

**CHAPTER 16 - LAND USE ORDINANCE**

**Article XII - Density and Dimensional Regulations**

***Section 16-181 Minimum Lot Size.***

Subject to the provisions of Section 16-186 (Cluster Subdivisions), all lots in the following zones shall have at least the amount of square footage indicated in the following table:

<b>Zoning Classification</b>	<b>Minimum Square Feet</b>
R-A	The minimum lot size for a residence shall be one-half acre.
R-15	15,000
R-10	10,000
R-6	6,000
R-MH	6,000
CB	No minimum
GB	No minimum
OI	No minimum
HMC	No minimum
HSG	No minimum
PGS	No minimum

*[Amended July 14, 1998; October 13, 1998; March 14, 2000]*

***Section 16-182 Residential Density.***

(A) The following shall represent the maximum density permitted for residential uses in the various zoning districts:

<b>Zoning Classification</b>	<b>Permitted Use</b>	<b>Maximum Density</b>	
		<b>Within Watershed Area</b>	<b>Outside Watershed Area</b>
R-15	Single Family	2 Units Per Acre Minimum Lot Size: 15,000 sq. ft.	3.Units Per Acre Minimum Lot Size: 15,000 sq. ft.
R-10S	Single Family	2 Units Per Acre Minimum Lot Size: 10,000 sq. ft.	4 Units Per Acre Minimum Lot Size: 10,000 sq. ft.
R-10D	Two Family	2 Buildings (4 Units) Per Acre Minimum Lot Size: 15,000 sq. ft. per building	2 Buildings (4 Units) Per Acre Minimum Lot Size: 15,000 sq. ft. per building
R-10 M	Two Family	2 Buildings (4 Units) Per Acre Minimum Lot Size: 15,000 sq. ft. per building	3 Buildings (6 Units) Per Acre Minimum Lot Size: 15,000 sq. ft. per building
R-10 M	Multi Family	4 Units Per Acre Also limited to 24% impervious area.	4 Units Per Acre
R-6S	Single Family	2 Units Per Acre	6 Units Per Acre

		Minimum Lot Size: 6,000 sq. ft.	Minimum Lot Size: 6,000 sq. ft.
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Zoning Classification	Permitted Use	Maximum Density	
		Within Watershed Area	Outside Watershed Area
R-6M	Two Family	2 Buildings (4 Units) Per Acre Minimum Lot Size: 9,000 sq. ft. per building Also limited to 24% impervious area.	3 Buildings (6 Units) Per Acre Minimum Lot Size: 9,000 sq. ft. per building
R-6M	Multi Family	5 Units Per Acre Also limited to 24% impervious area.	5 Units Per Acre

*[Amended October 13, 1998; December 8, 1998]*

(B) Subject to the provisions of Sections 16-186 (Cluster Subdivisions) and the remainder of this section, every lot used for single-family residential purposes shall have at least the number of square feet indicated as the minimum permissible in the zone where the use is located, according to Section 16-181. Every lot developed as a single family residence with accessory apartment shall have the number of square feet equal to 133% of the minimum required for single family residences in that district. Lots in the CB, GB and OI districts may be used for single-family residential purposes regardless of lot size. *[Amended July 14, 1998; October 13, 1998]*

(C) Every lot developed as a duplex or two-family conversion shall have the number of square feet equal to 150% of the minimum required for the single family residences in that district.

(D) Lots in the R-MH, CB, GB, and HMC zoning districts, where residential developments are permissible, may be developed at a density equal to the density allowed within the R-6S District for single family developments, or the density allowed within the R-6M District for multi family developments, whichever is applicable to the type of development that is being proposed. *[Amended October 13, 1998]*

(E) With respect to lots where multi-family conversions are permissible, the lot must contain at least the number of square feet equal to 200% of the minimum required for single family residency if a conversion into three dwelling units is proposed and 250% of the minimum required for single family residency if a conversion into four dwelling units is proposed.

**Section 16-183 Minimum Lot Widths.**

(A) No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:

- (1) Could be used for purposes that are permissible in that zoning district; and
- (2) Could satisfy any applicable setback requirements for that district.

(B) Without limiting the generality of the foregoing standard, the following minimum lot widths are required to satisfy the standard set forth in subsection (A). The lot width shall be measured along a straight line connecting the points at which a line that demarcates the required setback from the street intersects with lot boundary lines at opposite sides of the lot. *[Amended December 10, 1991; July 14, 1998; October 13, 1998; March 14, 2000]*

Zoning Classification	Lot Width
R-A	100 feet
R-15	100 feet
R-10	80 feet
R-6	60 feet
R-MH	60 feet
CB	None
GB	None
OI	None
HMC	None
HSG	None
PGS	None

(C) No lot created after the effective date of this chapter that is less than the recommended width shall be entitled to a variance from any building setback requirement.

