

**ORDINANCE AMENDING WEAVERVILLE TOWN CODE CHAPTERS 2 AND 20
CONCERNING PLACES OF GATHERINGS, HOME OCCUPATIONS, FEES IN LIEU OF
SIDEWALK CONSTRUCTION, AND CONSERVATION SUBDIVISIONS**

WHEREAS, the Planning Board met 4 April 2023 and 2 May 2023, in order to review the table of uses and, in so doing, considered certain Code amendments concerning places of gatherings and home occupations, and found that the proposed code amendment concerning the review process for places of gatherings and the regulation of home occupations is consistent with the Town’s comprehensive land use plan, reasonable, and in the best interest of the public in that such amendments provide for legal compliance and clarity of regulations which provides more orderly development;

WHEREAS, the Planning Board met 2 May 2023, 6 July 2023, and 6 December 2023, in order to considered regulations concerning conservation subdivision, and found that the proposed code amendments which requires conservation design in all subdivisions proposing 30 or more lots, is consistent with the Town’s comprehensive land use plan, reasonable, and in the best interest of the public in that such amendments provide for more open space and preservation of existing conditions;

WHEREAS, the Planning Board 6 December 2023 in order to consider regulations that implement a fee in lieu of sidewalk installation as contemplated by the Active Weaverville Bike/Ped Plan and found that the proposed code amendments are consistent with the Town’s comprehensive land use plan, reasonable, and in the best interest of the public in that such amendments increases pedestrian accessibility within the Town by providing a mechanism for new development to contribute to the desired sidewalk infrastructure within the Town;

WHEREAS, after proper notice the Town Council held a public hearing on 22 January 2024 in order to receive input from the public on these amendments;

NOW, THEREFORE, BE IT ORDAINED by Town Council of the Town of Weaverville, North Carolina, as follows:

1. The findings and recommendations of the Planning Board are hereby incorporated by reference and adopted by Town Council, including specifically a finding that the amendments approved herein are consistent with the Town’s adopted comprehensive land use plan.
2. Concerning places of gatherings, and home occupations, Code Section 20-3205 is hereby amended as follows with the added language shown as underlined and deleted language, if any, is shown with strike-throughs:

Sec. 20-3205. Table of uses.

The following notes shall be applicable to the Table of Uses established herein.

- (1) Additional standards for those uses identified on the Table of Uses as "permitted with standards" are found in article III of part III of this chapter.
- (2) If a proposed use can't be found on the table of uses herein established or is not specifically defined herein, then the zoning administrator shall make a determination on which use most closely resembles the proposed use and shall apply those regulations and restrictions. Such determination may be made as a formal interpretation, or as part of an issuance or denial of a zoning permit or a notice of violation. The zoning administrator's determination is subject to an appeal of an interpretation which shall be heard by the board of adjustment.
- (3) The abbreviations and symbols shown in the Table of Uses have the following meanings:
 - "C" = Conditional District required
 - "P" = Permitted
 - "PS" = Permitted with Standards
 - "-" = Not Permitted

USES	R-1	R-2	R-3	R-12	C-1	C-2	I-1	MHO
RESIDENTIAL								
Home Occupation	PS	PS	PS	PS	<u>PS</u>	<u>PS</u>	<u>PS</u>	-
ENTERTAINMENT / RECREATION								
Cultural or Community Facility	<u>PS C</u>	<u>PS C</u>	<u>PS C</u>	<u>PS C</u>	<u>P C</u>	<u>P C</u>	<u>P C</u>	-
CIVIC / INSTITUTIONAL								
Religious Institutions	C	C	C	C	C	C	C	
MISCELLANEOUS USES								
Event Center	-	-	-	-	C	C	C	-

3. Concerning home occupations and conservation subdivisions, Code Section 20-1202 is amended to add the following definitions of "Conservation Area, Primary", "Conservation Area, Secondary", "Recreation Area, Active", and "Recreation Area, Passive" and to amend the definition of "Home Occupation" as follows, with the added language shown as underlined and deleted language, if any, is shown with strike-throughs:

Sec. 20-1202. Specific definitions.

