulations applying thereto, whether or not wheels, axles, hitch, or other appurtenances of mobility are removed and regardless of the nature of the foundation provided.

Modular Building: A unit constructed in accordance with the standards set forth in the State Building Code applicable to site built homes/or structures and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. A modular building may consist of one or more sections transported to the site in a manner similar to a mobile home or manufactured home, or a series of panels or room sections transported on a truck and erected or joined together on the site. (Amended 12/21/2010)

Motel. A building or group of buildings used as temporary lodging facility for compensation for more than ten (10) accommodations for a period of less than two weeks. Meals may be offered to the overnight guests and the general public.

Open Space (Open Space Area). Portions of a tract of real estate that are not covered by impervious surfaces and are not in easements or rights-of-way as further defined in section 808 (amended on 4/09/2007).

Outdoor Storage. Storage of any materials, merchandise, products, lumber and building supply materials, landscape materials, stock, supplies, machines, operable and/or inoperable, vehicles, equipment, manufacturing materials, or chattels of any nature which are not kept in a structure having at least four walls and a roof for more than 24 hours.

Outdoor display. The temporary placement of commercial materials inventory, goods including, but not limited to furniture, crafts, farm implement sales, and farmers markets that are outside the building. The display area must be located and maintained by the people who own the property and are displaying the goods. Such displays must be clearly incidental and subordinate to the principal businesses.

Parking Space. An area of not less than nine (9) feet by eighteen (18) feet, plus the necessary access space. Parking space(s) shall be provided with vehicular access to a street or alley, and shall always be located outside the dedicated street right-of-way, except for on-street parking permitted in downtown Banner Elk.

Parking Yard. A planting yard comprised of a landscaped planting area to be located within or adjacent to the parking area such as landscaped islands, inside medians, between 10 parking spaces and at the end of a parking bay. (Added 12-08-08)

Phased Development Plan. A plan which has been submitted to a city by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the city to be a site specific

development plan. (Added 11/13/2006)

Planned Commercial Development. A planned commercial development incorporating more than one commercial use within one or more structures, which are planned and developed as a unit on a compact and contiguous lot (or lots) under single ownership or control. The development shall consist of two or more principal commercial uses located in one or more principal structures and all accessory buildings and uses. A planned commercial development shall be permitted as a conditional use in certain districts in accordance with the provisions of Section 905 and Section 1109(2).

Planned Residential-Crafts Development. A planned development incorporating a single type or a variety of residential uses, craft shops, and customary accessory uses, which are planned and developed as a unit on a compact and contiguous lot (or lots) under single ownership or control. The development shall consist of at least two or more principal buildings and all other accessory buildings and uses. A planned residential-craft development shall be permitted as a conditional use in certain districts in accordance with the provisions of Section 906 and Section 1109(2).

Planned Residential Development. A planned residential development incorporating a single type or a variety of residential and accessory uses which are planned and developed as a unit on a compact and contiguous lot (or lots) under single ownership or control. A planned residential development shall consist of at least two or more principal buildings or a single building with more than four (4) dwelling units and all other necessary buildings and uses. A planned residential development shall be permitted as a conditional use in certain districts in accordance with the provisions of Section 907 and Section 1109(2).

Planning Program. The planning program consists of the following; the Banner Elk Zoning Ordinance, the Official Zoning Map of the Town of Banner Elk, the Banner Elk Subdivision Regulations, Banner Elk Erosion and Sedimentation Control Ordinance, the Banner Elk Flood Damage Prevention Ordinance, the Town of Banner Elk Flood Insurance Rate Maps, the Master Streetscape Plan, 1992 ASU Planning Studies, the Architectural Review Guidelines (hereunto incorporated within the Zoning Ordinance), and the Banner Elk Thoroughfare Plan.

Premises. A tract of real property in single ownership which is not divided by a public street or public right-of-way.

Property Owners Association (POA). A legal entity to manage a community of homes. The entity is given the authority to enforce the covenants, restrictions and conditions and to manage the common entities of a development. Other variations apply such as: Home Owners Association (HOA), Condominium Owners Association (COA). (Added 09-14-09)

QR Code – The use of QR Codes (Quick Response Codes) will be allowed on a smooth flat surface, added to an existing sign or as an attachment to an existing sign, to be no greater than 4” x 4”. (Added 10-08-12)

Restaurant (dine in). A place of business where food is prepared and served and where seating is provided for the consumption of food.

Retail Food Business or Restaurant (carry-out/delivery). A business such as a bakery, delicatessen, or take-out pizza establishment, which that prepares and sells food, but does not provide seating for the consumption of food. (Note: if seats are provided on the business premises for the consumption of food, whether self-service or not, such business shall be considered a restaurant.)

Ridge. The elongated crest or series of crests at the apex or uppermost point of an intersection between two opposite slopes or sides of a mountain.

Roof. The exterior upper covering of a building or canopy attached to a building. Any portion of a roof or exterior wall that extends from or beyond the vertical wall of a structure at an angle of 15 degrees or more shall be considered part of the roof.

Rooming House: A building or group of buildings used for the temporary lodging of residents, intended primarily for lease or rent for a period of more than one week, with or without board.

Security and Warning Signs. On-premises signs which designate health or safety warnings as required by law, and security signs which regulate the use of the property such as "no trespassing," "no hunting," "no soliciting," or provide other warnings of danger on the

premises.

Setback. The area located between a property line, the established edge of a road right-of-way, or the edge of the traveled way, whichever is closer, and the closest projection of a building including any eaves, dormer, deck, or other part attached thereto and any portion of a building located below grade. No building shall be placed within the setback area, however, doors, windows, marquees, canopies, or fixed awnings shall be permitted to encroach.

Sexually Oriented Business. Any business or enterprises that have as one of their principle business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas as specified in N.C.G.S. 14-202.10. This term may be used interchangeably with *adult establishment*.

Shared Parking. Parking that can be applied when land uses have different parking demand patterns and are able to use the same parking spaces/areas throughout the day. Shared parking is most effective when these land uses have significantly different peak parking. Characteristics, that vary by time of day, day of week, and/or season of the year. In these situations, shared parking strategies will result in fewer total parking spaces needed, when compared to the total number of spaces needed for each land use or business separately.

Sign. A structure, or part thereof, displayed for the purpose of conveying some information, knowledge, or idea to the public.

Sign, Advertising. A sign which directs attention to a business, service, or entertainment conducted, sold or offered elsewhere than on the premises, and only incidentally on the premises, if at all.

Sign, Business. A sign that directs attention to the business, profession, or principal use conducted on the premises.

Sign, Off-Premise Directional. A sign which provides directions to a business, service, or activity located on another property, provided that such sign shall be no larger than four (4) square feet per sign face and not exceed four (4) feet in height. Off-premise directional signs shall be used only by businesses, services or activities which are located in Banner Elk's zoning jurisdiction, and said locations do not have direct frontage from NC 184 and NC 194, in accordance with Article VI.

Sign, Directly Illuminated. A directly illuminated sign is designed to give forth artificial light directly (or through transparent or translucent material) from a source of light within or on such sign.

Sign, Directional and Information. A sign located on the premises of a business or development which provides directions and information for vehicular or pedestrian traffic. A directional and information sign shall not display the name, logo, or products of the on premise business. Entrance, exit and parking regulating signs one (1) square foot or less in area per side shall be exempt from regulation, provided such signs are non-illuminated, less than four (4) feet in height, and are located out of the street right-of-way.

Sign, Indirectly Illuminated. An indirectly illuminated sign is designed to have illumination from a remote light source so shielded that no direct rays thereof are visible elsewhere than on the lot where said illumination occurs. If such shielding device is inoperative, such sign shall be deemed to be a directly illuminated sign.

Sign, Non-Illuminated. A sign that is not illuminated, either directly or indirectly.

Sign, On Premises. The lot or parcel upon which the principal building or structure is directly located, for which sign is designated or intended to advertise.

Signs, Portable. Any permanent or temporary sign which is affixed to or placed in or upon any parked vehicle, trailer or other parked device designed or capable of being towed or transported, the primary purpose of which is to direct attention to a business commodity, or service, entertainment or other activity.

Site specific development plan. A plan which has been submitted to a city by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a preliminary or

general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a city. (Refer to 160A-385.1)

Spa. A commercial establishment (such as a resort) providing facilities devoted especially to health, fitness, eight loss, beauty, and relaxation.

Solid Waste Management Facility. A facility that means (1) land, personnel, and equipment in the management of solid waste including a transfer station, landfill, or materials recovery facility. Specifically excluded from this definition are incinerators and drop-off recycling centers; and those solid waste management facilities that are constructed and/or operated by or on behalf of any federal, state, or local governmental entity; provided, however, that this exclusion from regulation only applies to those solid waste management facilities not operating as a hazardous waste facility. The facility shall not include the burial of any waste.

Steep Slopes. Parcel(s) of land that have an average slope of 20% to 50%. Refer to section 310(1) to determine degree of slope. (Added on 2/12/07)

Street (Road). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties, including avenue, place, way, drive, lane, court, boulevard, highway, road or any other thoroughfare except an alley or driveway.

Street Yard. A planting yard comprised of a strip of land containing landscaping materials located along and parallel to a public street, or streets. (Added 12-08-08)

Structure. Anything vertically constructed or erected and is permanently attached to the ground; not including roads, driveways and streetscape features. Streetscape features may include but are not limited to retention walls, fences, sidewalks, light poles, entry features, monuments, pylon signs and similar ancillary development items, will be considered on a project by project basis as a function of the issuance of a Conditional Use Permit. (Amended 06-11-2007)

Structural Alteration. Any change, except for the repair or replacement, in the supporting members of a structure, such as, but not limited to, bearing walls, columns, beams, or girders.

Tattooing – The inserting of permanent markings or coloration, or the producing of scars, upon or under the skin through puncturing by use of a needle or any other method. (Added 9-14-15)

Tattoo Artist – Any person who engages in tattooing. (Added 9-14-15)

Tattoo Establishment – Any location where tattooing is engaged in or where the business of tattooing is conducted in any art thereof. (Added 9-14-15)

Tattooing Room - A room in a tattoo establishment where tattooing is performed.

Telecommunication Tower. A monopole, guyed, or self-supporting tower, constructed as a free-standing structure or in association with a building, other permanent structure, or equipment, that contains one or more antennas intended to transmit or receive television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication. This definition shall not include any structures erected solely for a non-commercial individual use such as residential television antennas.

Temporary Agricultural Product Signs. A temporary on premise sign displaying the availability of seasonal agricultural products offered for sale on the premises.

Temporary Seasonal Business Sign. A temporary sign, including any device, equipment or material which represents a seasonal business offered on the premise where such sign, device, equipment, or material is located. A seasonal business period is defined as an activity which is limited by a natural season or condition.

Temporary Use Structure. A structure intended for temporary offices, headquarters, or storage of materials on the same lot or tract of land being used or developed for a directly related permanent use. This temporary structure shall require a temporary certificate of zoning compliance from the Zoning Administrator for a maximum period of one year, with renewal extensions of six months. Temporary use structures are permitted in all zoning districts.

'Tourist Court': A building or group of buildings, containing a combination of three (3) to eight (8) lodging units which are to be rented or leased as temporary lodging for transients, as distinguished from rooming houses, in which occupancy is generally by residents rather than

transients. If meals are offered, they shall only be offered to those transients currently residing in the tourist court.

Town. The Town of Banner Elk. (Added 09-14-09)

Tractor Trailer or Semi-Trailer. A commercial conveyance with a total of no more than five (5) axels for the transportation of retail goods. The trailer is designed to be pulled by a truck or tractor. The trailer portion uses tandem wheels and is usually supported in the front by legs (landing gear) when it is uncoupled from the powered portion of the vehicle. The overall maximum length can be no more than 70-80 feet and the maximum height can reach approximately 13 feet 6 inches. (Added 07/14/08)

Travel Trailer. Any vehicle, self-propelled or otherwise, which is designed for transient, non-permanent living. This term shall also include any references to recreational vehicles.

Use. Any activity, occupation, business, or operation carried on or intended to be carried on in a building or structure or on a tract of land.

Usable land. Area that remains on a parcel of real estate that is not defined in section 806. (Added on 2/12/2007)

Use, Accessory. A use located on the same lot with a principal use, and clearly incidental or subordinate to and customary in connection with the principal use.

Use, Nonconforming. A building or land occupied by a use that does not conform to the regulations of the use district in which it is situated.

Use, Principal. The main and primary use on a lot.

Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

Very Steep Slope. Parcel(s) of land that have an average slope of greater than 50% (added on 2/12/2007)

Vested Right. The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan. (Refer to NC GS 160A-385.1) (Added on 11/13/2006)

Viewshed. All land clearly visible from parts of NC Highways 184 and 194 within Banner Elk planning jurisdiction.

Warehouse and Storage Facilities. Any fully enclosed building or portion thereof which is used exclusively for the temporary storage of merchandise, household or business goods, supplies, parts or equipment. Buildings or space allocated for storage shall not include any retail displays, or public access, or manufacturing or assembly processing.

Water Detention Basin. Used interchangeably with detention and/or retention ponds, a storage site whereby the water in storage is permanently obstructed from flowing downstream and is allowed to cool and filter back into the water. (Added 07-14-08)

Winery - This industry comprises establishments primarily engaged in one or more of the following: (1) growing grapes and manufacturing wine and brandies; (2) manufacturing wine and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and brandies. Areas for demonstration, education or tasting are included in this definition and are incidental to the primary use of producing beverages in accordance with State ABC permits. (Added 02-11-2013)

Yard. An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees or shrubbery, or as otherwise provided herein.

Yard, Front. A yard across the full width of the lot extending from the front line of the building to the front line of the lot, excluding steps.

Yard, Rear. A yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

Yard, Side. An open, unoccupied space on the same lot with a building between the building and the side line of the lot extending through the front building line to the rear yard.

APPLICATION OF REGULATIONS

SECTION 300 Use

No building or land shall hereafter be used or occupied and no building or structure, or part thereof, shall be erected, moved, or structurally altered except in conformity with the regulations of this ordinance or amendments thereto, for the district in which it is located.

SECTION 301 Height and Density

No building shall hereafter be erected or altered so as to exceed the height limit, or to exceed the density regulations of this ordinance for the district in which it is located.

SECTION 302 Lot Size

No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in size so that the lot width or depth, front, side, or rear yards, lot area per family, or other requirements of this ordinance are not maintained. Lot size, width, depth, front, side, or rear yards, lot area per family, or other requirements of this ordinance may be reduced or increased in accordance with said regulations, provided that any lots which are not served by public water or sewer must be approved for private water and/or sewer systems by the Avery County Health Department.

SECTION 303 Yard Use Limitations

No part of a yard or other space required about any building for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space similarly required for another building.

SECTION 304 Only One Principal Building or Principal Use on Any Lot

Only one (1) principal building or principal use and its customary accessory buildings or accessory uses may hereafter be erected or conducted on any lot, except as provided in certain conditional uses as defined herein.

SECTION 305 Required Road Access

(1) Except as provided in subsection (2) below, no building or structure shall be constructed or placed on any lot which does not have contiguous frontage of at least twenty-five (25) feet on an existing public or private road which has a recorded minimum right-of-way width of at least twenty-five (25) feet. However, a zoning permit and a certificate of compliance may be issued for the construction or placement of one dwelling unit on an existing lot of record which does not meet the minimum requirements of this section, provided the lot of record is located on a platted right-of-way which was recorded prior to September 11, 1978. No subdivisions of land are permitted for parcels or lots which do not meet the minimum road access requirements in the subdivision regulations. All driveway entrances and other openings onto streets within the town's zoning jurisdiction shall be constructed so that:

a. Vehicles can enter and exit from the property in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling on abutting streets;

b. Interference with the free and convenient flow of traffic on abutting or surrounding streets is minimized;

c. Streets shall be related appropriately to the topography. In particular streets shall be designed to facilitate drainage and stormwater runoff, and street grades shall conform as closely as practicable to the original topography.

d. Whenever connection is anticipated, a site plan shall be submitted to the Zoning Administrator illustrating all setbacks; proper drainage and stormwater

measures; and soil and erosion control plans. Proper drainage plans shall profile details of piping, drainage structures, swales, and channels tying into a network of pre-existing man-made or natural channels. If natural channels are incorporated into the plan, filtering and cooling measures may be required if tour waters are involved as per Section 313 Stormwater Management. Included in the site plan will be a landscaping plan if it is considered necessary by Town Staff.

e. A permit approving driveway connections shall be issued by the Zoning Administrator before any construction activity can begin. A minimum of 15 days will be required to review plans and to visit the site. During construction, appropriate soil and erosion control measure will be maintained to prevent runoff from entering town waterways and storm drains.

(2) A zoning permit and a certificate of compliance may be issued for the construction or placement of one dwelling unit on an existing lot of record which does not meet the minimum requirements of this section, provided the lot of record is located on a platted right-of-way which was recorded prior to September 11, 1978. No subdivisions of land are permitted for parcels or lots which do not meet the minimum road access requirements in the subdivision regulations.

(3) Roads that do not meet the requirements of subsection (1) above, but were recorded prior to September 11, 1978, may be extended only to provide access to lots within a subdivision for heirs in accordance with Section 63 (2) (c) of the Banner Elk Subdivision Regulations.

SECTION 306 Establishment of Zoning Districts and Boundaries

For the purpose of this ordinance, the Town of Banner Elk and its extraterritorial jurisdiction is hereby divided into the following designated districts:

R-1	Low-Density Residential District
R-1-U	Single Family Residential District
R-2	General Residential District
C-1	Central Business District
C-1P	Central Business District with Parking
HDO	Heritage District Overlay
C-2	General Business District
RC	Resort Commercial District
G-O	Governmental-Office District
M-E	Medical Educational District
M-I	Industrial District
M-U	Mixed Use District
CUD	Conditional Use District

SECTION 306.1 District Boundaries.

The boundaries of the district enumerated in Section 306 above are hereby established as shown on the map entitled "Official Zoning Map, Town of Banner Elk, North Carolina, and the Area Comprising it's Extraterritorial Jurisdiction" adopted by the Town Council and certified by the Town Clerk. Said map and all explanatory matter thereon accompanies and is hereby, made a part of this ordinance as if fully written herein. Said map shall be retained in the Office of the Town Clerk and also shall be recorded in the office of the Register of Deeds of Avery County, North Carolina.

SECTION 306.2 Interpretation of District Boundaries.

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

(1) Where district boundaries are indicated as approximately following the centerlines of streets,

highways, streams or rivers, street right-of-way lines, or such lines extended, such lines shall be construed to be such boundaries.

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

(3) Where district boundaries are so indicated that they approximately parallel to the centerlines of streets or highways, or rights-of-ways of same, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on said Zoning Map.

(4) Where a district boundary line divides a lot of single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof; provided, that such extensions shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line.

SECTION 307 Intent.
It is the intent of this article that if any use or class of use is not specifically permitted in a district as set forth in the sections below, it shall be prohibited in that district.

SECTION 307.1 R-1 Low-Density Residential District.
The R-1 Low-Density Residential District is established as a district in which the principal use of land is for single family dwellings on large parcels of land. It is the intention of these regulations to provide for limited residential development in areas where police and fire protection, protection against flooding by storm water, and dangers from excessive erosion are not possible without excessive costs to the community. It is also the intent to maintain and preserve a tranquil residential community with the flexibility to accommodate conditional uses compatible with residential use.

SECTION 307.2 R-1-U Single Family Residential District.
The R-1-U district is established for developments where the existing pattern of development has been established by a subdivision intended and used principally for single family dwellings on traditional lots. The more defined urban pattern offers limited use for optional non-residential development and provides justification for a more restrictive residential zone.

SECTION 307.3 R-2 General Residential District.
The R-2 General Residential District is established as a district in which the principal use of land is for residential purposes.

SECTION 307.4 C-1 Central Business District.
In order to protect and improve the main shopping area in Banner Elk and to discourage uses which do not require a central location which are not compatible with the function of the area as the primary shopping and office area, a central business district is hereby established.

SECTION 307.5 C-2 General Business District.
The purpose of this district is to provide for general and commercial activity along major thoroughfares and at other convenient points in the area. Regulations are designed to preserve the traffic carrying capacity of the streets and to provide for off-street parking. It is not the intent of this district to encourage extensive strip commercial development, rather to provide concentrations of general commercial activities.

SECTION 307.6 M-E Medical-Educational District.
The district is established to provide for the specific circumstances and needs of the medical and educational institutions within the town's jurisdiction. The uses permitted within this district shall be limited to those of a medical and educational nature, and closely related uses supportive of medical and educational institutions.

SECTION 307.7 C-1P Central Business District.
The Central Business District is created to provide an expanded central commercial area that will maintain the character of the existing C-1 district, but will require that all uses in the district conform to the off-street parking requirements of this ordinance.

SECTION 307.8 R-C Resort-Commercial District.
The Resort-Commercial District is established to provide specific areas within the Banner Elk jurisdiction where specific and limited resort activities can be developed in a more rural setting. The district will have conditions and standards for uses in the district that will provide protection for any adjacent residential areas while providing a more rural, rustic setting for resort commercial activities.

SECTION 307.9 M-1 Industrial District.
This district is established to provide areas for manufacturing, warehousing, and similar uses.

SECTION 307.10 G-O Governmental-Office District
The Governmental-Office District includes property owned by governmental entities, such as, but not limited to, the Town of Banner Elk and Avery County and their respective subdivisions. It includes the Town Maintenance Facility; the Tate-Evans Park; the Banner Elk Daycare Facility; the Wastewater Treatment Plant; Town Hall; the Police Department; the Banner Elk Volunteer Fire Department; professional offices; and any other such properties which may heretofore be designated for similar uses.

SECTION 307.11 Heritage District Overlay (boundary descriptions established on 2/7/2005)

The purpose of the Heritage District Overlay is to protect, preserve and encourage the architectural, cultural, village atmosphere and historical significance of the downtown core of Banner Elk. Its boundaries shall be defined as established on the *Official Zoning Map of Banner Elk*. As an overlay district, the permitted and conditional uses, as well as dimensional requirements, shall conform to those of the underlying, except where additional requirements are noted in Articles III, IV, V, and VI.

Section 307.12 Mixed Use District
This district is designed to encourage integration of mixed land uses (residential and commercial) to promote high density, low impact development of communities with alternatives modes of transportation, such as walking and biking. The commercial and residential uses should compliment each other. The district is intended to promote nodal development as opposed to strip development and can be located away from main thoroughfares, if the Town Council agrees that the location is consistent with the vision for the Town.

Section 307.13 Conditional Use District (CUD)
This district is designed to allow a zoning district with no permitted uses at all; all development is subject to acquiring a conditional use permit. This can only be established at the property owner's request. The legislative rezoning to apply the CUD is generally done concurrently with the quasi-judicial issuance of a CUP by Town Council. (Added 07-13-2009)

Section 307.15 Civic Zoning District
The Civic Zoning District is established to enable property owned by governmental entities, including the Town of Banner Elk, to operate in a way that is beneficial to the residents of Banner Elk and protects the Historical integrity of the property while supporting the maintenance of the property. This district is to focus on permissible uses that are compatible with the community with some that are within the broad definition of "civic use." Management of the property in this district will be under control of the governmental entity and its assigns. This district encourages the consolidation of civic and other public and institutional uses into a single centralized area convenient to town employees, residents and visitors. Educational,

cultural, museum and fine arts, and low impact business uses are predominate. (Added 9-14-2015)

Section 307.14 Wellhead Protection Overlay District (see section 314)

308 - TABLE OF USES												
Residential												
Uses	**R-1**	**R-1-U**	**R-2**	**M-U**	**C-1**	**C-1P**	**C-2**	**M-E**	**RC**	**G-O**	**CUD**	**CZD**
Single family dwellings – detached - 23 -	P	P	P	C	-	-	-	P[1]	P	-		-
Multi-family dwellings (apartments, condominiums, townhouses, duplexes, etc), not exceeding four dwelling units per building	-	-	C	C	-	-	-	C[1]	-	-		-
Modular home	P	P	P	C	-	-	-	P	P	-		-
Manufactured homes on individual lots - doublewide	C	C	C	-	-	-	-	-	-	-		-
Manufactured home parks	-	-	C	-	-	-	-	-	-	-		-
Accessory buildings or structures	P	P	P	C	-	-	-	-	P	-		-
Accessory dwelling/apartment	P	P	P	C	C	C	C	-	C	-		-
Halfway House [2]	P	P	P	-	-	-	-	-	-	-		-
Home Occupations	P	C	P	C	-	-	-	-	C	-		-
Farms and related agricultural uses	P	P	-	C	-	-	-	-	P	-		-
Greenhouses, noncommercial	P	P	P	C	-	-	-	P	-	-		-
Bed and Breakfast Homes	C	-	C	C	-	C	C	-	P	-		-
Bed and Breakfast Inns	-	-	C	C	-	C	C	-	P	-		-
Bed and Breakfast Village	C	C	C	-	-	-	-	-	-	-	-	-
Cluster Subdivisions	P	-	P	-	-	-	-	-	-	-		-
Planned Residential Developments	-	-	C	C	-	-	-	-	C	-		-
Planned Residential and Craft Developments	-	-	C	C	-	-	C	-	C	-		-
Family care home	P	P	P	C	-	-	-	-	P	-		--
(-) Not permitted, (P) Permitted by right, (C) Conditional Use; See Articles 8 and 9 for additional requirements												
[1]Developed in accordance with the dimensional standards of the R-2 district.[2] Pursuant to NCGS 168-22 shall not be located within ½ mile of another facility of like manner. (amended 09-14-09)												

Office, Institutional, and Government Facilities													
Use	**R-1**	**R-1-U**	**R-2**	**M-U**	**C-1**	**C-1P**	**C-2**	**M-E**	**RC**	**G-O**	**CUD**	**M-I**	**CZD**
Accessory uses to medical and educational facilities: Pharmacies, snack bars, rental/sale of medical supplies, florist and gift shops, not to exceed 25% of total floor area	-	-	-	-	-	-	-	C	-	-		-	
Airports	C	-	-	-	-	-	-	-	-	-		C	
Assisted Living Residences; Residential Care Facilities			C	C			P	P					
Animal hospital or veterinary clinic, excluding open kennels on the premises	-	-	-	C	-	-	P	P	-	-		-	
Assembly Halls, gymnasiums and similar structures as the principle use	-	-	-	C	-	-	C	P	-	-		-	P
Assisted Living Facilities; Residential Care Facilities	-	-	C	C	-	-	C	P	-	-		-	
Banks and financial institutions	-	-	-	C	P	P	P	-	-	-		-	
Cemeteries	C	C	C	-	-	-	C	-	-	-	-	-	-
Civic organizations, lodges and fraternal organizations	-	-	C	C	P	P	P	C	-	-		-	P
Colleges, vocational and trade schools	-	-	C	C	C	C	P	P	-	-		-	P
Community centers	C	C	C	C	-	-	P	-	-	P		-	P
Dormitories; Student Staff Housing under direct supervision of College/Residential Child Care Institutions			C	C				C					-
Fire and Police stations	C	C	C	C	P	P	P	-	-	P		-	P
EMS	-	-	-	C	-	-	-	P	-	P		-	P
Funeral Homes	-	-	-	-	P	P	P	-	-	-		-	
Golf course, with or without associated country club	C	C	C	-	-	-	-	-	P	-		P	
Golf or baseball driving ranges, miniature golf	-	-	-	C	-	-	-	-	-	-		P	
Government buildings and land (excluding correction centers and jails), including public utility buildings and facilities	C	C	C	C	P	P	P	-	-	P		-	P
Hospitals, medical clinics and offices (not to include drug or alcohol treatment facilities)	-	-	C	C	-	-	C	P	-	-		-	
Incubator	-	-	-	-	-	-	-	C	-	-	-	-	
Libraries, museums, and art galleries	-	-	-	C	P	P	P	P	-	-		-	P
Music and dance studios	-	-	-	C	C	C	-	P	-	-		-	P
Newspaper offices and printing plants incidental to such offices	-	-	-	-	P	P	P	-	-	-		P	
Offices – business, professional and public (including doctors, dentists, etc)	-	-	-	C	P	P	P	-	-	-		-	P

Office, Institutional, and Government Facilities (cont'd)													
Use	**R-1**	**R-1-U**	**R-2**	**M-U**	**C-1**	**C-1P**	**C-2**	**M-E**	**RC**	**G-O**	**CUD**	**M-I**	**CZD**
Private kindergartens or nursery schools	-	-	C	C		-	-	P	-	C		-	P
Public parks w/ associated facilities such as playgrounds, swimming pools	C	C	C	C	P	P	P	P	P	P		-	P
Religious Institutions	C	C	C	C	C	C	-	-	-	-		-	-
Schools – public elementary, junior high and high schools, including private schools having a similar curriculum	-	-	C	C	-	-	-	P	-	-		-	C
(-) Not permitted, (P) Permitted by right, (C) Conditional Use; See Articles 8 and 9 for additional requirements													

Retail and Service													
Use	**R-1**	**R-1-U**	**R-2**	**M-U**	**C-1**	**C-1P**	**C-2**	**M-E**	**RC**	**G-O**	**CUD**	**M-I**	**CZD**
Accessory Uses and Structures located on the same lot as main structure	-	-	-	C	C	C	C	-	-	-		-	
Accessory Solar Energy Collection System, Small Scale	C	C	C	C	C	C	C	C	C	C	C	C	C
Accessory Solar Energy Collection System, Utility Scale	-	-	-	-	C	C	C	C	-	-	-	-	C
Antique and Consignment shops	-	-	-	C	P	P	P	-	-	-	-	-	P
Appliance sales and service, electrical repair no outside storage	-	-	-	C	P	P	P	-	-	-	-	-	-
Auto sales	-	-	-	-	-		C	-	-	-	-	-	-
Auto repair and paint shops, excluding open storage of wrecked cars, discarded tires, auto parts, or similar materials, w/exception of temporary storage of a wrecked car for a period not to exceed thirty (30) days	-	-	-	-	-	-	C	-	-	-	-	-	-
Bakery (sold on premise)	-	-	-	C	P	P	P	-	-	-	-	-	C
Bicycle sales and repair	-	-	-	C	-	-	P	-	-	-	-	-	-
Billiard and pool halls	-	-	-	C	P	P	C	-	-	-	-	-	-
Bowling alleys	-	-	-	C	-	-	C	-	-	-	-	-	-
Brewery, Brew Pub, Craft Brewery, Microbrewery	-	-	-	C	-	-	C	-	-	-	-	C	-
Building supply stores, building specialty shops, and equipment sales; not to exceed 50,000sf	-	-	-	-	-	-	C	-	-	-	-	-	-
Bus terminals	-	-	-	-	-		C	-	-	-	-	-	-
Car wash	-	-	-	-	-	-	P	-	-	-	-	-	-
Coffee shops and dairy bars	-	-	--	C	C	C	C	-	C	-	-	-	C
Commercial Campgrounds	C	-	-	-	-	-	-	-	C	-	-	-	-
Convenience Store, without Gas Sales													-
Convenience Store with Gas Sales													-
Distillery	-	-	-	C	-	-	C	-	-	-	-	C	-

Dry Cleaning, Laundry Services, Tailor													P
Farm machinery assembly, sales and repairs	-	-	-	-	-	-	P	-	-	-		-	-
Feed and seed stores	-	-	-	-	-	-	P	-	-	-		-	-
Fitness centers	-	-	-	C	-	-	P	-	-	-		-	P
Food Trucks	-	-	-	-	P	P	P	P	-	P	-	P	C
Florist	-	-	-	C	P	P	P	-	-	-		-	P
Gift/novelty shop	-	-	-	C	P	P	P	P	-	-		-	P
General merchandise stores - less than 10,000sf	-	-	-	C	P	P	P	-	-	-		-	-
General merchandise retail stores 10,000 – 50,000sf	-	-	-	-	-	-	C	-	-	-		-	-

Retail and Service (cont'd)													
Use	**R-1**	**R-1-U**	**R-2**	**M-U**	**C-1**	**C-1P**	**C-2**	**M-E**	**RC**	**G-O**	**CUD**	**M-I**	**CZD**
General merchandise retail stores – 50,000sf or more	-	-	-	-	-	-	-	-	-	-		-	-
Greenhouse, commercial	-	-	-	-	-	-	P	-	-	-		-	-
Grocery stores (no wholesale)	-	-	-	C	P	P	P	-	-	-		-	-
Gunsmith	-	-	-	-	P	P	P	-	-	-		-	-
Hotels, Condominium Hotel, Retail stores & ancillary uses to a Hotel, Conference Facility, Health Club & Day Spa	-	-	-	C	-	C	P	-	-	-		-	-
Hydroelectric Power	-	-	-	-	-	-	-	-	-	-	-	-	-
Locksmith	-	-	-	C	P	P	P	-	-	-		-	P
Manufactured Home/Building Sales	-	-	-	--	-	-	C	-	-	-		-	-
Medical supply stores	-	-	-	-	P	P	P	-	-	-		-	-
Miniature Golf Course	-	-	-	-	-	-	C	-	-	-		-	C
Monument sales	-	-	-	-	-	-	P	-	-	-		-	-
Motels	-	-	-	C	-	-	C	-	C	-		-	-
Office supply and equipment –sales and service	-	-	-	-	P	P	P	-	-	-		-	P
Parking lot (as principle use)	-	-	-	-	C	C		-	-	-		-	P
Pawn shops	-	-	-	-	-	C	P	-	-	-		-	P
Personal care services – hair, nails, tanning, weight loss	-	-	-	C	P	P	P	-	-	-		-	P
Pharmacy	-	-	-	C	-	P	P	P	-	-		-	P
Photographic studios and camera supply store	-	-	-	C	P	P	P	-	-	-		-	-
Planned Commercial Developments	-	-	-	C	C	C	C	-	-	-		-	-
Pre-form Metal Structures	C	-	-	-	-	-	-	-	-	-		-	-
Radio and television stations, studios, offices	-	-				-	C	P	-	-		P	-
Restaurants – carry-out, delivery (drive thru excluded)	-	-	-	C	-	-	C	-	-	-		-	C
Restaurants – drive thru	-	-	-	-	-	-	C	-	-	-		-	-
Restaurants - sit down (drive thru excluded)	-	-	-	C	C	C	C	-	C	-		-	-
Skating rinks	-	-	-	C	-	-	-	-	-	-		P	-
Sexually Oriented Businesses	-	-	-	-	-	C	-	-	-	-		-	-
Shoe Repair	-	-	-	C	P	P	P	-	-	-		-	-

Sign painting and fabricating shops	-	-	-	-	-	-	P	-	-	-		-	-
Spa	-	-	-	C	C	C	C	C	-	-	-	-	-
Tattoo Parlor	-	-	-	-	-	-	P	-	-	-	-	-	-
Taxi service	-	-	-	C	C	-	-	-	-	-		-	-
Telecommunications Structures	C	C	C	C	C	C	C	C	C	C	C	C	C
Theaters, indoor	-	-	-	C	P	P	P	-	-	-		-	P
Wind Energy System	C	C	C	-	-	-	-	C	-	-	-	-	C
Winery	-	-	-	C	-	-	C	-	-	-	-	C	-

Manufacturing and Industrial													
Use	**R-1**	**R-1-U**	**R-2**	**M-U**	**C-1**	**C-1P**	**C-2**	**M-E**	**RC**	**G-O**	**CUD**	**M-I**	**CZD**
Automobile wrecking, junk, and salvage yards	-	-	-	-	-	-		-	-	-		P	-
Bottling plants	-	-	-	-	-	-	C	-	-	-		P	-
Brewery, Brew Pub, Craft Brewery, Microbrewery	-	-	-	C	-	-	C	-	-	-	-	C	-
Cold Storage and Freezer Lockers	-	-	-	-	-	-	C	-	-	-		P	-
Contractors offices, including sheet metal, machine, roofing, plumbing, heating and air conditioning, but excluding open storage	-	-	-	-	-	-	C	-	-	-		P	-
Dairy Bars and Ice Cream Manufacturing	-	-	-	-	-	-	C	-	-	-		P	-
Distillery	-	-	-	C	-	-	C	-	-	-	-	C	-
Equipment machinery repair and service	-	-	-	-	-	-		-	-	-		P	-
Fabricating shops less than 10,000sf such as woodworking, cabinet and upholstery shops	-	-	-	-	-	-	C	-	-	-		P	-
Food manufacturing	-	-	-	-	-	-	P	-	-	-		P	-
Lumber yards, building materials storage	-	-	-	-	-	-	-	-	-	-		P	-
Manufacturing establishments whose manufacturing operations are wholly and permanently conducted within an enclosed building and are of a non-polluting nature.	-	-	-	-	-	-	-	-	-	-		P	-
Material Recovery Site	-	-	-	-	-	-	C	-	-	C		-	-
Municipal Maintenance Facilities	-	-	-	-	-	-	-	-	-	C		-	C
Printing, publishing and reproducing establishments	-	-	-	-			C	-	-	-		P	-
Propane Filling Station for retail purposes	-	-	-	-	-	-	C	-	-	-		-	-
Public utility lines and transformer stations, transmission towers, water tanks and towers with storage in cabinets or buildings	P	P	P	P	P	P	P	P	P	P		P	P
Radio and television towers	-	-	-	-	-	-	-	-	-	-		P	-
Recycling Center/Refuse Collection Facilities	-	-	-	-	-	-	-	-	-	C		-	-
Tire Recapping	-	-	-	-	-	-	-	-	-	-		P	-
Trucking terminals	-	-	-	-	-	-	-	-	-	-		P	-
Water Treatment Laboratories	-	-	-	-	-	-	C	-	-	-			-
Wholesale storage for oil, fuel, and gasoline	-	-	-	-	-	-	-	-	-	-		P	-
Wholesale and warehousing establishments, except for the storage of dangerous or offensive items such as uncured hides, explosives, oil, gasoline, etc.	-	-	-	-	-	-	C	-	-	-		P	-
Winery	-	-	-	C	-	-	C	-	-	-	-	C	-
(-) Not permitted, (P) Permitted by right, (C) Conditional Use; See Articles 8 and 9 for additional requirements													

Last Amended 10/16/2007 Commercial Campgrounds added to R-1 as a Conditional Use

Table 308-2 ***DIMENSIONAL REQUIREMENTS BY DISTRICT***

DISTRICT	MINIMUM LOT SIZE (SQ. FT.)	MINIMUM SETBACK REQUIREMENTS			IMPERVIOUS SURFACE * (% of usable area under 29% slope)	MAX. HEIGHT (FEET)
		FRONT (FEET)	SIDE (FEET)	REAR (FEET)		
G-O	-	20	10	10	60 to 90 j	35
CZD	-	20	10	20	60j	35
HDO	H	h	h	h	NA	35
R-1	20,000a 15,000b 10,000c	20	10	10	40 e	35
R-1-U	20,000a 15,000b 10,000c	20	10	10	40 e	35
**R-2	20,000a 15,000b 10,000c	20	10	10	45 e	35
M-U	NA	30	15	20	70 e	35
C-1	-	d	d	d	90 e	35
C-1P	-	d	d	d	90 e	35
C-2	10,000	30	15	20	60 e	35
M-E	40,000	35	20	25	60	35
M-1	40,000	30	15	25f	50	35
R-C	20,000a 15,000b 10,000c	g	g	g	50	35

*Note: For maximum percentage of impervious surfaces see Table 308-3. ** Multifamily units are limited to 4 units per building (quadraplex).

(a) Refer to page 15 (Table 308-1) for multi-family as a conditional use (Amended 05/09/05).
(b) Lots which are served by a public or community water system, but no public or community sewer system: The first unit permitted shall require the minimum lot area for the district in which it is located, plus an additional 5,500 square feet for each additional unit.

