



TOWN OF WAYNESVILLE

Planning Board

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Ginger Hain (Chair)
Travis Collins (Vice Chair)
John Baus
Michael Blackburn
Tommy Thomas
John Mason
Alex McKay
Tommy Rose
Kathy Lalonde

Development Services
Director
Elizabeth Teague

Special Called Meeting of the Planning Board Town Hall, 9 South Main Street, Waynesville, NC 28786 Monday, May 11, 2026, 5:30 p.m.

A. CALL TO ORDER

1. Welcome/Calendar/Announcements

B. BUSINESS

1. Discussion of Floodplain Ordinance revisions (legislative procedure) as required by the NC Emergency Management Agency, for a public hearing on June 15, 2026.
2. Public Hearing on Rural Conservation District Ordinance and updates to the LDS Chapter 2 zoning tables (legislative procedure).
3. Report from the Planning Board Procedure Work Group and scheduling of next meeting.

C. PUBLIC COMMENT/CALL ON THE AUDIENCE

D. ADJOURN

The Town's Land Development Standards (LDS) may be found at:
<https://www.waynesvillenc.gov/departments/development-services/land-use-zoning-ordinances>

Minutes and agendas from Planning Board and Town Council meetings may be found at:
<https://www.egovlink.com/waynesville/>

Planning Board Staff Report

Subject: Discussion of the text amendment related to floodplain regulations
Ordinance Section: Land Development Standards (LDS) sections 12.3 and 17.5
Applicant: Staff initiated text amendment, Development Services Department
Meeting Date: May 11, 2026
Presenter: Olga Grooman, Assistant Development Services Director

Background:

Town of Waynesville participates in the National Flood Insurance Program (NFIP). This program enables property owners, renters, and businesses in participating communities to purchase federally backed flood insurance. “In return, communities agree to adopt and implement local floodplain management regulations that contribute to protecting lives and reducing the risk of new construction and substantial improvements from future flooding” (*fema.gov*).

As a participating community, Waynesville enforces its Flood Damage Prevention Ordinance, located in Chapter 12 of the LDS, and Flood Damage Prevention Definitions, located in Chapter 17 of the LDS. Waynesville’s floodplain ordinance is based on the State Model Ordinance for non-coastal communities. In April, the NC Department of Public Safety- Emergency Management- announced the release of the 2026 NC Model Flood Damage Prevention Ordinances (Coastal and Non-Coastal versions), which can be downloaded at the North Carolina Flood Insurance Program (<https://flood.nc.gov/ncflood/ncfip.html>), under the Documents panel on the right-hand side of the Floodplain Management page. Therefore, Waynesville needs to update its existing floodplain ordinance to maintain its legal authority and remain in good standing with the NFIP.

The updates to the ordinance include, but are not limited to, revised definitions, additional clarifications, specifications for floodplain development permit certification, clarification of duties of the Floodplain Administrator, updates related to LOMRs, improvements to enforcement procedures, and provisions addressing recreational vehicles in floodplain and floodway. The proposed changes to the Land Development Standards are shown in the attached Draft Ordinance **in red**.

Today, prior to discussing the proposed text amendments, staff prepared a “Floodplain 101” presentation for the board to review key floodplain concepts, applicable regulations, and primary components of ordinance.

Consistency with the 2035 Comprehensive Land Use Plan:

Staff submits that the proposed text amendment to the LDS is consistent with the following 2035 Comprehensive Plan Goal:

Goal 1: Continue to promote smart growth principles in land use planning and zoning.

- Encourage infill, mixed-use and context-sensitive development.

The proposed text amendment is reasonable and in the public interest as it promotes community resilience, ensures timely review of floodplain permits, further clarifies existing floodplain regulations, and allows Waynesville to remain in compliance with FEMA and State regulations while maintaining its legal authority through an up-to-date ordinance.

Attachments:

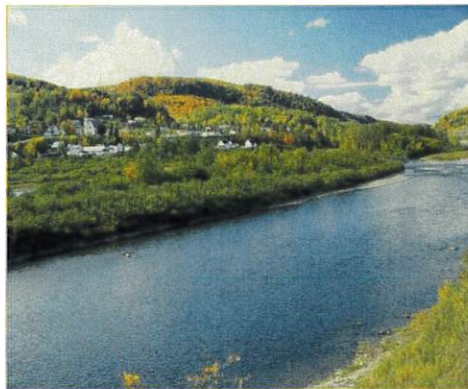
- Draft Ordinance
- Power Point Presentation: Floodplain 101

Recommended Motions:

This item is for discussion only regarding the proposed text amendment. An official public hearing has been scheduled and advertised for the Planning Board meeting on June 15, 2026.