Conservation area, primary. Consists of:

1. Floodplains (100-year and 500-year) and hydric soils identified as part of a Flood Insurance Study prepared by the Federal Emergency Management Agency (FEMA), or the County Soil Survey prepared by the USDA Natural Resources Conservation Service;
2. Land located within 50 feet of the bank of any perennial stream;

3. Natural areas, wildlife habitats and corridors identified as part of: (1) an Inventory of Natural Areas and Wildlife Habitats as prepared by a State agency, the Natural Conservancy, or a local land trust; (2) a required Environmental Assessment or Environmental Impact Statement; or (3) an independent site study conducted by a trained botanist or biologist; and
4. Historic or archeological sites including, but not limited to, sites listed on the National Register of Historic Places or included on the State's National Register study list, designated as a local historic landmark or district and/or designated as having a high potential for archaeological remains generally identified as part of a local architectural survey, local archaeological survey, required Environmental Assessment or Environmental Impact Statement, or independent site study conducted by a trained architectural historian or archaeologist.

Conservation area, secondary. Consists of:

1. Farmland (whether actively used or not) including cropland, fields, pastures, and meadows;
2. Slopes of 20% or greater (9 degrees or greater) which require special site planning due to their erosion potential, limitations for septic tank nitrification fields and terrain or elevation changes, or identified as part of a County Soil Survey prepared by the USDA Natural Resources Conservation Service, or a site analysis conducted by a registered professional engineer, professional land surveyor, landscape architect, architect or land planner and calculated using topographic maps from an actual survey or from the US Geological Society.
3. Non-commercial cemeteries; and
4. Viewsheds (scenic views, especially of natural and cultural features from designated scenic road corridors, including "views from the road" as well as views outward from potential home sites).

Recreation areas, active. Includes, but is not limited to the following: public recreation areas including playgrounds, sports courts, public parks, and community parks; private recreational facilities such as golf courses, playing fields, playgrounds, swimming pools, and sports courts, and commercial campgrounds.

Recreation areas, passive. Includes, but is not limited to the following: pedestrian, bicycle and equestrian trails, greenways, picnic areas, community commons or greens, and similar kinds of areas, whether public or private.

~~Home occupation. Any use An occupation conducted entirely within a dwelling or accessory structure and which use is clearly incidental and secondary to the use of the dwelling for residential purposes and which use does not change the residential character of the dwelling. and which meets the following: (a) no more than one employee, other than family members residing on the premises, shall be employed in connection with the home occupation; (b) no mechanical or electrical equipment shall be installed or used except such equipment as is normally used for domestic purposes; and (c) not over 25 percent of the total floor space of any residential structure shall be used for such home occupation. Home occupations include, but are not limited to, child care homes as defined herein.~~

4. Concerning home occupations, Code Section 20-3312 is hereby amended as follows with the added language shown as underlined and deleted language shown with strike-throughs:

Sec. 20-3312. Home occupation.

- (a) Home occupations shall be clearly incidental to the residential use of a dwelling and shall not change the residential character of the dwelling or the neighborhood.
- (b) Home occupations shall be contained entirely within the interior of the dwelling or accessory structure. Home occupations within a dwelling shall not occupy more than 25 percent of the gross floor area of the

dwelling. Should a home occupation occur within an accessory structure, said use shall not exceed 25 percent of the aggregate square footage of both the dwelling unit and accessory structure.

- (c) Only noncommercial vehicles are permitted in conjunction with a home occupation.
- (d) Business or product identification signs shall not be permitted.
- (e) ~~Commercial sale of merchandise shall not be permitted in conjunction with a home occupation.~~ Commercial sale of merchandise is limited to catalog and internet sales only. On-site customers are expressly prohibited. Products may be received and shipped from the premises to fulfill orders provided that goods, products or commodities are stored within the home, within an accessory structure, or off-site.
- (f) The installation or use of mechanical or electrical equipment not normally used for domestic purposes shall not be permitted.
- (g) Home occupations may include child care homes as defined herein.