(c) Lots which are served by a public or community water and sewer system: The first unit permitted shall require the minimum lot area for the district in which it is located, plus an additional 4,000 square feet for each additional unit.

(d) No front, side or rear yard shall be required except as follows:

(i) where the lot abuts a street, a ten (10) foot setback shall be provided from the edge of the adjacent street;

(ii) where a side or rear yard is provided, the width of such yard shall be not less than four (4) feet;

(iii) where the lot abuts upon property zoned for residential use a densely planted buffer strip shall be provided and maintained along the side and/or rear lot line of such abutting residential property. Such buffer shall not be less than eight (8) feet in depth along the full length of the abutting lot line and shall be composed of evergreen trees or shrubs, which at maturity will not be less than eight (8) feet in height. (Amended 05/09/05)

(e) The total impervious surface on any parcel shall not exceed 90% of the total square footage of the lot in the C-1, C-1P and G-O districts and shall not exceed 45% of the total square footage of the lot in R-1, R-1U and R-2. In the event that on site engineered storm water facilities, which capture the first inch of rain are presented as a function of the development project, the amount of impervious surface can be 90% of the lot in the C-1P, C-1 and 70% in the MU districts only, and then only upon a recommendation from the Planning Board and approval of a Conditional Use Permit by the Board of Adjustments. (Amended 06/11/2007)

(f) Deleted. (Amended 05/09/05)

(g) The minimum lot size for an R-C development shall be eight (8) acres, provided that within such development all uses allowed as permitted uses and conditional uses shall conform to the area and dimensional requirements in the R-2 district. All conditional uses shall conform to the eight (8) acre minimum and shall conform to the R-2 dimensional setbacks along the exterior boundary of the property.

(h) Buildings constructed within the Heritage District Overlay shall have a maximum front building setback of thirty-five (35) feet; other dimensional requirements of the underlying district apply. (Amended 05-13-13)

(i) Deleted 2/12/2007.

(j) 60 % to 90% for properties dedicated to providing emergency or civil services in a governmental capacity may waive this requirement if deemed essential for their operation.

NOTE:

(1) All corner lots shall have an additional width of 10 feet.

(2) Where a side yard abuts a street, the setback requirements for said side yard shall be the same as the front yard setback requirements for abutting property on the side street.

Table 308-3 Steep Slope Maximum Density Requirements

	Average Natural Slope of Parcel by Acre				
	Under 20%	21% to 30%	31% to 40%	41% to 50%	Over 51%
Zoning District	**Maximum Allowable Percent of Impervious Surfaces/Dwelling Units Per Acre of Land Including the Removal of Active Recreation Area, Section 312**				
R-1	40%	35%	30%	25%	Geotechnical Engineer required
R-2 R-1U	45%	40%	35%	30%	Geotechnical Engineer required
C-1 C-1P	80% **90%	75%	70%	65%	Geotechnical Engineer required
C-2	60%	55%	50%	45%	Geotechnical Engineer required
G-O	60% to *90%	55%	50%	45%	Geotechnical Engineer required
M-E	60%	55%	50%	45%	Geotechnical Engineer required
CZD	60% to *90%	55%	50%	45%	Geotechnical Engineer required
M-U	70%	65%	60%	55%	Geotechnical Engineer required
R-C	50%	45%	40%	35%	Geotechnical Engineer required

The percentage of the slope is to be determined for the whole acreage of a parcel. (Amended April 13, 2007)

A bond must be posted as a guarantee for any improvements proposed to be dedicated to the Town of Banner Elk. Contact the Zoning Administrator for more details.

* Up to 90% for properties dedicated to providing emergency or civil services in a governmental capacity may waive this requirement if deemed essential for their operation.

SECTION 309 Setback Provisions

The setbacks shown in Section 308-2 are intended to provide flexibility for locating structures on a building site while insuring a reasonable amount of open space for light, fire safety, privacy and aesthetics. The front setbacks, or any setback adjacent to a street or road right-of-way, must provide for sight visibility (see illustration in 402.9.) When natural features, including topography and existing trees of significant value to the lot, create a problem for setting a structure, the Board of Adjustment shall have the authority, upon request, to grant relief to vary the setbacks in order to reduce land disturbance or preserve valuable natural resources.

Setbacks from Roads. All setbacks from adjacent roads or right-of-way shall be measured from the edge of the traveled way if no right-of-way exists. However, in no case shall any structure be located closer than twenty (20) feet from the edge of any traveled way, except as otherwise provided in Section 308-2(d).

Setbacks from Natural Features. In order to protect and preserve the valuable natural features of the Banner Elk community, the Board of Adjustment, upon request, may authorize a property owner a variance to reduce a required setback. A property owner may make such a request if supporting evidence is provided that a reduced setback can and will preserve a natural feature which may include natural vegetation, a water course or a topographic feature. Evidence shall include a site plan which depicts the existing natural features of the site, the location and an elevation of the proposed structures, the setback variance requested and a plan which provides protection and safeguards for the natural features of the site. In considering and granting a variance, the Board of Adjustment must find that the impact of the reduced setback will enhance and not adversely affect the safety, health and aesthetics of the adjacent properties and the community.

Setbacks from streams: The following conservation setback requirements shall apply as set forth by the Division of Water Quality and Avery County:

(a) Twenty-five (25) feet from the top of bank of streams.
(b) Thirty (30) feet from the top of bank of any classified trout stream
(c) Fifty (50) feet from the top of bank of streams on commercial properties in C-1, C-1P and C-2 district

Note: Storm water and drainage facilities can encroach into these easements for up to 25% of the easement" (Amended 14 May 2007)

SECTION 310 Land Disturbing Activities Involving Steep Slopes

The intent of these regulations is to provide special measures for land development activities in areas requiring land disturbance of steep and very steep slopes, to facilitate the identification of land areas subject to possible slope failure and to require investigation and remediation of such conditions, if necessary, when such land is proposed to be developed.

1. The following categories of steep slope are hereby established:
    a. Very Steep Slopes are slopes steeper than 50%;
    b. Steep Slopes are slopes between 20% and 50%.

    Percentage of Average Slope is determined by the following method:

    S= 0.0023xIxLA
    I = Contour intervals of the map in feet, with said intervals being 5 feet or less
    L= Total length of the contour lines within the parcel in feet
    A= Area of the parcel in acres
    0.0023 The constant that converts square feet into acres

The above formula for calculating the percentage of average slope is used for Table 308.3 “Steep Slope of Parcel by Acre”; which determines the amount of impervious surface allowed for percentage of slope. Once the placement of the footprint of a structure has been identified, the height of the building can be determined by the midpoint of each wall of the smallest rectangle that can be made with the entire footprint, to determine a midpoint in the center of that rectangle to be used for a measuring point to determine the height of the building.

2. Development requirements for both Steep and Very Steep Slopes shall be as follows:
    a. All stream crossings, culverts, and disturbance of riparian zones are to comply with appropriate state and federal regulations;
    b. Should the Zoning Administrator believe that geological hazard indicators are present, at the direction of the Town Manager, he/she may employ and/or contract with an independent geotechnical engineer to evaluate plans for development, as necessary, with the cost for this technical review to be borne by the person(s) requesting development of the property. Once the analysis is performed, the Zoning Administrator shall cause it to become a part of the Public Record.
    c. Developers of property, where the development plan requires land disturbing activity on Very Steep Slopes, shall make reasonable effort to preserve and protect features of the slope, such as trees and other plant material, which may help to stabilize the slope.
    d. The owner of any property whose development plan will include the disturbance of a Steep or Very Steep Slope, as determined by the Zoning Administrator, may challenge this determination by appeal to the Board of Adjustment as provided in Article XI Section 1110 “Appeals and Applications.”

3. The requirements for land disturbing activities on Very Steep Slopes shall be as follows:
    a. Plans for the development of any property must be accompanied by a site-specific geologic analysis of the very steep slope portion of the site to be disturbed by the proposed development plan, paid for the by the applicant, and conducted by a geotechnical engineer, to determine whether the proposed development plan can be implemented without jeopardizing the slope stability on the site itself or/and on properties surrounding the site.
    b. If the property is determined to be safe for development and requires remedial measures to ensure slope stability, a North Carolina registered geotechnical engineer must develop and present a plan to the Zoning Administrator that will preserve slope stability on the site during and after completion of grading and construction for the site, as well as for surrounding

properties to the extent that the contemplated development activities on the site affect surrounding properties.

Section 311 Procedures for Review of Plans and Applications

(1) The intent of this section is to allow the town staff reasonable time for review of submitted plans and applications. These requirements will also allow the Board members to carefully consider all plans, applications and staff review comments.

(2) Certain fees apply to the reviewing of plans and are outlined in the Banner Elk Fee Schedule and must be paid before the review begins.

(3) All applications and site plans for minor and major subdivisions, and conditional uses that involve site plan approvals shall be submitted to the Zoning Administrator for review at least thirty (30) days before the Board meeting where these applications will be reviewed. Three (3) paper copies and one digital copy of plans shall be presented for staff review, and then after the review, upon request from the staff, additional copies shall be provided for the Board members no later than 15 days before the meeting.

For all subdivisions and conditional uses that require site plan approvals, if extension of public water and/or sewer is proposed, three (3) paper copies and one digital copy of utility plans shall be submitted to the Public Works Director for review at least 45 days prior to consideration of the plans by the appropriate board. Estimated number of units, bedrooms, lots shall be provided and uses specified. Extensions of the Town of Banner Elk water distribution and wastewater collection systems and the allocation of capacity related to these extensions will be evaluated in the context of consistency with the most current Water and Sewer Master Plan by the Town Council at a regular meeting.

(5) If the applications and the required plans are not complete, the applicant shall be notified by staff in writing. Additional information required shall be listed and the applicant shall be made aware of the fact that the Boards will not review incomplete applications or plans. Changes or additions to applications as a result of Staff recommendations must be submitted to the Town Manager for consideration no later than fifteen (15) days prior to any respective Board Meeting.

(6) If an application for a conditional use permit that requires site plan approval is denied, the same application cannot be considered again for three (3) months.

(7) The provisions of this section shall not apply to any subdivision plats or conditional use permit applications that were submitted for review prior to the adoption of this section.
(Added 14 May 2007)

SECTION 312 Active Recreation Area Requirements.

(1) Intent

Residential development engenders the need to insure that areas are provided, either within the development itself or in conjunction with the Town of Banner Elk, where active recreational activities can take place. Active Recreation Area Requirements (ARA), are established to insure that Banner Elk Citizens have adequate open space areas and walking trails to promote good health and a positive sense of community.

(2) Exemptions

The requirements shall apply to all planned residential developments and major subdivisions except:

- When a planned development or a subdivision had been approved or had a complete application filed prior to enactment of these regulations
- Subdivisions with lots greater than 3 acres

(3) Applicability

1) Every person or organization that subdivides or develops land for residential use shall provide for a recreational facility in accordance with this section by one of the following methodologies: establish within the development areas suitable for active recreation; provide cash-in-lieu-of payment; or to provide a combination of cash and facility development acceptable to the Town Council. Should payment in lieu of the provision of onsite ARA be determined to be the preferred method of compliance with this Ordinance, the amount will be determined in accord with part 4 of this section.
2) The amount of land required for ARA shall be based on the acreage of total area in a subdivision or planned residential development. The requirement shall be 15% of the gross square footage of the site.
3) Criteria for evaluating suitability of proposed recreation areas within the residential development shall include, but not be limited to the following as determined by the Town of Banner Elk Planning Board:
   (a) ***Unity.*** The dedicated land shall be a single parcel except where it is determined that two or more parcels would be in the public interest. The Planning Board may require that the parcels be connected and may also require a path of least 20 feet in width in addition to the land requirement. Trails cannot account for more than 25% of the required active recreation area.
   (b) ***Location.*** The dedicated land shall be located so as to serve the recreation needs of the residents which are a part of the proposed development.
   (c) ***Physical characteristics.*** The shape, topography and soils types of the land shall be such as to be usable for active recreation. Ponds and other water features may not be included in computing dedicated land area unless acceptable to the Planning Board. Average slope of ARA shall be under 15%.
   (d) ***Accessibility.*** Community access to the Active recreation area shall be provided either by an abutting street or community greenway easement. Such community easement shall be at least twenty (20) feet in width or should connection to Town of Banner Elk Greenway system be possible the easement shall be thirty (30) feet.

(4) Fees in lieu of providing land as required in subsection 312.2(2).

A developer may provide funds in the amount of 125% (to account for the cost of recreational equipment) of assessed value, as determined by the Avery County Tax Assessor, of the land area prescribed in subsection 2 of section 312.3. The Banner Elk Town Council upon a recommendation from the Planning Board shall determine whether fees in lieu of providing ARA is an acceptable solution, or if it can be a combination of fees and land.

(5) Use of Fees

The funds collected from the cash-in-lieu-of-land payments shall be spent only on capital improvements to town-owned recreational facilities or acquisition of new land and facilities, including greenway construction. The expenditure of recreation funds paid by the developer to the town in lieu of providing Active Recreation Area shall be determined by the Town Council. (Added 14 May 2007)

Section 313 Stormwater Management

1. Purpose

The storm water management regulations of this article shall protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of stormwater runoff associated with new development. Proper management of stormwater runoff will protect property, control stream channel erosion, prevent increased flooding associated with new development, protect floodplains, wetlands, water resources, riparian and aquatic ecosystems, and otherwise provide for environmentally sound use of the town's natural resources. These regulations create standards for post development levels of run off in addition to construction run off regulation that are governed by the Department of Environment and Natural Resources as part of the Soil Erosion Control permit. "All stormwater best management practices planned, designed, and implemented under the authority of this ordinance shall conform to the standards adopted by NCDENR in the latest Stormwater Best Management Practices Manual. Access to this manual can be found at http://portal.ncdenr.org/web/lr/bmp-manual. Where contradiction exists between the manual and tis ordinance, the stricter of the two shall prevail.

2. Definitions

Applicant. An owner or developer of a site who executes the Stormwater Permit Application.
Bio-retention Basin. Bio-retention is the use of plants and soils for removal of pollutants from stormwater runoff via adsorption, filtration, sedimentation, volatilization, ion exchange, and biological decomposition. In addition, bio-retention provides landscaping and habitat enhancement benefits.
Connection. Any ditch, pipe, or other device for the diversion or transmission of storm drainage, which will in any way affect the operation or maintenance of the drainage ways.
Conveyance. Any feature of the landscape or earth, manmade or natural, which carries water in a concentrated flow.
Detain. To store and slowly release stormwater runoff following precipitation by means of a surface depression or tank and an outlet structure.
Development. Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than a rebuilding activity that does not qualify as redevelopment.
Drainage structures. Shall include swales, channels, stormsewers, curb inlets, yard inlets, culverts, and other structures designed or used to convey stormwater.
Dry Extend Detention Basin. A dry extended detention basin temporarily stores incoming stormwater, trapping suspended pollutants, and reducing the peak discharge from the site.
Grassed Swale. A water quality grassed swale is a shallow open-channel drainage way stabilized with grass or other herbaceous vegetation that is designed to filter pollution.
Land disturbing activity. Any use of, or operations on, the land by any person in residential, industrial, educational, institutional, or commercial development, including road construction and maintenance, that results in a change in the natural cover or topography.
Ten-year, 24-hour storm. The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 10 years and with a duration of 24-hours.
Rain Garden. A rain garden is a planted depression allows rainwater runoff from impervious urban areas, like roofs, driveways, walkways, parking lots, and compacted lawn areas, the opportunity to be absorbed.
Retain. To capture and hold stormwater runoff following precipitation by means of surface depression allowing the water to infiltrate into the soil, thus reducing the hydrologic and pollution impacts downstream.
Stormwater. Any surface flow, runoff, and drainage consisting entirely of water from rainfall events.
Stream. A watercourse that collects surface runoff, minor waterway leading to a river;
Velocity. The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest.

Wet Detention Basin. A wet detention basin is a stormwater management facility that includes a permanent pool of water for removing pollutants and additional capacity above the permanent pool for detaining stormwater runoff.

3. Applicability and Exemptions

1) The storm water management regulations of this article apply to the following activities:

a) All new commercial development or expansions of commercial/industrial development that create an additional 2,000 square feet of impervious surface.

b) All major subdivisions and planned residential developments with land disturbance over 1 acre, that will require a soil and erosion control plan.

2) The following activities will be exempt:

a) Any development in which the owner has accrued a vested right prior to adoption of these regulations;
b) Redevelopment or expansions on existing residential lots, if the increase in the additional impervious surface created is less than 3000 square feet;
c) Minor subdivisions and minor subdivisions for heirs;
d) Single family residential development when total land disturbance of less than one acre takes place;
e) Agricultural and forestry activities as defined by NC General Statutes;
f) Activities for which a permit is required under the mining act.

4. Design Standards

a) Design standards are established for the purpose of promoting sound development practices which respect, preserve and enhance the Town's watercourses and are not intended to prohibit the use of innovative and alternative techniques which can be demonstrated to have the potential for successfully achieving the objectives stated in Section 1. All stormwater best management practices planned, designed, and implemented under the authority of this ordinance shall conform to the standards adopted by NCDENR in the latest Stormwater Best Management Practices Manual. To access this manual: http://portal.ncdent.org/web/lr/bmp-manual. Where contradictions exist between the manual and this ordinance, the town ordinance shall supersede the NCDENR document.

b) The measures shall control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-development conditions for, at a minimum, the 10-year, 24-hour storm.

c) The design of drainage facilities in flood hazard areas shall be consistent with the requirements of the Flood Damage Prevention Ordinance. No stormwater controls shall be allowed within the floodway unless a no rise certification from a licensed engineer or a CLOMR and LOMR are obtained from FEMA.

d) Runoff calculations shall be based on full potential development of the project to the extent allowed by the current zoning and subdivision regulations. A full set of design calculations, plans, hydrographs, and other supporting documents shall be submitted to the town to demonstrate compliance with this ordinance. The aforementioned plans must be sealed by a licensed NC Professional Engineer.

e) Stormwater controls that drain in whole or part to designated trout waters as defined by the NC environmental management commission shall be designed and shall implement the best stormwater management practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance. It is the applicant and the engineer's

responsibility to demonstrate that this requirement can be met based on the proposed BMP and design. (Added 14 May 2007)

5. Design Standards for Water Detention

(1) This shall be accomplished under the guidelines as follows:
   a. Wet Detention Basins shall maintain a permanent pool of water, sufficiently deep to function as open water body.
   b. Ponds should be engineered to maximize the theoretical detention time and avoid flow short-circuiting. Basic considerations for the installation of detention basins are location, hydraulic inflow rate, hydraulic residence time, permanent pool size and maintenance.
   c. Design shall include mechanisms to:
      i. Promote settling of suspended particulates.
      ii. Biological uptake of pollutants.
      iii. Decomposition of pollutants and plant nutrients.
   d. Pond shape, depth and surrounding fringe areas must be considered to maximize effectiveness of basin.
   e. Marsh plants shall be included around this fringe area to help remove pollutants, provide habitat, hide debris, and improve the look of an otherwise unsightly area.
   f. Dry Extended Detention Basins provide fewer hazards to the public due to the absence of a permanent pools.
   g. Rain Gardens and grassy swales reduce run-off by allowing stormwater to soak back into the ground with the use of natural plants that also absorb the water and hold it until it can be released slowly back into the ground.

(2) Maintenance of Wet Retention Ponds should be minimal if designed correctly. However, non-organic debris shall be removed on a regular basis. (Added 07-14-08)

(3) Maintenance of any Stormwater measures will be overseen by a Property Owners Association (or equivalent) if required as a part of a planned residential development approval. Failure to maintain stormwater development systems may result in a violation of the zoning ordinance and will be subject to penalties as outlined in Section 1401 (b). (Added 04-12-10)

Notice of Violation and Penalty.

Failure to design stormwater development systems or maintain these systems may result in a violation of the zoning ordinance and will be subject to penalties as outlined in Section 1401 (b).

Wellhead Protection Overlay District

Section 314

It is the primary purpose of the "Wellhead Protection Overlay District", hereafter the "District, to promote the health, safety and general welfare of Citizens, Institutions, Businesses and Visitors that rely on the Water Distribution System owned and operated by the Town of Banner Elk. A secondary function of the District is to make every effort possible to prevent potential contamination of groundwater and surface water through thoughtful efforts of private landowners and the Town of Banner Elk.

1 Scope

The Wellhead Protection Overlay District is an overlay district superimposed on the various zoning districts established by the Town of Banner Elk Municipal Code. Permitted activities or Conditional land uses that fall within the District must also comply with the requirements set forth in this section of the Zoning Ordinances. Conversely, uses that are prohibited in the underlying zoning district shall not be permitted in the District.

2 Establishment and Delineation of the Wellhead Protection District

Groundwater obtained from wells in the Mountains comes from wells drilled into fractured rock and these fractures can run for miles. The District is established using geological and hydro-geological information, and mathematical formulas to determine which areas will most likely affect the water supply for the Town of Banner Elk's production wells.

The Wellhead Protection Overlay is delineated on a map entitled "Wellhead Protection Overlay District, Town of Banner Elk – PWSID #01-06-025" hereafter the "Map". The Map is hereby made a part of the Town of Banner Elk Municipal Code of Ordinances and a copy is on file with the Town Manager or his/her designee.

(a) District Boundary Disputes. Should disputes arise regarding the specifics of the boundary of the District and a private landowner's desire to permit a land use not allowed, then the Banner Elk Board of Adjustments will determine the boundary.
At the request of the private landowner, the Town may elect to contract with an engineer, hydrologist or other person(s) that can more accurately determine the boundaries of the District. The Town may charge the private landowner all or part of the costs of the investigation.

3 Use Regulations

With the exception of the downtown, the very vast majority of the land area in the District is zoned for residential and light commercial uses. It is the intent of the District to provide a good understanding of the types of existing land uses, if these land uses could pose potential sources of contamination, and to preclude new land uses that are known to present the possibility of impacting groundwater quality.

(a) Permitted and Conditional Use. The permitted and conditional uses, as prescribed in the underlying zoning district, shall be maintained with additional consideration of the Wellhead Protection Overlay District to reduce the amount of impervious surface, provide on-site stormwater controls, and increase setbacks from streams, creeks and drainage ways.

(b) Prohibited Uses. The following uses and structures are known to pose threats to groundwater and are specifically prohibited by this ordinance:

1. Use, production or bulk storage of chemicals, fuels or other materials that can, in concentration or when mixed with other substances, enter the ground;
2. Development of community water systems where access to the Town of Banner Elk Water Distribution System is within the District;
3. Impervious surfaces can cover no more than 15% of the lot except where public water and wastewater are available and then no more than 40% in residential development, 50% in commercial areas;

4. None of the land within the District shall be zoned for a commercial or an industrial use involving the use of wood-preserving operations using formulations of Chrome-Cooper-Arsenate (CCC), pentachlorophenol (PENTA), creosote and related chemicals;
5. Retail gas stations and truck stops where underground storage tanks are used unless secondary containment tanks are employed;
6. Storage of pesticides/herbicides in quantities in excess of what can be safely applied within thirty days of delivery to the property upon which the chemicals are to be used;
7. Earth removal consisting of the removal of soil, loam, sand, gravel or any other naturally occurring materials to within six (6) feet of the historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the US Geological Survey, except for excavations associated with building foundations, roads or utility works;
8. Septic tanks, unless used only for domestic purposes. These must be pumped out every five years and be 1,200 gallons or less.

(c) Use List is not Exhaustive: As knowledge, both common and scientific, increases regarding the protection of the ground water, and as other polluting uses are discovered, they shall be added to the list of uses prohibited in this district.

(d) Limited Exemptions: The following activities or uses are exempt from the provisions of this Ordinance:

1. The transportation of any Hazardous Substance through the District, provided that the transportation vehicle is in transit or making a delivery to a retail gas station or heating fuel to a residence or business,
2. Retail sales or other businesses that store, use and sell Hazardous Substances in their original containers and where the aggregate inventory of such substances shall not exceed one hundred (100) gallons or eight hundred (800) pounds at any time.

4 Site Plan Requirements in the District

A component of all Site Plans for development activities to take place in the district shall involve the following information with references to be identified as notes on site plans:

a. Location of all public or private wells, either for domestic or other uses that exist within five hundred feet (500') of the property boundary or within the site itself;

b. Provisions for the management of storm water runoff that exist on the site and will be a part of the development following any construction;

c. A description of the types and projected volumes of wastes to be generated from the project and including: wastewater, solid wastes and non-sewage discharges. (Added 05-14-2007)

SECTION 315 ALTERNATIVE ENERGY RESOURCES

315.1 Intent

The Town of Banner Elk recognizes the progressive and changing needs for alternative energy sources and wish to illustrate a desire to be proactive in addressing these new sources. The goal is to preserves the health, safety, and welfare of the Community's citizens by promoting the safe, effective and efficient use of active solar energy systems and systems used in the conversion of wind powered energy installed to reduce the on-site consumption of fossil fuels or utility-supplied electric energy. The Town's goal of protecting its natural beauty is an important consideration in the substance of this section.

315.2 Definitions

Accessory Solar Energy Collection Systems, Small Scale: Any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for generating energy for residential use. The term shall include passive and active solar systems.

Accessory Solar Energy Collection Systems, Utility Scale: Any device or combination of devices or elements which rely upon sunlight as an energy source, including but not limited to any substances or devices which collect sunlight for generating energy primarily for selling and/or returning electric energy to an electric distributor. Energy generated by this system may be used to serve on site power needs as well. Location of such high impact use is restricted to flat roofs and areas that cannot be seen from major thoroughfares. This use is prohibited from slopes greater than 20 percent grade and shall not cover more than 50% of a property.

Accessory Wind Energy Conversion System: A wind energy conversion system consisting of a wind turbine, tower, and associated control or conversion electronics, which has a rated capacity of less than or equal to hundred (100) kilowatts and is intended to reduce on-site consumption of utility power. A system is considered a small wind energy system only if it supplies electrical power for on-site use with no intention of selling power back to the grid.

Accessory Wind Energy Conversion System, Utility Scale: A wind energy conversion system consisting of a wind turbine, tower, and associated control or conversion electronics with the intention of selling power back to the grid.

Environmental Assessment: a detailed examination of the applicant's proposal as it relates to the project's local environment with an emphasis on avoiding, minimizing, and mitigating adverse impacts. An Engineer licensed in the State of North Carolina must provide an environmental assessment.

Fall Zone: The National Academy of Sciences has recommended a height three times the height of the tower as a setback from the nearest structure in order to alleviate the concerns of safety and negative impact. It may be possible to have a professional engineer calculate the specific "fall zone" for where the turbine could conceivably land if it were to topple. Additionally, the Town's setback from both property lines and buildings that may lie on the same property should exceed the fall zone

Mechanical Equipment: Any device associated with a solar or wind powered system, such as an outdoor electrical unit/control box that transfers the energy to the intended on-site structure.

Operator: the entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.

Parapet Wall or Curtain Wall: Is a wall-like barrier at the edge of a roof where extending above a roof, it may simply be a portion of the exterior wall that continues above the line of the roof surface, or may be a continuation of a vertical feature beneath the roof such as a fire wall. This outer covering is non-structural and is used merely to keep the weather out or to be used as a screening device. Because it is non-structural, it must be of like durability as the other external building materials.

Photovoltaic (PV): The technology that uses semiconductors to convert light directly to electricity.

Solar Glare: The effect produced by light reflecting from a solar panel with an intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

Solar Access: A property owner's right to have sunlight shine on the owner's land.

Solar Panel: A solar panel is a packaged, connected assembly of photovoltaic cells. One solar panel on its own is most likely not enough to provide a usable amount of energy. More than one solar panel is held together by a metal frame and is referred to as an array. (Added 05-13-13)

Wind Energy Facility: is an electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessories.

Wind Power: is the conversion of wind energy into another form of energy.

Wind Turbine: or windmill, is a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, guy wires, and pad transformer.

Wind Turbine Height: the distance measured from grade at the center of the tower to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.

315.3 Application Requirements: Submittal of a conditional use permit application as well as a site specific development plan for all systems shall include the following requirements of the Board of Adjustment:

(a). A plan denoting the dimensions of the subject property, proposed location of solar panel(s), the arrangement of solar panels, distance from the roof, pitch of the finished roof, and distance from the proposed site improvements to all property lines.

(b). The site plan should also show the required buffering as outlined in Section 502.3; while consideration should be made for reasonable solar access.

(c). Submit horizontal and vertical elevation drawings to scale with dimensions.

(d). Approved solar components: Solar energy system components must have a UL listing and must be designed with anti-reflective glare coating(s) to minimize solar glare.

(e). Written authorization, when applicable, from the public utility company acknowledging that it has been informed of the applicant's intent to install an interconnected customer-owned generator and that it also approves of such connection(s).

(f). Compliance with North Carolina Building Code: All active solar energy systems shall meet all requirements of the North Carolina State Building Code and shall be inspected by an Avery County Building Inspector.

(g). Compliance with National Electrical Code: All photovoltaic systems shall comply with the National Electrical Code, current edition.

(h). All solar collection devices shall register with the Department of Emergency Services and shall submit a map of the solar collection devices and panel disconnect.

(i). Posting of a performance bond is required on the completed project and must be done within 10 days of approval. The amount shall be determined by an Engineer licensed in the State of North Carolina and approved by Town Council.

(j). If the applicant ceases operation of the energy project or begins, but does not complete, construction of the project, the applicant shall restore the site to its previous appearance. It shall be the responsibility of the property owner to maintain any installed solar system. If failure to restore or maintain, the Town of Banner Elk shall have the authority to cash in the performance bond and perform the necessary work to restore the site.

315.4 Accessory Solar Energy Collection Systems, Small Scale. Shall be permitted as accessory uses in the Residential Zoning Districts (R-1, R-1U, R-2) as roof mounted systems to existing structures or facilities provided they comply with minimum design standards outlined below. Ground mounted systems are prohibited. Compliance with applicable standards shall be documented and shown on a site plan and submitted to the Zoning Administrator along with a Conditional Use Permit Application for the appropriate review and approval.

(1). Residential Solar Collection**.** An application for a proposed Small Scale Solar Collector/Energy System located at a residence must meet the following standards as an accessory use:

(A). Roof-mounted solar collector systems shall meet the following location standards:

(i). Roof-mounted accessory solar collectors shall not extend above the ridge-cap or exceed the 35 feet height restrictions of this ordinance.

(ii.). The collector surface and mounting devices for roof-mounted systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built.

(iii). Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.

(iv). Roof mounted systems shall be located so as not to impede the ability of emergency personnel to access the roof for fire-fighting purposes.

(v). Roof mounted systems shall be mounted parallel to the roof at the same pitch or no greater than 5 % steeper than the roof.

(vi). Solar panels shall be placed such that concentrated solar radiation or glare shall not be directed onto other properties or public access areas.

(vii). Mounting hardware and framing shall be non-reflective or matte black in color.

(viii). Approved solar components: Solar energy system components must have a UL listing and must be designed with anti-reflective glare coating(s) to minimize solar glare.

Section 315.5 Accessory Solar Energy Collection Systems, Small Scale. Shall be permitted as an accessory use in zoning districts other than residential (C-1, C-1P, C-2, M/U, M/E, R/C, G/O, M/I) as roof mounted systems to existing structures or facilities provided they comply with minimum design standards outlined below. Accessory Solar Energy Collector Systems shall not be allowed in the Heritage Overlay District (HOD) unless approval is obtained from the Preserve America Commission, the Planning Board, and the Board of Adjustment. Approval can be obtained through a

Conditional Use Permit Application accompanied by a proper site plan. Compliance with applicable standards shall be documented and shown on a site plan and submitted to the Zoning Administrator with a Conditional Use Permit Application for review and approval. Ground mounted systems are prohibited.

(1). Commercial Energy Solar Collection. An application for a proposed Small Scale Solar Collector/Energy Systems in zoning districts other than residential must meet the following standards as an accessory use:

(A). Roof-mounted solar collector systems shall meet the following location standards:

(I). Roof-mounted accessory solar collectors shall not extend above the ridge-cap or exceed the 35-foot height restriction of this ordinance.

(ii.) The collector surface and mounting devices for roof-mounted systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built.

(iii). Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.

(iv). Roof mounted systems shall be located so as not to impede the ability of emergency personnel to access the roof for fire-fighting purposes.

(v). Roof mounted systems shall be mounted parallel to the roof at the same pitch or no greater than 5 % steeper than the roof.

(vi). Solar panels shall be placed such that concentrated solar radiation or glare shall not be directed onto other properties or public access areas.

(vii). Sites where a flat roof is used to support the solar system must be shielded from view by a parapet or curtain wall tall enough to shield the panels and have a uniform look around the entire perimeter.

(viii). Exterior electrical wires and conduit shall be kept as a location to a side yard and any related conjunction boxes shall be shielded from public view while maintaining access to mechanical equipment.

315.6 Accessory Solar Energy Collection System, Utility Scale (Production for Resale): On a small scale, accessory use solar collectors in the zoning districts of C-1, C-1P, C-2, R/C, M/E, G/O, M/U and M/I may be used for on-site consumption as well as generating electrical energy for the purposes of resale back to the energy grid. This type of use must meet the following standards as an accessory use:

(A). Systems designed for on-site consumption and the possibility of resale use shall be permitted on a flat roof only, no ground systems allowed.

(b). Systems shall be screened from public view by a parapet or curtain wall around the entire perimeter of a flat roof, with consideration given to maintenance and solar access.

(c). System panels shall be tilted in the optimal direction and shall not exceed a 37° angle.

(d). Systems must be mounted on non-reflective or black matte frames to help reduce glare to neighboring properties.

(e). System's associated wiring and electrical boxes should be located inside the building. If this is not possible, then they must be screened from public access and public view, while allowing maintenance access for the operator(s).

(f). System's solar panels shall be placed such that the concentrated solar radiation or glare shall not be directed onto other properties or public access areas.

(g). Systems shall not cover more than 65% of a flat roof. This allows for the calculation of other roof top mechanical or electrical equipment and solar access.

315.7 Accessory Wind Energy Conversion Systems, Small Scale shall be conditional as an accessory use in the Residential Zoning Districts (R-1, R-1U, and R-2) as a single system whose main purpose is to supply electricity for on-site consumption. It is essential that a site plan must first be submitted in order to determine if a property is eligible for a wind energy conversion system. Roof mounted systems to existing structures or facilities are easier to regulate provided they comply with

minimum design standards outlined below. Compliance with applicable standards shall be documented and shown on a site plan and submitted to the Zoning Administrator along with a Conditional Use Permit Application for review and approval by the Planning Board and the Board of Adjustment.

(1). Residential Wind Energy Conversion Systems: A conditional use permit application, as well as a site plan, denoting the dimensions of the subject property for a proposed Small Scale Wind Energy Conversion System located at a residence must meet the following standards as an accessory use:

(A). Roof-mounted wind energy conversion systems shall meet the following location standards:

(i). Roof-mounted accessory wind energy conversion systems shall not extend above the ridge-cap of the roof or exceed the 35 feet height restrictions of this ordinance.

(ii). The wind energy conversion system and mounting devices for roof-mounted systems shall not extend beyond the exterior perimeter of the roof of the building on which the system is mounted or built.

(iii). Roof mounted systems shall be located so as not to impede the ability of emergency personnel to access the roof for fire-fighting purposes.

315.8 Accessory Wind Energy Conversion Systems, Utility Scale shall be conditional as an accessory use in the Medical/Educational Zoning District (M/E) for the purpose of on-site consumption in addition to the resale of energy back to the grid. The M/E Zoning District has large enough parcels to accommodate this type of system with minimal impact to neighboring properties. These systems require an environmental assessment by a professional Engineer, licensed in the State of North Carolina. The environmental assessment shall be submitted along with a Conditional Use Permit to the Zoning Administrator for review by the Planning Board and the Board of Adjustment.

(A). All wind energy conversion systems shall be located within a protected "fall zone." The "fall zone" shall not have any other structures located within the clearly defined area and the system shall be indicated on the site plan, with distances from the proposed site improvements to all property lines. The setbacks in the zoning ordinance are in addition to the fall zone calculation.

(b). Acceptable decibels (at the property line) should be no greater than (40dB.)

(c). Clear cutting of property in order to install an accessory wind energy conversion system shall not be allowed without special permission from the Town's Planning Board and Board of Adjustment.

315.9 Completion and Decommissioning. Each accessory wind energy conversion system project must be completed within 18 months. Should delays occur, the Zoning Administrator must approve an extension at six (6) month intervals. Should a project cease operation as an ongoing business entity, the site must be restored to the original agricultural natural state. A plan must be filed with the Zoning Administrator within 180 days after cessation, outlining how the structure will be removed, the timeframe in which the work will be done, and the plan to return the property to its pre-existing state. A date for final removal must be given and approved by the Zoning Administrator in the plan.

315.10 Violations. Each day that the site is not restored beyond the approved deadline for final removal shall be assessed a civil penalty of $50 per day fine. Each day will be treated as a separate offense. If the violation continues for a consecutive sixty (60) days: the Town of Banner Elk will then have the authority to cash in the performance bond and have the work performed. (Added 07-08-2012)

Section 316 MOBILE FOOD TRUCKS

Intent: It is the Town's intent to remain proactive in new and innovative ways of serving the public while providing for proper places for these innovations to occur within zoning districts so as to protect the peace, well-being, harmony and atmosphere of the Town of Banner Elk. The use of Food Trucks is an appropriate use in some areas of the Town of Banner Elk and its Extra-Territorial Jurisdiction in certain districts and upon the compliance with certain conditions as set forth herein. The Town of Banner Elk would like to allow for their use in certain zoning districts in the corporate limits, as well as its ETJ, along with certain conditions.

Definitions:

Co-op Advertising – Advertisement attached to or part of a vehicle that advertises anything other than the principal use and business of the vehicle.

Food Truck – a licensed, motorized vehicle or mobile food unit that is placed upon any premises within the Town of Banner Elk for the purpose of selling food items to the general public.

Improved Individual Parcel/Mobile Food Site – any improved individual parcel where mobile food vending is permitted to occur.

Mobile Food Vending means commercial food service sales conducted through use of a Food Truck.

Regulation of Mobile Food Vending:

1. Food Trucks may operate as a permitted use within the C-2, C-1P, C-1, M/E, and G/O Zoning Districts only upon compliance with all requirements of this Section.

2. All Food Trucks shall apply for and obtain a Privilege License from the Town of Banner Elk. The cost of this Privilege License shall be set by the Town Council for the Town of Banner Elk and shall be included on the schedule of fees maintained by the Town. N.C. Gen. Stat. §105-33.

3. All persons wishing to operate a Food Truck must provide to the Town written permission of the property owner to park and operate upon those premises.

4. Operation of a Food Truck shall only occur upon a paved parking area. The location of a Food Truck must be at least ten feet from the edge of any property lines or right of way in relation to the property, unless the adjoining property owner agrees to a lesser limit.

5. All Food Trucks shall be connected to a permanent power source. The use of Electric Generators in relation to Mobile Food Vending is prohibited.

6. Food Trucks shall locate trash receptacles and any other amenities being offered within 10 feet of the truck. Vendors shall remove any items placed by them upon leaving each night. No outdoor storage shall be allowed. Trash shall be removed each night and town trash receptacles shall not be used by a Mobile Food Vendor for purposes of waste disposal.

7. Food Trucks shall not be allowed to use amplified speakers, microphones, or bullhorns as part of their Mobile Food Vending.

8. All Mobile Food Vendors shall obtain and maintain a permit from the Avery County Health Department and keep such posted in a conspicuous place during hours of operation.

9. Free-standing, temporary, sandwich board signage. Co-op advertising is prohibited unless co-op advertising is related to the nature of the items the food truck is using and selling.

10. The hours of operation for a Food Truck shall be limited to the hours between 6am and 11:00 pm. Food Trucks may not remain after hours upon the premises unless registered to participate in a special event recognized by the Town of Banner Elk.