National Flood Insurance Act of 1968

- Established NFIP
- Required mapping of floodprone areas (SFHAs)
- Made flood insurance available in communities that meet floodplain management criteria



North Carolina State Law

- Floodplain Management: NCGS Chapter 143, Article 21, Part 6
 - The provisions of this Part shall not preclude the imposition by responsible local governments of land use controls and other regulations in the interest of floodplain management for the 100- and 500-year floodplain
 - Enabling law that allows local communities to regulate floodplains in the state



NC Model Flood Damage Prevention Ordinance

2026 NC Flood Damage Prevention Ordinance, Non-Coastal

Instructions:

- Where you see sections of text highlighted in grey (i.e., **Governing Body**), select the entire highlighted text and enter in the information as requested (i.e., City Council, Board of Aldermen, etc.). This should delete the grey highlighted text and replace with your information.
- Sections, definitions, or text highlighted in **BLUE** is optional language to include in your jurisdiction's flood ordinance.
 - If you elect to maintain the optional language in your flood ordinance, remove the italics, return the text color to black, and delete "(OPTIONAL Language...)" and any other instructions in the parenthesis.
 - If you elect to delete the optional language, delete in its entirety including the bullet and instructions (i.e., **OPTIONAL Language**). If the section must be reserved to maintain references throughout the document, these instructions will be included in the parenthesis.
- Sections, definitions, or text highlighted in **GREEN** are new or revised language to include in your jurisdiction's flood ordinance.
 - If you elect to maintain the new language or revise your existing language to reflect the updated or revised language, return the text color to black.
 - If the new or revised language provides instructions such as, *(this amount should be consistent with Article 3, Section B)*, delete the instructions and parenthesis.
- Contact your North Carolina NFIP Branch Planner with any questions and to allow for a review of the revisions prior to adoption to ensure accuracy and compliance.

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FLOOD DAMAGE PREVENTION ORDINANCE

Non-Coastal Regular Phase

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Part 6 of Article 21 of Chapter 143; Article 6 of Chapter 123A; Article 8 of Chapter 160A; and Articles 1, 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the **Governing Body of Community Name**, North Carolina, does ordain as follows:

SECTION B. FINDINGS OF FACT.

- The flood-prone areas within the jurisdiction of **Community Name** are subject to periodic inundation which results in loss of life, property, health and safety; hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- These flood losses are caused by the cumulative effect of obstructions, both inside and outside the identified Special Flood Hazard Areas, causing increases in flood heights and velocities and by the occupancy in flood-prone areas by uses vulnerable to floods or other hazards. These obstructions and occupancy by uses vulnerable to floods may be hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood-prone areas by provisions designed to:

- Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- Prevent or regulate the construction of flood barriers that will unreasonably divert flood waters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES.

The objectives of this ordinance are to:

CHAPTER 12: ENVIRONMENTAL CONSERVATION STANDARDS

12.1 Purpose and Intent.

This Chapter sets forth standards for environmental protection and conservation in the Town of Waynesville's land use jurisdiction concerning a variety of different environmental issues. The Town of Waynesville possesses an abundance of unique natural assets. The standards set forth in this section address the enhancement and preservation of these important features. (Article VIII summary)

12.2 Land Suitability.

Land subject to flood hazard, improper drainage, erosion, landslides or that is for topographical or other reasons unsuitable for development as determined by the Town of Waynesville, shall not be platted or developed for residential use nor for any other uses that will continue or increase the danger to health, safety, or property unless the hazards are corrected or mitigated.

12.2.1 Landfill Development.

Areas that have been used for the disposal of solid waste shall not be subdivided into commercial or residential building sites. This includes areas that have been used for the disposal of trash, demolition waste, construction debris, stumps, and other waste materials.