**Section 16-184 Building Setback Requirements.**

(A) ) Subject to the other provisions of this section, no portion of any building or any sign may be located on any lot closer to any lot line or to the street right-of-way line or center line than is authorized in the table set forth below. If the street right-of-way line is readily determinable (by reference to a reworked map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way is not so determinable, the setback shall be measured from the street centerline. The term "lot boundary line" refers to lot boundaries other than those that abut streets. For the purposes of determining setbacks in this article, the Blue Ridge Parkway boundary is considered a lot boundary line."

Zone	Minimum Distance From Street Right-of-Way Line		Minimum Distance From Street Centerline		Minimum Distance From Lot Boundary Line
	Building	Sign	Building	Sign	Building and Sign
R-15	40	20.0	55	50.0	12
R-10	30	15.0	45	45.0	10
R-6	25	12.5	40	42.5	8
R-MH	25	12.5	40	42.5	8
CB	(Sec. 16-184.02)	(Sec. 16-282)	(Sec. 16-184.02)	(Sec. 16-282)	(Sec. 16-184.02)
GB	20	(Sec. 16-282)	35	(Sec. 16-282)	8
OI	15	(Sec. 16-282)	30	(Sec. 16-282)	8
HMC	15	(Sec. 16-282)	30	(Sec. 16-282)	8
HSG	-	(Sec. 16-282)	30	(Sec. 16-282)	-
PGS	-	(Sec. 16-282)	30	(Sec. 16-282)	-
R-A	25	12.5	40	42.5	12

*[Amended August 12, 2003] [Amended October 12, 2004] [Amended July 12, 2005]*

(B) The board of adjustment may issue a variance to allow a reduction in the minimum front yard setback if it concludes that, because of the topographic features of the lot in question, it would be

impractical to build upon the lot in compliance with the front setback requirements or such compliance would work an unwarranted hardship on the developer.

(C) Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, and the property line setback requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to observe the property line setback requirement applicable to the adjoining residential lot.

(D) Setback distances shall be measured from the property line or street right-of-way line to a point on the lot that is directly below the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.).

(E) Whenever a private road that serves more than three lots or more than three dwelling units or that serves any nonresidential use tending to generate traffic equivalent to more than three dwelling units is located along a lot boundary; then:

(1) If the lot is not also bordered by a public street, buildings and freestanding signs shall be set back from the centerline of the private road just as if such road were a public street.

(2) If the lot is also bordered by a public street, then the setback distance on lots used for residential purposes (as set forth above in the column labeled "Minimum Distance from Lot Boundary Line") shall be measured from the inside boundary of the traveled portion of the private road.

(F) Notwithstanding any other provision of this section, on lots in residential zones used for residential purposes, a maximum of one accessory building may be located in the rear yard of such lot without regard to the setback requirements otherwise applicable to the rear lot boundary line if such accessory building does not exceed fifteen feet in height or contain more than 150 square feet of gross floor area.

(G) The front yard requirements of this chapter for dwelling units shall not apply to any lot where the average setback of existing buildings located wholly or partially within one hundred feet on either side of the proposed dwelling and on the same side of the street in the same block and use district as such lot is less than the minimum required front yard depth. In such case, the setback on such lots may be less than the required setback but not less than the average of the existing setbacks on the aforementioned lots, or a distance of twenty (20) feet from the street right-of-way lines, whichever is greater. *[Amended October 24, 1988]*

(H) Notwithstanding any other provisions of this Section, the Zoning Administrator may grant an administrative waiver or variance of the setback requirements contained herein due to topography. In such case, the minimum distance required under this Section for placement of a building from the street right-of-way line or street centerline may be reduced by using one of the following two calculations:

(1) The elevation shall be calculated by a licensed North Carolina Surveyor at two points in each of the side lot property lines, one of which is located in the street centerline or the street right-of-way line, and the other of which is located 55 feet or 40 feet from said point, as may be appropriate, running the same course as the lot boundary line. The two elevations and the street centerline or the street right-of-way line shall be averaged, and the two elevations and the lot boundary lines shall be averaged, and for every 2 feet of decrease or increase in elevation as determined by a licensed North Carolina Surveyor between the two averaged elevations, one foot of setback may be deducted from the front setback requirements of this chapter; or

(2) The elevation shall be calculated by a licensed North Carolina Surveyor at two points, one of which is located at a point in the street centerline or street right-of-way line which is in the center of said lot, and the other of which is located 55 feet or 40 feet from said point, as may be appropriate, running perpendicular from said point in the center of the lot. For every two feet of decrease or increase in elevation as determined by a licensed North Carolina Surveyor between the two elevations, one foot of setback may be deducted from the front setback requirements of this chapter.