5. Concerning fees in lieu of sidewalk installations, the following is added as Article VII of Part I of Chapter 20:

Article VII. Fee in Lieu of Sidewalk Construction

Sec. 20-1701. Purpose

In general, the Weaverville Town Council supports the installation of sidewalks by the development community at the time of development. However, there are circumstances when current site conditions or other considerations justify the acceptance of a fee in lieu of sidewalk construction.

It is the purpose of this ordinance, and the rules and regulations set forth, to establish clear, equitable, and consistent standards for carrying out the fee in lieu of construction alternative provided for in Section 20-2404 and 20-3503 of the town's code of ordinances, as it pertains to sidewalks and related pedestrian facilities. This objective shall be achieved by establishing defined standards related to project eligibility, prioritization, and implementation.

Sec. 20-1702. Discretionary Power

Nothing in this policy shall be construed to limit town council's authority to deny a fee in lieu of sidewalk construction request or credit for off-site sidewalk construction. The standards and material contained herein are meant to guide and support any decision made by Council regarding fee in lieu of sidewalk construction.

Sec. 20-1703. Fee in Lieu of Sidewalk Construction Requests

Any project required to install sidewalk per the standards of this Chapter 20 may request to pay a fee in lieu of said physical improvements. All requests to pay a fee in lieu of sidewalk construction shall be reviewed and decided upon by Weaverville Town Council.

Sec. 20-1704. Evaluation Criteria

While any project may submit a request to pay a fee in lieu of sidewalk construction, it is the Town's intention to limit the approval of such requests to those projects which merit serious consideration. The following list of criteria shall be used by town council for the purpose of evaluating a payment in lieu of construction request. A request is not required to meet all of the following criteria to be considered eligible:

- (1) The applicable property will be developed for residential purposes with a density of less than 1 dwelling unit per acre.
- (2) There are no sidewalks in the vicinity of the project, and it is unlikely that there will be development

nearby that would require the installation of sidewalks in the future.

- (3) A stormwater drainage ditch or similar public utility facility prevents the installation of the sidewalk, and neither the sidewalk nor the facility can be reasonably relocated to accommodate both the sidewalk and the facility.
- (4) The topography would require the construction of a retaining wall more than 6 feet in height to accommodate the sidewalk.
- (5) There is a planned roadway or infrastructure improvement scheduled to be implemented within the next 5 years which would require the removal or relocation of the required sidewalk.
- (6) Other unusual circumstances make the sidewalk installation requirement unreasonable or inappropriate.

Sec. 20-1705. Fee Calculation

The Town may request a cost estimate of required sidewalk construction from a civil engineering firm to assist in the fee calculation for approved payments in lieu. Cost estimates and fee calculations are subject to review and recommendation by the Town's Public Works Department.

The fee for approved payments in lieu of sidewalk shall be based on the adopted fee schedule and shall be due prior to (1) final plat approval, or (2) issuance of a zoning permit for any projects requiring sidewalk construction in which final plat approval would not apply, whichever comes first.

Sec. 20-1706. Credits for Off-Site Sidewalk Construction

A fee in lieu of sidewalk construction may be credited by an equivalent amount of sidewalk construction in another location, based on estimated cost, subject to review and approval of Weaverville Town Council. The selected location for off-site sidewalk construction must be approved by the Zoning Administrator, as well as inspected by the Public Works department prior to pouring. Additionally, the developer must obtain all necessary encroachments and/or easements and provide copies of said agreements to the Town of Weaverville prior to commencement of work. Unless otherwise approved by the Zoning Administrator, off-site sidewalk construction permitted by this ordinance shall be due prior to (1) final plat approval or (2) issuance of a zoning permit for any projects requiring sidewalk construction in which final plat approval would not apply.