11. Food Trucks are not allowed within 50 ft of the main entrance of a restaurant during business hours unless they are operating as an extended part of that same restaurant, or with written permission from the restaurant owner.

12. Food Trucks are not allowed within 10 feet of a fire hydrant or fire escape. Food Trucks shall not be allowed to block driveways, sidewalks, utility boxes, handicap ramps, access to loading/service areas, emergency access or fire lanes, building entrances or exits, tree trunks, or parking spaces.

13. Operators must be present at all times during hours of operation.

14. A Food Truck shall not operate as a drive-through window.

15. No Mobile Food Vending shall cause parking problems, traffic congestion, litter problems, or be used in a manner which creates a danger to public health or safety.

Violations.

The penalty for violation of this Section shall be as set forth in Section 1401 of the Town of Banner Elk Zoning Ordinance.

SECTION 400 PARKING AND LOADING REGULATIONS

It is the intent of these regulations that adequate parking and loading facilities shall be provided on private property in order to promote the public safety, to lessen congestion in the public streets, and to help make possible the full use of existing streets for traffic movement. Parking lots shall not be focal points for development. Parking and site circulation should be created behind buildings. To achieve these purposes, it is further intended that upon the erection of any building or the use of any lot, there shall be provided on the lot not less than the minimum space required herein. Compliance with these requirements shall be a continuing responsibility.

SECTION 402 Off-Street Parking Required

Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereinafter established; exception may be made within the C-1 Central Business District when evidence is provided by the applicant that adequate on-street or public parking is available. No certificate of compliance will be issued upon completion of any building unless all off-street parking and loading requirements, shown upon the plans or made part of the zoning permit, shall be in place and ready for use and conforming to the requirements.

SECTION 402.1 Dimensions and Design Criteria

Each parking space shall be not less than the dimensions provided in Table 4-2. The number of parking spaces provided shall be at least as great as the number specified in Table 4-1 for various uses.

Parking areas shall be designed to accommodate the following criteria.

(a) Unless no other practical alternative is available, parking areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street. This requirement does not apply to driveways that serve single-family residential units or duplexes.

(b) Parking areas of all developments shall be designed so that sanitation, emergency and other public service vehicles can serve such developments without the necessity of backing unreasonable distances (greater than 900 feet) or making other dangerous or hazardous turning movements.

(c) Parking area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties, public rights-of-way, sidewalk or landscaped areas.

(d) Parking areas shall be graded and improved with either asphalt, concrete or pave-blocks to provide a surface that is stable and minimizes dust. Alternative pervious surfaces will be encouraged in areas where site constraints permit. Storm water runoff shall be directed to grass catchment areas (rain gardens or swales), or existing stormwater systems, and allowed to percolate into the soil to the maximum extent practicable. The Town shall review the proposed parking area and may require additional measures by the applicant to reduce or mitigate any negative impacts of stormwater runoff. *Exception:* Churches, theaters or assembly halls, whose peak attendance will be at night or on Sundays, may be exempt from the requirement to pave or concrete one-half (1/2) of the parking spaces required, provided the spaces are stabilized with turf or gravel and maintained in good condition.

Table 4-1 Required Parking

Use	Minimum Parking	Maximum Parking
Residential dwellings, single family and duplex.	Two (2) spaces for each dwelling unit,	NA
Residential dwellings, multifamily	Two (2) spaces for each dwelling unit (to be rounded up)	NA
Residential care facilities, Rest and convalescent homes, homes for the aged, and similar institutions	One space for each six patient beds, plus one space for each staff or visiting doctor, plus one space for each four employees.	NA
Bed and Breakfast Homes, Bed and Breakfast Inns, Motels, and Hotels.	One (1) space for each accommodation, plus one (1) space for each two employees.	Two (2) spaces for each accommodation, plus one (1) space for each one employee.
Churches, other religious institutions, and places of public assembly with fixed seats.	One (1) space for each (4) seats in the principal assembly room.	One (1) space for each (2) seats in the principal assembly room.
Churches, other religious institutions, and assembly places of public assembly without fixed seats.	One (1) space for each two hundred (200) square feet of gross floor space directed to patron use.	One (1) space for each one hundred (100) square feet of gross floor space directed to patron use.
Schools, kindergartens, elementary and junior high, as well as child care facilities.	One (1) space for each classroom and each staff member and employee; sufficient stacking room should be provided for child drop-off and pick-up areas.	NA
Schools, high, and public	One (1) space for each staff member and employee, plus one (1) space for each ten (10) students. Spaces should be calculated for the maximum staff and students for which the building is designed.	NA
Colleges	One (1) space for each four (4) students, plus one (1) space for each faculty and staff member	NA
Libraries, art galleries, public buildings, professional business offices, and banks	One (1) space for each two hundred fifty (250) square feet of gross floor space	NA
Offices – professional, business or public, including banks	One space for each 200 square feet of gross floor area.	NA
Medical and dental offices and clinics	Four spaces for each doctor or dentist practicing at the office or clinic, plus one space for each employee	NA
Automobile repair	Two (2) spaces for each	NA

	working bay; plus one (1) space for each employee	
Car sales, outdoor equipment and machinery sales	One space for each two employees at maximum employment on a single shift; plus one (1) space for each sales vehicle/machinery	NA
Commercial nurseries	One space for each company vehicle; plus one (1) space for each four (4) employees	NA
Convenience stores *With gas sales* *Without gas sales*	Two (2) spaces for each gas pump plus two spaces for each vehicle bay or similar facility. One space for each 300 square feet of store gross floor area.	NA One space for each 150 square feet of store gross floor area.
Personal care services – hair, nail, tanning	Two spaces for each employee.	NA
Restaurants and beverage shops (dine-in)	One space for each 3 seats in the restaurant	One space per fifty (50) square feet of gross floor area
Restaurants (carry-out/ delivery)	Three spaces for customers, plus one for each delivery vehicle.	NA
Retail stores and shopping centers (greater than 10,000sf)	One (1) space for each five hundred (500) square feet gross floor space	One (1) space for each two hundred fifty (250) square feet of gross floor space
Other retail business not specifically listed above.	One space for each 300 square feet of gross floor area.	One space for each 200 square feet of gross floor area.
Warehouse and storage facilities including portions of facilities used for storage, provided the minimum area for storage and warehousing is 750 square feet (added 10/1/90).	One space for each 750 square feet of floor area allocated exclusively for warehouse or storage use	NA

Table 4-2 Parking Space and Aisle Dimensions

Aisle Width	**0°**	**30°**	**45°**	**60°**	**90°**
One-way	13’	11’	13’	18’	24’
Two-way	19’	20’	21’	23’	24’
Parking Stall					
Standard	22’ x 9’	18’ x 9’	18’ x 9’	18’ x 9’	18’ x 9’
Compact (a)	18’ x 8’	16’ x 8’	16’ x 8’	16’ x 8’	16’ x 8’

a). In parking areas containing ten (10) or more spaces, up to twenty (20) percent of the parking spaces may be designated for compact cars only. If such spaces are provided, they shall be conspicuously designated as reserved for compact cars only.

SECTION 402.2 Reduction on Area and Number of Parking and Loading Spaces.
No open area in an off-street parking area shall be encroached upon by buildings, storage, or other use; nor shall the number of parking and loading spaces be reduced except after the submission of proof to the Zoning Administrator that, by reason of reduction in floor area, seating capacity, number of employees or change in other factors controlling the regulation of off-street parking spaces, the proposed reduction is reasonable and consistent with the intent of this ordinance.

SECTION 402.3 Mixed Uses.
In the case of mixed uses, the total requirement for off-street parking spaces shall be the sum of the requirements of the various uses computed separately and averaged.

SECTION 402.4 Setbacks.
All parking spaces required in this ordinance shall be setback at least five (5) feet from any adjacent street right-of-way, and at least eight (8) feet from the edge of the street when no right-of-way exists beyond the street. In no case shall the location of parking spaces obstruct the visibility of a sight triangle nor shall they be allowed within any setback area unless granted a variance by the Board of Adjustment. (Amended 06-11-2007)

SECTION 402.4.1 Parking location in the Heritage Overlay District.
Parking spaces shall be located to the side and/or rear of the associated buildings they serve. Parking lots that serve as the principal use of a lot shall be exempt from this requirement; however, parking spaces should be setback a minimum of fifteen (15) feet so as not to be a dominant feature of the streetscape.

SECTION 402.5 Designation of Parking Spaces.
All parking spaces required in this ordinance shall be marked or designated by painted lines or an equivalent in a paved parking lot, and by some permanent, fixed markers in unpaved lots.

SECTION 402.6 Shared Parking.
The owner or agent of a land use which requires off-street parking spaces in accordance with this section may be permitted to provide a portion of the required parking at an off-premise location (shared parking), provided the owner or agent can meet the following requirements:

(a) In the C-2, C1-P and MU zoning districts and where a mix of uses are incorporated into a minimum five (5) acre site, the required parking may be reduced by a maximum of twenty-five percent (25%) in recognition of shared parking that occurs in mixed use developments and then only on the approval of a Conditional Use Permit. (amended 06-11-2007)
(b) All shared parking spaces shall be located within 400 feet of a public entrance of the principal structure incorporating the use associated with the required parking, or within 400 feet of the lot on which the use associated with such parking is located if the use is not within a principal building.
(c) The shared area shall be located in a commercial zoning district.
(d) The owner or agent requesting use of the shared parking provision shall provide written evidence that permission was granted by the owner of the land to be used for shared parking. The written evidence shall specify the number of spaces provided in the shared parking area, and that the parking area meets the provisions of this ordinance.
(e) The owner or agent requesting the use of shared parking shall sign a statement

accompanying the certificate of compliance that the validity of the certificate is contingent upon the provision of the requisite number of parking spaces. Reduction of the number of required parking spaces or other violations of this section shall result in the revocation of the certificate of compliance.

(f) The shared parking area shall be identified with one sign that shall not exceed four (4) square feet in area and four (4) feet in height.

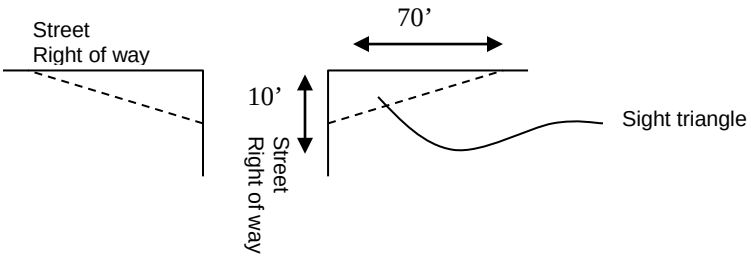
In the C-2, C1-P and MU zoning districts and where a mix of uses are incorporated into a minimum of five (5) feet from adjacent street right of way, and at least eight (8) feet from the edge of the street when no right-of-way exists beyond the street. In no case shall the location of parking spaces obstruct the visibility of a sight triangle.

SECTION 402.7 Handicapped Parking Requirements.
For all new and expanding developments which require new parking facilities, handicapped parking shall be provided in accordance with requirements of the North Carolina State Building Code Volume I-C, as revised.

SECTION 402.8 Driveways.
Driveways serving multi-family, commercial, or industrial development shall be permitted in accordance with the standards of the North Carolina Department of Transportation; provided, however, a commercial or industrial development shall be limited to no more than two driveways on any one road and no more than three driveways total. Additional driveways may be permitted when reviewed by the Administrator and deemed that they are necessary to improve traffic movement, increase sight distances or for other safety reasons.

Developments shall share driveways with adjoining developments where possible. In addition, adjoining uses shall provide safe and efficient access to neighboring parking areas so vehicular traffic and pedestrians can move directly to the adjoining use without first returning to the public right-of-way or street. Driveways as a means of the only ingress and egress shall be allowed in the setback areas as determined in Table 308-2, Dimensional Requirements by District.

SECTION 402.9 Visibility at Intersections.
On a corner lot in any zoning district, no planting, structures, sign, fence, wall, or obstruction to vision more than two and one-half (2 ½) feet in height measured from the centerline of the street shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting points on said street right-of-way. The sight triangle, as required by the North Carolina Department of Transportation, is illustrated below; however, this sight triangle may be varied by the Administrator on Town and private streets as deemed necessary:



SECTION 402.10 Parking of Tractor Trailers or Semi-Trailers for Storage.
At no time can a tractor trailer or semi-trailer be parked within view, with or without the truck or tractor, in any zoning district in the Town of Banner Elk for the purpose of storage of goods for

retail, new or used. Individual utility trailers may be used within the Town of Banner Elk as long as they are used for the specific purpose they were designed for. (Added 07/14/08)

SECTION 403 Off-Street Loading and Unloading Space Required.
Every lot on which a retail, service, trade, wholesale, or industrial use is hereinafter established shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley, or if there is no alley, to a street. For the purpose of this section, an off-street loading space shall have minimum dimensions of twelve (12) feet by forty
(40) Feet. Required space shall be considered as follows:

(1) Retail, Service, or Trade Business: One (1) space for each 5,000 square feet of gross floor area.
(2) Wholesale and industrial uses: One (1) space 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 loaded or unloaded at the terminal at any one time.

SECTION 500 ARCHITECTURAL DESIGN STANDARDS

It is the intent of this section to establish the architectural review standards of the previously adopted *Town of Banner Elk Architectural Review Guidelines (1998)*. These standards shall apply to all new construction, expansions and/or additions of 50% of the gross floor area of existing buildings, or changes to exterior building facades for multifamily and nonresidential development. Single-family detached residential uses and individual duplexes are exempt from Article V (unless sections 503 apply), as are changes considered maintenance and repairs to existing nonresidential buildings; maintenance and repair is defined as those changes that are considered upkeep and do not change the architectural appearance of the building. The Architectural Review Standards shall hereby be incorporated as a reference to Article V, specifically with regard to illustrations. (Amended 7-13-2015)

SECTION 501 Site Aspects

1. Relationship of a building to its site.
   a) Building design shall be fitted to the natural contours of the site. Natural features of the site, such as rock outcroppings or natural drainage ways shall be preserved.
   b) On wooded sites, buildings shall be carefully situated to take advantage of the shade and energy conservation provided by the trees.
   c) The impression of buildings tucked into, rather than superimposed on, the natural landscape shall be created.
   d) The view of the building from the street and surrounding areas shall be as important as the view available to the buildings occupants.
   e) Buildings shall be located according to the natural characteristics of the site. In hilly terrain, clustering of buildings is encouraged as a strategy to avoid destroying sensitive natural areas.
   f) Buildings shall be designed to harmonize with the existing topography, thereby minimizing land disruption.
   g) Grading shall be held to a minimum and should complement natural land forms (such as smooth gradations or terracing).
   h) Use of retaining walls over eight (8) feet in height require design and certification by a NC registered engineer.

2. Relationships of the project to adjoining area.
   a) Building projects shall not be designed as isolated units, but instead shall reflect the context of the adjoining properties.
   b) Grading shall blend gently with contours of adjacent properties.
   c) Buildings at the ends of streets, or at street corners, shall serve as visual “terminals.” Serving to both unify and conclude the architectural statement made on the street.
   d) Proposed recreation areas or uses shall complement nearby existing uses. The extension of existing parks or recreation areas into a proposed development is a highly desirable design feature.
   e) Buildings or projects located near or adjacent to a greenway shall provide safe and efficient pedestrian connection to that greenway, and also to adjacent properties that might include pedestrian systems in the future.
   f) Buffer zones shall separate and protect the greenway, while at the same time connect it to the building site.
   g) Natural drainage patterns shall be preserved where possible. Changing the natural drainage areas will affect the drainage onto adjoining areas.

h) Innovative building and site design can capitalize on natural drainage ways and transform steep slopes into major site amenities.
i) Design shall insure that drainage occurs only in areas designed to serve a drainage function. Stormwater should not flow over sidewalks, paths or streets.

3. Streetscape
   a) Scale is a major factor in creating a sense of community and a sense of place.
   b) The ratio between the width of the street corridor (as measured between opposing building facades) and the height of the "walls" of that corridor (the foundation-to-eaves dimension) plays an important role in creating a human scale in the streetscape. The most satisfactory ratio is generally a width that is two (2) or three (3) times the height of the defining walls or edges. If the width exceeds the height more than four (4) times the sense of enclosure is diminished.
   c) The Town shall be focused on people rather than on vehicles. Streets shall be connections not separations.
   d) Reference "Zones" of Section 6.3.1 of the Architectural Review Guidelines for explanation of zones and transition areas that shall be addressed in the design of new streets. (See illustration "A").

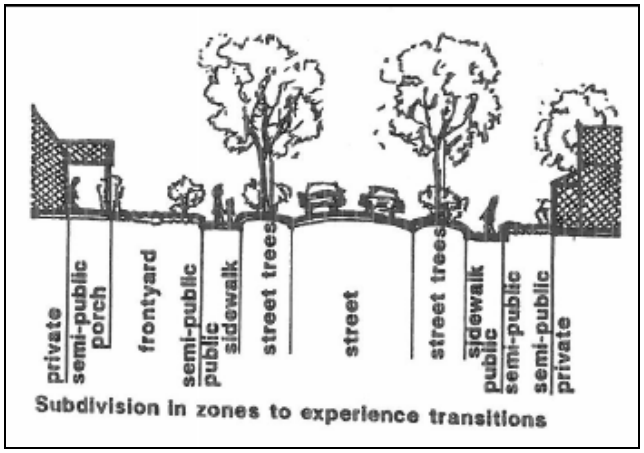


Illustration "A", Zones to Experience Transitions

   e) Especially in the downtown area, and Heritage Overlay District, building faces shall have adequate setback from the street edge to allow for sidewalks where people may walk leisurely around – meeting places. Public spaces between buildings (including room for planting and street furniture) provide places for the pedestrian to rest and relax.
   f) Between sidewalk and street, there shall be enough room to accommodate the planting of trees and shrubs (see Article VII, street yard). The street will be enclosed, pedestrians will be separated from the cars and the view will be framed.
   g) Street furniture should complement the overall site and landscape design. It shall reflect the natural mountain character of Banner Elk, such as the use of wood and stone for benches, trash receptacles, etc.

4. Streets

a) Difficult topography shall be avoided when locating and designing roads. For instance, roads are best placed along the contours of a site if the site is hilly or steep. This minimizes fuel consumption and noise in automobiles and provides a more comfortable access for pedestrians and bicycle riders. Consideration shall also be given to fire protection and emergency vehicles in order to facilitate access to any structure in case of any emergency.
b) Roadways shall focus attention on interesting views and should not interfere with natural drainage patterns.
c) The Town of Banner Elk uses the *NC Department of Transportation Subdivision Roads Minimum Construction Standards* to suggest parameters for new streets. These standards may need to be adjusted, especially in areas of difficult topography with steep slopes.
d) The site plan should incorporate a hierarchy of roadways and walkways that provide for safe, smooth and pleasant movement of people and vehicles. Special attention shall be paid to points at which pedestrian, bicycle, and automobile movements are in conflict. Clearly marked crosswalks or routing of pedestrian paths away from main automobile traffic areas can reduce hazards in these areas.
e) Whenever there is a design choice between access from the development to a street of a higher classification and access to a street of a lower classification, access should be to the street of lower classification.
f) On large streets, landscaped median islands are encouraged and crosswalks shall be included.
g) Trees, shrubs and other plants shall be planted along the streets in accordance with Article 7.

5. Sidewalks
a) Building sites shall accommodate pedestrians and shall be centered around pedestrian traffic rather than vehicular traffic.
b) Access must be safe and convenient within a site. Sidewalks must be clearly separated from driving areas and must connect buildings to each other, to parking areas and to adjacent pedestrian paths.
c) Handicapped accessibility along walkways at street/driveway intersections shall be provided whenever possible, per NC State Building Code specifications.
d) Sidewalk construction standards (including curb and gutter) shall follow the *NC Department of Transportation Subdivision Roads Minimum Construction Standards.*
e) Walkways or sidewalks shall be provided along all public streets for commercial developments. Where intersections occur, pedestrian walkways shall be clearly marked with paint or contrasting surface material.
f) The separation of sidewalks from the roadway for pedestrians safety will be achieved by:
    (1) Curbside planting strips
    (2) Depressing or raising the walkway in relation to street level
    (3) Providing parking adjacent to the walkway (on-street parking) as an additional barrier
g) Especially around areas with interesting natural features, sidewalks shall be curved, bending into adjoining lands, following the natural contours.
h) Major commercial developments shall include a system for internal pedestrian movement. These internal walkways shall also be linked with town-wide systems, particularly to greenways and parks.

i) Covered sidewalks are especially encouraged, as well as the development of public spaces with a pedestrian system like courts and gardens.
j) Surfaces shall be constructed of brick when located within the Heritage Overlay District; other materials such as concrete may be permitted in the other zoning districts.
k) Semi-pervious or pervious material as opposed to asphalt or concrete is especially desirable on sidewalks, to the extent they do not diminish the accessibility of the pathway. If concrete is used, it should be textured or patterned with sections that shall include a brick pattern that matches the town's Master Streetscape Plan.

Basket Weave pattern of the Master Streetscape Sidewalks

6. Bicycles
   a) Bike lanes or sufficient room on the streets for bicyclists are very desirable. However, bike lanes do not have to parallel the street. Like sidewalks or walkways they should follow natural patterns.
   b) Businesses and organizations should recognize the needs of cyclists who may bicycle to work. These cyclists need convenient use of a bicycle rack.

SECTION 501.7 Lighting Trespass Ordinance

a) Design and intensity of lighting shall be architecturally integrated with the building style, material and color. Lighting shall be designed and located to ensure that excessive light spillage and glare, especially toward neighboring areas and motorists, are avoided. All parking and street lighting provided shall be aimed downward and provide shield covers to direct light in such a manner.
b) Down lighting shall be used to reinforce the circulation corridor. Pedestrian scale lights, such as ornamental poles, shall be used on sidewalks instead of street lights; street lights shall match existing Town of Banner Elk streetscape lights. Low light sources should be used on other walking paths and greenways.

(A) *Definitions.* For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FIXTURE. The assembly that holds the lamp (bulb) in the lighting system. It includes the elements designed to give light output control, such as a reflector (mirror) or refractor (lens), the ballast, housing and the attachment parts.

FLOODLIGHT. A luminaire or bulb which projects light in a specific direction in a wide beam, typically 100 degrees or more.

FOOTCANDLE. The American unit used to measure the total amount of light cast upon a surface (illuminance). One foot candle is equivalent to the illuminance produced by a source of one candle at a distance of one foot. For example, the full moon produces .01 S. S are measured with a light meter. One foot candle is approximately equal to ten (10) lux, the British unit used to measure illuminance.

FULL CUTOFF (FCO). A light fixture that cuts off all upward transmission of light (See Figure 1).

FULLY SHIELDED. A fixture with housing or attachment thereto which prevents a line of sight to the bulb when viewed from another property and which prevents a line of sight to any part of the light source at or above a horizontal plane running through the lowest portion of the fixture.

GLARE. Discomfort experienced by an observer with a direct line of sight which often results in annoyance, discomfort or loss of visual performance causing visual impairment.

HORIZONTAL (OR VERTICAL) FOOTCANDLES. The amount of light striking a vertical or horizontal plane.

IESNA. Illuminating Engineering Society of North America.

LIGHT SOURCE. The bulb and lens, diffuser or reflective enclosure.

LIGHT TRESPASS. Light projected onto a property from fixtures not located on that property.

LUMEN. The unit used to quantify the amount of light energy produced by a lamp at the lamp. Lumen output of most lamps is listed on the packaging. For example, a 60-watt incandescent lamp produces 950 lumens while a 55 watt low pressure sodium lamp produces 8000 lumens.

NEON SIGNS. Luminous tube sign that contains neon or other inert gasses at a low pressure.

SPOTLIGHT. A luminaire or bulb which projects light in a specific direction in a narrow beam, typically 45 degrees or less.

(B) Regulation.

(1) It is unlawful for any person, firm or corporation to install, erect or maintain any floodlight, searchlight, security light or other form or type of light source within the limits of the town in such manner that the light rays from this lighting fail to conform with the terms and conditions of this section, and that the light thereof may distract the attention of any vehicle driver from the operation of a vehicle in a safe and prudent manner.

(2) On all properties except those zoned R1 and R2, the installation or replacement of any outdoor lighting fixtures shall require approval. Approval may not be issued unless the proposed installation is found by the Zoning Administrator to conform to all applicable provisions of this section.

(3) All properties within the town and the ETJ must comply with the terms of this section.

(C) *Light Trespass.* The maximum illumination at 5 feet inside an adjacent residential parcel or public right-of-way, or beyond, from light emitted from an artificial light source, is 0.05 horizontal foot-candles and 0.05 vertical foot-candles. This illumination likewise measured inside an adjacent commercial or industrial parcel or on a public roadway, or beyond, shall not exceed 0.1 horizontal foot candles or 0.1 vertical foot candles. No line of sight to a glaring light source is permitted from 5 feet or more inside a residential or public right-of-way property line by an observer viewing from a position that is level with or higher than the ground below the fixture. Compliance is achieved with fixing shielding, directional control designed into the fixture, fixture location, fixture height, fixture aim or a combination of these factors.

(D) *General Lighting Design.*

(1) General.

(a) The bulbs in outdoor light fixtures emitting from 600 to 1,200 lumens shall be frosted glass or covered by frosted glass or other similarly translucent cover. An outdoor light fixture emitting more than 1,200 lumens except motion detector-activated lighting shall be full cutoff and fully shielded to an observer at the property line. This can be achieved with fixture location, mounting height, natural artificial barriers on the fixture owner's property, fixing shielding and other fixture design features.

(b) A spotlight of less than 1,800 lumens need not be full cutoff or covered by a translucent cover if its center beam is aimed at a point not beyond any property lines and no higher than 45 degrees below

the horizontal, and is motion detector-activated and cycles off after 5 minutes.

(c) Generally, luminaries should not be located closer to the property line than a distance equal to 3 times the fixture's mounting height above grade at the property line.

(d) The use of search lights, laser lighting or lights that pulse, flash, rotate or stimulate motion for advertising or promotions is prohibited.

(e) Emergency lighting and traffic control lighting is exempt.

(f) Tower lighting shall not be permitted unless required by FAA. Required lighting shall be of the lowest allowed intensity and red unless specifically forbidden under FAA requirements.

(g) At the close of business, all lighting shall be reduced to a level not greater than those described in division (D) (5) below.

(h) With the exception of structures having exceptional symbolic significance in the community such as churches and/or public buildings of historic significance in the community, exterior buildings and other vertical structures shall not be illuminated. When buildings and other structures having symbolic or historic significance are to be illuminated, the design for the illumination must be approved by the Preserve America Commission.

(2) *Buildings and other vertical structures.*

(a) The maximum illumination on any vertical surface or angular roof surface shall not exceed 5.0 foot candles.

(b) Lighting fixtures shall be carefully located, aimed and shielded so that light is directed only onto the building surface. Lighting fixtures shall not be directed toward adjacent streets or roads.

(c) Lighting fixtures mounted on the building and designed to "wash" the building surface with light are preferred.

(d) To the extent practicable, lighting fixtures shall be directed below the horizontal rather than above the horizontal.

(3) *Landscaping.* When landscaping is to be illuminated, the Planning Board shall first approve a landscape lighting plan that presents the purpose and objective of the lighting, shows the location of all lighting fixtures and what landscaping each is to illuminate, and demonstrates that the installation will not generate excessive light levels, cause glare or direct light beyond the landscaping into the night sky.

(4) *Externally illuminated signs.(Also see Section 605 (h))*

(a) The average level of illumination on the vertical surface of the sign shall not exceed 3.0 foot-candles, and the ratio of average to minimum illumination shall not exceed 2:1.

(b) Lighting fixtures illuminating signs shall be carefully located, aimed and shielded so that light is directed only onto the sign façade. Lighting fixtures shall not be aimed toward adjacent streets, roads or properties.

(c) Light fixtures illuminating signs shall be of a type such that the light source is not directly visible from adjacent streets, roads or properties.

(d) To the extent practicable, fixtures used to illuminate signs shall be top-mounted and directed below the horizontal.

(5) *Parking lot lighting.* Parking lot lighting shall be designed to provide the minimum lighting necessary to ensure adequate vision and comfort in parking areas, and to not cause glare or direct illumination onto adjacent properties or streets.

(a) All lighting fixtures serving parking lots shall be cut-off fixtures.
(b) Mounting heights of lighting fixtures shall not exceed 20 feet.
(c) The minimum overall illumination level shall be no less than 0.4 foot-candles. The ratio of the average illumination to the minimum illumination shall be 4:1.
(d) The maximum overall average illumination level shall not exceed 1.5 foot-candles.

(6) *Lighting levels on exterior display/sales areas.*

(a) Lighting levels on exterior display/sales areas shall be adequate to facilitate the activities taking place in these locations during business hours. Lighting of these areas shall not be used to attract attention to the businesses, but rather the merchandise. Signs allowed under local ordinances are to be used for the purpose of advertising a business.
(b) The applicant shall designate areas to be considered display/sales areas and areas to be used as parking or passive vehicle storage areas. This designation must be approved by the Planning Board.

1. Areas designated as parking or passive vehicle storage areas shall be illuminated in accordance with the requirements for parking areas suggested elsewhere in this section.
2. Areas designated as exterior display/sales areas shall be illuminated so that the average horizontal illuminance at grade level is no more than 5.0 foot-candles. The ration of average to minimum illuminance shall be no greater than 4:1. The average and minimum shall be computed for only that area designated as exterior display/sales area.
3. Light fixtures shall be full cut-off fixtures (See figure 1) and shall be located, mounted, aimed and shielded so that direct light is not cast onto adjacent streets or properties.
4. Fixtures shall be mounted no more than 20 feet above grade and mounting poles shall be located either inside the illuminated area or no more than 10 feet away from the outside edge of the illuminated area.

(7) *Lighting of walkways/bikeways and parks.* Where special lighting is to be provided for walkways, bikeways or parks, the following requirements shall apply:

(a) The walkway, pathway or ground area shall be illuminated to a level of no more than 0.5 foot-candles;
(b) The vertical illumination levels at a height of 5 feet above grade shall be no more than 0.5 foot-candles; and
(c) Lighting fixtures shall be designed to direct light downward, and light sources shall have an initial output of no more than 1,000 lumens.

(8) *Lighting of gasoline stations/convenience store aprons and canopies.* Lighting levels on gasoline station/convenience store aprons and under canopies shall be adequate to facilitate the activities taking place in those locations. Lighting of these areas shall

not be used to attract attention to the businesses. Signs allowed under local ordinance are to be used for that purpose.

(a) Areas on the apron away from the gasoline pump islands used for parking or vehicle storage shall be illuminated in accordance with the requirements for parking areas set forth elsewhere in this section. If no gasoline pumps are provided, the entire apron shall be treated as a parking area.

(b) Areas around the pump islands and under canopies shall be illuminated so that the minimum horizontal illuminance at grade level is no more than 5.5 foot-candles. The ratio of average to minimum illuminance shall be no greater than 4:1. This yields an average illumination level of no more than 22.0 foot-candles.

(c) Light fixtures mounted on canopies shall be recessed so that the lens cover is recessed or flush with the bottom surface of the canopy and/or shielded by the fixture or the edge of the canopy so that light is restrained to no more than 85 degrees beyond the vertical plane.

(d) As an alternative to recessed ceiling lights, indirect lighting may be used where light is beamed upward and then reflected down from the underside of the canopy. In this case light fixtures must be shielded so that direct illumination is focused exclusively on the underside of the canopy.

(e) Lights shall not be mounted on the top or sides of the canopy and the sides of the canopy shall not be illuminated.

(9) Lighting of outdoor facilities. Outdoor nighttime facilities (concerts, athletic contests and the like) have unique lighting needs. Illumination levels vary, depending on the nature of the activity. The regulations in this section are intended to allow adequate lighting for such events while minimizing sky glow, reducing glare and unwanted illumination of surrounding streets and properties and reducing energy consumption. The design plan shall include a discussion of the lighting requirements of various areas and how those requirements will be met.

(E) *Site Plans (Also see Sections 311 & Section 1152).*

(1) (a) Outdoor lighting installations involving the installation or replacement of 2 or fewer lighting fixtures may be approved by the Zoning Officer, provided that no single lamp exceeds 150 watts, and that the total wattage of all bulbs in all fixtures does not exceed 300 watts. All other installations must be approved by the Planning Board.

(b) The applicant shall submit to the Town sufficient information, in the form of an overall exterior lighting plan, to enable the Town to determine that the applicable provisions will be satisfied.

(2) The lighting plan shall include at least the following items:

(a) A site plan, drawn to scale of 1 inch equals no more than 20 feet, showing buildings, landscaping, parking areas and all proposed exterior lighting fixtures;

(b) Specifications for all proposed lighting fixtures including photometric data, designation as full cut-off fixtures (See figure 1) and other descriptive information on the fixtures;

(c) Proposed mounting height of all exterior lighting fixtures;

(d) Analyses and illuminance level diagrams showing that the proposed installation conforms to the lighting level standards in this section; and

(e) Drawings of all relevant building elevations showing the fixtures, the portions of the walls to be illuminated, the illuminance levels of the walls and the aiming points for any remote light fixtures.

(3) (a) Wherever practicable, lighting installations shall include timers, dimmers and/or sensors to reduce overall energy consumption and eliminate unneeded lighting.

(b) When an outdoor lighting installation is being modified, extended, expanded or added to, the entire outdoor lighting installation shall be subject to the requirements of this section.

(c) Expansions, additions or replacements to outdoor lighting installations shall be designed to avoid harsh contrasts in color and/or lighting levels.

(d) Electrical services to outdoor lighting fixtures shall be underground, unless the fixtures are mounted directly on utility poles.

(e) Proposed lighting installations that are not covered by the special provisions in this section may be approved only if the Planning Board finds that they are designed to minimize glare, do not direct light beyond the boundaries of the area being illuminated or onto adjacent properties or streets, and do not result in excessive lighting levels. In general IESNA standards shall be used to determine the appropriate lighting design.

(f) For the purpose of these regulations, the mounting height of a lighting fixture shall be defined as the vertical distance from the grade elevation of the surface being illuminated to the bottom of the lighting fixture.

(g) The Planning Board may modify the requirements of this section if it determines that, in so doing, it will not jeopardize achievement of the intent of these regulations.

(F) Exemptions.

(1) The temporary use of low wattage or low voltage lighting for public festivals, celebrations and the observance of holidays is exempt from this section except where they create a hazard or nuisance from glare. However, consideration to light trespass requirements shall be demonstrated prior to commencing the use of the temporary lighting.

(2) All other lighting existing or installed on the date of this section which does not conform with this section shall be exempt under the following conditions:

(a) The exemption shall expire seven (7) years after the adoption date of this section;

(b) Lighting found by a governmental agency to create a public hazard can be ordered removed or altered at any time;

(c) On the effective date of this section, any light installation which provides for re-aiming of the fixture shall be brought into compliance with the terms of this section without delay;

(d) Upon repair or replacement of any component of any luminaire, or relocation of any luminaire, that luminaire shall be brought into compliance with the terms of this section at the completion of the repair or replacement;

(e) Upon installation of any new luminaire, this section shall fully apply. An inventory of existing lighting submitted by the

applicant will be required when the application for installing new luminaire(s) is made;

(f) Upon the transfer of ownership of an existing business or property, the exemption shall expire and all terms of this section shall apply;

(g) At the close of business all lighting shall be reduced to a level not greater than those described in division (D) (5) of this section.

(G) *Street lighting.*

(1) Street lighting owned, operated, maintained or leased by the town shall be exempt, understanding that a good-faith effort shall be made to comply with the following conditions;

(a) All new, repaired or replaced shall be full cut-off fixtures (See figure 1) and that IESNA guidelines shall be considered. However, the design for an area may suggest the use of street light fixtures of a particular period or architectural style as an alternative if the following items are considered:

(i) The maximum initial lumens generated by each fixture does not exceed 2,000;

(ii) The mounting height of the alternative fixture does not exceed 15 feet; and

(iii) That alternative lighting be approved in a public hearing in accordance with Section 1009 (4). Public comment regarding the alternative lighting standard will be considered at that time.

(b) Street lights shall be located in the public right-of-way or on easements acquired for that purpose.

(c) If the street has a sidewalk along one (1) side, the street lights will generally be limited to the sidewalk side of the street.

(2) (a) Street lighting which causes light to trespass onto or into a neighboring parcel and causes an annoyance or disturbs the person(s) who owns the neighboring parcel shall seek relief through the Board of Adjustment.

(b) The Board of Adjustment shall hold a hearing on the matter in a meeting published in accordance with Section 1109 (4). The complaint and possible solution will be considered at that time.

(3) *Violations.* A person who installs or causes to be installed various forms and types of lights as described heretofore in violation of this section and is subject to penalties outlined in Section 1401 of the Banner Elk Zoning Ordinance.

SECTION 501.1 Colored Lighting.

(A) Purpose.

(1) The welfare of Banner Elk is inextricably tied to its scenic, historical and architectural characteristics. In order to protect these characteristics and to ensure the safety of pedestrians and vehicular traffic, it is necessary to

establish public regulations of neon, argon, helium, fluorescent and any and all other types of colored lighting visible from the streets and public ways of the town.

(2) Therefore, it is the intent of this section to:

(a) Control the prominence of lighting in as fair and as impartial a way as possible; and

(b) Prohibit lighting which may cause confusion for or block or impair the vision of pedestrians or which may pose a distraction to pedestrian or vehicular traffic on roads or the intersections of streets and roadways.

(c) Neon lighting signs advertising “open” and/or “closed” are permitted as long as they are located inside of the business window display area. The maximum number of neon signs allowed to be displayed directly in the window is one (1) per street frontage. Any additional neon signs or lighting must be located in the interior of the business and not directly in front of a window. The maximum standard size allowed for the open and/or closed sign from the date this revision is approved (February 09, 2009) is 13”Hx32”L.

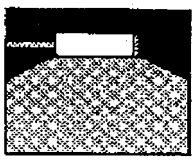
(B) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates a different meaning.

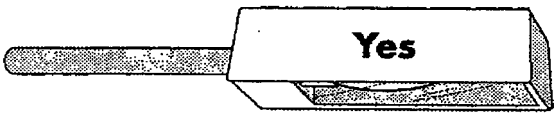
Colored Lighting. Any lighting inside a window display area of a business which is visible to pedestrian and vehicular traffic or which is on the outside of any business or outbuilding, which is any color other than white, clear or natural light such as neon, argon, xenon, helium or fluorescent lighting which is used in and of itself as a lighting mechanism, or in combination with any coloring process which produced colored lighting, including but not limited to painted tubing or plastic sheathing or any type which would produce colored lighting. However, this shall not include neon lighting as discussed in Section 501.1 (D) (c) and any official court or public lighting of the flag, emblem insignia of a government or otherwise when displayed for official purposes. Additionally, this section shall not apply to seasonal lighting between November 15 and March 15.

(C) *Violations.* A person who installs or causes to be installed various forms and types of lights as described heretofore is in violation of this section is subject to penalties outlined in Section 1401 of the Banner Elk Zoning Ordinance.

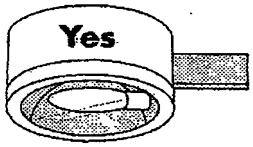
Figure 1

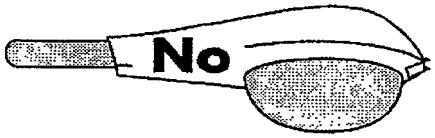
What is a True Full Cutoff Outdoor Lighting Fixture?