12.3 Flood Damage Prevention.

12.3.1 Statutory Authorization, Findings of Fact, Purpose and Objectives.

- Statutory Authorization:** The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Articles 7, 9, 11, and 13 of Chapter 160D; and Article 8 of Chapter 160A, and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Town Council of the Town of Waynesville, North Carolina, does ordain as follows:

B. Findings of Fact:

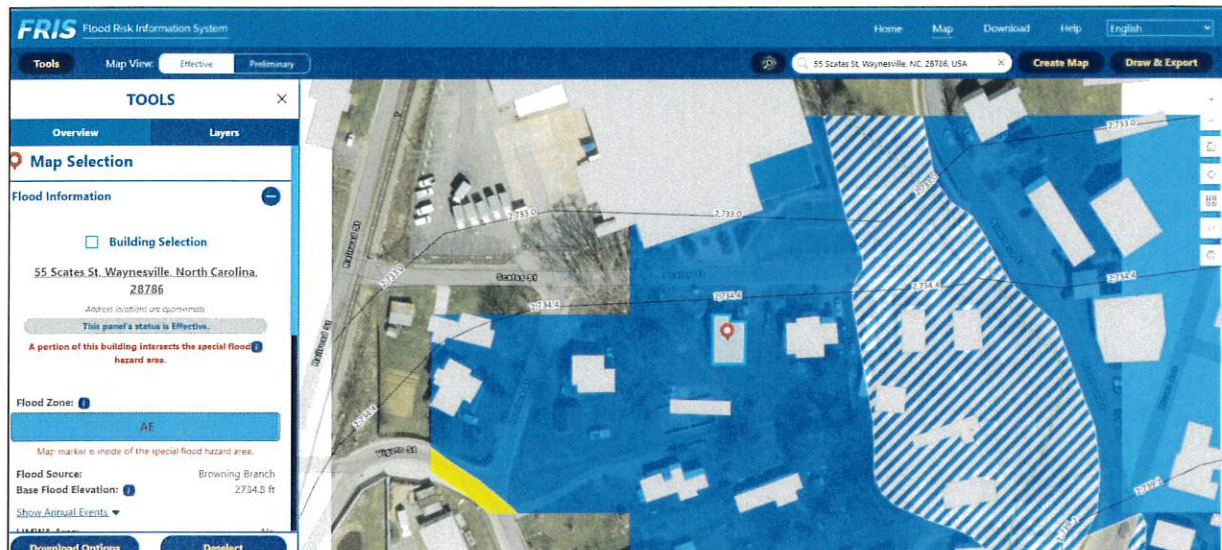
- The flood-prone areas within the jurisdiction of the Town of Waynesville are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood-prone areas of uses vulnerable to floods or other hazards.

Local Floodplain Ordinance

Chapter 12 of the Land Development Standards (LDS)

NC Flood Risk Information System (FRIS) Maps

The Flood Risk Information System (FRIS) contains digitally accessible flood hazard data, models, maps, risk assessments, and reports.



Sanctions for Non-Participation

- No Federal grants or loans for development in Special Flood Hazard Areas (SFHAs) under Federal programs
- No Federal disaster assistance to repair insurable buildings located in SFHAs
- No Federal mortgage insurance or loan guarantees in SFHAs
- Federally insured or regulated lenders must notify applicants seeking loans in SFHAs that:
 - There is a flood hazard
 - The property is not eligible for Federal disaster relief