Sec. 20-1707. Use of Funds

Fees deposited with the Town in lieu of sidewalk construction shall only be used to install new sidewalks or new pedestrian facilities (such as curb ramps or crosswalks). Costs associated with sidewalk repairs shall be otherwise budgeted for by the town, and shall not come out of the fees in lieu of sidewalks.

Sec. 20-1708. Prioritization of New Sidewalk Installation

The Town shall periodically compile a priority listing for the installation of paved sidewalk improvements, giving full consideration to the following criteria:

- (1) Paved sidewalks along one side of the streets that constitute major walking routes to a public school shall normally be given first priority in an order established by the town after consideration of the service area.
- (2) Sidewalks along one side of the streets that constitute a major walking route to some public facility or along streets designated as a major or minor thoroughfare shall normally be given second priority in an order established by the town.
- (3) Sidewalks along a second side of the streets that constitute a major walking route to public schools, other public facilities, or along major or minor thoroughfares, where sidewalks already exist on one side, shall be given third priority.

- (4) Paved sidewalks in locations other than those described above shall normally be given fourth priority in an order established by the town.

Sec. 20-1709. Future Site Improvements or Changes

Any fee in lieu of sidewalk installation request approved by Town Council shall only apply to those requirements in place at the time of development. This ordinance shall not be construed to grant exceptions to sidewalk installation related to any future building or parking lot expansions, redevelopment, or changes in use which would require sidewalk installation per the standards of Chapter 20.

6. Concerning fees in lieu of sidewalk walk installations, Code Sections 2-165, 20-3108, 20-2404, and 20-3503 are amended as follows with the added language shown as underlined and deleted language, if any, is shown with strike-throughs:

Sec. 2-165. Duties.

The board of adjustment shall primarily act in a quasi-judicial capacity and shall perform the following duties:

- (a) *Quasi-judicial procedures.* The board of adjustment shall follow quasi-judicial procedures as specified in G.S. 160D-406 and Code section 20-1309 when making any quasi-judicial decision.
- (b) *General.* The board of adjustment shall hear and decide all other matters which it is required to pass under any statute or development regulation adopted under the authority of GS Chapter 160D.
- (c) *Appeals.* Except as otherwise provided by G.S. Chapter 160D, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of all development regulations and may hear appeals arising out of any other ordinance that regulates land use or development all as set out in chapter 20, including specifically Code section 20-1308 and Code section 20-3108(b).
- (d) *Special use permits.* The board of adjustment shall hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in chapter 20, including specifically Code section 20-3108(c) and Code section 20-3204.
- (e) *Variances.* The board of adjustment shall hear and decide all variance requests in accordance with the principles, conditions, safeguards, and procedures specified in chapter 20, including specifically Code section 20-3108(d).
- (f) ~~*Sidewalk waivers.* The board of adjustment shall hear and decide all requests for waivers of sidewalk requirements in accordance with principles, conditions, limitations and procedures specified in chapter 20, including specifically Code section 20-3108(e).~~
- ~~(g)~~ *Vegetative screening and/or buffer waivers.* The board of adjustment shall hear and decide all requests to alter or eliminate the required vegetative screening or buffering requirement in accordance with principles, conditions, limitations and procedures specified in chapter 20, including specifically Code section 20-3108(f).

Sec. 20-3108. Quasi-judicial zoning decisions.

- (a) *Quasi-judicial procedures.* The board of adjustment shall follow quasi-judicial procedures as specified in G.S. 160D-406 and Code section 20-1309 when making any quasi-judicial decision.
- (b) *Appeals of administrative decisions.* Except as otherwise provided by G.S. Chapter 160D, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of all development regulations and may hear appeals arising out of any other ordinance that regulates land use or development. A majority vote of the members shall be required to decide an appeal. The provisions of G.S. 160D-405 and Code section 20-1308 governing appeals of administrative decisions,

and G.S. 160D-406 and Code section 20-1309 governing quasi-judicial procedure are applicable to these appeals.