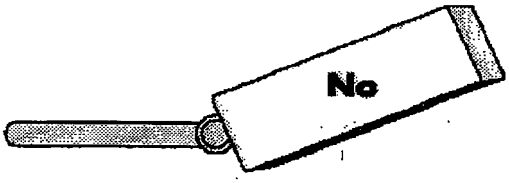


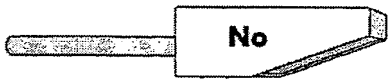
Flat glass lens, eliminates or minimizes direct glare, no upward throw of light. The housing for these fixtures are available in many styles.

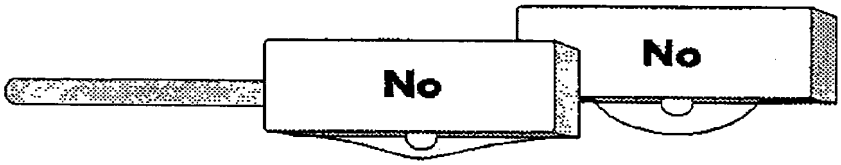




Same fixture as above mounted incorrectly – defeating the horizontal mounting design. The fixture now produces direct glare, and can also produce uplight at steeper mounting angles.







Known as just "Cutoff" Center "drop" or "sag" lens with or without exposed bulb, produces direct glare.

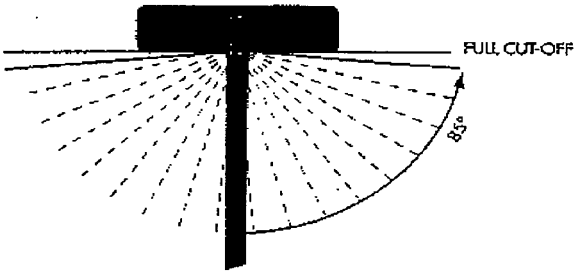


FIGURE 2

85° Full Cut-Off Fixture

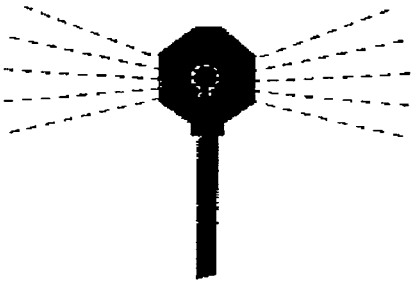


FIGURE 3

Partially Shielded
(translucent siding - bulb not visible)

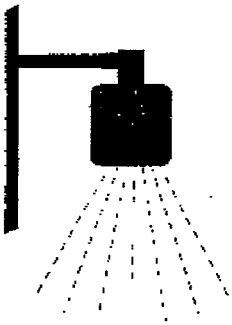


FIGURE 4

Shielded

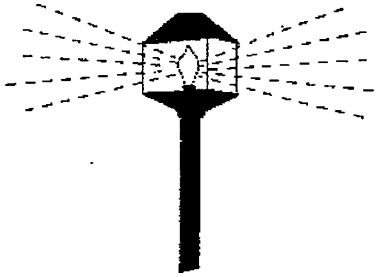


FIGURE 5

Unshielded with Opaque Top
(less than 375 lumens)

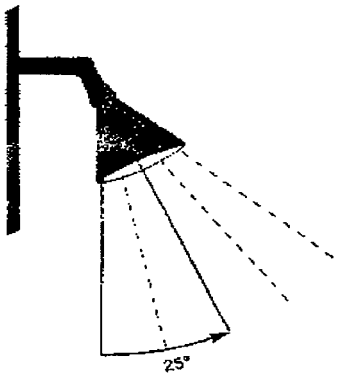


FIGURE 6

Angle of Flood Light
with External Shielding

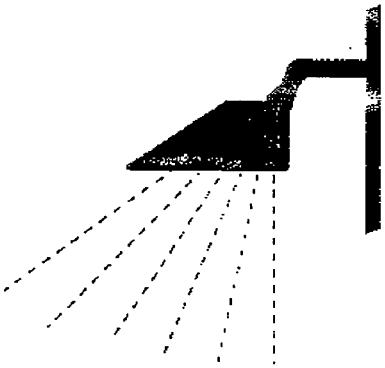


FIGURE 7

Directional Flood Light

8. Utilities
   a) New utility and electrical power lines are required to be placed underground, unless deemed unfeasible by the utility provider.
   b) Should overhead utility lines be necessary, they should be located to minimize their visual impact
      - Utilities should follow site access drives to preserve natural vegetation
      - Utility poles and supports should be neutral in color:
   c) Utility structures such as cabinets and transformers shall be screened by natural vegetation and shall be located along rear lot lines and services areas. However, landscaping should not hinder maintenance of the facilities.

9. Fencing
   a) Fencing shall consist of natural materials such as wood and/or stone being complemented by appropriate landscaping to break up the length and solidity of fencing. Metal, such as iron or aluminum, but excluding chain link, is permissible.
   b) Where chain link is deemed necessary for security purposes, such fencing must be completely concealed by evergreen plant material. Chain link with plastic insets of natural earth tone color is acceptable for the screening of dumpsters. Chain link fence shall not be allowed in the Heritage District Overlay, with the exception of dumpsters with acceptable screening.
   c) Fencing higher than six (6) feet shall follow the setback requirements in Section 309 for that zoning district. (Added 02-11-2013)

SECTION 502 Building Design
The following elements of building design shall be incorporated in new construction and renovations as noted in section 500.

SECTION 502.1 Scale
Scale and proportion should reflect local traditions of mountain buildings. They should be oriented to the characteristic, simple residential buildings of Banner Elk. Texture of roof and wall finishes shall provide a scale or reference point for the pedestrian in proximity to the structure. In the C-2, M-E and MU districts, where structures already exist on a subject property. The maximum wall height of any new structure connected to existing structures shall not exceed the highest wall of the existing structure. (Amended 06-11-2007)

(a) ALLOWED:
- 35 feet height maximum from average natural grade to roof (ridge height); existing contours shall be provided on the plat or site plans as part of the zoning permit application. Take the smallest rectangle inside the footprint and find the midpoint of each wall. The spot where each of these lines intersect is the point where the measurement will be taken for the height of the building. (See illustration “B” on how to calculate the height of a building.)
- Harmony with landscape and surroundings
- Residential scale
- Structures using rectangular configurations
- Street front having sense of entry
- Use of stepbacks and architectural elements (windows, stairs, etc) to break up large masses of buildings
- Pedestrian-oriented scale

- Covered walkways
- Canopies
- Planned Residential and Commercials Developments in the M/U with connections to **existing** tall buildings (over 35 feet) allow for the principal building to be 60% of the footprint and any additional interconnected buildings can not exceed the footprint by 40%, making the total footprint 100%, (Amended 5-12-14)

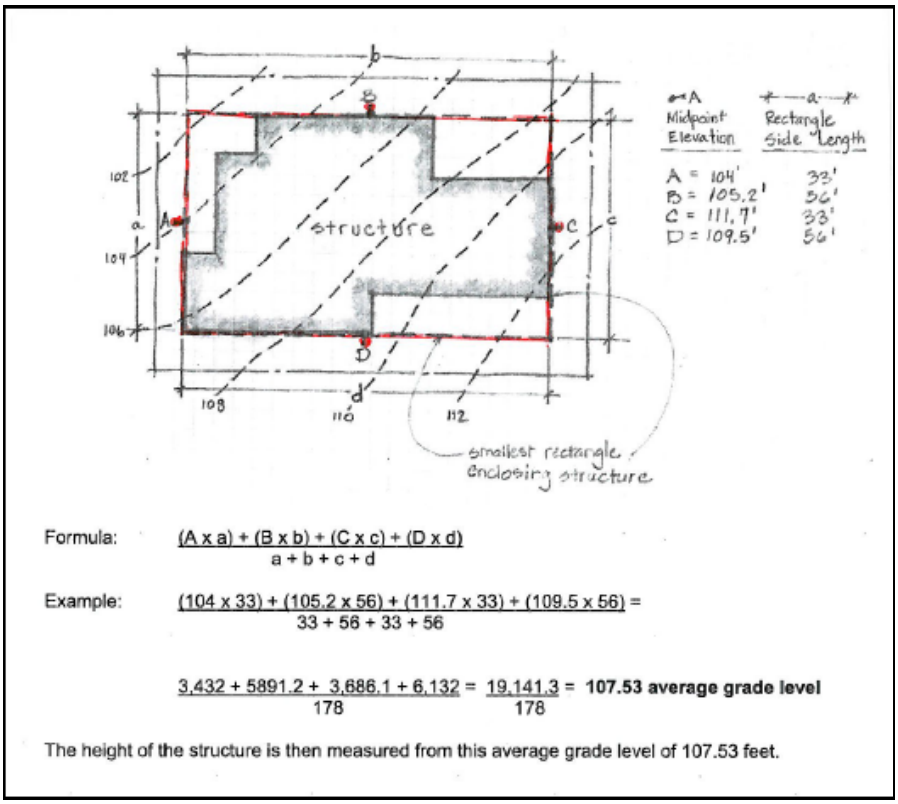


Illustration "B" on How to calculate the height of a building.

(b) PROHIBITED:

- Square or rectangular buildings in excess of 50,000 square foot of gross floor area, when constructed on an individual lot(s) and are not a part of a Planned Commercial or Planned Residential Development containing less than three buildings in the C-2, M-E, or MU zoning district. (amended 06-11-2007)
- Continuous flat facades
- A-frame buildings
- Round buildings
- Geodesic domes

SECTION 502.2 Exterior Materials

Materials shall be selected for suitability to architectural style. For the mountain village character of Banner Elk, this means using natural traditional materials such as wood and native stone. All sides of a building should relate to each other. The front should not look substantially different from the other sides. The number of different materials on exterior finishes should be limited.

(a) ALLOWED:

- Use of materials native to mountain area
- Wood siding (painted, stained, or weathered)
- Wood shingles/shakes
- Native stone
- True log construction
- Log siding
- Exposed wood structural members
- Related trims
- Where materials change there should be a change in wall plane or some architectural device to give sense of transition
- Cultured stone (faux stone)
- Bark siding
- Brick (allowed as accents for areas of detail – then the brick shall be of constant color and of the wood mold type, no blends)
- Stucco, for two (2) feet above grade only, or allowed as an accent for areas of detail
- All ASTM approved cement board, at the discretion of the Architectural Review Committee or per requirement of NC State Fire Code

(b) PROHIBITED:

- Stucco, as an entire wall exterior finish
- Mix of materials unrelated to architectural form/structure
- Pre-form metal siding
- Exposed or painted concrete block
- Vinyl siding
- Artificial brick
- Reconstituted or manufactured wood materials
- Synthetic stucco
- T1-11 siding (plywood)
- Split face block
- Non-ASTM approved cement board

SECTION 502.3 Roofs

Roofs are a major visible element and shall be compatible with both buildings and neighboring buildings architectural style. Similarities in roof type create a visual continuity in the streetscape and neighborhood. Roof shape, color and texture should be coordinated with the treatment of the buildings perimeter walls. Roofs with more than one plane, and containing dormers, add variety to a building and break-up its size. Roofs outside of the allowed pitch slope may need to apply for a variance considering the type of building and how the slope would make the building look.

(a) ALLOWED:

- Any pitched roof must be 6/12 to 12/12 slope
- Large overhangs (minimum one (1) foot)
- Fascia eight (8) inches minimum and/or exposed rafter tails
- Gable or hip roofs
- Large roof areas should have more than one plane and be broken up with dormers
- Roof pitches over porches and ancillary structures should be in keeping with principal building (minimum 3/12)
- Flat roofs with parapet only in zoning districts C-2, M-I, M/U, and M-E

Rooftop equipment specifications:

- Screen rooftop mechanical, electrical, and energy equipment from view of people on street
- Energy collection equipment on street side is allowed when mounted on roofs with pitch, of similar color, and are mounted flush with the roof. (added 05-13-13)
- Grouping together of utility structures (vents, ducts,…) and painted to match adjacent building surface
- Exposed gutters and downspouts painted to match adjacent roof or wall material
- Earth tone colors for roof materials
- Traditional roof materials
- Wood shakes/slate/metal roofs/fiberglass shingles/ concrete tiles
- Same materials on all principal parts of the roof
- Asphalt composition shingles (artificial slate)

(b) PROHIBITED:

- Flat roofs, with exception noted above
- Shed, gambrel, mansard roofs
- Low slopes (under 6/12) for main roof
- Very steep slopes (over 12/12)
- Overhangs less than one (1) foot
- Brightly colored and unnatural looking roof material
- Roll felt roofing
- Corrugated plastic sheet material

SECTION 502.4 Windows

Windows are the most important architectural element to unify a façade. They reflect the character of a building. However, windows not only add to the aesthetics of a building but also have to provide light and ventilation.

(a) ALLOWED:

- Traditional shapes (forms of square, arches or rectangle)
- Forms of residential scale
- Multi-plane windows (use of muntins to divide glass into unified sections)
- Vertical windows
- Separate large windows (also for storefront windows)
- Separate large windows (including storefront) by columns
- Accentuated by trim work

Shutter Specifications:

- Should measure full height and half the width of all window
- Traditional horizontal slats (wood)

(b) PROHIBITED:

- Horizontal windows
- Large undivided panes of glass
- Windows as dominant elements; a higher percentage of wall than window should exist on the façade. [Exception shall be made to retail establishments in the C-1 and C-1P districts which rely on pedestrian traffic]
- Floor to ceiling windows greater than one story
- Large horizontal strips of windows (ratio greater than 2:1) visible from the street

- Glass block visible from street
- Aluminum store front systems
- Reflective glass
- Plastic glazing materials
- Outside jalousies and jalousies windows visible from street

SECTION 502.6 Color
Colors shall be natural and subdued (earth tones are recommended) and shall blend in well with the natural surroundings. Natural stains or paints that reflect the colors of natural materials should be dominant on large areas such as building facades and elevations. Openings and entryways should be clearly expressed with changes of texture or color. Trim color shall refer to any or all building's trim elements (such as eaves, soffits, overhangs, fasciae, windows, sills, gutters). Principal building and trim colors are subject to review, also for repainting an existing building. If the color for repainting matches the existing, then no permit will be required.

PROHIBITED:

- more than three (3) colors of the Banner Elk color chart and of like materials (principal building and trim)
- high gloss finishes
- day-glow and fluorescent colors (except for as permitted above)
- bright colors, including pastels that do not harmonize with natural materials
- and earthtone stains

SECTION 503 Heritage Overlay District Supplemental Regulations

All development, whether new construction, additions or major renovations within the HOD shall be conditional in nature and shall require review by the Preserve America Commission (PAC) with a recommendation to the Planning Board. Additional consideration of the Medical/Education (M/E) District may be required on a case-by-case basis. They shall also comply with all of the architectural standards in Section 500, taking into consideration the elements of social, economic, political and architectural history of Banner Elk and additionally shall incorporate the following into their site design:

a) All additions to existing structures must have prior approval of the PAC and the Planning Board before a zoning permit can be issued.
b) No demolition of any kind shall take place in the HOD without prior review by the PAC and the Planning Board. If the Planning Board allows a building to be demolished, then anything rebuilt in its place will not increase the size of the previous footprint without approval.
c) For new construction or rebuilding on any site within the HOD, sidewalks shall be provided along the street side and sidewalk or alternate pedestrian paths shall connect the building entrance to the sidewalk at street side. Sidewalks shall be designed to match the Town's Master Streetscape Plan. Should it prove impossible to construct on the property in question, due to prevention by some other portion of the ordinance, inadequate feasibility or a hardship caused by land features, then an equitable fee in lieu shall be paid to the Town of Banner Elk to be used as the Town Council sees fit in other areas of the Town. The fee shall be calculated by the linear footage of road frontage where the sidewalk

should have been placed and the current rate to construct that amount of sidewalk. (Amended 07-14-08)

d) Buildings setbacks shall be reviewed on an individual basis providing for the consideration of pedestrian amenities and landscaping. Commercial sites should design for parking in back of the property with storefront access available to sidewalk traffic.

e) Pedestrian amenities such as bike racks, benches, and trash receptacles shall be a component of the site plan and be provided at a distance of one per 200' by the developer taking into consideration the proximity of such amenities on adjacent properties. These amenities shall match the existing items as per the Master Streetscape Plan. Based on surrounding properties, pedestrian paths, vehicular traffic and residential property this requirement and the location of the amenities may be varied or waived at the discretion of the Planning Board with advice from the Zoning Administrator.

f) Ornamental street lights, which match the existing Town of Banner Elk streetscape lights, shall be incorporated into parking lot and street designs.

g) Any residential trash receptacles should be taken up on the property after they have been emptied and not left to linger at the edge of the road for the day ; possibly causing a traffic hazard. If you cannot bring the receptacles back up then the Town has the authority to mandate door pick up service at the expense of the property owner.

(h) The Town of Banner Elk, at its option, may provide mail receptacles and require the use of such by the homeowner or tenant to which it is provided in the Heritage Overlay District. Damage to the Town provided receptacles outside of normal wear and tear could be assessed to the resident up to the full replacement cost. The Town may require that all new construction provide identical mail receptacles to those provided by the Town. (Added 02-09-2009)

SECTION 504 Viewshed Development Guideline

The intent of the Viewshed Development Guidelines is to preserve the scenic beauty and natural environment of Banner Elk's hillside areas vital to preservation of a high quality of life, preservation of our natural heritage and continued development that is critical to the economic future of the Citizens of Banner Elk.

SECTION 504.1
All land development and construction clearly visible from section of NC Highways 184 and or 194 within a Viewshed area. Section 504 shall apply to all development within the Viewshed area taking place after the adoption of this amendment, including single family residences.

SECTION 504.2
The Zoning Administrator or his/her designee shall make an on-site inspection to determine if the development, as proposed, can be seen during any season of the year from major traffic corridors. The Zoning Administrator's determination may be appealed to the Board of Adjustments in accordance with Section 1110 of the Zoning Ordinance.

SECTION 504.3
Person developing property in the Viewshed shall strive to preserve foliage and trees on the property with a goal of minimizing the visual impact of the development from the

major corridors. Clearing cutting is prohibited, however considerations shall be given toward ensuring the safety of the structure to be constructed.

SECTION 504.4
All development in the Viewshed shall include a plan for landscape buffering, in the line of sight of the major corridor, to reduce the extent, reasonably possible, of the visual impact of the development from the major corridors. Such plans, in the case of the construction of a single family home, need not be" formal" or prepared by a landscape profession, but must be in writing sufficiently detailed to allow the Administrator to know what is planned.

SECTION 504.5
All development along ridgelines must be designed in an effort to reasonably minimizes the visual impact of such development as seen from the major traffic corridors. To this end, the Zoning Administrator may suggest a redesign of a site development plan or may require specific landscape buffering, such as trees and other plant material, to be installed. In spirit with the Viewshed Development Guideline no structure shall make a silhouette or stand out against the sky on the ridges, as visible from the major traffic corridors.

SECTION 600 SIGNS

The purpose of this section is to encourage the effective use of signs as a means of communication for businesses and residents in Banner Elk, while maintaining a pedestrian scale and enhancing the aesthetics of our environment. The intentions are to prevent obtrusive signage that will negatively impact the Town's streetscape; to improve pedestrian traffic and safety; and, to minimize the possible adverse effects of signs on nearby public and private property.

SECTION 600.1 Sign Materials

Signs should be designed to have minimum detrimental impact on the environment. Material and craftsmanship should be in harmony with the natural and mountain character of the surroundings. As a quick summary, you may refer to items (a) and (b) below. For more complete details refer to Sections 603 through 606. (Amended 12/21/2010)

(a) ALLOWED:

- *Colors provided in Section 600.2 (gold leaf lettering is allowed)*
- *Sandblasted (minimum ¼ depth)*
- *Hand carved signs*
- *Routed signs*
- *Supports constructed from rock, brick, or wood posts (Amended 05-13-13)*
- *Ground signs with incorporated landscaping*
- *Attracting direction to business conducted on the premises upon which the sign is displayed*
- *Day glow or reflective signage is permitted for addressing and emergency purposes*
- *Neon signs that display open and/or closed only*
- *Signs in the Heritage Overlay District shall be reviewed and approved by the Architectural Review Committee*

(b) PROHIBITED:

- *Signs that do not advertise or directly support businesses in Banner Elk's Zoning jurisdiction (Added 10-10-11)*
- *Off-premise signs including billboards, except where permitted by Table 608-3*
- *Portable signs*
- *Directly/Internally illuminated signs*
- *Flashing or moving signs*
- *Fluorescent colors*
- *Roof signs*
- *Sign faces with an aluminum, vinyl, or similar material*
- *High gloss finishes*
- *Day-glow and fluorescent colors (except for as permitted in 600.1 (a)*

SECTION 600.2 Sign Colors

Colors shall blend in well with the natural surroundings. The Banner Elk Color Chart shall serve as a guideline. The color chart can be found at www.oldecenturycolors.com. (Added 10-10-11) Should the color for repainting match the existing, then no permit will be required, unless the colors are out of compliance. Accent color(s) may be allowed with no greater than 2% of the overall sign calculated for the accent color(s) and with prior approval from the Zoning Administrator.

SECTION 601 Applicability.

a) A sign may be erected, placed, established, painted, created, or maintained in the Town only in conformance with the standards, procedures, exemptions, and other requirements of this section. The effect of this ordinance is more specifically set forth, herein:

- To establish a permit system for an allowable variety of signs in commercial districts, and a limited variety of signs in other districts, subject to the standards and permit procedures of this ordinance;
- To enhance the Town's ability to attract sources of economic development and growth, while protecting the beauty and unique character of Banner Elk and enhancing the aesthetic environment of the Town by eliminating visual blight (added 08-08-11);
- To allow certain signs that are small and unobtrusive, and incidental to the principal use of the respective lots on which they are located, subject to the substantive requirements of this article, but without the a requirement for permits;
- To minimize the possible adverse effect of signs on nearby public and private property (added 08-08-11);
- To provide for temporary signs for a limited timeframe and under limited circumstances;
- To prohibit all signs not expressly permitted by this article;
- To promote public safety, welfare, convenience and enjoyment of travel and the free flow of traffic within the Town (added 08-08-11);
- To provide for the enforcement of the provisions of this ordinance.

b) Alteration of the Sign Face. Repainting of a sign face for maintenance purposes, and not including changes to color or message shall be considered maintenance or repair and a sign permit is not required. However, any physical alteration of the sign frame or supporting structure shall be considered the same as construction of a new sign and shall require a sign permit and conformance with the standards established in this section.

SECTION 602 Definitions.

Words and phrases used in this article shall have the meanings set forth below. Words and phrases not defined in this article but defined in Section 2 of the Zoning Ordinance shall be given the meanings set forth in such article. (Last amended 08-08-11)

A-Frame Sign (Sandwich board) - A portable sign comprised of two separate panels or faces joined at the top and spread apart at the bottom to form the base on which the sign stands.

Animation - The movement, or the optical illusion of movement of any part of the sign structure, design or pictorial segment including the movement of any illumination or the flashing, scintillating or varying of light intensity. The automatic changing of all or any part of the facing of a sign shall be considered to be animation. Also included in this definition are signs having "chasing action" which is the action of a row of lights commonly used to create the appearance of motion.

Artwork – Integral decorative or architectural feature of a building or attached to a building or works of art painted on a surface; so long as such features or works do not contain trademarks, moving parts or lights, or any commercial reference or messages (added 08-08-11).

Balloon - A nonporous bag of material filled with heated or non-heated air or gas so as to rise or float in the atmosphere.

Banner, Permanent – Banners, supported by brackets, that have characters, letters, illustrations, ornamentations, symbols, color or visual representation applied to cloth fabric or like kind of malleable material. Used to promote cultural or historical events and the promotion of approved institutions within the Town of Banner Elk (added 08-08-11).

Building Front - The linear length of building facing a street right-of-way or in the case of a planned unit development, facing a legal private access road.

Building Marker – Any sign indicating the name of a building, date and incidental information about its construction, which sign is cut into a masonry surface or made of bronze or other permanent material.

Building Sign – Any sign attached to any part of a building, as contrasted to a freestanding sign.

Canopy - A protective cover over a door, entrance, window, or outdoor service area, which is attached to or cantilevered from a building; also known as an awning. Permanent marquees and porticoes that are designed as a continuous or integral part of the structure shall not be considered canopies.

Canopy Sign - A sign that is suspended from, attached to, support from, applied to, or constructed as part of a canopy or awning. A marquee is not a canopy.

Changeable Copy Sign - A sign on which message copy is changed manually in the field through attachment of letters, numbers, symbols and other similar characters of changeable pictorial panels; also known as a reader-board sign. In no case shall the changeable copy portion exceed fifty percent (50%) of the total sign area (amended 08-08-11).

Combined Development - Two or more establishments or businesses occupying a common building or adjoining buildings which are designed and developed in a coordinated manner and which share parking, driveways and other common facilities. Must be approved by the Board of Adjustment as part of the original Conditional Use Permit. (Amended 10-10-11)

Commercial Message - Any sign wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.

Directional Signs – An on-premise sign giving directions, instructions, or facility information. The signs may contain the name or logo of the establishment, but no advertising copy. Examples include “parking” or “exit” signs (added 08-08-11).

Drive-Through Window Sign – An attached or freestanding sign listing choices and processes. The sign allows communication between the consumer and business.

Limited to no more than two (2) signs and should not be seen from a road, only viewable to those waiting in line at a drive-through (added 08-08-11).

Electronic Message Board - A sign that displays messages, such as time and temperature, or advertising, in alternating light cycles.

Facade - The entire building walls, including wall faces, parapets, fascia, windows, doors, canopy and visible roof structures of one complete elevation.

Facsimile Sign - An oversized, three-dimensional object, such as a chicken bucket, lettering, automobile (or automobile part), or human figure, which may or may not contain advertising matter, and may or may not contain information about products sold on the premises, and is located in such a manner as to attract attention.

Fence Sign - A sign mounted on, attached to, or constructed as part of a fence or similar structure.

Festoon Lighting - A string of outdoor lights suspended between two or more points.

Flag - Any fabric, banner or bunting containing distinctive colors, patterns, or symbols, used as a symbol of government, political subdivision, or other entity. The height of any flagpole cannot exceed the 35-foot height restriction (amended 08-08-11).

Flag, Corporate – a flag that contains the official registered corporate identity of a corporation in a recognizable logo or word-mark form. Corporate colors must be in compliance with the color chart or modified (added 08-08-11).

Flag, Ornamental – Any fabric containing distinctive colors or patterns that is used as an ornamental residential decoration. No commercial advertising is allowed. Size is restricted to no greater than 3 feet by 5 feet and should be mounted on a small pole attached to the house or a fence. If placed on a fence, the flag cannot protrude into the road or right-of-way. Quantity limited to two (2) per residence (added 08-08-11).

Freestanding Sign – A sign supported by a sign structure placed in the ground that is wholly independent of any building, fence, vehicle, or object other than the sign structure for support (added 08-08-11).

Gasoline Pump Sign – Signs which are normally associated with the sale of gasoline, including the price, self-service, etc. and information contained on the pump. Any additional promotional signage must remain inside the station (added 08-08-11).

Government Entity – The Town of Banner Elk and its departments, Avery County and its departments, the State of North Carolina and its departments, and the United States of America and its departments (added 08-08-11).

Government Sign – Any temporary or permanent sign erected and maintained by a governmental entity (added 08-08-11).

Grade - The uppermost surface directly below the sign or immediately adjacent to the support. Where the uppermost surface has been artificially raised for landscaping or

other purposes, grade shall be measured from the level of the nearest Town or state street curb.

Ground Sign - A free standing sign with its base or its supports mounted directly to the ground. For the purposes of this ordinance, a ground sign shall be defined as two sign faces that are located back-to-back on a single structure. The maximum sign area as set forth in Tables 608-1, 608-2 and 608-3 shall be applied to each of the sign faces independently.

Holiday Decorations - Displays erected on a seasonal basis in observance of religious, national or state holidays, which are not intended to be permanent in nature, and which contain no advertising material or commercial message.

Identification sign – A sign whose copy is limited to the name and address of a building, institution, person and/or activity or occupation being identified (added 08-08-11).

Illumination, Indirect - Illumination that reflects light from an artificial light source intentionally directed upon a surface. This shall also include silhouettes of letters or symbols placed before a background of reflected light.

Illumination, Internal - Illumination provided from a source located inside or within the face of the sign.

Individual Establishment or Business - A single establishment or business occupying one or more buildings and located on an individual parcel of land, designed to function as a single enterprise.

Inflatable Signs - A three-dimensional object, filled with air or gas, and located in such a manner as to attract attention.

Informational Sign – A sign, emblem or decal informing the public of goods, facilities or services available on the premises that cannot be seen from the road, e.g. credit cards, "ATM" or a sign indicating hours of operation (added 08-08-11).

Lettering – Building letters that are mounted to the side of a building may be allowed in order to identify the business at that location. Lettering can be made of high-density urethane or wood. Maximum allowable area for lettering is 1 square foot per linear foot of building wall the lettering is attached to and not to exceed 50 square feet for all zoning districts and 32 square feet for all residential zoning districts (added 08-08-11).

Logo – A graphic mark or emblem commonly used by commercial enterprises, organizations and even individuals to aid and promote instant public recognition. Logos are either purely graphic (symbols/icons) or are composed of the name of the organization. An example of a word-mark: "IBM" (added 08-08-11).

Maintenance – The cleaning, painting, repair, or replacement of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign (added 08-08-11).

Mansard - A steeply pitched roof, pitched at such an angle as to resemble a building wall.

Monument Sign – A ground sign that is mounted generally flush with the surrounding grade. It may not be attached to a pole or pylon, nor raised by mounting on a man-made berm, wall, or similar structure. Supporting elements may not exceed 24 inches in height and are included in the measurement of sign height.

Neon Signs – Luminous tube sign that contains neon or other gasses at a low pressure. Refer to Section 501.1 Colored Lighting (added 09-14-2009)

Nonconforming Sign – A sign that was legally erected, but that does not comply with the subsequently enacted sign regulations and restrictions (added 08-08-11).

Off-Premise Sign - A sign identifying/advertising and/or directing the public to a business, or merchandise, or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured and/or furnished at a place other than the real property on which said sign is located. This definition shall include Outdoor Advertising or "Billboard" signs.

On-Premise Sign - A sign or display that identifies or communicates a message related to the activity conducted, the service offered, or the commodity sold on the premises where the sign is located.

Outdoor Advertising (Billboard) Signs - A permanently installed sign identifying/advertising and/or directing the public to a business, or merchandise, or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured and/or furnished at a place other than the real property on which said sign is located.

Panel - The primary surface of a sign that carries the identifying/advertising message.

Pennant - Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

Political Sign - A sign advertising a candidate or issue to be voted upon on a specific election day, which is attached to the ground by a stake or stakes, but which excludes any other sign defined as a portable sign.

Portable Sign - Any sign designed or intended to be readily relocated whether or not it is permanently attached to a building, structure or on the ground. Portable signs also include signs on wheels or on portable structures such as trailers, tent signs, A-frame or T-shaped signs, attached to a person and/or normal advertising placed on motor vehicles which are not used regularly and are placed in such a manner as to attract attention (amended 08-08-11).

Projecting Sign - A sign which projects from a structure into a vehicular or pedestrian access way, more than one foot from the surface on which it is mounted, and is mounted usually, but not always, at right angles to the building.

Public Right-of-Way – The land or interest therein acquired for or devoted to transportation purposes by the Town of Banner Elk or the State of North Carolina Department of Transportation (added 08-08-11).

QR Code – The use of QR Codes (Quick Response Codes) will be allowed on a smooth flat surface, as an addition to an existing sign or as an attachment to an existing sign, to be no greater than 4" x 4". (Added 10-08-2012)

Roof Sign – Any sign erected and constructed wholly on and over the roof of a building, supported by the roof, and extending vertically above the highest portion of the roof.

Real Estate Signs – Signs advertising the sale, rental, and/or lease of the property on which said sign is located. Signs must be mounted on a wooden pole that shall not exceed 4" x 4" or a one-inch channel iron post or similar material, if approved by the Zoning Administrator. The sign shall be removed within seven (7) days of the sale, rental or lease of the property. Construction of said sign shall be in compliance with Section 605 (a). See Tables 608-1 and 608-2 for size and placement. One (1) info tube shall be allowed per sign and must be attached to the bottom of the sign. (Added 12/21/2010 amended 08-08-11).

Roof Sign – Any sign erected and constructed wholly on and over the roof of a building, supported by the roof, and extending vertically above the highest portion of the roof.

Sign - Any display of letters, words, numbers, symbols, emblems, objects, pictures, or any combination thereof made visible for the purpose of attracting attention or of making something known, whether such display is made on, attached to, or constructed as part of a building, structure, vehicle, or object.

Snipe Sign – A temporary sign or poster affixed to a tree, public utility pole, fence, etc…(added 08-08-11).

Spinner - A wind activated, propeller-type device, which may or may not be attached to advertising copy.

Streamer - A string or strip of miniature or full size pennants or flags that may or may not be suspended between two points.

T-Shaped Sign - A portable sign comprised of one or more panels or faces joined at the bottom to a perpendicular base on which the sign stands.

Temporary, Agricultural Product Signs – Signs advertising the availability of agricultural or horticultural products. These signs are considered temporary in nature dependent on the harvest season of the product. (Added 9-14-09)

Temporary, Banner - A sign or outside advertising display having the character, letters, illustrations, ornamentations, symbol, color or visual representation applied to cloth, paper, vinyl, fabric, plastic, or like kind of malleable material with or without frame that advertises a limited event (i.e. grand opening or special sale). National flags, state or municipal flags, or the official flag of any nonprofit institution shall not be considered banners. Limited to thirty (30) days in a six-month period (amended 08-08-11).

Temporary, Open House Sign – One-day temporary signs used only for the hours the Realtor is on site and for the purpose of showing the property for sale, lease or rent. One may be placed on a main thoroughfare with "Open House" and an arrow; a second sign may be placed on the actual property being shown that reads "Open House" (added 08-08-11).

Temporary, Seasonal Business Sign – A sign advertising a seasonal business shall be allowed for no longer than 120 days. The sign must meet the ordinance and can be attached to a permanent freestanding sign or canopy sign. Only one allowed per business and shall not exceed 24 square feet (added 08-08-11).

Temporary Sign - A sign advertising a special event and not intended to be displayed on a permanent basis. Cannot exceed 2 square feet. Temporary Signs have a time limit for how long they will be erected stated on the sign permit application and approved by the Zoning Administrator. (Amended 10/10/2010)

Vehicle Sign – Signs that are transported in the back of a vehicle, trailer or signs that compose more than 50% of the exterior of the surface of a vehicle and is purposely left parked in a location other than the actual business in order to advertise their business. See Portable Sign. (Amended 08-08-11).

Vision Obstruction – The placement of a sign that would limit a full view of both pedestrian and vehicular traffic within the sight triangle. See Section 402.9. (Amended 10-10-11).

Wall Sign - A sign affixed on and parallel to the exterior wall of any building and projecting not more than 12 inches from the wall. Signs mounted on porticoes shall be considered as wall signs.

Window Sign - A sign that is applied to the building glass area located such that the identifying/advertising message, symbol, insignia, visual representation, logotype or any other form that communicates information can be read from off-premise.

Yard or Garage Sale Sign – Signs advertising a "yard sale" or "garage sale" with an arrow indicating the direction of the premise the sale is to be conducted on. The signs cannot be illuminated and are restricted to 4 sq ft of area and cannot exceed 4 feet in height. One on-premise and one off-premise sign with an arrow indicating the direction of the premise the sale is to be conducted on shall be allowed per property. No neon colored poster board allowed. (Amended 10-10-11)

**Deleted Pylon (or Pole Sign definition 10-10-2011.)

SECTION 603 General Regulation of Signs
Measurement of Sign Area and Height. The following guidelines shall control the computation of the sign area and height: (amended 08-08-11).

(a) Computation of Area of Single-Faced Signs: The area of a sign face shall be considered to be that of the smallest 2-dimensional panels which encompasses all lettering, wording, design, or symbols together with any background difference

in the balance of the wall on which it is located, if such background is designed as an integral part of and obviously related to the sign.

(b) Computation of the Area of a Double-Sided Sign: The area of each panel of a sign that is designed to be seen from both sides shall be calculated independently. (Amended 10-10-11)

(c) Supports: The supports, which affix a sign to the ground or to a building, shall not be considered in the area of the sign unless supports are obviously designed to be an integral part of the sign, as defined by these regulations. Wooden ground supports shall be a minimum of 4" x 4". Temporary signs may use one 2" x 2" channel iron support.

(d) Computation of Height: The height of a sign shall be measured from the highest point of a sign or its support; whichever is greater, to the base of the sign at the highest adjacent grade.

(e) Copy Area: The area of the sign face that is covered by text or symbols. No more than 50% of the sign area shall be covered with text or symbols, with the exception of real estate signs.

SECTION 604 Reserved for Future Use.

SECTION 605 Design, Construction and Maintenance.
All signs shall be designed, constructed, and maintained in good structural condition according to applicable provisions of the North Carolina State Building Code, all applicable electrical codes and this ordinance. (Amended 08-08-11)

(a) Technique: All signs shall be sandblasted, hand carved or routed.

(b) Materials: A minimum of ¼ inch depth; made of wood or like material manufactured to replicate wood, with craftsmanship to be in harmony with the natural and mountain character of the surroundings. The approved Banner Elk Color Chart shall serve as a guideline for the acceptable colors. Any color outside this color chart will need to be approved by the Planning Board. Temporary materials may be allowed for temporary signs with prior approval from the Zoning Administrator.

(c) Landscaping: All ground mounted signs shall have incorporated landscaping which is consistent with the Banner Elk Streetscape Format with support being constructed from rock, wood posts or other natural materials being located outside of road rights-of-way.

(d) Locations: Except for banners, flags, temporary signs, and window signs conforming in all respects with the requirements of this ordinances, all signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or another structure by direct attachment. Signs shall not be placed in the road right-of-way and shall be kept out of the sight triangle (See 402.9 for an illustration of sight triangle).

(e) Design Area: 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.

(f) Maintenance: The trimming, removal or addition of trees, shrubs, or other vegetation located within the public right-of-way or within designated streetscape or greenway areas

shall be coordinated efforts between the Town and the adjoining property owner. The final approval shall be the domain of the Town. (Amended 10-10-11)

(g) Lighting: Illuminated signs shall be by a shielded indirect white or amber light of reasonable intensity and directed solely at the sign face. Internally lit signs are not allowed.

(h) Vision Obstruction: No sign shall create a vision obstruction onto a public right-of-way, including alleys and sidewalks, except for government signs. All signs shall be set back out of the right-of-way and the sight triangle as addressed in Section 402.9.

(i) Changeable Copy: In no case shall the changeable copy area of a sign or marquee exceed fifty percent (50%) of the total sign area.

(j) Projecting, Suspending, and/or Canopy Signs: Projecting, Suspending, and/or Canopy signs may be no less than eight feet at their lowest point above any sidewalk or walkway.

SECTION 606 Prohibited Signs.
The following signs are prohibited within the Town of Banner Elk and its ETJ:

(a) Signs that are similar, or mimic, official highway signs, warning signs, or regulatory devices.

(b) Signs displaying blinking, flashing, or intermittent lights, animation and moving parts or electronically displayed messages, with the exception of LED Reader Board style signs which display the time and temperature.

(c) Portable signs or any fashion of moveable sign

(d) Off-premise signs except those expressly permitted herein

(e) Off-premise Outdoor Advertising signs or billboards.

(f) Facsimile signs

(g) Signs attached to or painted on utility poles, telephone poles, trees, parking meters, bridges and overpasses, rocks, other signs, benches and refuse containers or any other inanimate object.

(h) Roof signs

(i) Pavement markings for purposes other than traffic control

(j) Signs placed within or extending into the right-of-way of Town and state maintained streets and roads, except those erected by a duly constituted government body.