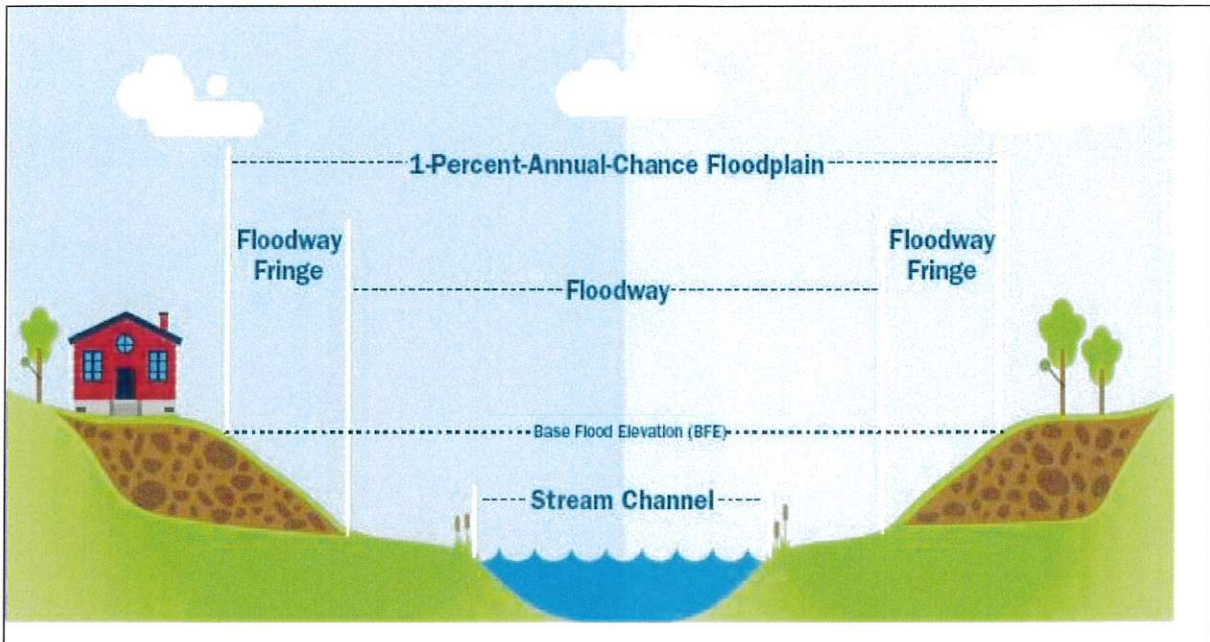
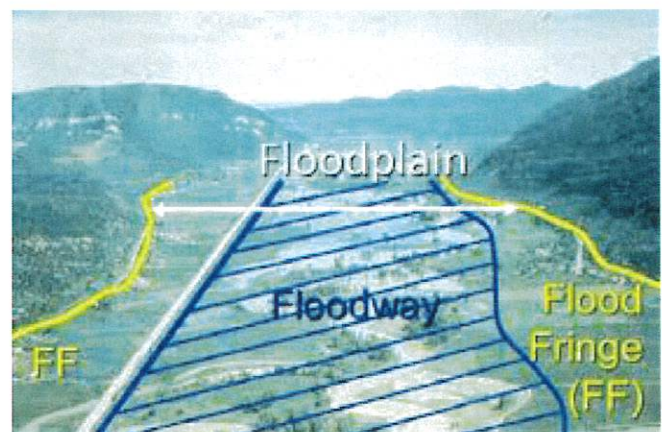


Image by Tulsa Engineering and Planning

Floodway- the primary channel that carries flood waters.

- High velocity.
- Immediate hazard.
- Non-encroachment area.

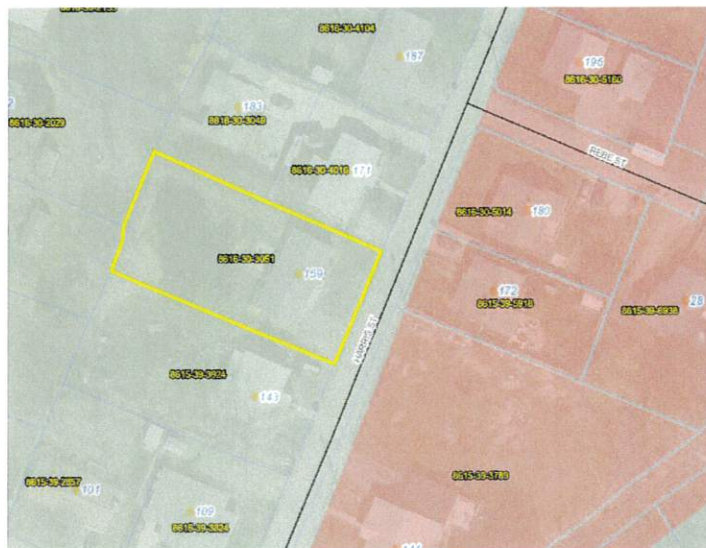
Floodplain is the broader area that includes floodway and flood fringe that stores the floodwaters.



Floodway- carries waters
Floodplain- storage

New construction within the floodplain and substantial improvements—defined as additions or renovations of at least 50% of the structure's pre-improvement or pre-damage market value—require an Elevation Certificate.