- (c) *Special use permits.* The board of adjustment shall hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in Code section 20-3204. A majority vote of the members shall be required to issue a special use permit.
- (d) *Variances.* When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation when, based on competent, material, and substantial evidence, it finds all of the following:
 - (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made on the property;
 - (2) 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 the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;
 - (3) The hardship did not result from the actions 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 is not a self-created hardship;
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved;
 - (5) The requested variance is not a request to permit a use of land, building, or structure which is not permitted in the zoning district in which the property is located; and
 - (6) The requested variance is not a request to permit a prohibited sign or to eliminate a required sidewalk.

Appropriate conditions may be imposed on any variance, provided the conditions are reasonably related to the variance. Other development regulations that regulate land use or development, including the subdivision regulations, may provide for variances from the provisions of those ordinances consistent with the provision of this section. The concurring vote of four-fifths (4/5) of the board of adjustment shall be necessary to grant a variance. Approved variances are required to be recorded with the Buncombe County Register of Deeds upon approval.

- ~~(e) *Sidewalk waivers.* The board of adjustment shall hear and decide all requests for waivers of sidewalk requirements, with a majority vote of the members based on competent, material, and substantial evidence. Limitations and standards applicable to sidewalk waivers are as follows:-~~
 - ~~(1) Sidewalk requirements imposed by a conditional district or special use permit are not eligible for a waiver of such sidewalk requirements.-~~
 - ~~(2) Major subdivisions are not eligible for a waiver of the sidewalk requirement for sidewalks on new streets proposed for construction within the major subdivision. Major subdivisions may, however, be granted a sidewalk waiver of the sidewalk requirements along existing streets upon the finding that:-~~
 - ~~(a) The construction of the sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk; or~~
 - ~~(b) The construction of the sidewalk is not feasible due to special circumstances including but not limited to impending road widening or improvements or severe roadside conditions or slope which would prohibit sidewalk construction; or~~

~~(e) The construction of the sidewalk will not meaningfully provide for better pedestrian access and/or connectivity to the existing or proposed pedestrian network or sidewalk system.~~

~~(3) Minor subdivisions may be granted a sidewalk waiver upon the finding that:~~

~~(a) The construction of the sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk; or~~

~~(b) The construction of the sidewalk is not feasible due to special circumstances including but not limited to impending road widening or improvements or severe roadside conditions or slope which would prohibit sidewalk construction; or~~

~~(c) The construction of the sidewalk will not meaningfully provide for better pedestrian access and/or connectivity to the existing or proposed pedestrian network or sidewalk system.~~

(e) *Vegetative screening and/or buffer waivers.* The board of adjustment shall have the authority to alter or eliminate the required vegetative screening or buffering requirement where the lot requiring the vegetative screen and the adjacent lot zoned residential are in single ownership or upon receipt of a notarized statement waiving or modifying the screening provisions of this chapter, between the owner of the lot requiring the vegetative screen and the owner of the adjacent lot zoned residential. These waivers may be granted by the board upon a majority vote of the members based on competent, material, and substantial evidence and any such agreements shall be attached to the approved waiver.

Sec. 20-2404. Sidewalks.

(a) Sidewalks shall be constructed along all street frontages of the property or properties for which the subdivision, whether major or minor, is proposed if the street is shown on a sidewalk master plan, sidewalk improvement plan, or sidewalk priority list adopted by the town, state, or regional council.

(b) Sidewalks shall be provided on at least one side of new streets constructed within major subdivisions.

(c) Curbs and sidewalks shall be constructed in accordance with the Town of Weaverville Street Standard Specifications and Details Manual applicable to sidewalks and in full compliance with ADA accessibility standards, including specifically but not limited to width, ramp and crosswalk construction. Sidewalk rehabilitation shall be required where the existing sidewalk has been determined by the department of public works to be dilapidated.

