

ORDINANCE NO. 17-01-16

ORDINANCE AMENDING THE TEXT OF CHAPTER 78, ARTICLE VI OF THE BUNCOMBE COUNTY CODE OF ORDINANCES, THE ZONING ORDINANCE OF BUNCOMBE COUNTY

WHEREAS, pursuant to N.C. Gen. Stat. §153A-340, the County may adopt a zoning ordinance to regulate development within its territorial jurisdiction;

WHEREAS, on December 1, 2009, the Buncombe County Commissioners enacted Buncombe County Ordinance No. 09-12-01 which established a comprehensive zoning plan for the properties located in Buncombe County outside of the boundaries of incorporated municipalities and their zoning jurisdictions;

WHEREAS, pursuant to N.C. Gen. Stat. §153A-323, the County may amend its zoning ordinance after giving proper public notice and holding a public hearing;

WHEREAS, in accordance with the procedures set forth in the Buncombe County Zoning Ordinance, the Buncombe County Planning Board met to consider the proposed amendments;

WHEREAS, the Planning Board recommended in a vote of **7 to 0** on December 5, 2016 that the amendments to modify the Zoning Ordinance of Buncombe County in order to revise definitions of Planned Unit Developments (commercial and residential or mixed use) and provide for minor technical deletions and additions throughout the zoning ordinance are consistent with the Buncombe County Comprehensive Land Use Plan and Updates thereto, and are reasonable and in the public interest, and further recommended that the Board of Commissioners approve the proposed amendments;

WHEREAS, this Board has reviewed this written recommendation of the Buncombe County Planning Board; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Division 8 of Chapter 78, Article VI of the Buncombe County Code of Ordinances, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. This Board has resolved by Resolution adopted separately that the adoption of the proposed amendments to the text of the Zoning Ordinance of Buncombe County is consistent with the Buncombe County Land Use Plan and updates and is reasonable and in the public interest;

Section 2. That this Board does hereby approve the following amendments to The Zoning Ordinance of Buncombe County:

Sec. 78-581. Definitions

Planned unit development, ~~level II-commercial~~ (CPUDII) means more than four (4) principal buildings or uses on a single lot or any principal building with a gross floor area of 50,000 square feet or more. ~~CPUDII~~s must include only commercial and/or industrial uses such as retail trade; professional and business offices; storage and warehousing; and manufacturing uses and shall not include places of worship. Relatively small and low-impact additions to a building already greater than 50,000 square feet and located greater than fifty feet from any adjoining property may not trigger the definition of a ~~CPUDII~~ at the discretion of the zoning administrator.

Planned unit development, ~~level I-residential or mixed-use~~ (RPUDI) means more than four (4) principal buildings or uses on a single lot; any principal building with a gross floor area of 25,000 square feet or more; any residential complex of more than eight (8) units; or a subdivision of more than ten (10) lots where building envelopes are defined, areas are set aside for open space and/or amenities, and a decrease in minimum lot size and/or interior setbacks is desired. A ~~RPUDI~~ must include may be comprised of residential uses; a mix of residential and nonresidential uses; or the following nonresidential uses: health care facilities; private or public utility stations and substations, pumping stations, water and sewer plants, water storage tanks; recreation uses; schools; and vacation rental complexes and shall not include places of worship and may not be solely commercial and/or industrial development.

Sec. 78-641. Permitted uses.

(a) *Permitted use table.* Uses are permitted in the various zoning districts pursuant to Table 1.

Table 1 – Permitted Use Table												
Uses	P = Permitted C = Allowed as Conditional Use SR = Permitted with Special Requirements Blank Space = Not Permitted											
	Districts											
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	CR	AI	BDM	OU
Planned unit developments, <u>level I residential or mixed use</u>		C	C	C	C	C	C	C	C			C
Planned unit developments, <u>level II commercial</u>						C	C	C	C	C		C

Sec. 78-662. Relationship of building to lot.

In no case, shall there be more than four (4) principal buildings, in addition to any customary accessory buildings on a single lot, except in the case of a designated commercial or residential or mixed use planned unit development, manufactured home park, place of worship, or community oriented development.

Sec. 78-677. Procedure for obtaining a conditional use permit.

(11) For commercial structures in CPUDs and RPUDs, architectural renderings of all principal buildings, drawn to a known scale, shall be provided. Elevation renderings of the site, drawn to a known scale, shall be required for any retaining wall system proposed to provide a cumulative vertical relief in excess of 10 feet in height showing landscaping; vegetative screening; and the top and bottom of the wall at grade.

Sec. 78-678. Uses by right subject to special requirements and conditional use standards.

(b) *Conditional Use Standards.*

(6) Residential or Mixed Use-Planned Unit Developments, level I (RPUDI).