New mechanical equipment (ex: mini-splits, HVAC units) also require an Elevation Certificate. Replacement units may be installed in the same location or at a higher elevation.



New construction or any increase in footprint within FLOODWAY is generally prohibited unless a "no-rise" certification is obtained, demonstrating the project won't increase flood levels.

This certification requires an engineering analysis showing no increase in base flood elevations, floodway elevations, or floodway widths.

Example: a stand for a heat pump, fill on property.

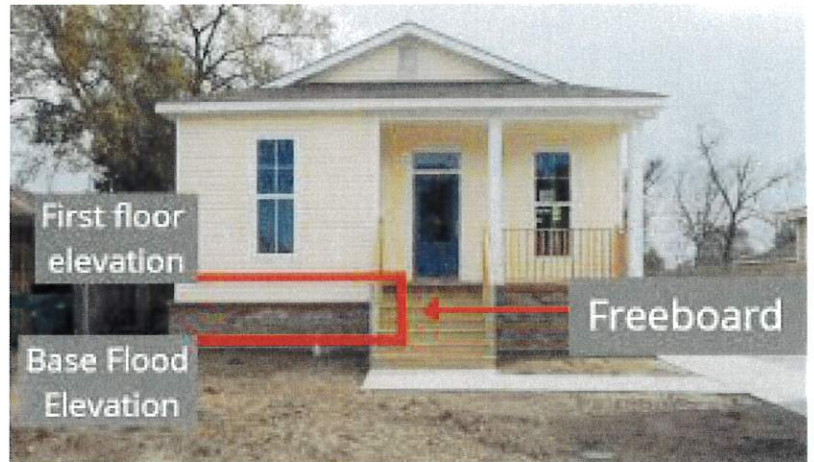
Elevation Certificate is still required!



Base Flood Elevation (BFE) is the elevation to which floodwater is expected to reach during a **100-year flood**.

Freeboard- additional height added above the BFE as a safety margin. **In Waynesville, it is 1 foot.**

For example, if the BFE is 2,500 feet, new HVAC equipment must be elevated on a platform to at least 2,501 feet. Similarly, the top of the first finished floor of the house must also be at 2,501 feet.



QUIZ TIME

1. What does BFE stand for?

- A. Big Flood Energy
- B. Base Flood Elevation
- C. Basement Floor Elevation
- D. Base Floor Elevation

2. In Waynesville, how much Freeboard is required above the BFE?

- A. 1 foot
- B. 2 feet
- C. 0 feet
- D. Just enough to keep your feet dry during flood

3. Which of the following must be elevated to meet or exceed BFE + 1 foot Freeboard?

- A. First finished floor of the house
- B. New HVAC units
- C. Garage floor
- D. Doghouse

DRAFT ORDINANCE FOR BOARD CONSIDERATION

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE TEXT OF THE
TOWN OF WAYNESVILLE LAND DEVELOPMENT STANDARDS**

WHEREAS, the Town of Waynesville has the authority, pursuant to Article 7 of Chapter 160D of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend said regulations from time to time in the interest of the public health, safety, and welfare; and

WHEREAS, the Town of Waynesville is the community that participates in the National Flood Insurance Program (NFIP) and therefore must comply with its requirements and implement local floodplain management regulations; and

WHEREAS, the National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance; and

WHEREAS, floodplain regulations contribute to protecting lives, property, and reducing the risk of future flooding for new construction and existing structures; and

WHEREAS, the North Carolina Department of Public Safety, Emergency Management, has released the 2026 NC Model Flood Damage Prevention Ordinance; and

WHEREAS, the Town of Waynesville shall update its Floodplain Damage Prevention Ordinance to stay in compliance with the NFIP requirements and maintain legal authority to enforce the floodplain program through up-to-date ordinances; and

WHEREAS, the Town Council adopted the 2035 Comprehensive Plan to “enable the growth of a vibrant, healthy, and successful community,”

WHEREAS, the Town of Waynesville Planning Board has reviewed the proposed text amendment to the Land Development Standards (LDS) and recommends that it is consistent with the 2035 Comprehensive Plan and that it is reasonable and in the public interest, and recommends the text amendment for its enactment by the Town Council; and

WHEREAS, the Town Council find this ordinance consistent with the Town’s 2035 Comprehensive Land Use Plan and that it is reasonable and in the public interest, updating the floodplain regulations and promoting public safety, specifically meeting the following Comprehensive Plan goals:

Goal 1: Continue to promote smart growth principles in land use planning and zoning.