~~(d) Subdivisions may apply to the board of adjustment for a sidewalk waiver in accordance with Code section 20-3408(e).~~ Subdivisions may apply to town council for a fee in lieu of sidewalk construction or credit for off-site sidewalk construction in accordance with Sec. 20-1701 through Sec. 20-1709, but are ineligible for a variance seeking to eliminate a required sidewalk.

Sec. 20-3503. Sidewalks.

(a) *Purpose.* The purpose of this section is to ensure that applicants for new construction and renovations, additions, and/or expansions to existing structures consider the need for sidewalks as part of the proposed development and to establish requirements for the construction of sidewalks. While the town recognizes its need to maintain sidewalks and to construct sidewalks to meet the needs of the general population, project applicants may be required to participate in the construction of sidewalks to meet the pedestrian needs of the citizens of the town. The town also recognizes that in certain cases, sidewalks may not be needed or their construction may not be feasible.

(b) *Sidewalks required.* Sidewalks shall be required for all new commercial construction and development, multi-family residential development, all major subdivision development, and certain minor subdivision development.

Sidewalks shall be constructed along all street frontages of the property for which the development is proposed and least one side of new streets constructed as a part of the development. Curbs and sidewalks shall be constructed in accordance with the Town of Weaverville Street Standard Specifications and Details Manual applicable to sidewalks and in full compliance with ADA accessibility standards, including specifically but not limited to width, ramp and crosswalk construction.

Sidewalk rehabilitation shall be required for the types of development projects identified above where the existing sidewalk has been determined by the department of public works to be dilapidated.

- (c) ~~Waiver of sidewalk requirement. Sidewalk requirements may only be waived as allowed by Code section 20-3108(e). Developments may apply to town council for a fee in lieu of sidewalk construction or credit for off-site sidewalk construction in accordance with Sec. 20-1701 through Sec. 20-1709.~~

7. Concerning conservation subdivisions, Code Sections 20-2203 are amended as follows, with added language shown as underlined and deleted language, if any, is shown with strike-throughs:

Sec. 20-2203. Process of review of major subdivisions and conservation subdivisions.

- (a) *Submission of application and preliminary plan.* All applications for development of a major subdivision and/or conservation subdivision shall be submitted to the subdivision administrator at Weaverville Town Hall. The subdivision administrator shall determine if the application is complete and notify the subdivider of any deficiencies. Once the application is deemed complete, the subdivision administrator will schedule review of the application by the technical review committee. The application should include a water commitment application if the subdivider intends to extend the public water system of the town. The application should include a public street commitment application if the subdivider intends for the streets to be included within the town's public street system.
- (b) *Review of preliminary plan (and town public water/street commitment applications) by technical review committee and others.* The technical review committee shall review all major subdivisions and conservation subdivisions and preliminary plans, and plan revisions if necessary, for compliance with planning and development regulations applicable to major subdivisions. If town public water and/or street commitment application are part of the subdivision application, the technical review committee shall review them and provide a report and recommendation to town council on those requests. If state streets or highways are proposed the request must be submitted to the NCDOT district highway engineer for review and recommendation. If private water wells or septic systems are proposed, the request must be submitted to the Buncombe County Health Director for review and recommendation. If public sewer is proposed, the request must be submitted to MSD for review and recommendation.
- (c) *Review and action on town water commitment and/or public street commitment.* Any public water commitment or public street commitment applications shall be forwarded to town council for review and action. Depending on the action taken by town council, plan revisions may be necessary.
- (d) *Report and recommendation of technical review committee.* Based on its findings during its review and actions taken by the town concerning public water commitment and/or public street commitment, the technical review committee shall prepare and submit to the planning board a report and recommendation concerning the major subdivision and/or conservation subdivision application and the preliminary plan.
- (e) *Review of preliminary plan by the planning board.* The planning board shall review all major subdivisions and conservation subdivisions and preliminary plans for compliance with planning and development regulations applicable to major subdivisions.
- (f) *Approval of preliminary plan.* The planning board shall approve the preliminary plan once it is found compliant with the planning and development regulations of the town for major subdivisions and/or

conservation subdivisions. The planning board has 90 days from first consideration to approve or deny a preliminary plat. If the planning board has failed to act within that time period the preliminary plat shall be deemed approved.