Residential or mixed use pPlanned unit development, level I standards shall be as follows:

- a. *Purpose.* The purpose of this section is to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building siting, mixtures of housing types, and land use. Residential densities are calculated on a project basis, thus allowing the clustering of buildings in order to create useful open spaces and preserve natural site features.
- b. *Land development standards.* The following land development standards shall apply for all RPUDIs. RPUDIs may be located in the relevant

districts as conditional uses, subject to a finding by the board of adjustment that the following conditions are met:

1. *Ownership control.* The land in a RPUDI shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.
2. *Density requirements.* There are no density requirements for nonresidential uses as long as the proposed project does not violate the intent of the district in which it is located. The proposed residential density of the RPUDI (dwelling units per acre as shown in section 78-642) shall conform to that permitted in the district in which the development is located. If the RPUDI lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the RPUDI that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire RPUDI. When the RPUDI is a community oriented development, the allowed density shall be in accordance with Sec. 78-650.
3. *Land uses.* A mixture of land uses shall be allowed in any RPUDI. However, within residential districts, ~~nonresidential uses shall not constitute the primary use in the RPUD, and~~ nonresidential uses shall be carefully designed to complement the residential uses within the RPUDI. All RPUDIs must be compatible with and not violate the intent of the zoning district; however, said uses may include uses not permitted under Sec. 78-641 within the zoning district(s) within which the project is located, provided that the board of adjustment finds that nonresidential uses do not disrupt the character of the community.
4. *Minimum requirements.* Minimum requirements for land development are as follows:
 - a. The normal minimum lot size and requirements for interior setbacks are hereby waived for the RPUDI, provided that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.
 - b. Height limitations. The normal maximum structure height may be waived for the RPUDI, provided that unique elements of the development impose requirements for additional height that are not universal throughout the zoning district. Additionally, RPUDIs in excess of the normal maximum height require that the spirit and

intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section. RPUDIs within the Blue Ridge Parkway Overlay District may not contain structures which exceed the maximum height allowed within the overlay district.

- c. Required distance between buildings. The minimum distance between buildings shall be 20 feet or as otherwise specified by the board of adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.
5. *Privacy.* Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views or uses, and reduction of noise. Multilevel buildings shall be located within a RPUDI in such a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings.
 6. *Perimeter requirements.* Perimeter requirements are as follows:
 - a. Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district within which the property is situated.
 7. *Parking.* Parking requirements may be waived for the RPUDI, provided that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.
 8. *Conveyance and maintenance mechanisms.* Conveyance and maintenance of open space, recreational areas and communally owned facilities shall be in accordance with G.S. 47-1 et seq. the Unit Ownership Act and/or any other appropriate mechanisms acceptable to the board of adjustment.
 9. *Building envelopes.* Building envelopes shall be shown on the submitted site plan. Where flexibility in design of residential units is desired, the building envelope shall indicate the maximum expanse of the proposed footprint of the structure.

(7) ~~Commercial~~ Planned Unit Developments, level II (CPUDII). ~~Commercial~~ Planned unit development, level II standards shall be as follows:

a. *Land development standards.* The following land development standards shall apply for all CPUDIIs. CPUDIIs may be located in the relevant districts as conditional uses, subject to a finding by the board of adjustment that the following conditions are met:

1. *Ownership control.* The land in a CPUDII shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.
2. *Land uses.* CPUDIIs must include only non-residential uses.
3. *Dimensional requirements.* Dimensional requirements for land development are as follows:

a. *Height limitations.* The normal maximum structure height may be waived for the CPUDII, provided that unique elements of the development impose requirements for additional height that are not universal throughout the zoning district. Additionally, CPUDIIs in excess of the normal maximum height require that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section. CPUDIIs within the Blue Ridge Parkway Overlay District may not contain structures which exceed the maximum height allowed within the overlay district.

b. *Required distance between buildings.* The minimum distance between buildings shall be 20 feet or as otherwise specified by the board of adjustment to ensure adequate space for emergency vehicles.

4. *Parking.* Parking requirements may be waived for the CPUDII, provided that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

- Section 3. That if any section, subsection, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and
- Section 4. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict.
- Section 5. This ordinance is effective upon adoption.

Read, approved and adopted this 17th day of January, 2017.

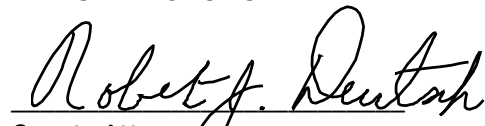
ATTEST


Kathy Hughes, Clerk

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

BY 
Brownie Newman, Chairman

APPROVED AS TO FORM


County Attorney