(k) Signs that contain language and/or pictures obscene to the general public in accordance with NCGS 14-190.1.

(l) Signs that advertise an activity or business no longer conducted on the property on which the sign is located, except as addressed in Table 608.3, “Business Relocation Signs”.

(m) Indirect illumination, such as floodlights, erected in such a manner as to cause glare that impairs driver vision on streets or roadways or that causes a nuisance to the occupants of adjoining property.

(n) Signs that obstruct fire escapes, windows, doors or other openings used as a means of egress or as required legal ventilation

(o) Signs containing or consisting of pennants, ribbons, streamers, festoon lighting, balloons (or inflatable signs) or spinners

(p) Directly illuminated signs, with the exception of seasonal holiday decorations without commercial advertising

(q) Signs whose face is composed of vinyl, aluminum or similar materials

(r) Signs that do not conform to the provisions of these regulations

(s) Snipe signs

(t) Signs that do not advertise or promote businesses or the Town of Banner Elk's zoning jurisdiction. (Added 10-10-11)

SECTION 607 Exempt Signs.
The following signs do not require a permit:

(01**)** **Building Marker Signs**. A sign etched into masonry, bronze or similar material on a building.

(02) **Business Identification Sign**. A pedestrian oriented sign attached to a building to identify the tenant within. Such sign shall contain no advertising other than trade name and/or logotype. One sign is permitted per entrance. MAXIMUM SIZE: 6 SQUARE FEET

(03**)** **Construction/Contractor's and Subdivision Project Signs**. Such signs shall be non-illuminated and may be located in any district to identify future tenants, homebuilders, contractors, and architectural or engineering designers during the period of construction. These signs shall be removed no later than seven days after the completion of the project and for Planned Residential Developments one year after final plat approval, whichever comes first. MAXIMUM SIZE: 24 SQUARE FEET TOTAL PER SITE; LOCATED 15 FEET BACK OF STREET AND/OR SIDEWALK. (Amended 07-14-08)

(04) **Directional Signs**. Signs that are located on the premise/property to provide directions. Such signs contain no copy (i.e. company name or logo) other than directional information. No more than two (2) signs per entrance or exit shall be permitted. Max. Size: 4 SF; Max. Height: 4 feet.

(05) **Drive-Through Signs.** Signs that are permitted as either a freestanding or attached wall sign. Such signs may not exceed 28 square feet and should not be visible from the front of the building. No more than two drive-through signs are allowed per location (added 08-08-11)

(06) **Flags**. Flags or insignia of any nation (United States), organization of nations (United Nations), state (North Carolina), county or municipality (Avery County or Banner Elk), any religious (Star of David), civic or fraternal organization (Kiwanis or Lees McRae College Phi Beta Kappa), or any educational or cultural facility and/or any one corporate flag per lot. The total number of flags allowed is three (3) in all zoning districts; except residential. With the exception of flags flown in an official capacity, flags are restricted to no greater than 4' x 6' on a flag pole and 3' x 5' otherwise. Ornamental residential flags are allowed with no more than two (2) per residence and no greater than 3' x 5'. Flagpoles cannot exceed the 35-foot height restriction.

(07) **Government Signs**. Signs posted or authorized by various local, state, and federal agencies in the performance of their duties such as regulatory signs, welcome signs, and traffic signs. Also, Bulletin Boards erected and maintained by the Town of Banner Elk.

(8) **Historical Marker**. An historic marker may be placed on the premise or property for the expressed purpose of signifying the site or an event that occurred on the site as having historical value. The request should be accompanied with a notation of the historical value of the site or the event or person(s) it is representing. Max Size: 16 SF (Added 07-14-08)

(9) **Informational Signs.** Signs displayed for the direction and convenience of the public. Such signs shall not exceed two (2) square feet in area and are to be used to advertise service or function not immediately in view of the public, i.e. "ATM". (amended 10-10-11)

(10) **Legal and Warning Signs**. Signs erected to warn of danger or hazardous conditions such as signs erected by public utility companies or construction companies; signs required for or specifically authorized for a public purpose by any law, statute or ordinance.

(11) **Occupant/Street Number Signs**. Signs affixed to structures, mailboxes, decorative light posts, driveway entrances, etc., which serve to identify the address of the structure or occupant. All such signs shall be placed in such a manner as to be visible from the street. MAXIMUM SIZE: 2 SQUARE FEET.

(12) **Political Signs**. Political signs may not be located within a public street right-of-way and in no case closer than three (3) feet from the edge of the pavement, and shall not be attached to trees or utility poles. Signs may be displayed on the 30th day before the beginning date of "onestop" early voting under GS§ 163-227.2 and ending on the 10th day after the primary or election day. Permittee must obtain permission from any owner of a residence, business, or religious institution fronting the right-of-way. No sign shall obscure motorist visibility of an intersection or replace another sign. Max. Size: 16 SF; No more than 4 signs per lot; not to exceed aggregate of 64 SF. (Amended 02-11-2013)

(13) **Temporary Holiday Decorations**. Temporary decorations or displays, when such are clearly incidental to and are customarily and commonly associated with any national, local or religious holiday/celebration.

(14) **Window Displays**. Merchandise, pictures or models of products or services that are incorporated as an integral part of a window display.

(15) **Window Signs**. Signs temporarily attached or temporarily painted to a window or door, announcing sale or special features, provided they do not exceed 50% of the area of said window or door. Signs that exceed 50% of the area of said window shall be treated as wall signs. Temporary signs shall be removed within 2-days after the termination of such sale or special event.

(Section on requirement of Planning Board to review all signs was deleted on 4-12-10 by adoption of deletion from Town Council.)

Table 608-1 Standards for Permanent Signs in R-1, R-1-U, and R-2.

Type of sign	MAXIMUM SIZE OF SIGN	MAXIMUM NO. OF SIGNS	MAXIMUM HEIGHT	LOCATION OF SIGNS
Free Standing • *Churches, schools, public buildings* • *Parks, community centers* • *Nursing homes, residential care facilities* • *Planned Residential Development*	32sf 16sf 32sf 32sf	1 per frontage 1 per frontage 1 per frontage 1 per frontage	4’	Outside of street right-of-way and sight triangle**
Real Estate Signs *Signs that advertise the sale/rental or lease of the property on which said sign is located. Such signs may not be illuminated and must be placed on the actual lot for sale. (Amended 12/13/2010)*	2sf	1 per street frontage	3’	Outside of street right-of-way and sight triangle**
Open House Signs *One-day temporary open house signs used only for the hours the Realtor is on site and for the purpose of showing the property for sale, lease or rent.*	2sf	1 on a major thoroughfare and one on the actual property being shown.	4’	Outside of street right-of-way and sight triangle**
Wall Signs • *Churches, schools, public buildings, nursing homes* • *Home Occupations, or other professional uses allowed in residential districts* ** For illustration see 402.9	1sf per linear foot of building wall the sign is attached to and not to exceed 32 square feet. 4sf	1 per building wall with frontage 1	Not to extend above vertical wall	___ ___
Free Standing Project/Construction Sign ***Planned Residential Development*** ***** For Illustration see 402.9 Parking***	24 square feet for tracts exceeding three acres or advertising lots for sale in approved subdivision	1 per PRD allowed for up to one year from final plat approval with renewal option by Architectural Review Committee	4’	Outside of street right of way and sight triangle **

Table 608-2A Standards for Permanent Signs in C-2, M-E*, and M-1 (to include all signs also permitted in Table 608-1)

Type of sign	MAXIMUM SIZE OF SIGN	MAXIMUM NO. OF SIGNS	MAXIMUM HEIGHT	LOCATION OF SIGNS
Freestanding/Ground Signs *Individual businesses may not exceed a combined total of 48 square feet.*	48 square feet	1 per street frontage	14’	Outside of street right-of-way and sight triangle**
Wall Signs	1 square foot per linear foot of building the sign is attached to, up to a maximum of 50sf.	1 per building wall that has frontage on a public street or parking lot.	Not to extend above the vertical wall or roof line	__
Real Estate Signs *Signs that advertise the sale/rental or lease of the property on which said sign is located. Such signs may not be illuminated and must be placed on the actual lot. (Amended 12/21/2010)*	3sf	1 per street frontage and no illumination will be allowed	4’	Outside of street right-of-way and sight triangle**
Projecting/Suspending/ Canopy Signs	8sf	1	__	Vertical clearance from sidewalk and/or Public Street is a minimum of 8’
Combined development *(Multiple units in one or a group of buildings)*	Not to exceed an additional 50% of the area allowed for a free-standing sign or a total of 72 sf, whichever is greater.	1	14’	Outside of street right-of-way and sight triangle**

*Signage in addition to that listed above is permitted in M-E district as a conditional use, when signs are needed to identify the name of more than one structure or use, or specific signs are needed for public health and safety. HOD areas require special permitting. **For illustration see Section 402.9.

Table 608-2B Standards for Permanent Signs in C-1, C-1P, M-E*, and HOD (to include all signs also permitted in Table 608-1)

Type of sign	**MAXIMUM SIZE OF SIGN**	**MAXIMUM NO. OF SIGNS**	**MAXIMUM HEIGHT**	**LOCATION OF SIGNS**
Freestanding/Ground Signs *Individual businesses may not exceed a combined total of 32square feet.*	32 square feet	1 per street frontage	14’	Outside of street right-of-way and sight triangle**
Wall Signs	1 square foot per linear foot of building the sign is attached to, up to a maximum of 35 sf.	1 per building wall that has frontage on a public street or parking lot.	Not to extend above the vertical wall or roof line	—
Real Estate Signs *Signs that advertise the sale/rental or lease of the property on which said sign is located. Such signs may not be illuminated and must be placed on the actual lot. (Amended 12/21/2010)*	3sf	1 per street frontage and no illumination will be allowed	4’	Outside of street right-of-way and sight triangle**
Projecting/Suspending/ Canopy Signs	8sf	1	—	Vertical clearance from sidewalk and/or public street is a minimum of 8’
Individual business	8sf, plus 2sf per additional tenant, up to 32sf total	1	—	Outside of street right-of-way and sight triangle**
Combined development *(Multiple units in one or a group of buildings with multiple entrances designed for this purpose)*	*Not to exceed an additional 50% of the area allowed for a free-standing sign or 48 sf total.*	1	14’	Outside of street right-of-way and sight triangle**

*Signage in addition to that listed above is permitted in M-E district as a conditional use, when signs are needed to identify the name of more than one structure or use, or specific signs are needed for public health and safety. HOD areas require special permitting. **For illustration see Section 402.9.

Table 608-3 Standards for Temporary or Incidental Signs Requiring a Permit

Zoning District	**MAXIMUM SIZE OF SIGN**	**MAXIMUM NO. OF SIGNS**	**MAXIMUM HEIGHT**	**LOCATION OF SIGNS**
R-1, R-1-U				
Temporary Agricultural Product Signs	4sf	2 per property	4'	Outside of street right-of-way and sight triangle**
Off-Premise Directional Signs[1]	4sf	3 per business/ activity	4'	
Security and Warning Signs[2]	2sf			
Yard or Garage Sale Sign. *One on-premise and one off-premise. Cannot be illuminated and must have owners name and phone number hand written in letters no taller than 3 inches on back of sign. (Added 09-14-09)*	4sf	2	4'	Must be kept 4' off the edge of the pavement.
Open House Signs *One-day temporary open house signs used only for the hours the Realtor is on site and for the purpose of showing the property for sale, lease or rent.*	2sf	1 on a major thoroughfare and one on the actual property being shown.	4'	Outside of street right-of-way and sight triangle**
C-1, C-1P, C-2, M-E and M-1				
Temporary Banners[3]	24sf	1	4'	Outside of street right-of-way and sight triangle**
Temporary Seasonal Business Signs[4]	24sf	1	(endnote 4)	
Directory Signs for PCDs	24sf, but not to exceed the size of the freestanding sign to which it is attached	1		"
Off-Premise Directional and Business Relocation Signs[5]*Temporary Signs*	4sf	1	4"	"
	2sf	no more than 3	4'Not to extend above the vertical wall or roof line	Within ten feet of main entrance of principal building
Menu Wall Signs	6sf	1		

[1]Off-premise directional signs shall only be used by places of business and institution; which are located in Banner Elk's zoning jurisdiction and said locations do not have direct frontage from NC 184 and NC 194. (Amended 06-11-2007)
[2]On-premise signs which designate health or safety warnings as required by law, and security signs which regulate the use of property (i.e. "no trespassing," "no hunting," "no soliciting") or provide other warnings of danger on the premises. Larger signs are permitted where required by law or statute provided the signs shall not exceed the maximum number or size required by said law or statute.
[3]Permitted for opening and other special events for a maximum of thirty (30) days during a six month period
[4]Sign shall be attached to or suspended from an existing conforming freestanding sign; the sign shall not extend above the permitted height of the existing sign, nor placed on top of the existing sign. Additions shall not extend below the permitted 8' vertical clearance over streets or sidewalks. Permit shall be valid for a period of 120 days. Only one sign shall be permitted at any one time. (Amended 10-16-2007)
[5] Off-premise directional signs shall only be used by places of business and institution; which are located in Banner Elk's zoning jurisdiction and said locations do not have direct frontage from NC 184 and NC 194. Directional signs are limited to one per entity/activity, indirect illumination, and written permission of the property owner on which the sign is located is required for permit. Business Relocations: A sign may be placed at the original location giving directions to the new location provided the new location is within Banner Elk's Zoning Jurisdiction. If new location is not in Banner Elk's zoning jurisdiction then on the City/Town location may be used for a new location information. The sign may be placed at the original location for up to 30 days; the Administrator may consider extensions if the relocation is due to casualty loss. (Amended 06-11-2007)

SECTION 609 Non-Commercial Messages.
Any sign, display, or device allowed under this section may contain, in lieu of any other copy, any otherwise lawful non-commercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with size, height, lighting, and spacing requirements of this section.

SECTION 610 Community Events Advertisements.
Advertisements for community events may be placed upon a facility designated by the Town. These advertisements shall be in the form of a banner; a maximum of 24 square feet. The facility shall provide room for only one (1) advertisement at any time per set of posts. An advertisement shall be displayed for no longer than seven (7) consecutive days, and shall be displayed only one time within a six (6) month period. If an event is ongoing through several months, the Town can decide how long the banner can remain as long as other events can have access as needed. Any person or group using this facility shall have the burden of removing the banner on the business day directly following the event. Unclaimed banners shall become the property of the Town of Banner Elk. Placement of banners upon the community facility shall be at the discretion of the Zoning Administrator. Permit is required.

SECTION 611 Non-conforming Signs
(a) Limitations to Continued Use of Non-Conforming Signs. Subject to the following schedule, a non-conforming sign may be continued and shall be maintained in good condition, but it shall not be:
  (i) Changed to another non-conforming sign;
  (ii) Structurally altered as to prolong the life of the sign;
  (iii) Expanded;
  (iv) Reestablished after discontinuance for ninety (90) days; or
  (v) Reestablished after damage, destruction, or deterioration if estimated expense of reconstruction exceeds fifty percent (50%) of the appraised replacement cost.

(b) Removal of all non-conforming signs. All signs already in place as of October 16, 2007 that do not conform with the regulations of this ordinance shall be brought into conformance with this ordinance or shall be removed within seven (7) years of **October 16, 2007**. Any sign placed after October 16, 2007 that becomes non-conforming as a result of any future amendment or rezoning shall have seven (7)

years from the effective date of said amendment or rezoning to bring the sign into conformance with the ordinance or be removed.

(c) Publicly owned signs. All publicly owned signs that are erected upon any public street, public right-of-way, or public property shall be approved by Town Council and they shall not come under the context of this ordinance.

(d) Impoundment of Signs. The Town shall have the authority to remove and impound any sign, without further notice, where such signs are not in compliance with this Ordinance as per Section 606, Prohibited Signs, and the sign is placed in any street, state road or highway right-of-way or other right-of-way, attached to trees, fence posts, telephone and/or utility poles, and/or any other than natural features.

(i) The Town shall impound such signs for a period of ten (10) days. The owner of a sign impounded may recover it prior to the expiration of the ten-day impoundment period. In the event a sign is not claimed within the ten (10) days of its impoundment, the Town shall have the authority to dispose of such sign.

(ii) In the event a violating sign requires special resources for its removal and impoundment, the Town, or independent contractor secured by the Town, shall remove the sign and the resulting charges shall be assessed and the resulting charges shall be assessed to the owner and/or lessee. (Amended 7-13-09)

SECTION 612 Penalties

Each sign that is illegally displayed shall be subject to a civil penalty of $25.00 per sign per day for each day that the offense continues, plus court costs and attorney fees. The Town shall have the authority to remove and impound any sign, without further notice, where any sign is creating a public safety hazard through placement in any street, state road or highway, right-of-way, or other right-of-way, attached to trees, other natural features, fence posts, telephone and/or utility poles. The Town will attempt to notify the sign owners by phone and/or first-class mail that the signs may be picked up after payment of the associated penalties within ten (10) business days at Town Hall before the sign(s) are destroyed. The Town will assess a $10.00 pick-up fee for each sign the town removes. The Town shall impound such signs for a period of ten (10) days. The owner of a sign impounded may recover it prior to the expiration of the ten-day impoundment period upon paying all penalties assessed. In the event a sign is not claimed within ten (10) days of its impoundment, the Town shall have the authority to dispose of such sign. In the event a violating sign requires special resources for its removal and impoundment, the Town, or independent contractor secured by the Town, shall remove the sign and the resulting charges shall be assessed to the owner and/or lessee. (Added 08-08-11)

Section 613. Violation of Section 600 of the Town of Banner Elk Zoning Ordinance shall not be deemed a misdemeanor. (Added 08-08-11)

SECTION 700 LANDSCAPING AND SIDEWALKS

The purpose of this section is to establish landscaping regulations for future multifamily, commercial, planned residential development, and industrial development in the Town of Banner Elk. There are great benefits to preserving our existing trees and replacing diseased ones. (Amended 12-08-08)

It is the intent of this section:

1. To enhance the natural beauty and environment and quality of life for the citizens of Banner Elk and also protect the public health, safety and general welfare;
2. To prevent and reduce soil erosion and sedimentation;
3. To reduce the hazards of flooding and stormwater runoff;
4. To lessen air pollution and increase dust filtration;
5. To provide shade and thereby reduce heat levels associated with pavement;
6. To increase natural buffers and thereby reduce the effects of wind and noise;
7. To strengthen and protect property values; and
8. To improve community appearance.

SECTION 701 Applicability

A landscaping plan, prepared by a registered architect, landscape architect or professional landscaper, incorporating the requirements of this section shall be submitted with an application for a certificate of compliance (zoning permit) for any permitted or conditional use. The landscape plan shall be reviewed and approved by the Banner Elk Architectural Review Committee.

The landscaping plan shall include the following:

Existing and proposed landscaping, including but not limited to,

(1) the location, species, and height of new trees and shrubbery[1];
- (a) The location and dimensions of planting areas;
- (b) The dimensions of the entire parking or paved area;
- (c) The location and height of fences or walls.

(2) The number, location, species and size of existing trees between the principal building and the public street right-of-way which are to be maintained and preserved for credit; the size is to be measured by taking the circumference of the tree at approximately four and one-half feet (4 ½) above the grade (dbh).
- (a) The location and description of any barriers to be erected to protect any vegetation from damage both during and after construction.
- (b) Clear edging shall be provided between landscaped areas and pedestrian/vehicle areas.

SECTION 702 Street Yard

A planting yard comprised of a strip of land containing landscaping materials located along and parallel to a public street, or streets. A street yard is defined as a planting yard comprised of a strip of land containing landscaping materials located along and

2.1.1.1.1.1. [1] Shade trees shall be a minimum of 2-2 ½" caliper and 8 to 10' in height at the time of planting; ornamental trees shall be a minimum of 1-1 ½" caliper at the time of planting. Shrubs shall be a minimum of 18" in height at the time of planting.

parallel to a public street, or streets. The street yard is located on private property and not within the street right-of-way. Street yards may have a varying minimum width as specified in this section; however, no street tree can be planted more than 35 feet from the edge of the right-of-way to count as a street tree. The minimum depth of the street yard from the edge of the street right-of-way cannot be less than seven feet; or not less than five from the edge of the sidewalk. The average length of the street yard, running parallel to the right-of-way, shall be at least ten feet.

For street yards, one (1) large shade tree (expected height of 35 feet at maturity) is required for every fifty (50) feet of linear street frontage of the lot minus the width of driveways and access points. Trees do not need to be spaced evenly. They may be clustered with a minimum spacing of 15 feet and a maximum spacing of 75 feet. Ornamental trees (expected height of 25 feet upon maturity) may be used in place of shade trees at the rate of one (1) for every thirty (30) feet. Due to above ground utilities; the Town may require the use of ornamental trees in place of large shade trees.

Inclusion of existing trees in the landscape design is encouraged. Shrubbery, ground cover, and other planting materials shall be used to compliment the tree planting. No area of the street yard may be exposed soil, but instead shall be covered with vegetation, whether grass or shrubbery. The only area that shall remain uncovered is the six-foot radius surrounding the trunk of any tree; however, this area shall be mulched.

SECTION 703 Parking Lot Yard

The purpose of parking lot yards is to provide attractive views from roads and adjacent properties; provide shade to reduce the heat generated by impervious surfaces, reduce glare from parking lots, and to help filter exhaust from vehicles. A parking lot yard is defined as a planting yard comprised of a landscaped planting area to be located within or adjacent to the parking area such as landscaped islands, inside medians, between 10 parking spaces, and at the end of a parking bay. Parking areas shall be broken up with landscaping and should be screened by hedges, trees, planted berms, shrubs, or walls. This section applies to parking lots with ten (10) or more parking spaces.

Parking lots shall provide a minimum 10% net area of landscaping on the interior or exterior of parking lots. All parking areas (not including parking decks) shall provide and maintain landscaped planting areas within the interior of or adjacent to the parking area or both.

- Landscaped planting areas are to be located within or adjacent to the parking area as landscaped islands, at the end of parking bays, inside medians, or between rows of cars.
- There shall be one large shade tree within 60’ of every parking space.
- There shall be one shrub for every three-hundred (300) square feet of total parking area. Shrubs shall be eighteen (18) inches tall at planting and reach a minimum height of thirty (30) inches in three years. No more than forty percent (40%) may be deciduous.
- All trees and shrubs are to be planted within a landscaped planting area not less than 200 square feet in area.
- Parking bays shall be broken up with landscaped islands or medians to avoid long monotonous rows of parking; no more than ten (10) spaces shall be located in one continuous row.
- Trees and shrubs shall be planted within 20 feet of the parking lot area to count as parking lot landscaping; provided, however, all street trees required pursuant to

§702, may not count as parking lot landscaping.

SECTION 704 Buffer Yards

The purpose of the buffer yard is to provide a transitional area between uses that may differ in development intensity and density. A buffer yard is defined as a planting yard that serves as a visual separation between uses and should be densely planted. No buildings or parking areas may encroach within the buffer yard.

(a) Where a commercial, office, multi-family, institutional or industrial (nonresidential) proposed use abuts an existing residential use or residential zoning district, the developer is required to provide a vegetative buffer yard between the residential and proposed uses. This shall be accomplished through the use of densely planted landscaping that would provide complete visual separation within 3 years of planting, or a combination of shrubs and a six foot fence constructed of masonry or pressure-treated lumber. The buffer yard between nonresidential and residential uses shall be 8' in width. Buffer yards are required to use a mix of evergreen and deciduous trees as well as shrubs. This allows for a more natural setting and doesn't limit the design to one type of plant that could become diseased and perish, leaving open gaps. All buffer yards are to be maintained and any dead plants shall be removed immediately and are to be replaced as soon as weather permits. (Amended 07-13-2015)

No such buffer shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining residential lot.

(b) When any parking area is located within 100 feet of an abutting property and no buffer yard is required by section 704(a), a planting yard which is a minimum of five feet wide shall be planted between the parking area and the abutting property line, except along approved driveway openings which run perpendicular to the planting strip. One large evergreen or deciduous tree and five evergreen or deciduous shrubs shall be planted for every 40 linear feet of property line that parallels the parking lot area. Fifty percent of these trees and shrubs may be counted toward the parking lot trees and shrubs required in section 703, above, if the planting yard is located within 20 feet of the parking lot area.

Exception:
Adjacent businesses on separate lots which share parking or driveways shall be exempt from this requirement provided that the required planting yard would interfere with the reasonable use of the shared parking or driveway. Parking areas located behind buildings and screened from view from a public street shall be exempt from this requirement.

SECTION 705 Tree Preservation Overlay District

Purpose:

The purpose of this ordinance is to promote and protect the natural beauty of Banner Elk and to encourage better care of trees and vegetation within the Town on both public and private property. It is also of utmost importance to identify and protect trees deemed historic and of great value. The value placed on these trees should be based upon the following criteria: age, size, species, historic significance, ecological value, aesthetics,

and location. A list of identified trees can be found with the Zoning Administrator and this list may be updated on a regular basis. This ordinance will establish a viable tree management program to be administered by the Planning Board, who will act as a Tree Board until the Town deems it necessary to adopt a separate Tree Board. Support and participation in the Tree City USA program will help guide and support the tree board. Lastly, and of utmost importance, this program will educate the public to the importance of protecting trees; along with the benefits they provide to our environment.
(Implemented 05-01-2013, Passed 02-13-2013)

Section 705.1 *Definitions*

ANSI (American National Standards Institute) – A guide used in setting standards for tree work.
Caliper-Diameter measurement of the trunk taken six inches above ground level for trees up to and including four-inch-caliper size. Measurements shall be taken 12 inches above the ground for larger trees.
Canopy - The uppermost layer in a forest, formed by the crowns of the trees.
Cleaning – Selective pruning to remove one or more of the following parts: dead, diseased, and/or broken branches.
Clear cutting – The cutting or removal of all trees within an area of 400 square feet or larger.
DBH (Diameter Breast Height)-The diameter of a tree four and one-half feet above the average ground level.
Drip Line-A vertical line running through the outermost portions of the tree crown extending to the ground.
Frontage Strip-A continuous access strip, exclusive of access driveways, abutting a public street.
Guidelines-Guidelines and Specifications of Tree Planting on Public and Private Property, published by the planning and inspections department.
Historic Tree-A tree that has been specifically designated by the Banner Elk Town Council as historic.
Impervious Cover-Building and structure footprints, areas of pavement, compacted gravel, or other compacted areas that, by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.
Injuring a Tree – Any cutting, trimming, pruning, or other method of removing any live part of a live tree shall be considered injurious to the tree.
General Maintenance – The removal of small branches under ½" diameter shall not generally be considered injurious to the tree, providing that such an act does not remove a substantial portion of the canopy of said tree or otherwise result in a threat to the life or health of said tree.
Large Maturing Tree - Any tree whose height exceeds 35 feet at maturity.
Lion's Tailing – The removal of an excessive number of inner, lateral branches from parent branches; which can injure trees and are not considered normal pruning practices.
Maintenance- Proper cultural practices including pruning, fertilization, pest management, and root system protection. The standards of maintenance are those published by the National Arborists Association.
Paved Area-Any ground surface covered with concrete, asphalt, stone, compacted gravel, brick, or other paving material.

Person – A public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative, or other legal entity.
Planning and Inspections Director-The head of the Town of Banner Elk Planning and Inspections Department or his or her designee.
Preservation-Maintaining a stable environment among mature trees that is critical in delaying the transition from maturity to decline and death. (Prevention of construction damage, root system care, proper tree care maintenance, etc.) Tree care preservation should be proactive and then reactive
Private Property – Property that is not owned by a federal, state, or local government.
Reduction – Selective pruning to decrease height and/or spread of a tree.
Regulated Tree -Trees that are located on private property and are listed as the champion or co-champion of the species, either on the "National Big Tree List" as compiled by the American Forestry Association or the "Champion Big Trees of North Carolina" as compiled by the North Carolina Division of Forestry Resources.
Replacement - Replacement of dead, dying, diseased, or removed trees with trees of equal or comparable size, species, vigor, and health.
Removal-The cutting down of any tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning, or other direct or indirect actions resulting in the death of a tree.
Root Protection Zone-Generally, 18 to 24 inches deep and a radius distance from the trunk of the tree equal to one foot for each one inch of trunk diameter or the outermost drip line of the tree, whichever is greater.
Small Maturing Tree-Any tree whose height is less than 35 feet at maturity.
Temporary Service Route – A route, other than a planned permanent driveway or access route to a structure, which is created and used during the construction process.
Thinning – Selective pruning to reduce density of live branches or smaller trees.
Topping – Any pruning practice that results in pruning back the main leader stem of the tree or causes disfigurement of the normal shape of the tree. The reduction of a tree's size using heading cuts that shorten limbs or braches back to a predetermined crown limit.
Town-The Town of Banner Elk, North Carolina.
Town Attorney-The Town Attorney for the Town of Banner Elk, North Carolina, or his designee.
Town Property (Public Property)-All real property which is owned or leased by the Town or which is maintained by it or any part of Town right-of-way.
Tree Board –A board appointed by the Town Council, made up of citizen volunteers, to review specific tree issues within the Town. The Planning Board shall act as the Tree Board until such time as it deems it necessary to adopt a separate board.
Tree Evaluation Formula-A formula for determining the value of ornamental trees and shrubs as published by the International Society of Arboriculture.
Tree City USA Program – A program sponsored by the Arbor Day Foundation in cooperation with the USDA Forest Service and the National Association of State Foresters, providing direction, technical assistance, public attention, and national recognition for urban and community forestry programs. The many benefits of being a Tree City include a framework for action, education, a positive public image, and citizen pride.
Tree Crown – The leaves and branches of a tree measured from the lowest branch on the trunk to the top of the tree.
Unsafe Tree - For a tree to be considered unsafe, one of the following criteria must apply:
(A) A combination of a structural defect and a target.

1. A structural defect which predisposes the tree to failure; i.e., dead tree, trunk decay, dead branches, V-crotches; and

2. A target such as a structure, road, walkway, campsite, or other area where property exists or people reside; or

(B) A tree that is otherwise structurally sound but which tree routinely interferes with the routine activities of people. Interferences include obstructions, sight distance problems for motorists, buckling of sidewalks, attracting lightning, or interference with utilities.

Utility Space – The physical area occupied by a utility's facilities and the additional space required and to ensure its operation.

Whitewashing, painting – Painting or in any way discoloring any portion of a tree.

Section 705.2-*Administration*

(A) Zoning Administrator. For the purpose of carrying out the provisions of this chapter, the Zoning Administrator shall have responsibility and control over all trees and shrubbery planted or growing in or upon city property. The Zoning Administrator shall also have responsibility and control over all regulated trees, unsafe and diseased trees, located upon private property.

(B) Planning Director.

(1) The Planning Director shall ensure that the guidelines set out by the **ANSI** for tree planting, care, maintenance, removal and landscape design will be followed.

Section 705.3 Creation *of the Town Tree Board*

(A). Tree *Board.* The Town Council may establish a tree board, made up of citizen volunteers. The Volunteer Board shall have the following duties:

(1). Assist the Town Manager and/or his or her designee with the creation, updating, monitoring, and management of the Town's tree regulations; and

(2). Work with the Town Manager and/or his or her designee to prepare an annual tree replacement, planting, and maintenance program; and

(3). Work with the Town Manager and/or his or her designee on all other issues relating to the management and care of the Town's forests.

(B). The Board may request information on trees located on town property and shall receive, in a timely fashion, reports from the Zoning Administrator. The board shall receive regular reports on landscaping and buffering plans for new developments and alterations to existing developments.

(C). The Board shall consist of five members appointed by the town council to staggered three-year terms. In addition to the five members appointed by the city council, shall serve as ex-officio voting members of the commission. Additionally, the Zoning Administrator may appoint ex-officio non-voting members.

(D). The Board shall select annually from among its members a chair and vice-chair. The Zoning Administrator shall serve as secretary to the commission.
All appointed members shall serve a term of three years. Town council shall fill vacancies resulting from resignation or from a member's failure to attend the required number of meetings for the unexpired term upon request by the chairperson.
The Board shall formulate and adopt rules of procedure under which it will operate.

(E). Operations. The Board shall meet on a regular schedule to be determined at its first meeting. The first meeting of the Board shall be at the call of the Planning Director. The Chairperson and Vice Chairperson of the Tree Board shall serve at the pleasure of the Board. A member may be removed for improper conduct. This shall include missing more than three consecutive meetings or a criminal conviction involving an act of moral turpitude.

Section 705.4 *Registration of Private Property Tree Cutters*

All persons paid compensation to cut or trim trees on private property in the Town of Banner Elk and it must be registered in the office of the Zoning Administrator. The registration shall consist of obtaining a copy of this subchapter, and by signature, affirm that they will abide by the rules prescribed by this subchapter. No person shall be allowed to register unless all civil penalties owed to the town have been paid in full. A property owner shall only hire persons to cut or trim trees that are registered with the Town.

Section 705.5 Permitting

(A). General.

Permits shall be obtained from the Zoning Administrator for all activity involving the planting, grading, removal, and replacement of trees on city property except as noted herein. Permits are also hereby required for all removal and replacement of regulated trees and historic trees.

The Zoning Administrator shall review all requests for permits for the planting, grading, removal, and replacement of trees and shrubbery on city property and the removal and replacement of regulated and historic trees. If the planting, grading, removal, or replacement complies with the guidelines, the Zoning Administrator shall issue a permit and may attach reasonable conditions to the permit. If the plans do not comply with the guidelines, the permit shall be denied.

(1). Permits shall be valid for sixty calendar days.

(2). The Town may require the replacement of trees in accordance with Section 705.9 as a condition of any permit.

(3). A copy of the permit shall be displayed in plain sight on the property where the trees are being cut.

(B). Permit *Procedure.* The application for a permit shall be on a form provided by the Town of Banner Elk and signed by the property owner.

(C). Standards *for granting permits.*

(1). Public *property trees.* In determining whether a permit should be issued for the cutting of trees on public property, the Zoning Administrator shall consider the following criteria:

(A). The condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structures, and interference with utility services;

(b). The necessity to remove trees in order to construct proposed improvements to allow economic development of property adjacent to public property;

(c). The topography of land and the effect of tree removal on erosion, soil retention and the diversion or increased flow of surface waters, and coordination with the town's drainage patterns; and

(d). The number of trees existing in the neighborhood on improved property. The Zoning Administrator shall be guided by the standards established in the neighborhood and the effect of tree removal upon property values in the area.

(e). The Town may require the relocation or replacement of trees as a condition of issuing the permit, on a one-on-one basis, with replacement trees having a caliper of 1 ½ inch dbh.

(2). Private *property trees*. The Zoning Administrator may issue a permit for the cutting of live trees or portions of live trees (i.e. limbs or branches) on private property when such trees are in excess of six inches when:

(A). The trees or portions of trees are within 15 feet of the existing main structure or main structure being constructed on the building site.

(b). The trees or portions of trees are within five feet of an approved septic tank or septic drain field.

(c). The trees or portions of trees are within five feet of a driveway or parking area, the location of which has been approved by the Zoning Administrator.

(d). The trees or portions of trees pose a hazard to the property owner and/or other residents.

(e). The cutting of the trees or portions of trees promotes the growth and development of other trees on the lot.

(f). The trees or portions of trees are diseased or damaged.

(g). The trees or portions of trees are within a temporary service route as defined in this subchapter. Approval under these criteria shall require the replacement of trees on a one-for-one basis in accordance with Section 705.9 of this ordinance.

(h). The removal of trees or portions of trees not meeting the criteria set forth in divisions (a) through (g) above may be permitted pursuant to a landscaping plan that improves the property and is acceptable to the town. Such a plan shall be designed to minimize the injury, disturbance, or removal of trees not necessary to achieve the specific objectives of the plan.

(i). With regard to divisions (a), (b) and (c) above, for new construction no trees or portions of trees shall be cut pursuant to these criteria until the owner is ready to begin construction as evidenced by the issuance of a building permit.

(j). Permits may be granted for trees to be pruned or limbed for view enhancement. To attempt to minimize the detriment to the tree of these practices, the standards provided in American National Standards Institute (ANSI) A300 (Trees, Shrubs, and Other Woody Plant Management, Part 1 - Pruning) shall be followed.

(D). Flag *and photo required.* All trees to be cut or trimmed must be clearly flagged and photo(s) taken.

Section 705.6 *Inspection of Sites*

(A) The Zoning Administrator may periodically inspect areas subject to the provisions of this chapter.

(B) If through inspection it is determined that a person has failed to comply or is no longer in compliance with the provisions of this chapter, a notice to comply shall be served upon that person by registered mail, returned receipt requested or by hand delivery from the Zoning Administrator. The notice shall state the violation and describe that which will be necessary to comply with this chapter.

(C) The Zoning Administrator may conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this chapter and may enter at reasonable times upon private property as defined herein, for the purpose of inspecting trees and shrubbery subject to the provisions of this chapter. No person shall refuse entry or access to any authorized representative or agent of the city who requests entry for the purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with such representative while in the process of carrying out official duties.

Section 705.7 *Enforcement*

(A) *Notice and Appeal*

(1) Any person who violates any provision of this chapter shall be notified by the Zoning Administrator of the specific violation by certified or regular mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation, the measures required to comply with the chapter, if compliance is at all practicable, and a reasonable time period within which compliance must be had.

(2) If any aggrieved person disagrees with a decision of the Zoning Administrator, such person may request a hearing within ten business days of the receipt of the violation. The request must be in writing and directed to the Zoning Administrator. The Board of Adjustment (BOA) shall serve as the appeals board for all tree issues. The owner shall have the right to be represented by counsel, examine and cross-examine witnesses at said hearing. The Town Attorney shall serve as the Appeals Board's legal advisor during said hearing. The appeals board shall render its written decision within 30 days after the hearing.

(4) If any aggrieved party is dissatisfied with the decision of the appeals board, an appeal may be taken to the Avery County Superior Court. Notice of the appeal must be filed within ten business days of receipt of the appeals board's decision.

(5) Any aggrieved party may request an injunction to preserve the status quo during the pendency of any appeal in accordance with applicable North Carolina law.

(B) *Civil Penalty*. Any person who violates any of the provisions of this chapter shall be subject to a civil penalty. The amount of civil penalty shall be $100.00 except as hereinafter provided. Each day of a continuing violation shall constitute a separate violation.

(C) *Protected Tree Penalty.* In addition to the above, the penalty for a protected tree as provided by the list prepared by the Tree Board shall be assessed as follows:

Circumference of tree removed or damaged	Civil Penalty	Tree Replacement
1.50 – 3.50 feet	$ 800.00	3 inches in diameter
3.51 – 5.50 feet	$1,600.00	3 inches in diameter
5.51 – 7.50 feet	$2,400.00	3 inches in diameter
7.51 – 9.50 feet	$3,200.00	3 inches in diameter
9.51 + feet	$4,000.00	3 inches in diameter

(D). Development *Conservation Penalty.* For proposed developments which remove or damage trees clearly marked for non-encroachment into the tree conservation area the penalty will be $1,000.00 per acre per day of the development until the site has been replanted.

(E) *Criminal Penalty*. A violation of this Chapter subjects the offender to a civil penalty, pursuant to the authority granted by N.C. Gen. Stat. sec. 160a-175, and does not subject the offender to the criminal penalty provisions of N.C. Gen. Stat. sec. 14-4.

(F) *Injunctive Relief*. Whenever there exists reasonable cause to believe that any person is violating this chapter or any standards adopted pursuant to this chapter or any term, condition, or provision of an approved permit, the city may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil

action in the name of the city for a mandatory or prohibitory injunction and an order of abatement demanding the violator to correct the unlawful condition upon or cease the unlawful use of the property.