- Promote conservation design to preserve important natural resources.

Goal 3: Protect and Enhance Waynesville’s Natural Resources.

- Protect and enhance water quality and forests.
- Protect rural lands, iconic views, and mountain vistas; and

WHEREAS, after notice duly given, a public hearing was held on **June 15, 2026**, at the special meeting of the Waynesville Planning Board, and on _____, **2026**, at the regularly scheduled meeting of the Waynesville Town Council;

NOW, THEREFORE, BE IT ORDAINED BY THE WAYNESVILLE TOWN COUNCIL, MEETING IN REGULAR SESSION ON _____, 2026, AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:

That the Land Development Standards to be amended as follows:

12.3 Flood Damage Prevention.

12.3.1 Statutory Authorization, Findings of Fact, Purpose and Objectives.

- A. **Statutory Authorization:** ~~The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Articles 7, 9, 11, and 13 of Chapter 160D; and Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.~~ **The Legislature of the State of North Carolina has in Part 6 of Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Articles 1, 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare.**

Therefore, the Town Council of the Town of Waynesville, North Carolina, does ordain as follows:

- B. **Findings of Fact:**
1. The flood prone areas within the jurisdiction of the Town of Waynesville are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 2. These flood losses are caused by the cumulative effect of obstructions ~~in floodplains~~, **both inside and outside the identified Special Flood Hazard Areas**, causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards. **These obstructions and occupancy by uses vulnerable to floods may be hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.**
- C. **Statement of Purpose:**
- It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:
1. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
 2. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
 3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

- 4. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- 5. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

D. Objectives.

The objectives of this ordinance are to:

- 1. Protect human life, safety, and health;
- 2. Minimize expenditure of public money for costly flood control projects;
- 3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- 4. Minimize prolonged business losses and interruptions;
- 5. Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- 6. Minimize damage to private and public property due to flooding;
- 7. Make flood insurance available to the community through the National Flood Insurance Program;
- 8. Maintain the natural and beneficial functions of floodplains;
- 9. Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- 10. Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

12.3.2 General Provisions.

A. Applicability.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs), of the Town of Waynesville and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

B. Basis for Establishing the Special Flood Hazard Areas.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated April 3, 2012 for Haywood County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:

- Haywood County Unincorporated Area, dated July 15, 1984.
- Town of Waynesville, dated January 6, 1983.

When Preliminary Flood Insurance Studies and Flood Insurance Rate Maps have been provided by FEMA to the Town of Waynesville:

- (1) Prior to the issuance of a Letter of Final Determination (LFD) by FEMA, the use of the preliminary flood hazard data shall only be required where no base flood elevations and/or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in the effective flood hazard data provided by FEMA. Such preliminary data may be subject to revision through valid appeals.
- (2) Upon the issuance of a Letter of Final Determination (LFD) by FEMA, the revised flood hazard data shall be used and replace all previously effective flood hazard data provided by FEMA for the purposes of administrating these regulations.

The community reserves the right to require further studies for any development within its jurisdiction, if there is evidence that a potential flood hazard exists. Studies can be used to

designate Community Flood Hazard Areas (CFHA). Such evidence may include but shall not be limited to:

- (1) Eyewitness accounts of historic flooding or other reports of historic flooding deemed credible by the community;
- (2) Surveyed high-water marks;
- (3) Geologic features observed that resemble floodplains (such as flat areas along streams);
- (4) Proximity to manmade or natural constrictions in or along a watercourse (such as road crossings that can cause backwater effects), and;
- (5) Drainage basin characteristics (such as drainage area, slope, percent impervious cover, land use, etc.).

Where adopted regulatory standards conflict, the more stringent base flood elevation shall prevail.

C. Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section 12.3.2.B.

D. Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

E. Abrogation and Greater Restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

F. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under State statutes.

G. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Waynesville or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

H. Penalties for Violation.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to G.S. 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing

herein contained shall prevent the Town of Waynesville from taking such other lawful action as is necessary to prevent or remedy any violation.