The property owner applying for a setback reduction under this Subsection shall be entitled to choose from either of the above calculations. Provided, that this reduction from the front setback requirements shall not exceed 15 feet. *[Amended November 10, 1992]*

(I) Notwithstanding any other provisions of this section, a parking deck that has neither a wall nor a roof may be located within the required setback area between the building and the street. An open, protective barrier not more than 42 inches high located around the perimeter of the parking deck shall not be considered a wall for the purposes of this section. *[Amended July 9, 1996]*

(J) Whenever a lot in a residential zoning district is bordered by more than one public street, the applicable street setback shall only apply to the lot line bordering the primary street. A street setback of 20 feet shall apply to the lot line(s) bordering streets other than the primary street. *[Adopted October 8, 2002]*

(K) The individual lots within a townhouse development, whether for residential or non-residential use, shall not be required to meet the building setback requirements, minimum lot sizes, or minimum lot widths as specified in Article XII, provided the overall zoning lot containing the townhouse development meets such standards. *[Adopted October 12, 2004]*

#### ***Section 16-184.01 Setback Requirements from Historic Trails.***

(A) The Town hereby recognizes the existence of three historic trails known as the *Lonesome Pine Trail*, the *Glen Burney Trail*, and the *Thunderhole Trail*. The approximate location of those trails are delineated in the attached map and incorporated herein.

(B) No building, fence, structure, or other encumbrance shall be permitted within 15 feet of the centerline of any such trail.  
*[Adopted May 13, 1997]*

#### ***Section 16-184.02 Central Business and Town Center Districts Setbacks, Building Height, Open Space, and Green Space Requirements***

Lots developed in the Central Business District and Town Center District shall meet the following standards pertaining to setbacks, building heights, open space and green space areas, and other development criteria:

##### ***Setbacks:***

For purposes of subsections (A) and (B), primary streets shall be Main Street, Sunset Drive, and Hwy 221. Where a lot or property is bordered by more than one primary street, Main Street shall be the primary street. In such case, other streets shall be considered side streets.

All buildings may be rebuilt to the existing building footprint. This option may only be applied if, prior to the development or removal of the building, a survey is performed by a licensed North Carolina Surveyor to accurately determine the existing footprint.

If a proposed building is not built back to an existing footprint, or development is on vacant property, the following setback requirements apply:

- (1) Primary street setback(s) shall be the lesser of:
  - (a) 15% of the average lot depth, or
  - (b) 15-feet
- (2) A building may encroach into the required primary street setback along 50% of the lot width. However, no building may encroach closer than ten (10) feet from the back of the sidewalk. When a building is permitted to encroach into the required primary street setback, the displaced open/green space area must be placed within the front 1/3 of the lot.
- (3) In 1, 2, and 3, above, the setback shall be measured from the back of the public sidewalk. For the purposes of this subsection, public sidewalks are typically located within five (5) feet of the edge of the public street. The area between the buildings and the sidewalk shall be open space.
- (4) Side lot and rear boundary setbacks will be a minimum of five (5) feet. Common walls (i.e. zero (0) setbacks) are not allowed. Where an alley is not required by subsection (I), *Alleys*, green space is required in the areas between buildings and the side and rear property lines.
- (5) Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

*[Amended July 13, 2010]*

### ***Open Space/Green Space***

For purposes of this section, open space is defined as the gross land area not covered by a building.

Within the open space area, a minimum of 75 % of the open space at the front of the building, must be planted green space with an emphasis on large, over-story, shade trees. Planted green space shall be defined as areas with grass, herbaceous ground cover, shrubbery, and drip line areas of mature, shade trees. Massive areas of mulch, void of vegetation, shall not be considered green space.

One (1) over-story tree (as defined in Appendix E, Section 10 (c) )shall be planted for every 300 square feet of required green space.