Section 705.8 Exemptions

Modifications to the requirements of this ordinance may be granted in writing by the Tree Board or Board of Adjustment; in advance of any work being done due to extenuating circumstances. A review is required if the Administrator finds any of the following circumstances exist on the site, or surrounding properties such as:

(A). Natural land characteristics such as topography or existing vegetation on the proposed building site would achieve the same intent of this section.
(b). Innovative landscaping or architectural design is employed on the building site to achieve an equivalent effect.
(c). The required screening and landscaping would be ineffective at maturity due to the proposed topography of the site, and or the location of improvements of the site.
(d). The topography of adjacent and surrounding sites is such as to render required screening ineffective at maturity.
(e). Due to the location of utility and transmission lines, the landscaping requirements would be in conflict with the requirements of the utility company and verification of such conflict can be provided by the applicant;
(f). If, in the opinion of the Town Manager, the landscaping or screening required will interfere with traffic safety.
(g). Trimming of trees by the Town or an approved agent as normal maintenance provided the trimming does not result in the mutilation, death, or destruction of the tress.
(h). Any tree, which during a period of emergency or act of God must be removed so that it will in no way hinder public work to restore order in the town. Removal shall be by the Town or its authorized agent(s).
(I). The removal of dead trees or dead portions of a tree. The owner of the property on which the trees are located bears the burden of proving that such trees or parts of trees were dead at the time of removal.
(j). The removal or cutting of live trees or portions of live trees (i.e. limbs or branches) on private property under six inches in diameter and measuring four feet above ground (at its highest point) with the exception that provisions regulating clear-cutting as found in Section 705.11 of this ordinance must be followed.

Section 705.9 Diseased *or Damaged Trees*

The owner of a tree(s) within the Banner Elk zoning jurisdiction, deemed to be a potential public hazard by the Town of Banner Elk, will be notified by certified mail that they must remove said public hazard within 30 days or pay the Town of Banner Elk the costs of such remedy as the Town sees fit or incurred to have the tree(s) removed. If the removal of such hazard can be accomplished by pruning, the remedy may be postponed until said tree(s) is in a dormant state.

Section 705.10 *Damage to Trees without a Permit – Prohibited*

The following actions shall constitute a violation of this ordinance and shall be subject to the penalties prescribed herein. For trees located on public property, the following restrictions shall apply to any and all trees, regardless of size. For trees located on private property, the following restrictions apply to trees in excess of six inches in diameter, measured four feet above the ground.

(A). Injuring*, removal, relocation, general.* No person shall, without a written permit from the Town, perform or cause to be performed the following acts: mutilate, injure, remove, and/or relocate any live trees within the Town, or injure or misuse any structure or device placed to protect any such trees.
(B). Whitewashing*, painting.* No person shall, without a written permit from the Town, whitewash, paint, or in any way discolor the stem base, bole or root of any tree in the Town of Banner Elk except as authorized by NCGS § 14-159(7).
(C). Attaching *sings or other devices; obstructing roots*. No person shall, without a written permit from the Town, fasten or attach any sign, wire or electrical attachment or other device in any manner to the trees in the Town, or to guard about the tree, or close or obstruct any open space provided about the base or root of the tree within three feet in any direction, or in any way prevent access of air, water, or fertilizer to roots of the tree. Attachment of birdhouses or other small ornamental attachments that do not substantially threaten the life of a tree is permissible.

Section 705.11. *Clear Cutting – Prohibited*

On lots having a majority of trees less than six inches in dbh, clear-cutting is not allowed without the approval of the Zoning Administrator. Under no circumstances can more than 50% of the natural vegetation, equally balanced across the entire lot, be cut regardless of the size or diameter of the vegetation, without approval of the Zoning Administrator. The above criteria for permitting in Section 705.5 (C) (2) (a) through (j) will again be followed.

On properties with stream bank access; any healthy trees within 50 feet of the stream bank shall be considered protected and will remain as part of stream bank preservation. This is to ensure a healthy environment should the risk of flooding occur. Evident dead and diseased trees within the 50 foot protected stream bank area may be cut but the root system shall remain if determined not to be a hazard to the waterway.

Section 705.12 Replacement

Unless specified otherwise, when any provision of Section 705 through 705.11 creates the need for trees to be replaced, the replacement shall be accomplished in accordance with this section.
(A). Trees shall be of an appropriate species and type for the location and elevation in which they will be planted. A list of replacement tree types and the locations in which they are appropriate are listed below under New Plant Material.
(B). Tree caliper at the time of replanting shall be a minimum of one and one-half inches at dbh.
(C). Tree replacement shall be accomplished at the next growing season in accordance with American National Standards Institute ANSI A300 (Part 6-Transplanting).

Section 705.13 New *Plant Material.*

Regionally grown and native species of plants are preferred. Any plant not listed here can be approved if listed with the Agricultural Extension Office as a native plant. New plant material shall complement existing site vegetation, should be mixed with it and should be integrated with all other natural site features. Plantings should be grouped together or clustered as opposed to thin linear patterns. Preferred plant materials include the following but not limited to:

(A) *Large or medium hardwood canopy trees, including*:

American sycamore
Beech
Birch or river birch
Black cherry
Black gum
Black locust
Black walnut
Chestnut
Chinquapin
Eastern redbud
Golden rain tree
Hickory
Magnolia
Maple
May tree
Oak
Smoke tree
Sourwood
White ash
White fringed tree
Yellow poplar

(B) *Large or medium evergreen canopy trees, including*:

American Holly
Cypress
Fir
Hawthorn
Hemlock **
Larch
Leyland
Spruce

(C) *Small flowering understory trees, including*:

American mountain ash
American yellow wood
Cherry
Crab apple
Flowering dogwood
Forsythia
Fringe tree
Fruit trees
Gray-stemmed dogwood
Hawthorn
Holly (mountain, American)
Hydrangea
Lilac
Red-twigged dogwood
Serviceberry
Sourwood
Witch hazel

(D) *Shrubs, including*:

Arborvitaes
Azalea
Gold thread leaf cypress
Golden elder
Juniper family
Yews
Laurel
Rhododendron
Scottish heather
Viburnum
Burning bush

**Hemlocks may not be the best choice because they are prone to disease.

Section 705.14. *Trimming, pruning, planting and removal of trees and shrubbery.*

(A) No person shall remove, destroy, cut prune or otherwise treat any tree or shrubbery having its trunk upon any Town property or right-of-way or contract with another person to perform such acts without first obtaining a written permit from the Zoning Administrator except as herein set forth.

(B) No person shall plant of contract with another to plant any tree or shrubbery on any Town property, except as herein noted, without a permit from the Zoning Administrator.

(C) Private utilities shall submit written specifications for pruning, trenching or grading around trees and shrubbery on city property to the Zoning Administrator for approval. A utility company shall not be required to obtain a permit for routine maintenance operations affecting trees and shrubbery having their trunks upon Town property so long as such work is done in strict accordance with the specifications as approved by the Zoning Administrator. A utility company is required to obtain prior written approval to remove any tree or shrubbery on Town property. Approved written specifications shall be valid for two years. The utility company must make new specifications or a request for an additional two-year extension of the previously approved specifications.

Section 705.15*. Injuring trees and shrubbery***.**

(A) No person shall place or maintain upon the ground upon any Town property any compacted stone, cement or other impervious matter or substance in such a manner as may obstruct the free access of air and water to the roots of any tree or shrubbery. This provision shall not apply to paving, repairing or altering of Town streets, sidewalks and other Town property performed by the Town.

(B) No person shall perform or contract with another to perform construction work (including the operation or storage of equipment or materials) within the drip line of any tree or shrubbery having its trunk on any Town property without first obtaining a permit from the Zoning Administrator.

(C) No person shall attach any object, including but not limited to, rope, wire, chain or sign, to any tree or shrubbery in or upon any Town property or to the guard or stake intended for the protection of such tree or shrubbery except for the purpose of protecting it or the public.

Section 705-16. *Planting plan required where trees and shrubbery are to be planted.*

(A) Any person desiring to plant trees and shrubbery in or upon Town property or Town right-of-way shall, in addition to applying for a permit, submit a planting plan or written statement in triplicate to the Zoning Administrator who shall return one copy to the applicant and keep two copies on file. All planting plans upon Town property shall accurately show the following:

(1) The proposed street width, together with its subdivision of pavement, curb and gutter, parking strip and sidewalk areas, to a definite indicated scale.

(2) The location of underground and overhead utilities, all poles and posts, to a definite indicated scale.

(3) The proposed location of each and every proposed tree and shrubbery, together with the location of each existing tree, shrubbery, plant or vine within the proposed street right-of-way in scaled relation to the other features to the plan.

(4) The variety, height and caliper, where applicable, of each any every tree and shrubbery proposed to be planted and those already existing within the proposed street lines, either indicated on the plan or referenced with a number to a key list.

(5) The distance in feet between the tree and shrubbery in any one row.

(6) The nature of the soil in the planting space to a depth of three feet and all existing and proposed surface and subsurface drainage system.

(B) All written statements filed in lieu of a planting plan shall contain the same information required on the planting plan except in the case of persons not involved in planned development and desires to perform small-scale landscape plantings on Town property. In such a case, a simple letter of intent outlining the location, method and materials, may be substituted.

Section 705-17. *Trees and shrubbery abutting Town property to be kept trimmed; responsibility of owner.*

(A) Trees, shrubbery, flowers, bushes or vines standing in or upon any lot or land abutting Town property and having branches, limbs, trunks, or other parts projecting onto Town property shall be maintained by the owner of the property on which such tress, shrubbery, flowers, bushes or vines are growing so as not to interfere with the free and safe passage along the Town right-of-way by pedestrians and vehicular traffic.

(B) If the owner of such property does not keep this growth from projecting onto Town property, the Town Manager may order its removal. The order shall be in writing to the owner and shall be acted upon within 30 days from the time of the receipt of the order. If, after 30 days, the owner has not responded or acted to remove the project growth from such trees or plants, then the Town Manager may request town personnel enter upon the private property to perform the work necessary to correct the condition and bill the owner for the actual costs incurred. In situations deemed by the Town Manager to constitute an imminent threat to the public health, safety or welfare, the Town Manager may act without prior notification to the property owner.

Section 705.18*. Removal of regulated and historic trees*.

The Zoning Administrator may prohibit the removal of a regulated tree or a tree that has been designated by the tree board as historic or significant. The following factor(s) may be a basis upon which the Zoning Administrator may deny a permit to remove a regulated tree:
(A) there exist no current plan to develop the property;
(B) the planned development can be constructed without removed the regulating tree;
(C) the purpose for removal can be accomplished with less drastic results;
(D) the health of the tree;
(E) the proposal for replacement of the regulated tree; and
(F) Any other factors reasonable conditions to removal. The owner may appeal the Zoning Administrator's decision in accordance with Section 705.7(A).

Section 705.19*. Utility responsibility***.**

Public and private utility companies which install overhead and underground utilities (including CATV) shall be required to accomplish all work affecting trees and shrubbery located on such private property in accordance with the applicability of Section 705 in its entirety.

Section 705.20*. Unsafe trees.*

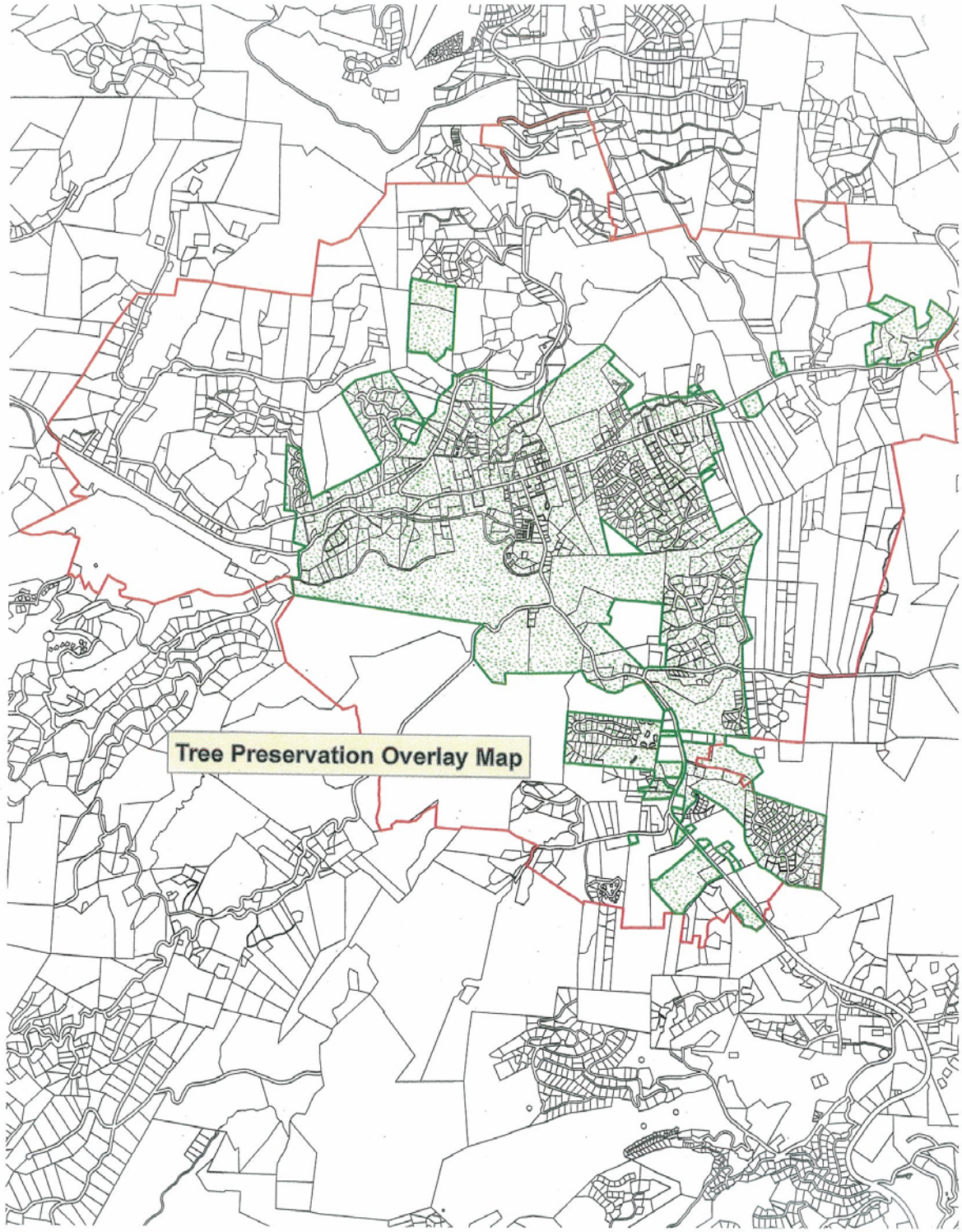
(A) The Zoning Administrator may cause or order to be removed any tree or part thereof on private property which is unsafe, injurious to the public welfare or which, by reason of its nature, is injurious to sewers or other public improvements or is infested with an injurious fungus, insect or other pest.

(B) The Zoning Administrator may enter upon private property in the city to spray, or otherwise treat or cause or order to be sprayed or otherwise treated, any tree infected or infested by any parasite, insect or pest when it shall be necessary to do so to prevent the breeding or scattering of any parasite or animal pest and to prevent danger there from to persons or property or to trees planted on Town property.

(C) When, in the opinion of the Zoning Administrator, the removal of a tree or shrubbery on private property shall be necessary, under the provisions of this section, the Zoning Administrator shall have the power to remove such tree or shrubbery or cause or order the same to be done upon notice and an opportunity to be heard to the property owner.

(D) Prior to exercising the authority conferred by this section, the Zoning Administrator shall give the owner notice and an opportunity to correct the condition by requesting that corrective action be taken. The request shall be in writing to the owner of the property in question and shall be acted upon within 30 days (or a lesser period of time if an imminent threat to life or property exists, from the date of the receipt of the request). If, after 30 days or such less time period, the owner has not corrected the condition or undertaken action that would lead to a timely correction of the condition, the Zoning Administrator may enter upon the property, to direct the town maintenance department to perform the work necessary to correct the condition and bill the owner for the actual costs incurred. In situations involving an imminent threat to the public health, safety or welfare, the Town may act without prior notification to the property owner but notice shall be given within a reasonable period thereafter.

Tree Preservation Overlay Map



SECTION 707 Nonconforming Parking Lots
Nonconforming parking lots, which are not used as storage but instead have parking as the principal use of the lot, existing at the time of the adoption of this amendment, shall be required to comply with Article 7 at such time they increase their parking area or add parking spaces.

SECTION 708 Location and Screening of Dumpsters and Outdoor Storage. (Amended 7/11/05)

SECTION 708.1 Property owners shall be responsible for providing adequate solid waste receptacles, in accordance with this section, to store solid wastes generated by said properties between scheduled pickups.

(a) Subject to the provisions of this section and after consultation with the owner of the premises concerned, the Zoning Officer shall determine the size, number, and type of solid waste receptacles that must be provided for all premises. In making this determination, the Zoning Officer shall consider the type of activities on each premises and the amount of solid waste likely to be generated by those activities, as well as the welfare of the occupants and neighbors of those premises and the town's need to facilitate collection and minimize the costs of this service.
(b) Unless otherwise determined by the Zoning Officer for good cause shown, when five or more dwelling units are located on a single lot, the owner of the premises shall provide one or more dumpsters so that the following criteria, relating to capacity are satisfied:
    1. Two cubic yards of storage capacity are provided for every eight (8) dwelling units or fraction thereof, provided that the minimum size dumpster shall be (4) cubic yards.
    2. If more than one dumpster is required, the owner shall provide the smallest number of dumpsters capable of satisfying the requirements stated in division 'a.' of this section.
    3. Only dumpsters compatible with town collection equipment will be approved.
    4. Unless otherwise determined by the Zoning Officer for good cause shown, the owners of all premises not required to be served by dumpsters shall provide at least one 30-32 gallon container made of galvanized metal, plastic, rubber or other material resistant to rust, corrosion, or rapid deterioration. Each required container shall be water-tight and provided with handles and a tight fitting cover.
    5. Within commercial districts, where the zoning office determines that a dumpster is not feasible, GDS approved, 96 gallon receptacles will be used.
(c) All solid wastes shall be stored in approved solid waste receptacles pending collection. Solid waste outside receptacles will not be collected.
    1. The owner or tenant of a property is responsible for seeing that solid wastes that are too bulky or too cumbersome to be collected by the town as part of its regular collection service, are taken to an approved waste management site for disposal.
(d) All solid waste receptacles shall be cleaned periodically to minimize offensive odors.
(e) The tops, openings and gates to dumpsters shall be kept securely fastened at all times, pending collection.

SECTION 708.1.2 The location of solid waste receptacles located within the jurisdiction of this ordinance shall comply with the following requirements:

(a) Solid waste receptacles shall be located in the rear yard, provided that when the receptacle cannot be serviced in said location, it may be located in the side yard.
(b) Only in extreme circumstances may receptacles be located in the front yard. I. Solid waste receptacles must be within the contiguous confines of said business' lot lines, maintaining setbacks. No receptacles may be placed on a lot detached from an established business.
(c) Dumpsters shall be located with a turning radius acceptable to the GDS driver so as not to jeopardize adjoining buildings, landscaping and other structures.

(d) Setbacks: No dumpster shall be located closer than ten (10) feet from any rear or side yard line or street right-of-way. The exception is in the C-1 district as detailed in Table 308-1.
   a. Where no right-of-way exists, no dumpster shall be located closer than fifteen (15) feet from the center line of any traveled way.
   b. No dumpster shall be located closer than twenty-five (25) feet from any stream. For a designated trout stream, per the Division of Water Quality, the setback shall be thirty (30) feet.

(e) Dumpster on Existing Sites: Where existing dumpsters are currently located on properties, the property owner or the leasing tenant owning or leasing the dumpster, shall relocate the dumpster to the rear or side yard and screen as required. Extreme hardships shall be reviewed on an individual basis by the Zoning Officer. The owner or leasing tenant of existing dumpsters shall have one (1) year from the effective date of this section to comply with these requirements. (07-11-05)

SECTION 708.1.3 Screening: Solid waste receptacles shall be screened from visibility from any adjacent property or right-of-way, except where existing structures, topography, or vegetation provide screening which meets the standards of this section. For the purpose of this section, screening shall mean one of the following:

(a) Coated chain link fencing with plastic inserts. Coating and matching inserts shall be black or green.
(b) The same materials as the main structure.
(c) Masonry that complies with Architectural Design Standards.
(d) Pressure treated wood slats placed no more than one-half (1/2) inch apart.
(e) Where feasible, a row of evergreen shrubs or trees, on all sides exposed to adjacent property or rights-of-way, excepting the service side, shall be planted. These shall be planted between three (3) and four (4) feet apart and not more than five (5) feet from the screening fence. When planted, the plants shall be a minimum of three (3) feet in height and reach a minimum height of six (6) feet within three (3) years.
(f) If both fencing and plant screening are provided, in accordance with the requirements listed above, the solid waste receptacle may be located within five (5) feet of a side or rear property line.
(g) All screening shall extend a minimum of six (6) inches above the top of the solid waste receptacle.
(h) Screening shall be located no more than five (5) feet from the dumpster's location, and provide a minimum width of twelve (12) feet for the service entrance.
(i) The service entrance doors shall be coated chain link with matching plastic inserts of black or green. All service entrance doors shall be maintained closed, except for servicing.
(j) Maintenance of screening materials shall be the responsibility of the property owner and the tenant leasing the solid waste receptacles. Fencing that does not meet the standards of this section, or plant material that dies shall be replaced in accordance with the requirements of this section.

SECTION 708.1.4 Construction of dumpster sites.

(a) All dumpsters shall be placed on a minimum (10' X 10') square concrete pad. Concrete shall be (6") thick, 5000 psi with #10/10 rebar, 6" X 6" WI.4 xWI.4 wire mesh, on a 5" AB stone base.* Pad shall have a ¼" per foot slope toward the entrance to the pad.
(b) Within pad, the back of the screening shall be protected by two (2) 4" diameter steel bollard posts, poured solid.
(c) The front corners of the gate shall be protected by (2) 4" diameter steel bollard posts, poured solid.
(d) There shall be a minimum (10') wide by (6') deep concrete apron at the entrance to the dumpster pad. Apron shall be (6") thick, 5000 psi with #10/10 - 6"X6" WI.4XWI.4 reinforcement and a 5" AB stone base. Alternatively, the apron may be an 8" AB stone base with 3" binder and 1 ½" I-2 asphalt top coat.*

(e) Required modifications if business has any type of **FOOD SERVICE**:

a. Dumpster pad shall have two (2), centrally located drains. One drain shall be tied to an approved in-line grease trap. After passing through this trap, drainage shall continue on into the sanitary sewer. This line shall only be open when dumpster is being cleaned/washed. The second drain shall be open at all other times and tied to the storm drainage system.
b. The pad shall have a ¼" slope toward the drains.
c. There shall be 11' square with a 6" curb around the sides and back of the pad.
d. The 5" stone base will be #67 stone as opposed to AB stone.
e. 96 gallon or smaller receptacles will be placed on a masonry pad with approved screening, curbing, and drains. If cleaning will be done in a separate approved can wash facility, tied to an approved inline grease trap, a second drain will not be required in the receptacle pad.

(f) The following recommended details in Figures 708.1, 708.2, 708.3, 708.4, 708.5, 708.6, and 708.7 (at the end of this section) may be modified and reviewed on an individual basis:

a. Notes to aid in reading details:
   i. 5000 psi means concrete mix gauged to hold 5000 pounds per square inch.
   ii. #10/10 means 10/8 (1 ¼") inch diameter rebar every 10 inches.
   iii. 6"x6" WI.4xWI.4 means number .4 gage 6"x6" wire mesh.
   iv. 8" stone, 3" binder, 1 ½" I-2 is the formula for using asphalt top coat.
   v. #67 stone is required under food service pad to facilitate drainage.
   vi. *Instead of rebar and wire mesh, 5000 psi concrete/fiberglass mix may be used.

(g) As dumpster pad construction is a multi-phase process, the following permit process must be followed:

a. Inspection and approval of drainage system in food service sites.
b. Inspection and approval of stone, rebar and concrete construction, slope, size, bollards, and apron.
c. Posted compliance to permit before dumpster may be placed.
d. There will be no charge for this permit.

Town of Banner Elk *Zoning Ordinance*
Article VII –Landscaping and Sidewalks

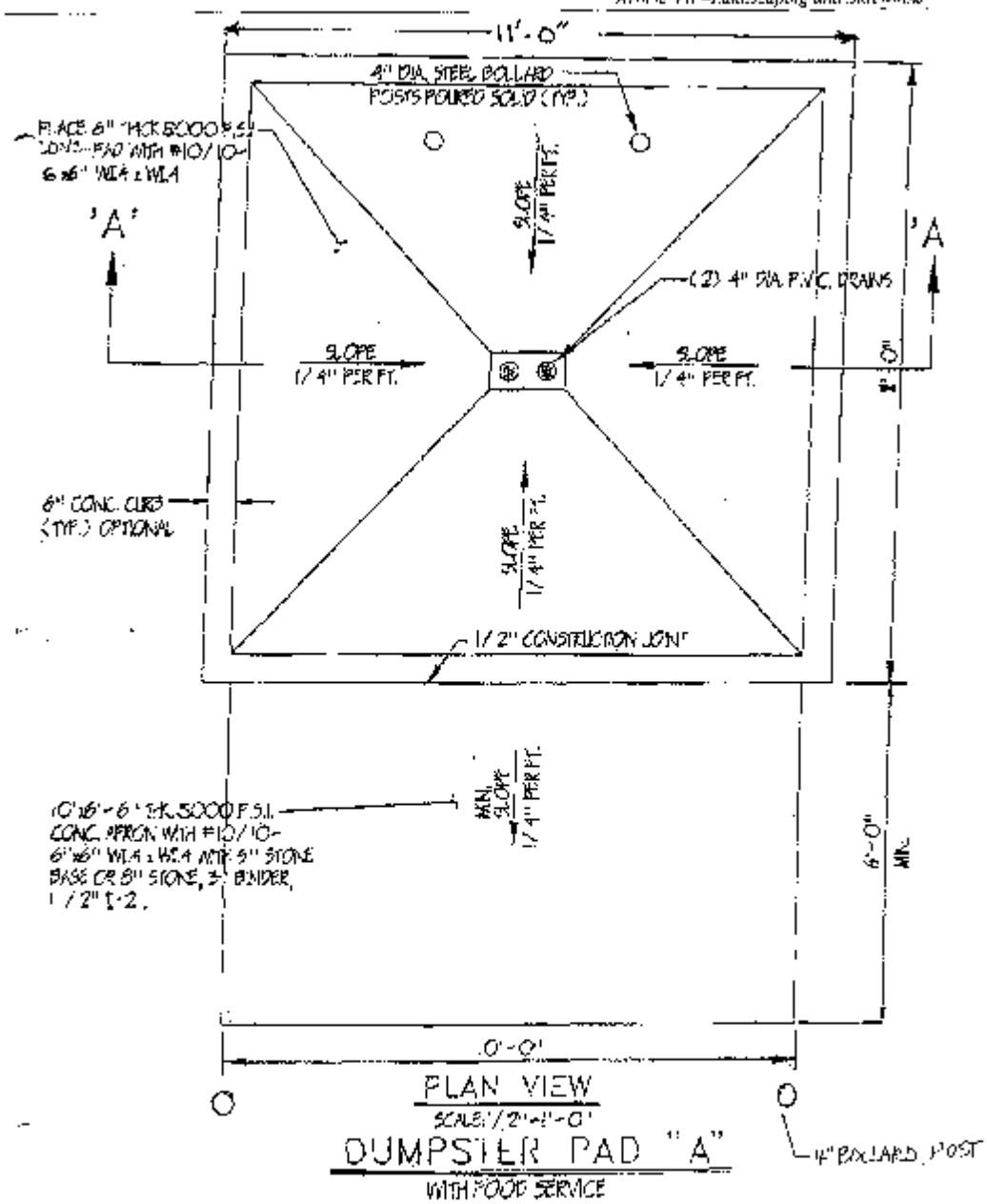


FIGURE 708.1

Town of Banner Elk *Zoning Ordinance*
Article VII –Landscaping and Sidewalks

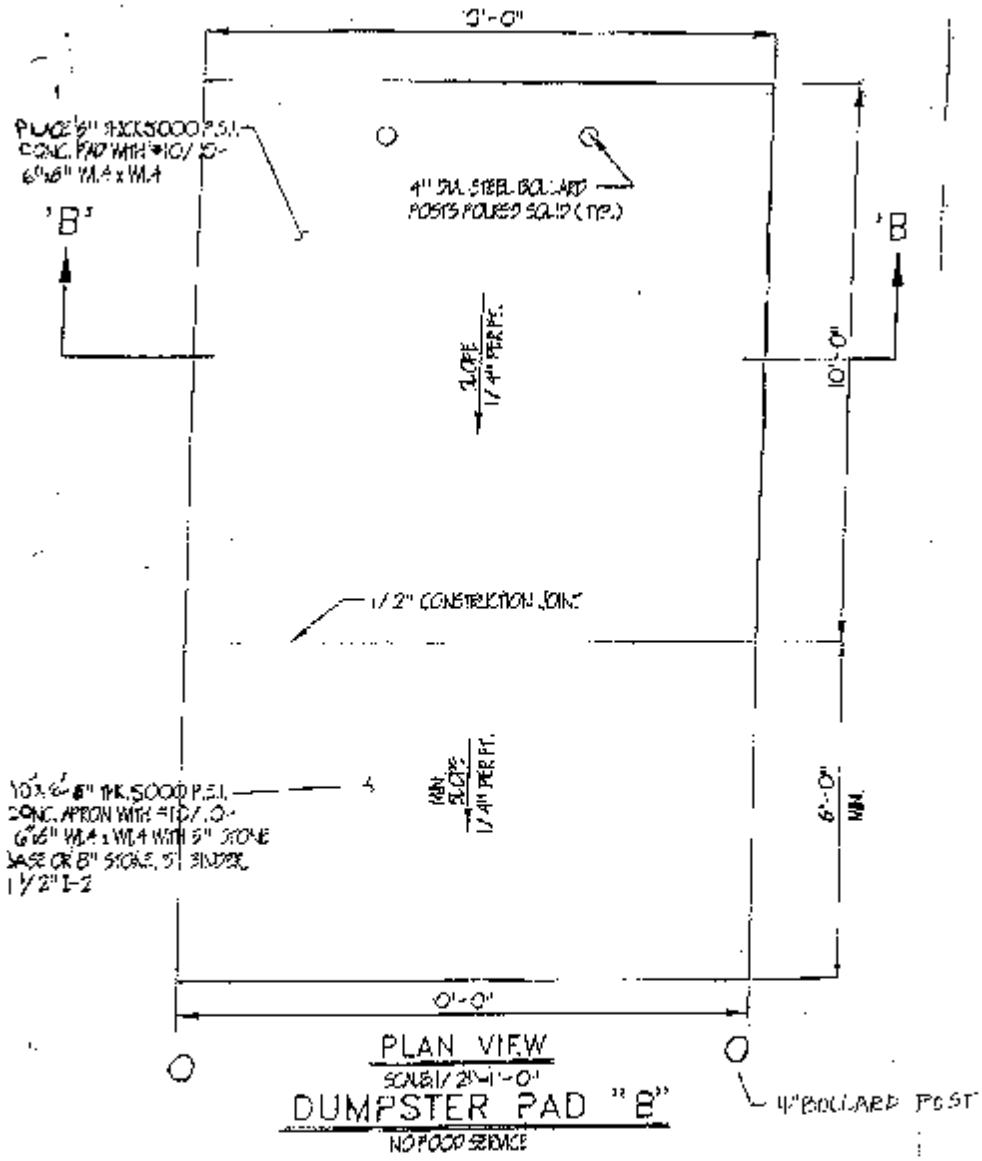
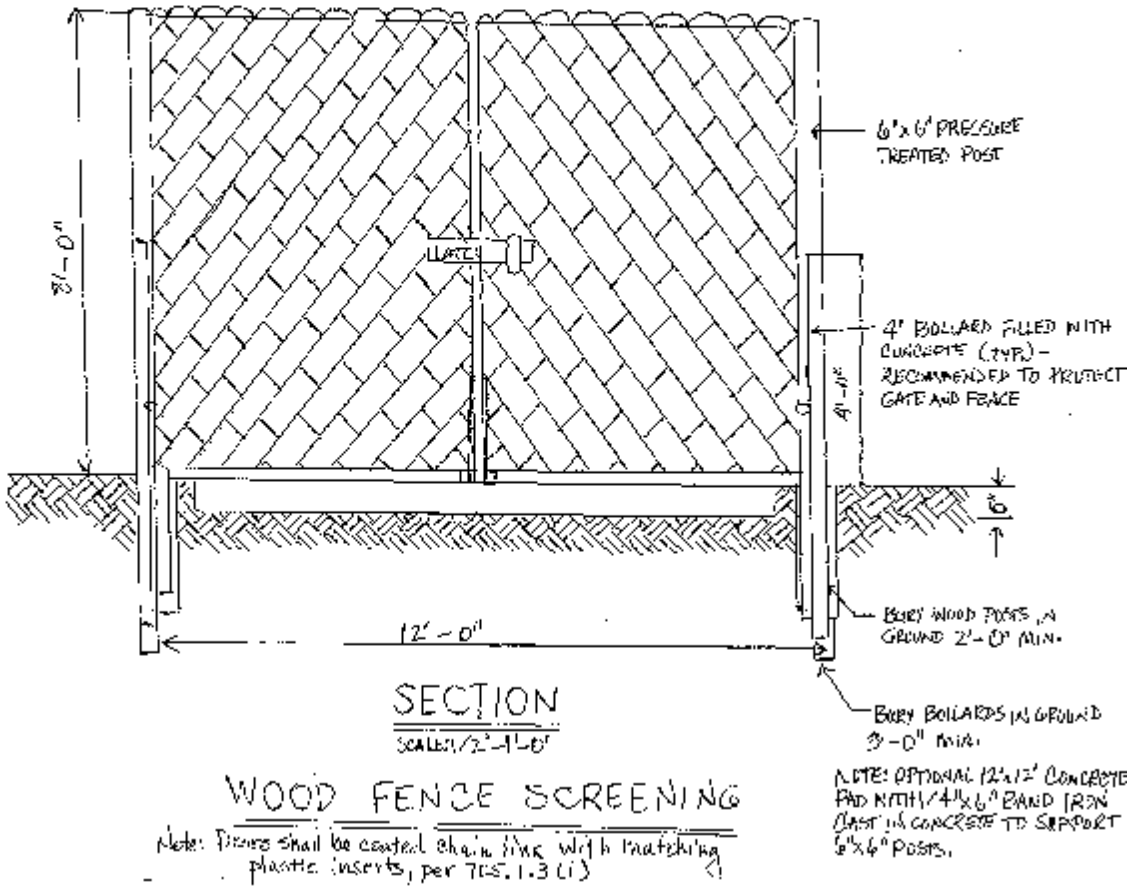


FIGURE 708.3

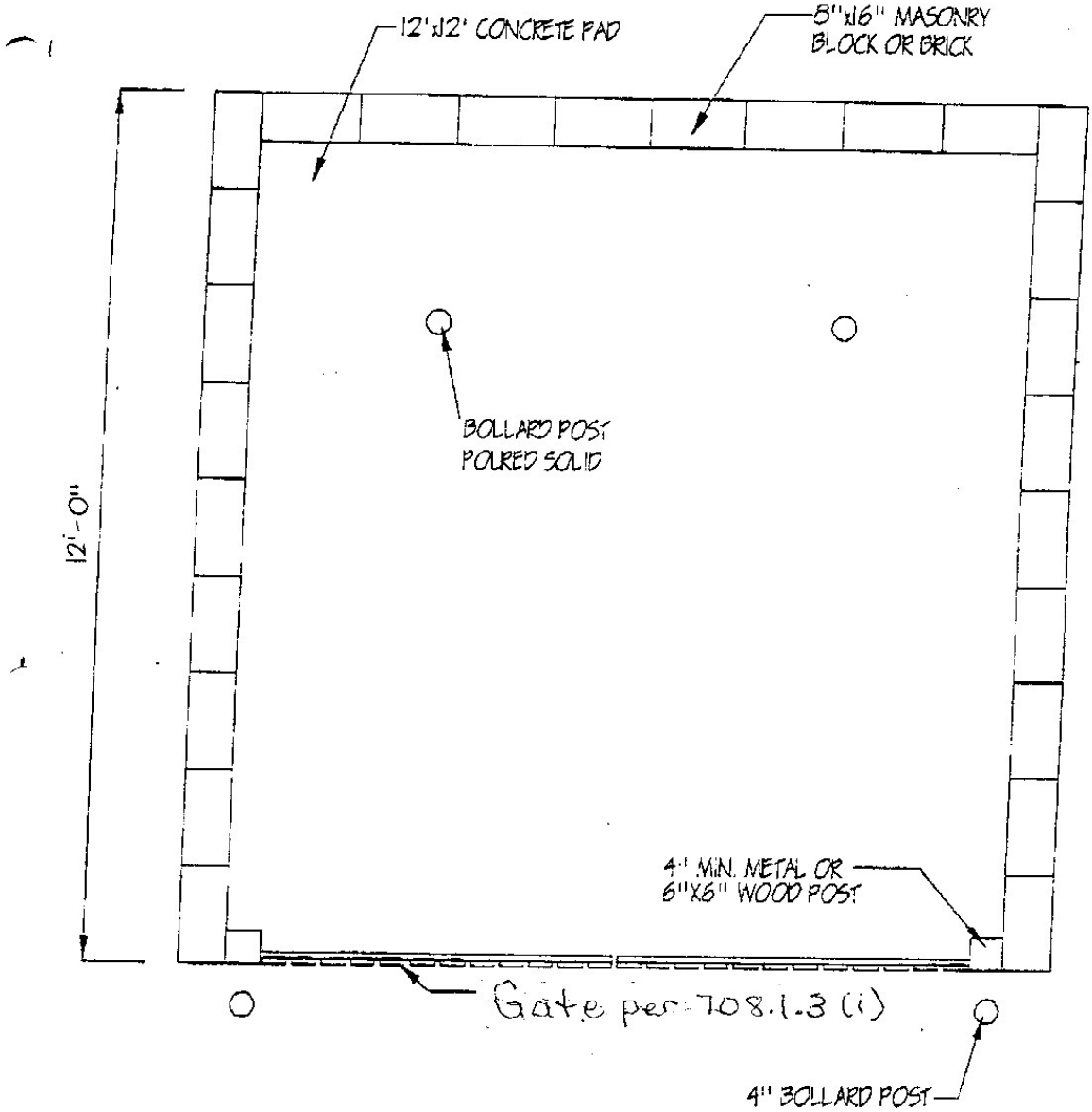


SECTION
SCALE: 1/2"=1'-0"

WOOD FENCE SCREENING

Note: Fences shall be coated chain link with matching plastic inserts, per 7.05.1.3 (i)