- (g) *Submission of certain construction drawings and supporting documentation.* The subdivider shall submit engineer-sealed construction drawings and supporting documentation for required improvements related to the major subdivision as a whole, or for each phase which has achieved preliminary plan approval. The public works director or their designee, in conjunction with the technical review committee or their designees, shall review and approve or recommend approval of the construction drawings for all water system improvements intended to be conveyed to the town and all roads intended to be dedicated to the town as public streets. Construction drawings for sanitary sewer improvements must be provided to MSD.
- (h) *Installation of required improvements.* Upon approval of the preliminary plan, and not before, the subdivider may proceed with the installation for required infrastructure in accordance with the approved preliminary plan and construction plans submitted. Prior to the approval of a final plat, the subdivider shall have installed the required infrastructure improvements. Required infrastructure shall be installed within 18 months of approval of the preliminary plan or phase of a preliminary plan. Otherwise, the planning board shall have the authority to grant up to an additional 12 months for completion of the infrastructure for good cause shown.
- (i) *Submission of final plat and supporting documentation.* Upon completion of the required improvements, the subdivider shall prepare and submit a final plat and supporting documentation to the subdivision administrator. The subdivision administrator shall determine if the final plat is complete and the supporting documentation evidences the completion of the required improvements, and notify the subdivider of any deficiencies. Once the final plat and supporting documentation is deemed complete, the subdivision administrator will schedule review of the final plat by the technical review committee.
- (j) *Review of final plat by technical review committee.* The technical review committee shall review the final plat and supporting documentation, and plat revisions as necessary, for substantial compliance with the approved preliminary plan and with planning and development regulations for major subdivisions and/or conservation subdivisions.
- (k) *Approval of final plat.* The planning director, or their designee, shall approve the major subdivision final plat once it is found compliant by the technical review committee. The planning director, or their designee, shall have 30 days from a fully complete final plat submission within which to approve or deny the final plat. Failure to take such action within this time period will be deemed an approval of the plat.
- (l) *Recordation of final plat.* The final plat of the major subdivision must be recorded, at the subdivider's expense, in the Buncombe County Register of Deeds within 60 days of final plat approval otherwise said approval shall be null and void. A copy of the recorded final plat must be provided to the subdivision administrator or zoning administrator prior to the issuance of any zoning permits. Access easements and road maintenance agreements must be recorded prior to or contemporaneously with the final plat.
- (m) *Issuance of zoning permits.* No zoning permits authorizing work on the property can be issued by the zoning administrator prior to a copy of the recorded final plat being submitted to the subdivision administrator or zoning administrator.
- (n) *Town action on acceptance of town public water and/or public streets dedication.* Improvements installed within rights-of-way or easements including but not limited to utility lines, streets, drainage facilities or sidewalks pursuant to public commitments approved by town council, may be accepted for maintenance by the town upon approval by town council.

8. Concerning conservation subdivisions, a new Code Section 20-2116 is added to Article I, of Part II of Chapter 20 and new Code Section 20-2309 is added to Article II of Part II of Chapter 20 as follows:

Sec. 20-2116. Conservation Subdivision

The conservation subdivision standards found at Sec. 20-2309 are additional standards which shall apply to all subdivisions proposing 25 lots or more.

Sec. 20-2309. Conservation subdivision standards.