### ***Tree Protection***

All existing trees eight (8) inches in diameter at breast height (dbh) and greater shall be retained to extent reasonably practical. If saving such trees, especially those located within the proposed building footprint, would cause undue hardship on the developer, those trees may be removed through the approval of the Board of Commissioners. All proposed developments in the Central Business and Town Center Districts shall submit a site plan with a tree survey that locates all trees eight (8) inches dbh and greater. The Board of Commissioners shall specifically approve the removal of any trees eight (8) inches dbh and greater during site plan approval. Any trees designated for protection shall

be replaced with a tree of similar species at least three (3) inches in diameter (measured 6 inches above grade), if the tree dies or must be removed due to unforeseen construction activities.

*[Amended July 13, 2010]*

### ***Retaining Walls***

All retaining walls shall be preserved and maintained. If the retaining wall is in poor structural condition, a new wall must be built back to replicate the original wall.

New retaining walls in the Central Business and Town Center Districts that are adjacent to a street shall be made of natural, locally found stone. Cultured stone that has the appearance of natural, locally found stone may be used as a substitute.

The Board of Commissioner recognize the need for compliance with ADA requirements and will consider such when reviewing a request for removal, or modification, of existing retaining walls.

### ***Building Height***

(G) The following standards determine the applicable building heights for buildings in the Central Business and Town Center Districts:

(1) The maximum building height shall be limited to 30 feet, as measured from the average elevation of the existing or proposed sidewalk along the primary street to the highest point of the building or structure. Where an existing rock wall is located adjacent to an existing sidewalk, or where a property does not border a primary street on any side, the maximum height shall be measured from the average finished ground elevation adjacent to the primary entrance to the highest point of the building or structure.

(2) The maximum building height shall also be limited to no more than a 25% increase above the average existing height of adjacent buildings, provided that at least two (2) stories shall be permitted. The average existing height shall be determined by the average height of existing buildings located within 100 feet of the proposed building, on the same side of the street, same block and use district. The lesser of : 25% greater than the average existing heights, or b) 30 feet shall determine the maximum allowable building height. Where the maximum building height is established, that maximum height shall govern the entire structure.

(3) The maximum eave height shall be limited to 24 feet. The eave height shall be the vertical distance measured from the sidewalk to the lowest point of the eave above the primary entrance.

(4) The maximum building height and maximum eave height for any building located 50 feet or more from the back of the existing or proposed sidewalk adjacent to a public street, shall be measured from the average finished ground elevation adjacent to the primary entrance. For purposes of this paragraph, the entire structure must be located at or beyond the 50-foot setback. If the building is located 50 feet or more from the sidewalk, the eave height shall be the vertical distance measured from the adjacent grade at the primary entrance to the lowest point of the eave above the primary entrance.

(5) Maximum building heights may exceed 30 feet, and the maximum eave height may exceed 24 feet if the building is set back beyond the standard 15-foot setback. No building height in the Central

Business or Town Center may exceed 40 feet. Additionally, no other building walls, measured from the average finished grade along the base of the wall to the highest point of the structure may exceed 40 feet. The following table shall be used to determine the maximum building height and eave height based on the proposed building setback from any street:

Setback	Maximum Building Height	Maximum Eave Height
15	30	24
20	31	25
25	32	26
30	33	27
35	34	28
40	35	29
45	36	30
50	37*	31*
55	38*	32*
60	39*	33*
≥ 65	40*	34*

\* measured from finished ground elevation adjacent to primary entrance to building

(6) Where a building is permitted to encroach into the 15-foot setback as provided in Section 16-184.02 (B)(2), the building height for that part of the building forward of the 15-foot setback must be reduced one (1) foot for every one (1) foot of setback encroachment. *[Amended March 8, 2005]*

### ***Property Grades and Elevations***

(H) Property grade elevations shall be maintained as reasonably practical. The Board of Commissioners shall have the authority to determine if the proposed grade elevations are consistent with the character of the Central Business and Town Center areas.

### ***Alleys***

(I) Alleys that connect adjacent lots and provide parking, delivery access, utility access, and garbage pickup will be strongly encouraged. Alleys may be required in certain situations through a conditional use permit.

*[Adopted September 9, 2003]*

### ***Section 16-185 Building Height Limitations.***

(A) For the purpose of this Section, the *height* of a structure or building shall be the vertical distance measured from (1) the finished ground elevation that is adjacent to the main or primary entrance into said building or structure; to (2) the highest point of said building or structure. Similarly, the *eave height* of a building shall be the vertical distance measured from (1) the finished ground elevation that is adjacent to the main or primary entrance into said building; to (2) the lowest point of the eave above said entrance.