FIGURE 7.08.4

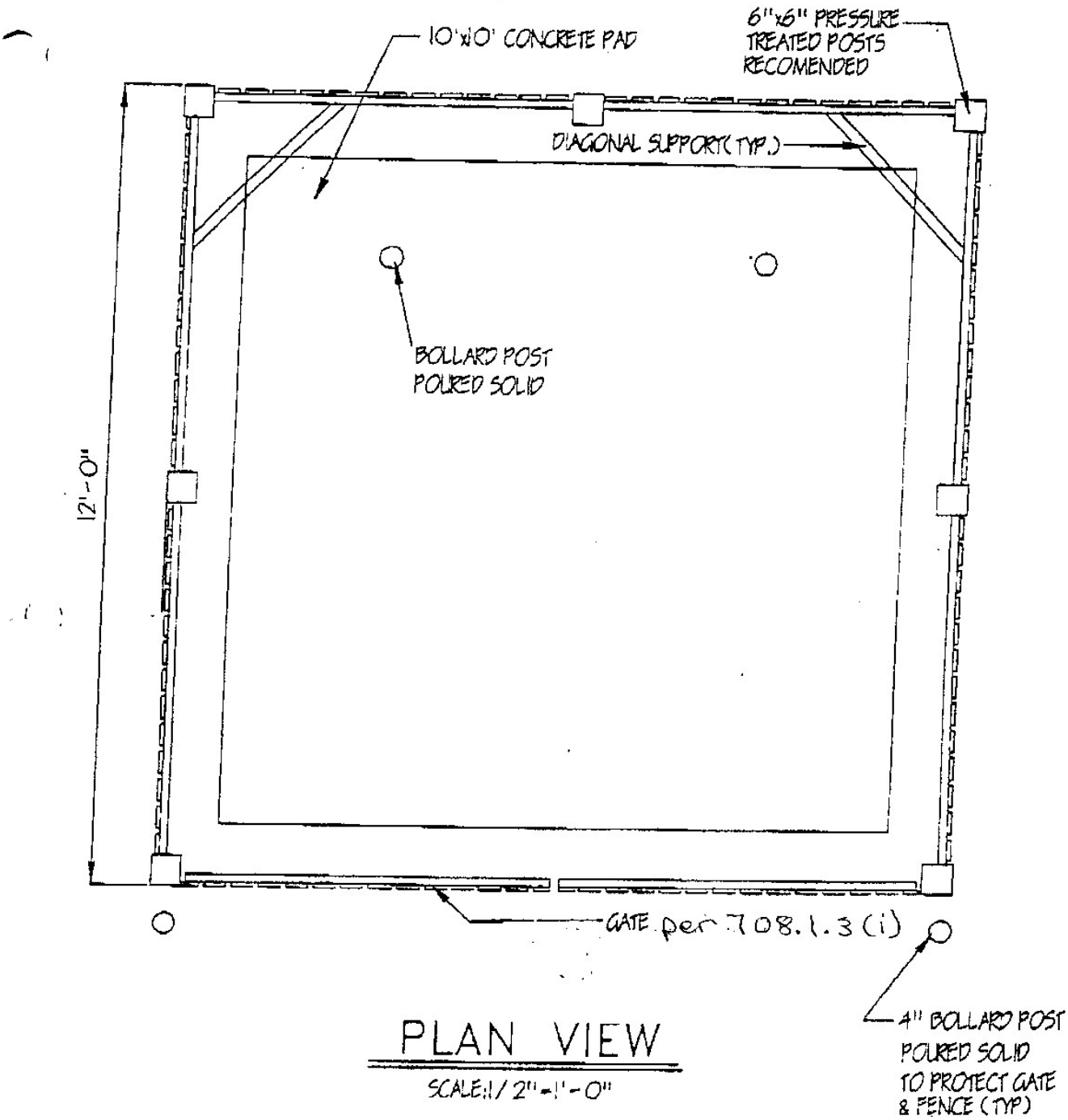


PLAN VIEW

SCALE: 1/2" = 1'-0"

MASONRY SCREENING

FIGURE 708.5



WOOD FENCE SCREENING

FIGURE 708.6

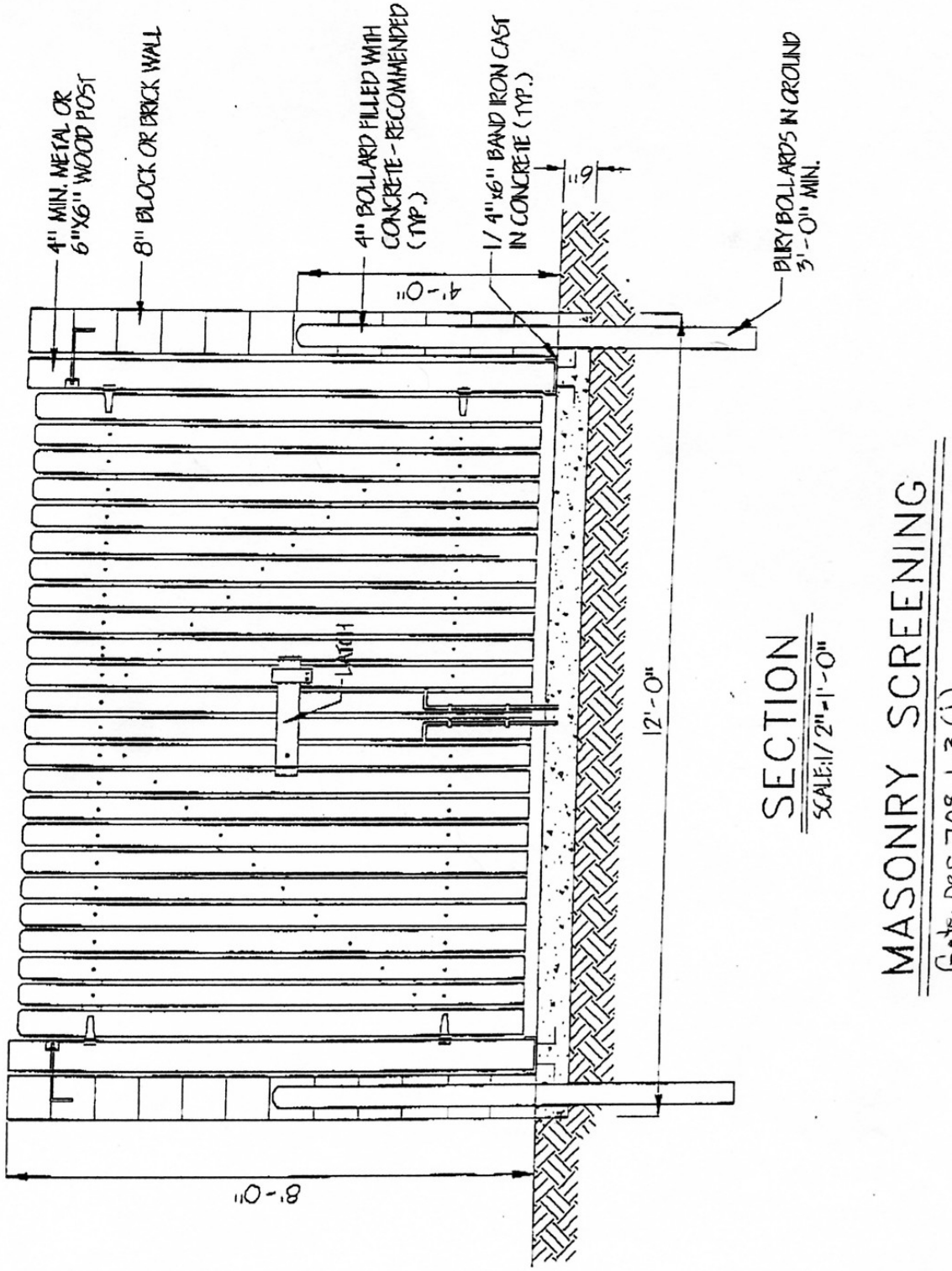

4" MIN. METAL OR 6"X6" WOOD POST
8" BLOCK OR BRICK WALL
4" BOLLARD FILLED WITH CONCRETE - RECOMMENDED (TYP.)
1/ 4"x6" BAND IRON CAST IN CONCRETE (TYP.)
BURY BOLLARDS IN GROUND 3'-0" MIN.
4'-0"
6"
LATCH
12'-0"
10'-8"
SECTION
SCALE: 1/2" = 1'-0"
MASONRY SCREENING
Gate per 708.1.3 (1)

FIGURE 708.7

SECTION 708.2 Outdoor storage areas of automobiles, machinery, equipment, and building supplies in nonresidential districts shall be screened from any public street or right of way and shall be applicable to all zoning districts. Opaque screening shall consist of a fence, wall, landscaped berm, or evergreen vegetation, which will provide an opaque screening at maturity or within three (3) years of planting. A combination of evergreen vegetation and fencing may be used to achieve the required screening; chain link fencing may be used in combination with evergreen vegetation if the chain link fence is coated in a natural color such as green. (Amended 07/14/08)

SECTION 708.2.1 Outdoor storage areas referenced in § 708.2 existing at the time of adoption of this ordinance shall submit a screening plan to the Zoning Administrator within six (6) months of adoption of this Ordinance. Upon approval of the screening plan by the Zoning Administrator, screening shall be installed within one (1) month. Screening plans utilizing landscaping shall have three (3) years from approval of the screening plan to provide full opaque screening; as such time will allow for maturity of vegetation. All screening shall be maintained by the property owner to meet the original screening ordinance intent. (Amended 07/14/08)

SECTION 709 Sidewalks
All sidewalks identified in the "Town of Banner Elk Master Streetscape Plan," dated September 1999 shall be constructed in accordance with the Town of Banner Elk Sidewalk Construction Standards and Specifications. In no case shall any sidewalks identified in "The Town of Banner Elk Master Streetscape Plan" be constructed by standards other than those specified in the Sidewalk Construction Standards and Specifications.

SECTION 709.1 Responsibility to Construct Sidewalk.
Whenever a zoning permit is issued for new commercial or an addition to an existing commercial construction, which requires architectural review in accordance with section 500, in conjunction with property identified in "The Town of Banner Elk Master Streetscape Plan" dated September 1999, it shall be the responsibility of the owner of the property to construct that segment of said sidewalk which adjoins his property. The "Town of Banner Elk Master Streetscape Master Plan" having been adopted by the Banner Elk Town Council shall be permanently kept on file in the office of the Zoning Administrator. The sidewalk shall be designed and constructed in accordance with the "Town of Banner Elk Sidewalk Construction Standards and Specifications."

SECTION 800 EXCEPTIONS AND MODIFICATIONS
Compliance with the requirements of this ordinance is mandatory except that under the specific conditions enumerated in the following sections, the requirements may be waived or modified as so stated. Sections 801 to 803 reserved for future codification

SECTION 804 Gasoline Service or Filling Stations (to include convenience stores with gas sales).
The following regulations shall apply to all gasoline service or filling stations:

(1) All buildings shall be located at least forty (40) feet from any street right-of-way line.
(2) Gasoline pumps and other service facilities shall be located at least fifteen (15) feet from any street right-of-way line, or twenty (20) feet from the edge of the road, whichever is greater.
(3) Accessory canopy structures may be permitted in the front or side yard area, provided the structure shall be located at least ten (10) feet from any street right-of-way line or fifteen (15) feet from the edge of the road, whichever is greater. The eaves of said structure shall not extend more than three (3) feet into the required setback. Any signs attached to any accessory canopy structure shall conform to Article VI of this Ordinance.
(4) All service, storage, or similar activities shall be conducted entirely on the premises.
(5) All major repair work, if any, shall be conducted within a completely enclosed building.
(6) Open storage of wrecked or inoperable vehicles, discarded tires, auto parts, or similar material shall not be permitted.

SECTION 805 Manufactured/Mobile Buildings and Manufactured Homes.
It shall be unlawful for any person to park or locate, place, maintain or use any manufactured/mobile building, manufactured home, or double-wide manufactured home within the corporate limits of Banner Elk and its extraterritorial jurisdiction, except as follows:

(1) Manufactured/Mobile Buildings.
(a) Mobile buildings may be permitted as a temporary use structure as defined in Article II.
(b) A double-wide mobile/modular unit as defined in Article II is permitted as a non-residential structure.
(c) Mobile buildings used as classroom space may be permitted as a conditional use in the Medical-Educational district as provided for in Sections 914 and 1109(2).
(d) The structure while at the site shall be placed on a permanent, enclosed, masonry foundation, with the wheels and pulling tongue removed.(Added 07/14/08)

(2) Manufactured Homes.
(a) Single-wide manufactured homes shall be permitted only for residential use and only in manufactured home parks as provided for in Article II and Sections 904 and 1109(2).
(b) A double-wide manufactured home may be permitted as a conditional use in accordance with Table 308-1when used exclusively for a single-family dwelling unit and when placed on a building site which conforms with the area and setback requirements of the zoning districts in which it is proposed to be located. The double-wide manufactured home shall also conform to the standards and conditions specified in Article II and Section 1109(2).
(c) The structure shall be placed on a permanent, enclosed, masonry foundation, with the wheels and pulling tongue removed.(Added 07/14/08)

SECTION 806 Usable Land.
Deleted April 9, 2007 all references to Usable Land shall be replaced with “total square footage of the site”.

SECTION 807 Subdivisions in Planned Developments.
Subdivisions of land within a Planned Residential Development (PRD) and a Planned Residential-Craft Development (PRCD) may be permitted, provided the following standards and requirements are met:

(1) The provisions of the Subdivision Ordinance for minimum lot area and dimensional requirements may be waived, provided the applicant for the planned development shall

submit a preliminary plat for approval with the planned development plans and supporting documentation.

(2) The preliminary subdivision plat, submitted with the plans and documentation for the planned development shall be reviewed in accordance with the procedures and requirements in Sections 64 and 65 of the Subdivision Ordinance. Except as otherwise provided, the improvements and minimum requirements of the ordinance shall substantially conform to Articles 7 and 8. The Planning Board and Town Council may require that other provisions of the Subdivision Ordinance apply to the proposed subdivision, including Articles 9, 10 and 11.

(3) No subdivision of land within a planned development shall be permitted until said development is completed, or until an approved scheduled phase of the development is completed. A final plat approval of the lots or tracts to be subdivided is required prior to the sale of any parcels from the completed development or a completed scheduled phase.

SECTION 808 Cluster Subdivisions.

Cluster subdivisions may be permitted in the R-1 and R-2 zoning districts in accordance with the provisions of this section and the requirements of the Subdivision Ordinance.

(1) Location and Permitted Uses. Cluster subdivisions are permitted in the R-1 and R-2 districts. Within a cluster subdivision permitted uses are limited to the specific permitted uses allowed in the district where the subdivision is located.

(2) Minimum Size of Cluster Subdivision. The minimum size of a cluster subdivision shall be five (5) acres, exclusive of any street rights-of-way.

(3) Minimum Lot Size and Dimensional Requirements. Within an approved cluster subdivision, the minimum lot size and dimensional requirements of the Zoning Ordinance and Subdivision Ordinance are waived, provided all provisions for open space dedication and the required approvals of water and sewer systems conform with the requirements of all applicable codes, ordinances and policies. A minimum setback of fifteen feet (15') shall be established along the exterior perimeter of the cluster subdivision.

(4) Open Space Requirements. A minimum amount of permanent open space shall be provided in any cluster subdivision in an amount equal to or greater than the total square foot reduction in all lots, but in no case less than one contiguous acre. The open space shall be dedicated for open space use, owned and maintained by a property owners association. An instrument providing for the dedication, ownership and maintenance of the open space shall be submitted with the preliminary plat. In calculating open space requirements, a cluster subdivision may use a maximum of fifty percent (50%) of the following areas or uses:

(a) Required setbacks
(b) Lakes or ponds
(c) Rock outcrops
(d) Slopes exceeding 40%

The required open space area shall be located on land contiguous to and geographically situated within the subdivision. The required open space is in addition to the Active Recreation Area described in section 312 (amended 4/9/2007)

(5) Utilities. Cluster subdivisions are required to have access and utilize water and sewer service from the Town of Banner Elk. Provided however, where town water and/or sewer service is not available, individual or community systems may be approved by the Planning Board and Town Council provided the systems are designed and approved by the appropriate agency prior to the submission of a preliminary plat.

SECTION 900 CONDITIONAL USE STANDARDS
The following standards are applied to specific conditional uses. Before granting a conditional use, the Board of Adjustment shall find that all standards for specific uses listed in this section, as well as all standards listed in Section 1109(2), have been met.

SECTION 901 Automobile Wrecking, Junk and Salvage Yards.

(1) Automobile wrecking, junk and salvage yards provided that:
- (a) All motor vehicles stored or kept in such yards shall be so kept that they will not catch and hold water in which mosquitoes may breed and so that they will not constitute a place or places in which rats, mice, or other vermin may be harbored, reared, or propagated.
- (b) Because of the tendency for salvage yards to promote the breeding of vermin, no such operation shall be permitted closer than two hundred (200) feet from any established residential zone.
- (c) All outdoor storage of salvage and wrecking operations shall be conducted entirely within an enclosed opaque fence, screen, or wall, excepting driveway areas, from eight (8) to twelve (12) feet in height. Such fence, screen, or wall for screening purposes shall be properly painted or otherwise maintained in good condition.
- (d) All such yards shall be so maintained as to be in a sanitary condition and so as not to be a menace to the public health or safety.
- (e) The number of vehicular access driveways permitted on any single street frontage shall be limited to:
  - (i) One driveway where the parcel to be used has a maximum road or street frontage of one hundred (100) feet or less.
  - (ii) Two (2) driveways where the road or street frontage exceeds one hundred (100) feet. Driveways used for ingress and egress shall be limited to twenty-five (25) feet in width.

SECTION 902 Commercial Campgrounds.

(1) Commercial campgrounds provided that:
- (a) The primary purpose of the facility is for tent and pop-up campers, excluding self contained Recreational Vehicles, at specifically designated sites.
- (b) The maximum size for a commercial campground, including permitted accessory uses, is five (5) acres and thirty (30) campsites and the minimum size three (3) acres and ten (10 sites.
- (c) Accessory uses permitted may include structures for offices, camp store, laundry, restroom, and recreation facilities for exclusive use of campsite patrons.
- (d) The campground and its accessory use must provide buffering and screening to reduce noise and light affecting adjoining residentially zoned property with consideration given for existing vegetation and added landscaping, (see Article 700), to create an immediate opaque buffer.
- (e) Drainage, sedimentation, and erosion control plans must be approved and implemented by standards of the North Carolina Department of Natural Resources and Community Development.
- (f) All water distribution and sewage disposal system plans must receive approval from the appropriate state and county officials prior to issuance of a Certificate of Compliance.
- (g) No camp sites, structures, or other facilities may be located closer than thirty-five (35) feet from any property line in a residential zone and in no case within two hundred (200') of an existing residence not associated with Campground Operations.
- (h) Noise levels shall return to those similar to residential neighborhoods no later than ten

o'clock pm during the week. (Added 10-16-2007).

SECTION 903 Manufacturing and Processing Operations.
Manufacturing and processing operations provided, however, that no permit shall be issued except in conformance with Section 1109(2) of this Ordinance, and further provided that these uses are subject to such conditions as the Board of Adjustment shall require in order to prevent smoke, odor, noise, dust, or other effects that would be detrimental to the health, safety, and general welfare of the community. Where in the opinion of the Board of Adjustment, engineering data or other studies are needed to determine the possible adverse effects of a proposed industry on the health, safety, and welfare of the community, the Board may require the applicant to submit such data or other studies prepared by competent engineers or other technical people.

SECTION 904 Manufactured Home Parks.

(1) Manufactured home parks provided that:
   - (a) The minimum area for any manufactured home park shall be two (2) acres.
   - (b) The maximum density shall be eight (8) manufactured homes sites per acre.
   - (c) Not less than five (5) manufactured home sites shall be available at first occupancy.
   - (d) The minimum lot size for individual manufactured home sites shall be forty (40) by eighty (80) feet. No manufactured home shall be placed closer than twenty (20) feet to any other manufactured home or other structures, except customary accessory buildings for the exclusive use of the manufactured home.
   - (e) All manufactured home sites shall abut upon a driveway of not less than twenty (20) feet in width. All driveways shall have unobstructed access to a public street or highway and shall be hard surfaced or of properly compacted gravel, well marked, and lighted by the manufactured home park owner.
   - (f) A densely planted buffer strip consisting of evergreen trees or shrubs shall be located along all sides of the manufactured home park, but shall not extend beyond the established setback line along any street. Such buffer strip shall be not less than ten (10) feet in width and shall be composed of trees or shrubs of a type which at maturity shall be not less than twelve (12) feet in height. This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

Section 905 Planned Commercial Development.

(1) Intent. The Planned Commercial Development is established to encourage a more creative approach in land and building site planning for commercial uses, to encourage a more efficient and aesthetic retail environment, and to achieve a greater flexibility for commercial development in the Banner Elk planning area.

(2) Location. Planned Commercial Developments are permitted in the C-1 and C-2 districts as a conditional use.

(3) Ownership. Land in a Planned Commercial Development shall be under single ownership or management at the time of construction, or proper assurance shall be provided in order that the project can be successfully completed.

(4) Uses Permitted. Within a Planned Commercial Development, a building or land shall be used only for the uses permitted within the zoning district in which the development is located. Permitted land uses within a Planned Commercial Development shall include those provided for in Table 301 – Permitted Uses that relate to the C-2 zoning district and allow for multi-family development were the residential use is no more then 40% of the total square footage of the building(s) in the proposed development. (Amended 4/9/2007)

(5) Dimensional Requirements. The Planning Board and the Board of Adjustment shall evaluate the site development plan in order to determine that the proposed site design and density of the project is acceptable regarding the health, safety, and general welfare for the commercial development, the patrons, and adjacent properties. All buildings and structures

shall conform to the minimum setback standards for the Zoning District in which they are located along the exterior boundaries of the site (Amended 3/16/92). The total building coverage area of all principal and accessory structures shall not exceed forty percent (40%) of the gross square footage of the proposed site.

(6) Parking. Off-street parking shall be provided in a manner consistent with Article IV of this Zoning Ordinance. (Amended 4/9/2007)

(7) Paving Materials. All drives, parking, and loading areas shall be paved with hard, all-weather surface material.

(8) Buffering. If the Board of Adjustment deems necessary, all or part of the boundaries of the development which abut residentially zoned property shall be provided with a fifteen (15) foot wide buffer strip, upon which evergreen trees or shrubs shall be planted and maintained; said plantings at maturity shall be at least ten (10) feet in height.

(9) Responsibility of the Applicant. When an applicant proposes to construct a Planned Commercial Development, he shall proceed with the following schedule:

(a) Apply in writing to the Board of Adjustment requesting a conditional use for a Planned Commercial Development. Attached to the application shall be the following information to be reviewed by the Planning Board:

(i) A site plan map showing the location of all proposed buildings and accessory uses, parking facilities, open space, utility easements and drainage, proposed buffer strips, and topographic relief (contour interval of five feet) map to be at an appropriate scale.

(ii) Gross acreage and/or square footage of the proposed development, the number and types of structures and accessory buildings, and the percentage of acreage and/or square footage of all covered space in the proposed development.

(iii) Streets and utilities: All developments containing streets and utilities designated or planned for acceptance by the Town of Banner Elk (whether for immediate or for future acceptance) shall first be reviewed by the Planning Board before the Planned Commercial Development is approved by the Board of Adjustment. All streets and utility lines proposed shall be designed and constructed in accordance with, but not limited to, standards as shown in the subdivision regulations of the Town of Banner Elk. All developments with streets and utilities designated or planned for acceptance by appropriate public agencies outside the Banner Elk Town Limits (streets to be accepted by the State Department of Transportation, utilities to be accepted by the Town of Banner Elk or other appropriate agency) shall also generally conform to, but not be limited to, the subdivision regulations of the Town of Banner Elk, as the subdivision regulations relate to standards for the one-mile extraterritorial area.

(b) Appear in person (or send a duly appointed representative affiliated with the proposed development) at the Planning Board and Board of Adjustment meetings at which the proposed application is to be discussed, in order to answer all pertinent questions which the Planning Board and the Board of Adjustment may feel necessary to have answered, in order to review said application.

(10) Timing. If no development has occurred pursuant to the issuance of a conditional use:

(a) one year after the date of the conditional use for the Planned Commercial Development; or

(b) Upon the expiration of one 90-day extension of time for starting development granted by the Board of Adjustment, the conditional use shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on subject property.

(11) Staged Development (Phasing). After general construction commences, the Zoning Administrator shall review, at least once every six (6) months, all permits issued and compare them to the overall development phasing program. If he determines that the rate of construction substantially differs from the approved phasing program, he shall so notify the developer and the Board of Adjustment in writing. Thereafter, the Board of Adjustment may issue such appropriate orders to the developer as it sees fit, and upon continued

violation of this section may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.

SECTION 906 Planned Residential-Craft Developments.

(1) Intent. The purpose of the Planned Residential-Craft Development is to allow craftsmen an opportunity through a creative approach in land and building site planning to work and live in the same general area.

(2) Uses Permitted. Within a Planned Residential-Craft Development, a building or premises shall be used only for the following purposes:

(a) Single-family dwelling units, excluding mobile homes

(b) Multi-family dwelling units; (Exception: Multi-family is not a permitted use within the R-1 district).

(c) Craft shops

(d) The residential units and the craft workshops shall be located in separate structures; if, however the Board of Adjustment determines that a particular type of craft shop and residential unit would not be incompatible, then the Board of Adjustment may allow the two uses to locate in the same structure.

(e) Customary accessory buildings, including garages, workshops, and greenhouses, which are an integral part of the planned development.

(f) Private, non-commercial recreational facilities and buildings which are accessory to the primary residential function of the development, and which are an integral part of the planned development.

(3) Dimensional Requirements. The Planning Board and the Board of Adjustment shall evaluate the site development plan in order to determine that the proposed site design and density of the project is acceptable regarding health, safety, and general welfare for residential living. All buildings and structures shall conform to the minimum setback requirements for the district in which the development is located along the exterior boundaries of the site.

(4) Density and Building Coverage. The development shall not exceed a maximum density of three (3) dwelling units per acre in the R-1 district, and six (6) dwelling units per acre in the R-2 and C-2 districts, rounded to the lowest whole dwelling unit. The total project density shall be determined on the basis of the gross square footage of the proposed site, less any part of the proposed site in any street or highway right-of-way. The Board of Adjustment may require a lower density within a development in order to protect the physical environment, and insure adequate access and services to the project and adjacent properties. The total building coverage space (including covered parking or storage areas) shall not exceed forty percent (40%) of the gross square footage of the proposed site. If the Board of Adjustment deems necessary, all or part of the boundaries of the development shall be provided with a fifteen (15) foot wide buffer strip, upon which evergreen trees or shrubs shall be planted which at maturity shall be at least ten (10) feet in height.

(5) Responsibility of the Applicant. When an applicant proposes to construct two or more principal buildings (residential and crafts related), he shall proceed with the following schedule:

(a) Apply in writing to the Board of Adjustment requesting for a Planned Residential-Crafts Development. Attached to the application shall be the following information to be reviewed by the Planning Board.

(i) A site plan map showing the location of all proposed buildings and accessory uses, parking facilities, open space, utility easements and drainage, proposed buffer strips, and topographic relief (contour interval of five feet) map to be at an appropriate scale.

(ii) Gross acreage and/or square footage of the proposed development, the number and types of dwelling units and accessory buildings, and the percentage of

acreage and/or square footage of all covered space (including covered parking or storage area) in the proposed development.

(iii) Street and Utilities: All developments containing streets and utilities designated or planned for acceptance by the Town of Banner Elk (whether for immediate or for future acceptance) shall first be reviewed by the Architectural Review Committee before the Planned Residential-Crafts Development is approved by the Board of Adjustment. All streets and utility lines proposed shall be designed and constructed in accordance with, but not limited to, standards as shown in the subdivision regulations of the Town of Banner Elk. All developments with streets and utilities designated or planned for acceptance by appropriate public agencies outside the Banner Elk Town Limits (streets to be accepted by the State Department of Transportation, utilities to be accepted by the Town of Banner Elk or other appropriate agency) shall also generally conform to, but not be limited to, the subdivision regulations of the Town of Banner Elk, as the subdivision regulations relate to standards for the extraterritorial area.

(b) Appear in person (or send a duly appointed representative affiliated with the proposed development) at the Architectural Review Committee and Board of Adjustment meetings at which the proposed application is to be discussed, in order to answer all pertinent questions which the Architectural Review Committee and the Board of Adjustment may feel necessary to have answered, in order to review said application.

(6) Timing. If no development has occurred pursuant to the issuance of a conditional use

(a) one year after the date of the conditional use permit for the Planned Residential-Craft Development; or

(b) upon the expiration of one 90-day extension of time for starting development granted by the Board of Adjustment, the conditional use shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on subject property.

(7) Staged Development (Phasing). After general construction commences, the Zoning Administrator shall review, at least once every six (6) months, all permits issued and compare them to the overall development phasing program. If he determines that the rate of construction of residential units or nonresidential structures substantially differs from the approved phasing program, he shall so notify the developer and the Board of Adjustment in writing. Thereafter, the Board of Adjustment may issue such appropriate orders to the developer as it sees fit, and upon continued violation of this section, may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.

SECTION 907 Planned Residential Development.

(1) Intent. The Planned Residential Development is established to encourage a more creative approach in land and building site planning for residential uses, to encourage an efficient, aesthetic, and desirable use of open space, and to achieve flexibility and incentives for residential development which will produce a wider range of choice in satisfying the changing need for residential development in the Banner Elk area.

(2) Uses Permitted. Within a Planned Residential Development, a building or premises shall be used for the following purposes only:

(a) Single-family dwelling unit, excluding manufactured homes.

(b) Multi-family dwelling units.

(c) Customary accessory buildings, including private garages, non-commercial workshops, greenhouses, clubs, inns, and lodges which are accessory to the primary residential function of the development, and which are an integral part of the planned development.

(d) Private, non-commercial recreational facilities and buildings which are accessory to the primary residential function of the development, and which are an integral part of the planned development

(e) Mixed Uses may be included with limited commercial activities, which complement the residential development. Integration of commercial uses may be considered upon a recommendation of the Planning Board and at the determination of the Board of Adjustment as a Conditional Use. No commercial uses are permitted by right. Only neighborhood type service and light retail uses can be considered with a limit of 40% of the total building(s) square footage being commercial.

(3) Dimensional Requirements. The Architectural Review Committee and the Board of Adjustment shall evaluate the site development plan in order to determine that the proposed site design and density of the project is acceptable regarding health, safety, and general welfare for residential living. All buildings and structures shall conform to the minimum setback requirements for the district in which the development is located along the exterior boundaries of the site.

(4) Density and Building Coverage. The development shall not exceed the density of the district in which the development is located, rounded to the lowest whole dwelling unit. The total project density shall be determined on the basis of the gross square footage of the proposed site, less any part of the proposed site in any street or highway right-of-way. The Board of Adjustment may require a lower density within a development in order to protect the physical environment, and insure adequate access and services to the project and adjacent properties. The total building coverage space (including parking or storage areas and all impervious surfaces) shall not exceed forty percent (40%) of the gross square footage of the proposed site. If the Board of Adjustment deems necessary, all or part of the boundaries of the development shall be provided with a fifteen (15) foot wide buffer strip, upon which evergreen trees or shrubs shall be planted which at maturity shall be at least ten (10) feet in height. (Amended 05/09/05).

(5) Responsibility of the Applicant. When the applicant proposes to construct two or more principal buildings (residential), he shall proceed with the following schedule:

(a) Apply in writing to the Board of Adjustment requesting a conditional use for a Planned Residential Development. Attached to the application shall be the following information to be reviewed by the Planning Board:

(i) A site plan map showing the location of all proposed buildings and accessory uses, parking facilities, open space, utility easements and drainage, proposed

buffer strips, and topographic relief (contour interval of five feet) map to be at an appropriate scale.

(ii) Gross acreage and/or square footage of the proposed development, the number and types of dwelling units and accessory buildings, and the percentage of acreage and/or square footage of all covered space (including covered parking or storage areas and all impervious surfaces) in the proposed development.

(b) Appear in person (or send a duly appointed representative affiliated with the proposed development) at the Architectural Review Committee and the Board of Adjustment meetings at which the proposed application is to be discussed, in order to answer all pertinent questions which the Architectural Review Committee and the Board of Adjustment may feel necessary to have answered, in order to review said application.

(6) Streets and Utilities. All developments containing streets and utilities designated or planned for acceptance by the Town of Banner Elk (whether for immediate or for future acceptance) shall first be reviewed by the Architectural Review Committee before the Planned Residential Development is approved by the Board of Adjustment. All streets and utility lines proposed shall be designated and constructed in accordance with, but not limited to, standards as shown in the subdivision regulations of the Town of Banner Elk. All developments with streets and utilities design or planned for acceptance by appropriate public agencies outside the Banner Elk Town Limits (streets to be accepted by the State Department of Transportation, utilities to be accepted by the Town of Banner Elk or other appropriate agency) shall also generally conform to, but not be limited to, the subdivision regulations of the Town of Banner Elk, as the subdivision regulations relate to standards for the extraterritorial area.

(7) Timing. If no development has occurred pursuant to the issuance of a conditional use

(a) one year after the date of the conditional use for the Planned Residential Development; or

(b) upon the expiration of one 90-day extension of time for starting development granted by the Board of Adjustment, the conditional use shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on subject property.

(8) Phased Development. After general construction commences, the Zoning Administrator shall review, at least once every six (6) months, all permits issued and compare them to the overall development phasing program. If he determines that the rate of construction differs from the approved phasing program, he shall so notify the developer and the Board of Adjustment in writing. Thereafter, the Board of Adjustment may issue such appropriate orders to the developer as it sees fit, and upon continued violation of this sub-section may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.

SECTION 908 Public Utility Buildings and Facilities.

(1) Public utility buildings and facilities, if such use is essential for the service of the immediate area, provided that:

(a) All buildings shall be located at least thirty-five (35) feet from any lot line.

(b) Fences and/or other appropriate safety devices are installed to protect the public safety and welfare.

(c) No vehicles or equipment are stored, maintained, or repaired on the premises.

(d) All structures are in keeping with the residential character of the neighborhood.

(e) Adequate landscaping, screening, and/or buffering shall be provided to ensure compatibility with the neighborhood.

SECTION 909 Radio and Television Transmitting Stations and Studios.

(1) Radio and television transmitting stations and studios provided that:

(a) Such facilities shall be housed in structures which are in keeping with the character of

the residential neighborhood.

(b) No structure shall be located within thirty-five (35) feet of any lot line.

(c) Adequate landscaping, screening, and/or buffering shall be provided to ensure compatibility with the neighborhood.

SECTION 910 Residential Dwellings as an Accessory Use.

(1) Residential dwellings as an accessory use, including single and multi-family dwellings, but excluding mobile homes, provided that the following conditions be met:

(a) The residential unit or units shall constitute less than fifty percent (50%) of the heated floor space of the structure in which it is located.

(b) The number of dwelling units permitted on a lot shall conform to the minimum lot size standards of the R-2 General Residential District.

(c) One (1) off-street parking space per dwelling unit shall be provided in addition to any other parking spaces required for the primary use of the property.

SECTION 911 Reserved for future codification

SECTION 912 Bed and Breakfast Homes and Bed and Breakfast Inns.

(2) Bed and Breakfast Homes and Bed and Breakfast Inns may be issued as a conditional use in districts specified in this Ordinance, provided the following standards and conditions of this section and section 1109(2) are met, and the proposed facility is compatible with the residential character of the area in a residentially zoned district and does not negatively affect the health, safety and general welfare of adjacent properties.

a. The owner or manager shall permanently reside in the business complex or premises.

b. Prior to approval of a building or buildings for either Bed and Breakfast facility, the Board of Adjustment shall receive a written notice from the Avery County Health Department that the facility is approved for a Bed and Breakfast Home or Inn.

c. Prior to approval of a building or buildings for either Bed and Breakfast facility, the Board of Adjustment shall receive a written notice from the Banner Elk Fire Chief that the site and structures have been reviewed, that adequate water is available, and that access to the structure or structures is sufficient for providing fire protection to the facility and adjacent properties.

d. Plans for structural modifications, access, parking, and landscaping shall be reviewed in order to determine the compatibility of the facility with adjacent development.

e. The Board of Adjustment may require new or additional landscaping and screening for the facility and the parking if it is determined that the existing visual screening is inadequate.

SECTION 913 Resort-Commercial Developments.

As permitted in the R-C district, developments shall include lodging and/or residential development as the principal use of the project. All other recreational and commercial uses shall be accessory uses and shall be developed in accordance with an overall development plan. If developed in phases, the principal use or uses shall be included in the first phase. Performance guarantees may be required to insure that the facilities are constructed in accordance with the approved plan.

(1) Residential development shall conform to the minimum standards of the R-2 district for single and multi-family development.

(2) Lodging facilities may include bed and breakfasts, and hotels or motels, provided the development meets the requirements of Section 912.

(3) Accessory recreational and commercial uses permitted in conjunction with the primary facility are to be designed to primarily serve the patrons and residents of the development.

(4) In addition to the requirements specifically defined or referenced herein, the developments shall conform to the following:

(a) Parking: All uses within the development shall be provided parking in accordance with

Article IV.

(b) Signage: The development is permitted one free-standing sign per entrance or road frontage in accordance with Article VI and the standards for signs in the C-1, C-1P, C-2, M-E, and M-1 districts. The sign shall display only the name of the development.

(c) Water and Sewer: The Board of Adjustment may require that a development approved by conditional use in the R-C district connect to the town's water and/or sewer system.

(d) Screening and Design Requirements: The Board of Adjustment may require visual screening and buffers to mitigate or reduce the visual, noise or traffic impact on adjacent properties.

(e) Design Review: The Board of Adjustment may require site development and architectural and facade designs that will be compatible with the natural features of the site and adjacent development.

SECTION 914 Manufactured/Mobile/Modular Buildings as Administrative Office/Classroom Space

(1) Mobile buildings as Administrative Office or Classroom Space may be allowed as a conditional use in the Medical-Educational district provided that:

(a) All mobile buildings used for administrative office or classroom space shall be located in the rear of the principal building and/or screened from public view.

(b) The appearance of mobile buildings shall be in harmony with existing buildings and the standards of the Article V.

(c) Landscaping of the site shall be in accordance with the standards of Article VII.

(d) The wheels, axles, hitch, or other appurtenances of mobility shall be removed and the mobile building shall be placed on a permanent masonry foundation.

(e) The number of units shall be considered on a case by case basis.

(f) The maximum amount of time that any mobile building used for administrative office and/or classroom space may remain on a property shall be one (1), two (2) year term. At the end of the two (2) year term, the Board of Adjustment may extend the life of the conditional use permit one (1) additional year. To be eligible for the extension, the applicant must apply prior to the expiration of the current permit.

(2) Modular buildings that are being used for administrative offices and/or classroom space and have been placed upon a permanent masonry foundation can remain on the site as long as needed. The modular building must be appropriately landscaped and meet the remaining guidelines of the Zoning Ordinance.

(3) Rented modular buildings must be placed on a permanent masonry foundation and once the unit is removed, the foundation materials must also be removed.

(4) In the event the use of the building ceases to be administrative office or classroom space, said building shall be removed from the property.

(5) In the event the property ceases to be zoned Medical-Educational, all mobile buildings shall be removed. (Amended 12-21-2010)

SECTION 915 Material Recovery Sites

(1) Material Recovery Sites may be permitted as a conditional use in the G-O and C-2 Districts, provided that:

(a) All Material Recovery Sites shall be so kept as to not catch and hold water in which mosquitoes may breed, and kept so that they will not constitute a place or places in which rats, mice, or other vermin may be harbored, reared, or propagated.

(b) All Material Recovery Sites shall be conducted entirely within an enclosed opaque fence, screen, or wall, excepting driveway areas, from eight (8) to twelve (12) feet in height. Such fence, screen, or wall for screening purposes shall be maintained in good condition at all times.

(c) All Material Recovery Sites shall be maintained in a sanitary condition and not allowed to become a menace to the public health or safety.