The following additional standards shall apply to all subdivisions proposing 25 lots or more:

(a) Open space shall:

- (1) Comprise a minimum of 25 percent of the project area. Floodplain areas are allowed to be calculated for both density and open space requirements.
- (2) Be composed of (in order of which lands should be designated as open space first): primary conservation area, secondary conservation area, and any remaining lands necessary.
- (3) Be designated so that a minimum of 50 percent of the proposed open space is contiguous and, where possible, adjoins open space or other protected areas (including protected forests or wildlife areas) outside the project area.
- (4) Be accessible by safe and convenient pedestrian access from all adjoining lots (except in the case of farmland or other resource areas vulnerable to trampling damage or human disturbance).
- (5) Be used as follows:
 - i. Conservation of natural resources, archaeological resources or historical resources;
 - ii. Agriculture, horticulture or silviculture, provided all applicable best management practices are used to minimize environmental impacts;
 - iii. Passive recreation
 - iv. Active recreation provided impervious surfaces are limited to a maximum of 12 percent of the total open space area;
 - v. Nonstructural stormwater management practices;
 - vi. Easements for drainage, access, and utility lines; and
 - vii. Water, septic and sewer systems.

(b) Open space ownership. The applicant must identify current and future owners of open space responsible for maintaining the area and/or facilities. The responsibility for maintaining the open space and its facilities shall be borne by the owner. If a homeowners' association is the owner:

- (1) Membership in the association shall be mandatory and automatic for all homeowners in the subdivision and their successors; and
- (2) The association shall have lien authority to ensure the collection of dues from all members.

(c) Open space management. The applicant shall submit an open space management plan which includes:

- (1) A statement allocating maintenance responsibilities and establishing guidelines for the upkeep of open space and its facilities.
- (2) Cost estimates for maintenance, operation and insurance needs for the open space.
- (3) A means by which funds will be obtained for all management expenses.
- (4) A provision allowing the subdivision administrator to approve plan change; and
- (5) Criteria for plan enforcement.

- (d) Legal instrument for permanent protection. Open space shall be protected in perpetuity by a binding legal document recorded with the deed. The document shall be one of the following:
- (1) Permanent conservation easement in favor of either:
 - (i) A land trust or similar conservation oriented non-profit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
 - (ii) A governmental entity with an interest in pursuing goals consistent with the intentions of this section.
 - (2) Permanent restrictive covenant for conservation purposes.
 - (3) Equivalent legal tool providing permanent protection, subject to approval by the Town Attorney. The instrument shall include all restrictions contained in Section 20-2309 conservation subdivision standards and any further restrictions the applicant chooses to place on the use of the open space.

- (e) Open space density bonus. Base density is determined by the zoning district in which the subdivision is located. Conservation subdivisions proposing more than the minimum required open space may be eligible for increased densities. The following table outlines the criteria for density bonuses. Lands under conservation easement shall not be counted when determining density bonuses.

Open Space Density Bonuses:

<u>Percent Open Space (%)</u>	<u>25-30</u>	<u>31-40</u>	<u>41-50</u>	<u>>50</u>
<u>Percent Housing Density Increases (%)</u>	<u>N/A</u>	<u>10</u>	<u>15</u>	<u>20</u>

- (f) Structure Placement. Structures should be placed as closely to internal roads as permitted. Structures may be:
- (1) Located in the side yard setback of other structures within the development required by the zoning district; and
 - (2) Placed as closely together as permitted by the North Carolina State Building Code.

9. It is the intention of Town Council that the sections and paragraphs of this Ordinance are severable and if any section or paragraph of this Ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs or sections of this Ordinance, since they would have been enacted by Town Council without the incorporation in this Ordinance of any such unconstitutional or invalid section or paragraph.

10. These amendments shall be effective immediately upon adoption and codified.

ADOPTED THIS the 22nd day of January, 2024, by a vote of 7 in favor and 0 against.

PATRICK FITZSIMMONS, Mayor

ATTESTED BY:

APPROVED AS TO FORM:

TAMARA MERCER, Town Clerk

JENNIFER O. JACKSON, Town Attorney