(B) Subject to the remaining provisions of this section, the height of a building or structure in any residential district (R-15, R-10, R-6, or RMH), may not exceed thirty-five feet. Similarly, the eave height

of a building or structure in the R-A district or any non-residential district (GB, HMC, HSG, OI, or PGS) may not exceed thirty-five feet and the overall height of the building or structure shall not exceed 50 feet. *[Amended March 14, 2000]*

(C) Subject to subsection (D), the following features are exempt from the district height limitations set forth in subsection (B):

- (1) Chimneys, church spires, elevator shafts, and similar structural appendages not intended as places of occupancy or storage;
- (2) Flagpoles and similar devices;
- (3) Heating and air conditioning equipment, solar collectors, and similar equipment, fixtures and devices.

(D) The features listed in subsection (C) are exempt from the height limitations set forth in subsection (B) if they conform to the following requirements:

- (1) Not more than one-third of the total roof area may be consumed by such features.
- (2) The features described in subdivision (C)(3) above must be set back from the edge of the roof a minimum distance of one foot for every foot by which such features extend above the roof surface of the principal building to which they are attached.
- (3) The permit issuing authority may authorize or require that parapet walls be constructed (up to a height not exceeding that of the features screened) to shield the features listed in subdivisions (B)(1) and (3) from view.

(E) The permit issuing authority may authorize the construction of a building one or more sides of which exceed the building height limitations set forth in subsection (B) if it finds that:

- (1) The height of the building measured at the front side does not exceed the building height limitations set forth in subsection (B), and
- (2) Other sides of the building exceed building height limitations because the building is constructed on a severe grade, and
- (3) The building is not in violation of the Mountain Ridge Protection Act of 1983.

(F) With respect to developments in the non-residential zoning districts that require a conditional use permit, the Board of Commissioners may authorize the construction of a building one or more sides of which exceed the building height limitations set forth in subsection (B) if it finds that:

- (1) It would be impractical to construct on the lot a building that suits the reasonable needs of the proposed use (such as a gymnasium, theater, etc.) without the height exception; and
- (2) The building will be designed, located, and constructed so that it does not unreasonably obstruct the view of owners or occupants of other property and is not otherwise substantially out of character with the size, scale, and appearance of other buildings within the immediate neighborhood; and
- (3) The building is not in violation of the Mountain Ridge Protection Act of 1983.

(G) Towers and antennas are allowed in all zoning districts to the extent authorized in Section 15-146 (*Table of Permissible Uses*), use classification 18.000, and Article XVII(B).  
[Amended March 15, 1995; November 9, 1999]

***Section 16-186 Cluster Subdivisions.***

[Repealed February 10, 2004]

***Section 16-187 Architecturally Integrated Subdivisions.***

[Repealed June 11, 1996]

***Section 16-188 Density on Lots Where Portion Dedicated to Town.***

(A) Subject to the other provisions of this section, if (i) any portion of a tract lies within an area designated on any officially adopted town plan as part of a proposed public park, greenway, or bikeway, and (ii) before the tract is developed, the owner of the tract, with the concurrence of the town, dedicates to the town that portion of the tract so designated, then, when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated in accordance with the provisions of this section.

(B) If the proposed use of the remainder is a single family residential subdivision, then the lots in such subdivision may be reduced in accordance with the provisions of Sections 16-186 and 16-187 except that the developer need not set aside usable open space to the extent that an equivalent amount of land has previously been dedicated to the town in accordance with subsection (A).

(C) If the proposed use of the remainder is a multi-family project, then the permissible density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.

(D) If the portion of the tract that remains after dedication as provided in subsection (A) is divided in such a way that the resultant parcels are intended for future subdivision or development, then each of the resultant parcels shall be entitled to its pro rata share of the "density bonus" provided for in subsections (B) and (C).

***Section 16-189 Flexibility in Applying the Standards Contained in this Article.***

(A) With respect to developments or projects that require a conditional use permit, the Board of Commissioners may permit deviations from the strict requirements of this Article if it concludes, based upon the information submitted at the hearing, that the project or development with the approved deviations:

- (1) Will not materially endanger the public health or safety;
  - (2) Will not substantially injure the value of adjoining or abutting property;
  - (3) Will be in harmony with the area in which it is to be located;
  - (4) Will be in general conformity with the Master Plan or other plan officially adopted by the Board;
- and

(5) Will be in substantial conformity with the intent of the regulations contained in this Article.

Any such findings shall be clearly entered on the face of the permit  
*[Amended March 12, 2002]*

*Sections 16-190 through 16-195 Reserved.*

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