(d) All Material Recovery Sties shall be so operated as to not emit odor, noise, and dust detrimental to the health, safety, and general welfare.
(e) The appearance of all Material Recovery Site buildings shall be in harmony with the standards of the Architectural Review Guidelines.
(f) Landscaping for all Material Recovery Sites shall be in harmony with the standards of the Architectural Review Guidelines.
(g) All Material Recovery Sites shall have traffic circulation patterns so as to insure safe traffic flow with respect to ingress/egress and loading/unloading.
(h) Driveways used for ingress and egress shall be limited to 30' in width.
(i) The water distribution and sewage disposal system plans for the Materials Recovery Site must receive approval from the appropriate Town, county, and state officials.
(j) Off-street parking must comply with the requirements of Section 602.
(k) All signs must comply with the requirements of Section 605.

SECTION 916 Tourist Courts

(1) Tourist Courts may be issued as a conditional use in districts specified in this Ordinance, provided the following standards and conditions of this section and section 1109(2) are met, and the proposed facility is compatible with the residential character of the area in a residentially zoned district and does not negatively affect the health, safety and general welfare of adjacent properties.

(a) The owner or manager shall permanently reside next to or on the premises.
(b) Submission of a Master Site Plan as specified in Article II.
(c) Submission of a landscape plan.
(d) Prior to approval of a building or buildings, the Board of Adjustment shall receive written notice from the Avery County Health Department that the facility is suitable for use as a Tourist Court.
(e) Prior to approval of a building or buildings for a Tourist Court, the Board of Adjustment shall receive a written notice from the Banner Elk Fire Chief that the site and structures have been reviewed, that adequate water is available, and that access to the structure or structures is sufficient for providing fire protection to the facilities and adjacent properties.
(f) The maximum coverage of the lot shall be not more than fifty (50) percent of the total land area.
(g) Two (2) parking spaces per lodging unit shall be required.
(h) The building or buildings shall comply with Article V.

SECTION 917 Sexually Oriented Businesses

(1) Sexually Oriented businesses may be issued a conditional use permit in the C-1P district, provided that the following standards and conditions of this section and section 1109(2) of the Zoning Ordinance are met, and the proposed facility is compatible with the commercial character of the area and does not negatively affect the health, safety and general welfare of adjacent properties.

(1) A vegetative buffer of evergreen trees is installed that at maturity reach no less than ten (10) feet in height and ten (10) feet in width.
(2) The business complies with Article V of this Ordinance.
(3) A landscape plan is submitted to the Town.
(4) Plans for any structural modifications, ingress and egress, and parking are submitted.
(5) Written notification from the Banner Elk Fire Chief that the site and structures have been reviewed, that adequate water is available.
(6) All drives, parking and loading areas shall be paved with hard, all weather surface material.

SECTION 918 Bed and Breakfast Village.

(1) Bed and Breakfast Village may be issued as a conditional use in districts specified in this Ordinance, provided the following standards and conditions of this section and section 1109(2) are met, and the proposed facility is compatible with the residential character of the area in a residentially zoned district and does not negatively affect the health, safety and general welfare of adjacent properties.

(a) The owner or manager shall permanently reside next to or on the premises.
(b) Submission of a Master Site Plan as specified in Article II.
(c) Submission of a landscape plan.
(d) Prior to approval of a building or buildings, the Board of Adjustment shall receive written notice from the Avery County Health Department that the facility is suitable for use as a Bed and Breakfast Village.
(e) Prior to approval of a building or buildings for a Bed and Breakfast Village, the Board of Adjustment shall receive a written notice from the Banner Elk Fire Chief that the site and structures have been reviewed, that adequate water is available, and that access to the structure or structures is sufficient for providing fire protection to the facilities and adjacent properties.
(f) The maximum coverage of the lot shall be not more than forty (40) percent of the total land area.
(g) Parking shall meet the standards of Article IV.
(h) The building or buildings shall comply with Article V.

SECTION 919 Pre-Form Metal Exterior Structures
(Deleted 12/21/2010)

SECTION 920 Miniature Golf Courses

Miniature Golf Courses can be seasonal in nature and may be permitted in the C-2 Commercial Zoning District as a conditional use provided that the following standards and conditions of this section have been met and that the proposed course meets all the requirements imposed on it by this ordinance.

(1) The course shall be screened from any major thoroughfare so as not to be a distraction to traffic or endanger the traffic with loose balls. It should be recommended that a landscaped parking lot separate the course from a major thoroughfare but if this is not possible, then buffering can be used to achieve this.
(2) Lighting will be pointed downward and away from the road and shall not remain on after 11:00 PM. Operation of the course will cease after 10:30 PM.
(3) Any music or other noise shall conform to the Banner Elk Municipal Code § 93.
(4) No amusement equipment, machinery or mechanical device of any kind with moving parts, or stationary may be operated within the property.
(5) Parking shall be provided according to Article IV of the Banner Elk Zoning Ordinance.
(6) A “temporary use structure” may be allowed as per Article II if a permanent structure is planned for this use. Should the operator decide to remain in business, such structure shall be removed within one (1) year. Upon the discretion of the zoning officer, the temporary structure may be granted up to one (1) six (6) month extension.
(7) As this is a use typically located within a floodplain area, any structures, surface or otherwise, must have an engineer’s certification of compliance with safety as it relates to surrounding properties. In addition, compliance with § 313 Stormwater Management shall be a part of the plan.
(8) A bond may be required at the discretion of the Town. Should the owner/operator use concrete as a method of designing the course and the course be abandoned for a period

longer than one (1) year; the bond will be used to remove any concrete and clean up any debris left from the vacated property.

(9) The course shall not incorporate any large theme park type structures, i.e. dinosaurs, pirate ships, windmills, etc… but should resemble a smaller version of regulation golf courses.

(10) Trash receptacle(s) shall be located strategically throughout the park as to provide adequate refuse collection.

(11) Landscaping shall be an integral part of the site plan to help the walkways and greens blend in with the surrounding property and to serve as a natural buffer, establishing a more garden type setting.

(12) Any outdoor storage shall be screened from public view. (Added 04-14-08)

SECTION 921 Conditional Use District (CUD)

(1) Intent. The Conditional Use District approval process is established to address those situations when a particular use may be acceptable but the general zoning district which would allow the use would not be acceptable. It allows the Planning Board and the Town Council the ability to approve a proposal for a specific use with reasonable conditions while assuring compatibility of the use with surrounding properties. This is a voluntary procedure that must be initiated by the property owner. Approval of a petition for conditional use district zoning shall result in the zoning classification being changed to the requested conditional use district designation and the issuance of a conditional use permit simultaneously.

(2) Responsibility of Applicant. No conditional use district shall be established until after the person proposing the district has submitted a petition for the rezoning of property and a conditional use permit application. Every petition for rezoning of property to a conditional use district shall be accompanied by a site plan containing any pertinent information that pertains to the site and the proposed use. In the course of evaluating the proposed use, the Planning Board and the Town Council may request additional information deemed appropriate to provide a complete analysis of the proposal and consideration of the conditional use permit. A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a conditional use district and should accompany the conditional use permit.

(3) Town Procedures for Approval. The Town Council may approve the rezoning of property to a conditional use district only upon determining that the proposed use will meet all the standards and requirements that are applicable to the proposed use. The Planning Board and the Town Council may attach reasonable and appropriate conditions to approval of the petition. When deciding the conditional use permit, the Town Council shall use quasi-judicial procedures. Any such conditions should relate to the relationship of the proposed use to surrounding properties, proposed support facilities such as parking areas and driveways, pedestrian and vehicular systems, screening and buffer areas, the timing of any development, road and right-of-way improvements, solid waste management, water and sewer improvements, stormwater drainage, the provision of open space, and any other matters that the Planning Board and the Town Council may find appropriate or that the petitioner may propose.

(4) Zoning Ordinance and Map. If a petition is approved under this Section, the district that is established, the approved petition, the approved conditional use permit, and all conditions which may have been attached to the approval are binding on the property as an amendment to the Zoning Ordinance and the Zoning Map. Only those uses and structures indicated in the approved petition, site plan and the conditional use permit shall be allowed on the subject property.

(5) Alterations to established CUD. Any minor changes in the detail of the site plan which will not alter the basic relationship of the proposed use to surrounding properties or the standards and requirements of these regulations or to any conditions attached to the approval may be approved by the Zoning Administrator without going through the amendment process. The Zoning Administrator, at his/her discretion, may forward any changes in detail to the Planning Board and/or the Town Council for review. If the applicant does not comply with the conditional use permit, the property shall revert back to the original zoning and the use will be subject to Section 1401 Penalties provided in the Ordinance. The applicant may appeal the decision of the Zoning Administrator to the Town Council for review and decision as per Section 1110. The Zoning Administrator shall periodically inspect the conditional use permit to ensure that all is in compliance. (Amended 07-13-2009)

SECTION 922 Incubators

(1) Intent: The Town of Banner Elk recognizes the importance of stimulating economic activity for the citizens of the Town and Avery County. The very nature of incubators is one of shared support to facilitate starting a new business. It is also recognized that there is a wide array of uses that can be incorporated into an incubator setting, some permitted and some conditional and that these uses will rotate out according to their contact with the incubator organization. It is because of these conditional uses that we establish this section as a way of incorporating those into the conditional use permits process with minimal impact to the neighboring businesses and the community at large. (Added 06-11-2012, Amended 09-10-2012)

(2) Uses, Permitted - All permitted uses in the Medical/Educational zoning district are allowed.

a. Assisted Living Residences; Residential Care Facilities,
b. Animal Hospital or Veterinary Clinic, excluding open kennels on the premises,
c. Assembly Halls, Gymnasiums and similar structures as the principle use,
d. Colleges, Vocational and Trade Schools,
e. EMS,
f. Gift/Novelty Shop,
g. Hospitals, Medical Clinics and Offices (not to include drug or alcohol treatment facilities),
h. Libraries, Museums, and Art Galleries,
i. Music and Dance Studios,
j. Pharmacy,
k. Private Kindergartens or Nursery Schools,
l. Public Parks, with Associated Facilities, such a playgrounds, swimming pools,
m. Radio and Television Stations, Studios, and Offices,
n. Schools – public elementary, junior high and high school, including private schools having a similar curriculum.

(3) Uses, Additional Permitted - The following are additional permitted uses in an Incubator setting consistent with the definition stated above and the other terms of this section:

a. Antique and Consignment Shops,
b. Appliance sales and service, repairs,
c. Bakery (sold on premise),
d. Bicycle Sales and Repair,
e. Coffee Shop and/or Dairy Bar,
f. Contractors Office (only, no materials stored on site),
g. Dry Cleaning Pick-up Site, Tailor (no actual dry cleaning activities),
h. Financial Institutions,

i. Florists,
j. General Merchandise Store less than 1,000sf,
k. Locksmith,
l. Medical Supply Store,
m. Newspaper offices,
n. Office Supply and Equipment – sales and service,
o. Offices – Business, Professional, and Public
p. Personal Care Services – hair, nails, tanning, weight loss,
q. Photographic Studios and Camera Supply Store,
r. Printing, Publishing, and Reproducing Establishment,
s. Restaurant, carry-out, delivery, sit-down,
t. Shoe Repair,
u. Web Site Design.

(4). Uses, Conditional. All other uses are conditional and shall appear before the Board of Adjustment and meet the following criteria for approval prior to starting their business in an Incubator:

(5). A Schedule "B" Privilege License shall be required, as per Section 110.16 of the Banner Elk Town Code, for each business that is part of the Incubator.

(6). No uses shall be permitted that shall cause run-off of toxic chemicals from the site into the Town's wastewater system or that would indirectly affect natural waterways.

(7). Parking shall be in accordance with the requirements set forth in the Town of Banner Elk zoning ordinance.

(8). Observance of any restrictions for the Heritage Overlay District must be met and any proposed changes to the property shall require prior approval by the Preserve America Committee.

(9). Signs shall be in conformance with all of Section 600 of the Sign Ordinance. No parking of vehicles with advertising covering more than 50 percent of the vehicle shall remained parked on site after hours. No flashing signs, outdoor advertising, or neon signage of any type shall be allowed. The Incubator may use a non-electronic changeable copy sign for event advertising, as long as it complies with all other requirements of the Sign Ordinance.

(10). Waste Receptacles shall follow the guidelines in Section 708 for all waste.

(11). No storage of any materials, parts, equipment, machinery, and/or supplies shall be allowed outside. All materials pertaining to a business must be stored on site with the business or in a designated storage room.

(12). Impact on Neighboring Properties. Businesses in the Incubator shall not have a negative impact on the neighboring properties, and must be found to be in harmony with the surrounding community.

(13). The educational component of the proposed conditional use must be demonstrated to the Board of Adjustment such that the Board of Adjustment finds such plan to be a credible and substantial component of the business undertaking.

(14). All Incubators must submit an acceptable Admissions Criteria that outline and meet requirements for the following categories:

(a). Criteria for new or early stage business

(b). Criteria for “Distressed Businesses”

(c). Viability

(d). Completed plan that outlines the following items:

1. A site plan of the property, to include the identification of neighboring properties;
2. A floor plan with the proposed uses of the spaces where possible;
3. Hours of operation of the Incubator;
4. Proposed signage for the Incubator;
5. A comprehensive Parking Plan;
6. A plan for solid waste disposal with screening;
7. A calculation of spaces identified for anchor businesses;
8. A landscaping plan;
9. A lighting plan;
10. Specifications of the grease trap for the culinary school’s needs

(e). Requirements for graduation

(f). Employment opportunities

(g). Professional environment

(h). Fit in the community

(i). Educational component

(j). Experience

(k). Cooperative environment

(l). Limited duplication of existing businesses

(m). Non-profit business

(n). Criteria for admissions as an “Established Business”

(o). Graduation requirements

(p). Criteria for “Anchor Businesses”

SECTION 923 BREWERIES, BREWPUB, MICROBREWERIES, DISTILLERIES, and WINERIES

(1) Intent: The Town of Banner Elk recognizes the increasing popularity of this type of industry and finds that by nature of the restrictive regulations of both State and Federal, considers these additional conditions. Therefore, the following conditions shall apply in Banner Elk's Zoning Jurisdiction:

(2) Conditions:

(a) No outside storage of raw materials,
(b) No outside storage of spent grain. Accumulated grains must be disposed of within 24 hours after a batch is finished,
(c) No drive-through windows,
(d) Ability to provide off-street loading and unloading for all materials,
(e) *For microbreweries*: Size is usually determined by the number of barrels produced each year. Microbreweries are limited to no more than 15,000 barrels per year.
(f) Discharge into the Town of Banner Elk's wastewater system must be pre-approved by the Town Manager and the Wastewater Treatment Plant Operator,
(g) *For Distilleries: T*he Town of Banner Elk requires that all distillery facilities be located in a standalone building whereby they are the only occupants in order to protect against fire and/or explosion.
(h) *For Distilleries:* Because spirituous liquor is the end product, "distillery" would not include industrial distilleries, such as for the production of ethanol for use as a fuel.

(3). Parking: Parking shall be provided as follows:

(a) One space for each five hundred (500) square feet of floor space plus one (1) space for each employee.
(b) All other requirements of parking in Section 400 must be met.

(4). Public Involvement: Areas for demonstration, education, retail, and tasting shall be included in all settings.

SECTION 1000 ADMINISTRATION AND ENFORCEMENT
It is the intent of this Ordinance that all questions arising in connection with the enforcement or the interpretation of this Ordinance shall be first presented to the Administrative Officer and that such question shall be presented to the Board of Adjustment only on appeal from the Administrative Officer, and that from the decisions of the Board of Adjustment, recourse shall be taken to the courts as provided by law. It is further the intent of this ordinance that the duties of the Town Council in connection with this Ordinance shall not include hearing and passing on disputed questions which might arise in connection with the enforcement or interpretation of this Ordinance, but the procedures for determining such questions shall be as stated in this Ordinance, and the duties of the Town Council in connection with this Ordinance shall be only the duty of holding a public hearing and voting upon any proposed amendment or repeal of this Ordinance as provided by law.

SECTION 1001 Administrative Officer.
The Zoning Administrator is hereby authorized, and it shall be his duty to enforce and administer the provisions of this Ordinance.

SECTION 1002 Zoning Permit.

(1) Zoning Permit Required in any Zoning District.

(a) No building or other structure shall be erected, moved, extended, enlarged, or structurally altered, nor shall any excavation or filling of any lot for the construction of any building be commenced until the Zoning Administrator has issued a zoning permit for such work. Application for a Zoning Permit shall be filed with the Zoning Administrator and shall be made prior to application for a building permit under the North Carolina State Building Code; such application shall include the following information:

(i) 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, landscaping and parking areas;

(ii) 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);

(iii) The use to which the completed project shall be devoted; and

(iv) Payment of all system access, impact fees and any additional costs associated with the physical connection to Banner Elk utilities; and

(v) 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 1) determine if review by the Architectural Review Committee is required, or 2) in the event that it is not, determine if he is satisfied that the work described therein complies with the Zoning Ordinance, he shall issue a Zoning Permit; said Permit shall be issued prior to application for a building permit under the North Carolina State Building Code. Review by the Architectural Review Committee is required for all new commercial buildings, additions to existing commercial buildings and the remodeling of the exterior of existing commercial buildings; the Architectural Review Committee shall review the project for compliance with Article V of this Ordinance, as well as other pertinent sections. In such cases, a Zoning Permit shall not be issued by the Zoning Administrator until such approval is issued by the

Architectural Review Committee.
After a Zoning Permit 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 therein to be contrary to the provisions of this Ordinance, he shall reject the application and deny the applicant's request for a Zoning Permit in writing, setting forth the reasons for the rejection and denial.

(c) A Zoning Permit 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 Permit shall immediately expire. Upon expiration, the Permit shall become void, and no work may be performed until a new Permit has been secured.

(2) Posting of the Zoning Permit. A Zoning Permit provided by the Town of Banner Elk shall be posted in a conspicuous place on the building site. The Zoning Permit shall remain posted throughout construction and shall not be removed until a Certificate of Compliance has been issued.

SECTION 1003 Certificate of Compliance.

(1) A Certificate of Compliance shall be secured from the Zoning Administrator before the making of a permanent connection to water service or sewer service.

(2) If any repairs, improvements, or alterations have been performed upon any premises for which a Zoning Permit has been issued, a Certificate of Compliance shall be secured from the Zoning Administrator within thirty (30) calendar days from the completion thereof.

(3) 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 Permit and the provisions of this Ordinance.

(4) 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. Failure to obtain a Certificate of Compliance in accordance with the Banner Elk Zoning Ordinance shall be a violation and punishable under Article XIV of said Ordinance.

(5) 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.

(6) Should a request for a Certificate of Compliance be made to the Zoning Administrator prior to site improvements (i.e. landscaping, sidewalks, parking) being completed, it shall be at the discretion of the Administrator to issue the Certificate if the improvements do not impact the functionality or occupancy of the building. However, the Certificate shall not be granted unless a financial security in the form of a cashier's check, letter of credit or performance bond shall be issued to the Town by a financial institution in an amount 125% times the estimated cost of completion of the improvements. Estimates shall be certified by a NC registered engineer or NC licensed general contractor. If the improvements have not been completed within six (6) months of the issuance of the Certificate of Compliance, the Town may use the financial security to complete the improvements.

(7) Certificates of Compliance shall be maintained in the records of the Town of Banner Elk.

SECTION 1004 Denial of Certificate of Compliance.
If a Certificate of Compliance is denied, the applicant may appeal the decision of the Zoning Administrator in accordance with Section 1110 of this Ordinance.

SECTION 1005. Deleted 5/12/97; reserved

SECTION 1006 Construction and Use to be as Provided in Application, Plans, Permits, and Certificates of Compliance.
Zoning Permits or Certificates of Compliance issued on the basis of plans and applications approved by the Administrative Officer authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction differing with that authorized shall be deemed a violation of this Ordinance and punishable as provided by Article XIV.

(1) A zoning permit provided by the Town of Banner Elk shall be posted in a conspicuous place on the building site. The zoning permit shall remain posted throughout construction and shall not be removed until a certificate of compliance is issued. (Amended 5/12/97)

SECTION 1007 Maintenance of Dedicated Areas until Acceptance by Town or POA
All facilities and improvements with respect to which the owner and/or development makes an offer of dedication for use, whether private or public, shall be maintained by the owner until such offer of dedication is accepted by the appropriate legal entity or public authority.

The council may relieve the owner of the requirement of this section if it determines that a Property Owners Association or other similar legal entity has been established for the development and a review of the covenants, restrictions and conditions have been made and are accepted by the Town Council. Town Council may approve the association once it determines that the association has assumed and/or is capable of performing the obligations set out in the covenants, restrictions and conditions as proposed by the development.

POA's which do not abide by their covenants, restrictions or conditions will first receive a letter of warning from the Town. Further violations shall be subject to Section 1401.

Areas of conservation easement must be dedicated to a legitimate conservation organization or the Town for management upon approval by the Board of Adjustment and the Town Council. POA's will not be allowed to manage their own area(s) of conservation easement. (Added 09-14-09)

SECTION 1100 Establishment of Board of Adjustment.
A Board of Adjustment is hereby established. Said Board shall consist of five (5) regular members; three (3) regular members of the Board shall be citizens of the Town of Banner Elk and shall be appointed by the Town Council, and two (2) regular members shall be appointed by the Board of County Commissioners and shall be a citizen of the extraterritorial area outside the town limits. As the terms of all members expire, new appointments for three (3) years shall be made. The Town Council shall also appoint two (2) alternate members for the municipalities' regular members, and the Board of Commissioners shall appoint one (1) alternate member for the extraterritorial members. The 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.

SECTION 1101 Vacancies.
The Town Council shall appoint members to fill vacancies of the town's members and the County Commissioners shall appoint members to fill vacancies of the extraterritorial area's members.

SECTION 1102 Rights of All Board Members.
All Board of Adjustment members, including extraterritorial members, shall have equal rights, privileges, and duties both within the town and extraterritorial area.

SECTION 1103 Rules of Conduct for Members.
Members of the Board may be removed for cause, including violation of the rules stated below.
All members should attend Board of Adjustment meetings regularly. If a member misses more than three (3) consecutive meetings, he may be replaced at the recommendation of the Board of Adjustment, and the discretion of the Banner Elk Town Council.
No Board member shall take part in the hearing, consideration, and determination of any case in which he is personally or financially interested. Personally interested is defined to mean that a Board member's family either owns, has a financial interest in, or has property abutting property being considered by the Board.
(4) No Board member shall vote on any matter deciding an application for appeal unless he shall have attended the public hearing on that application or appeal.(5) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from any other member of the Board, its secretary, or clerk prior to the hearing.(5) Members of the Board will not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.

SECTION 1104 Board Meetings.
Meetings of the Board may be called at any time by the chairperson. At least forty-eight (48) hours written notice of the time and the place of meetings shall be given by the secretary or by the chairperson to each member of the Board. All Board meetings are to be held in accordance with Article 33B of Chapter 143 of the General Statutes of North Carolina, commonly referred to as the Open Meeting Law.

SECTION 1105 Cancellation of Meetings.
Whenever there are no appeals, applications for conditional uses or variances, or other business for the Board, or whenever so many regular and alternate members notify the secretary of inability to attend that a quorum will not be available, the chairperson may dispense with a meeting by giving written or oral notice to all members not less than twelve (12) hours prior to the time set for the meeting.

SECTION 1106 Quorum.
A quorum shall consist of three (3) members of the Board, but the Board shall not pass upon any question relating to an appeal from a decision, order, requirement, or determination of the Zoning Administrator, or an application for a variance or conditional use permit when there are less than four (4) members present.

SECTION 1107 Voting.
All members shall vote on any issue unless they have disqualified themselves prior to the meeting or hearing for one or more of the reasons listed in Section 1103. The required vote to decide appeals and applications shall be as provided in Section 1110(4) (d), and shall not be reduced by disqualification. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board.

SECTION 1108 Conduct of Meetings.
All meetings shall be open to the public. The order of business at regular meetings shall be as follows:

(1) Roll call;
(2) Reading of minutes of previous meetings;
(3) Hearing of cases;
(4)Reports of committees;
(5) Unfinished business;
(6) New business;
(7) Consideration and determination of cases heard.

SECTION 1109 Powers and Duties of the Board of Adjustment.
The Board of Adjustment shall have the following powers and duties:

1. Administrative Review. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance.
2. Conditional Uses. To hear and decide only such conditional uses as the Board of Adjustments is specifically authorized to pass on under the terms of this Ordinance. To decide such questions as are involved in determining whether a conditional use should be granted. To grant conditional uses with such conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the intent of this Ordinance. A conditional use may be granted by the Board of Adjustment only after making the following findings:
   a. That the Board of Adjustment is empowered under a specific section of this Ordinance to grant the conditional use and that the granting of the conditional use will not adversely affect the public interest.
   b. Before any conditional use shall be issued, the Board shall make written findings certifying compliance with all specific rules governing the individual conditional use and that satisfactory provisions and arrangements have been made concerning the following wherever applicable:
      1. Ingress and egress to property and proposed structures, with particular reference to automobile and pedestrian safety, convenience, traffic flow and control, and access in case of fire or catastrophe.
      2. Off-street parking and loading areas where required with particular attention to the items in (a) above and to the economic, noise, glare, or odor effects of the conditional use on adjoining properties and generally in the district.
      3. Refuse and service areas, with particular reference to the items in (a) and (b) above.
      4. Utilities, with reference to location, availability, compatibility, and compliance with the Banner Elk Water and Sewer Ordinance. All impact charges must be paid prior to the issuance of a conditional use permit.

5. Screening and buffering, with reference to type, dimensions, and character.
6. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
7. Required yards and other open space.
8. General compatibility with adjacent property and other property in the district.

c. The Board of Adjustment shall request from the Banner Elk Planning Board a review and recommendations of the conditional use relative to the following considerations:

1. Relation of the conditional use to applicable elements of the planning program.
2. Relation of the conditional use to applicable elements of the Architectural Review Guidelines.

3. Variances. When unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Banner Elk Board of Adjustments shall vary any of the provisions of this ordinance upon a showing of the following:

a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be a basis for granting a variance;

c. The hardship did not result from action taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by a variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. (Amended 10-14-2013)

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

5. Fees for Variances, Appeals and Conditional Uses. A fee shall be paid according to Section 19 of the Banner Elk Fee Schedule for each application for a variance, appeal, or conditional use to cover the necessary administrative and advertising costs.

SECTION 1110 Appeals and Applications.

(1) 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 this Ordinance. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of this Ordinance and those based upon alleged hardship resulting from strict interpretation of this Ordinance.

(2) 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. The applicant must file his application for a hearing with the Zoning Administrator, who shall act as clerk for the Board in receiving this notice. All applications shall be made upon the form specified by the

town for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

(3) Hearings.

(a) Time. After receipt of notice of appeal, the Board chairperson shall schedule the time for a hearing, which shall be at a regular or special meeting within thirty-six (36) days from the filing of such notice of appeal.

(b) Notice. The Board shall give public notice of the hearing in a newspaper published in Avery County by advertisement published at least five (5) days prior to the date of the hearing. The Board shall mail notices of the hearing to the parties to the action appealed from, and to such other persons as the Zoning Administrator shall direct, at least five (5) days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.

(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 chairperson, or such person as he shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the argument in support of his application; (c) persons opposed to granting the application shall present the argument against the application; (d) both sides will be permitted to present rebuttals to opposing testimony; (e) the chairperson shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board 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) Re-hearings. 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.

(4) Decisions.

(a) Time. Decisions by the Board shall be made not more than thirty (30) days from the time of hearing.

(b) Form. Written notice of the decision in a case shall be given to the applicant by the secretary as soon as practicable after the case is decided by certified or registered mail. Also, written notice shall be given to owners of the subject property (if not the applicant) and to other persons who have made a written request for such notice. 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 chairperson upon approval of the minutes by the Board. Such 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 may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. Where conditional use 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 a conditional use.

(5) Intervention Any individual or organization who wishes to intervene as a party to any matter

before the Board of Adjustment shall complete an application to intervene upon a form which may be obtained from the Zoning Administrator. Such application shall state the proposed Intervenor's interest relating to the property or hearing, any practical impairment of the protection of the interest if not allowed to intervene as a party, and whether there is inadequate representation of that interest by existing parties. Such application shall be filed with the Zoning Administrator at least 24 hours prior to the scheduled time for the hearing of the matter before the Board. The Board may waive the deadline for the filing of this application upon good cause being shown for the failure to timely file to intervene. Upon a hearing on the motion to intervene, the Board of Adjustments shall determine whether intervention is appropriate. (Added 10-14-2013)

(c) Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting conditional use or variance shall expire if a zoning permit or certificate of compliance 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 board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For purposes of the Section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there no qualified alternates available to take the place of such members.

(e) Public Record of Decisions. The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

SECTION 1150 Establishment of Planning Board

A Planning Board is hereby established. Said board shall consist of nine (9) members; five (5) of which shall be appointed by the Town Council and four (4) members representing the Extraterritorial Planning Jurisdiction which shall be appointed by the County Commissioners for terms of four (4) years. Any vacancy in the membership shall be filled for the un-expired term in the same manner as the initial appointment. Members may be reappointed and shall serve at the pleasure of the Council.

SECTION 1151 Proceedings of the Planning Board

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

SECTION 1152 Architectural Review Committee

The members of the Planning Board shall also serve in the capacity of the Architectural Review Committee and shall review development plans for compliance with Article V – Architectural Design Standards, and other relevant sections of this Ordinance. The Planning Board shall have forty-five (45) days after the first consideration of the application within which to 1) approve, 2) deny, or 3) approve with conditions, the application.

SECTION 1153 Duties

The Planning Board shall provide an advisory function to assist in making decisions pertaining to amendments to a Comprehensive Plan and this Ordinance, and applications for conditional use permit approval. The Planning Board shall have the following powers and duties:

a) To exercise any of the powers and/or duties assigned pursuant to NCGS § 160A-361 including, but not limited to, the preparation of a comprehensive plan;

b) To prepare amendments to the plan and its elements and to submit the amendments to the Council;

c) To initiate, hear, review, and make recommendations to the Council on applications for amendments to the text of this Ordinance.

d) To initiate, hear, review, and make recommendations to the Council on applications for amendments to the Official Zoning Map.

e) To hear, review, and make recommendations on all applications for major subdivision approval in accordance with the rules and regulations established in the Town of Banner Elk Subdivision Ordinance;

f) To review applications for conditional use permits with regard to the application's technical merits meeting the requirements of this Ordinance and making recommendations to the Board of Adjustment. The authority of the Board in such cases is as an advisory body, and any recommendations made by the Board shall not be binding. All recommendations of the Board shall be made in writing to the Board of Adjustment for their review during the public hearing conducted for the applicable conditional use permit; such recommendations shall be entered into the record as evidence during such public hearing; and

g) To adopt bylaws, policies, procedures, and regulations for the conduct of its meetings, the consideration of applications for development approval, and for any other purposes deemed necessary for the functioning of the Board. All bylaws, policies, procedures, and regulations shall be consistent with this Ordinance.

SECTION 1200 Amendments.
This Zoning Ordinance, including Zoning Map, may be amended by the Town Council in accordance with the provisions of this article.

SECTION 1202 Initiation of Amendments.
Proposed changes or amendments may be initiated by the Town Council, the Planning Board, the Board of Adjustment, or one or more owners of property within the area proposed to be changed or affected.

SECTION 1202 Application.
Before any action on a proposed change or amendment, an application shall be submitted to the office of the Zoning Administrator at least ten (10) days prior to the Planning Board's meeting at which the application is to be considered. The application shall contain the name(s) and address (es) of the owner(s) of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulations or district as shown on the application forms supplied by the town. All applications requesting a change in the Zoning Map shall include a description of the property in question. The Planning Board and the Town Council will not consider an application for property denied within the preceding twelve (12) months by the Town Council.

SECTION 1203 Planning Board Action.
Before taking any action on a proposed amendment to the ordinance, the Town Council shall consider the Planning Board's recommendations on each proposed amendment. The Planning Board shall have forty-five (45) days after the first consideration of the application within which to submit its recommendations to Town Council. Failure of the Planning Board to submit recommendations within the forty-five (45) day period shall constitute a favorable recommendation.

SECTION 1204 Public Hearing.
Before enacting any amendment to this Ordinance, the Town Council shall hold a public hearing. A notice of such public hearing shall be published in a newspaper of general circulation in Avery County once a week for two (2) successive weeks. The first publication shall not appear less than ten (10) days prior to the date fixed for the public hearing, The notice shall include the time, place, and date of the hearing, and include a description of the property or the nature of the change or amendment to the Ordinance and/or map.

SECTION 1205 Protests.
No protest against a change, amendment, or revision of the Ordinance, shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the owners of twenty percent (20%) or more of either the area of lots included in such proposed change, or those immediately adjacent thereto, either in the rear or either side thereof, extending one hundred (100) feet therefrom, or those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots. The protest petition shall be on the form prescribed and furnished by the Town. The protest petition shall be received by the Town Clerk at least two normal work days (excluding Saturdays, Sundays and legal holidays) before the date established for a public hearing on the proposed change, amendment, or revision. Upon certification by the Town Clerk to the Town Council of the validity of the protest petition, no change, amendment, or revision shall become effective except by a favorable vote of three fourths of all members of the Town Council.

SECTION 1206 Decision.
The Town Council shall make a decision on the proposed amendment within sixty (60) days after the public hearing.

SECTION 1207 Fees for Amendments.
See section 19 of the Banner Elk Fee Schedule for fees to amend the Banner Elk Zoning Map and

Zoning Ordinance.

SECTION 1300 Non-conforming Uses

Within the districts established by this ordinance, or amendment thereto, there exist lots, structures, or uses of land and structures which were lawful before this ordinance was adopted or amended, but which are prohibited in the future under the terms of this ordinance or amendment. It is the intent of this ordinance to permit the continuance of certain of these non-conforming uses until they are removed by economic forces or otherwise, and to require discontinuance within a reasonable time of certain other non-conforming uses. It is the intent of this ordinance to discourage the survival of non-conforming uses and to prohibit their enlargement, expansion, or extension.

(1) Continuance. Non-conforming uses existing at the time of the enactment of this ordinance, or any amendment thereto, may be continued on the same land area provided, however, that the land area occupied by a non-conforming use may not be increased. Non-conforming uses shall not be:
   (a) Changed to another non-conforming use.
   (b) Enlarged or extended except in conformity with this ordinance.
   (c) Reestablished after discontinuance for one hundred twenty (120) days; except in those cases where a non-conforming building or structure is damaged by fire, explosion, flood, riot, or act of God and, in such case, the building or structure may be reconstructed and used as before any such calamity, but not enlarged or extended, provided such reconstruction takes place within one (1) year of the calamity.

(2) Cessation of Use. All non-conforming uses of land or non-conforming uses involving minor structures such as golf driving ranges, auto sales yards, home occupations involving retail sales and/or display of goods, junk yards, or any uses similar to those enumerated, shall be discontinued within two (2) years from the date of adoption of the ordinance within the corporate limits and within two (2) years in the extraterritorial area upon adoption of extraterritorial jurisdiction. All non-conforming uses involving mobile homes used for nonresidential purposes inside the corporate limits shall be discontinued no later than eighteen (18) months after adoption of such extraterritorial jurisdiction by the town.

SECTION 1301 Non-conforming Lots of Record

Where the owner of a lot of official record in any district at the time of the adoption of this ordinance, or his successor in title thereto, does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this ordinance, such lot may be used as a building site provided that:

(1) Where the lot area and/or any other dimensional requirement is not more than twenty percent (20%) below the minimum specified in this ordinance and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a zoning permit.

(2) Where the lot area and/or any other dimensional requirement is more that twenty percent (20%) below the minimum specified in this ordinance or other dimensional requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

SECTION 1400 Violations

Whenever, by the provisions of this ordinance, the performance of any act is prohibited, or whenever any regulation, dimension or limitation is imposed on the use of any land, or on the erection or alteration, or the use or change of use of a structure, or the uses within such structure, a failure to comply with such provisions of this ordinance shall constitute a separate violation and a separate offense.

SECTION 1401 Penalties

a) Unless otherwise provided herein, each violation of this ordinance shall constitute a misdemeanor, except as otherwise provided by statute, and violations of such provisions of this Ordinance shall be punished by fine or imprisonment as by law provided. Each day any violation of this Ordinance shall continue shall constitute a separate offense, except as may be specifically provided.

b) Violations of this Ordinance shall constitute either a misdemeanor or, at the election of the Town, shall subject the offender to a civil penalty upon the issuance of a citation for said violation as hereinafter provided. The civil penalty, if not paid to the Town of Banner Elk within fifteen days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Ordinance, said civil penalties shall be in the amount of $500.00 for each violation and each day any single violation continues shall be a separate violation.

c) In addition to the civil penalties set out above, any provision of this Ordinance may be enforced by an appropriate equitable remedy issuing from a competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

d) In addition to the civil penalties set out above, any provision of this Ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by General Court of Justice. When a violation of such a provision occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

e) An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of' a mechanic's and material man's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and, posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by judicial order. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith

f) The provision of this Ordinance may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.

g) Any ordinances hereafter adopted by the Town Council of the Town of Banner Elk, the violation of which shall incur a penalty shall specify whether the enforcement shall be pursuant to the civil penalty and/or criminal penal provisions of this section.

SECTION 1402 Procedure

a) Upon determination of a violation of any section of the Zoning Ordinance by the enforcement official, the penalty for which is a civil penalty, the enforcement official of the Town of Banner Elk shall cause a warning citation to be issued to the violator. The enforcement official shall be the Zoning Administrator, or other such designee of the Town Manager. Such citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time shall be stated during which the violation shall be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.

b) An appeal from a warning citation shall be taken within ten (10) days from the date of said warning citation to the Board of Adjustment. Except in any case where the ordinance violated, which is the subject of the warning citation, specifically grants to the Board of Adjustment other powers in considering appeals and such appeal is applied for, the Board of Adjustment in considering appeals of warning citations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of an ordinance, in the factual situation as it relates to the application of an ordinance or both.

c) Where the enforcement official of the Town determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the enforcement official may amend the warning citation to provide for additional time.

d) Upon failure of the violator to obey the warning citation a civil citation shall be issued by the appropriate official of the Town of Banner Elk and either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the Town or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear before the Town Manager of the Town of Banner Elk, or his designee, within fifteen days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued shall have been corrected by the time the citation is paid; otherwise further citations shall be issued. Citations are automatically considered a separate offense for each day the infraction continues until the prohibited activity is ceased or abated. A separate citation will not need to be issued for each day the infraction continues.

e) Within fifteen days from the date the first civil citation is served, the Town Manager shall have the authority, upon written request by the violator, to void the civil citation(s) issued to date and relieve the violator of any civil penalties due. The written request shall state the reasons why the violator believes that the civil citation(s) should be voided. Prior to any civil citations being voided, the violation for which the citation(s) were issued shall be fully corrected. The Town Manager shall use extreme discretion in voiding civil citations and such action shall be taken only under extraordinary circumstances. Such circumstances may include, but not be limited to, an error by an official of the Town, civil citations not reaching the violator due to mail delivery difficulties and extreme weather constraints. After fifteen days from the first civil citation being served, the Town Manager may only exercise said authority when correcting an error made by an official of the Town. In those circumstances involving an error by an official of the Town, the Town Manager may exercise said authority without a written request by the violator but shall consider the recommendation of the official making the error.

f) If the violator fails to respond to a citation within fifteen days of its issuance, and pay the penalty prescribed therein or receive relief from the Town Manager as described above, the Town of Banner Elk may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as

permitted by law.

The Zoning Ordinance of Banner Elk is hereby readopted in whole with all amendments and revisions included herein, following a public hearing conducted on the 14th day of March, 2005.

Latest Amendments were adopted by the Banner Elk Town Council on October 14, 2013.

Deka Tate, Mayor

AFFIRMED:

Steven Smith, Town Clerk

AMENDMENTS:

4/9/2007 Procedures for Review of Plans and Applications (section 311);
Definition and Requirements for Active Recreation Area (section 312);