12.3.3 Administration.

A. Designation of Floodplain Administrator.

The Land Development Administrator, or his or her designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

B. Floodplain Development Application, Permit and Certification Requirements.

1. Application Requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 12.3.2.B, or a statement that the entire lot is within the Special Flood Hazard Area;
 - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 12.3.2.B;
 - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 12.3.2.B;
 - (v) The Base Flood Elevation (BFE) where provided as set forth in Sections 12.3.2.B; 12.3.3.C; or 12.3.3.D;
 - (vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - (vii) The certification of the plot plan by a registered land surveyor or professional engineer.

(b) Notwithstanding the foregoing, the Floodplain Administrator shall have the discretion to waive the requirement set by section (a)(vii) that the plot plan bear the certification of a registered land surveyor or professional engineer where the application meets the following criteria:

- (i) No other ordinance or regulation requires such certification; and
- (ii) The Administrator determines that such activity does not create new or additional flood hazards or potential increases in erosion, flood heights, or velocities.

- (c) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

- (i) — Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
- (ii) — Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be floodproofed; and
- (iii) — Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

- (i) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
- (ii) Elevation in relation to NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO, A99 will be floodproofed; and
- (iii) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

- (d) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65 FF-206-FY-22-153) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (e) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
 - (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section 12.3.4.B.4(c) when solid foundation perimeter walls are used in Zones A, AE, AH, AO, A99.
- (f) Usage details of any enclosed areas below the lowest floor.
- (g) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (h) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (i) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Section 12.3.4.B.6 and Section 12.3.4.B.7 of this ordinance are met.
- (j) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

2. **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A complete description of all the development to be permitted under the floodplain development permit (e.g., house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.), **including cost estimate.**
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 12.3.2.B.
- (c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

- (d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, unless the requirements of Section 12.3.4.F have been met.
- (g) The flood openings requirements, if in Zones A, AO, AE or A1-30.
- (h) Limitations of below BFE enclosure uses (if applicable) (i.e., parking, building access and limited storage only).
- (i) A statement, that all materials below BFE/RFPE must be flood resistant materials.

3. **Certification Requirements.**

- (a) Elevation Certificates.
 - (i) An Elevation Certificate (FEMA Form FF-206-FY-22-152) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to ~~mean sea level.~~ **NAVD 1988.** The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
 - (ii) An Elevation Certificate (FEMA Form FF-206-FY-22-152) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to ~~mean sea level.~~ **NAVD 1988.** Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
 - (iii) A final as-built Elevation Certificate (FEMA Form FF-206-FY-22-152) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. **The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs**

should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable

(b) Floodproofing Certificate.

- (i) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form FF-206-FY-22-153), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
 - (ii) A final Finished Construction Floodproofing Certificate (FEMA Form FF-206-FY-22-153), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.
- (c) If a manufactured home is placed within Zone A, AE, AH, AO, A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 12.3.4.B.3(b).
- (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

- (e) Certification Exemptions. The following structures, if located within Zones A, AE, AH, AO, A99, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
- (i) Recreational Vehicles meeting requirements of Section 12.3.4.B.6(a);
 - (ii) Temporary Structures meeting requirements of Section 12.3.4.B.7; and
 - (iii) Accessory Structures less than 150 square or have a total cost of \$5,000 or less and meet requirements of Section 12.3.4.B.8.

4. **Substantial Improvement/ Damage Determinations for existing buildings and structures.**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

C. **Duties and Responsibilities of the Floodplain Administrator.**

The Floodplain Administrator shall perform, but not be limited to, the following duties:

1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas **or Community Flood Hazard Areas** to assure that the requirements of this ordinance have been satisfied.
2. Review all proposed development within Special Flood Hazard Areas **or Community Flood Hazard Areas** to assure that all necessary Local, State and Federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
3. Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
5. Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 12.3.4.F are met.
6. Obtain actual elevation (in relation to ~~mean sea level~~ **NAVD 1988**.) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 12.3.3.B.3.
7. Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 12.3.3.B.3.

8. Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Section 12.3.3.B.3.
9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 12.3.3.B.3 and Section 12.3.4.B.2.
10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
11. When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Section 12.3.2.B, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section 12.3.4.D.2(b), in order to administer the provisions of this ordinance.
12. When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 12.3.2.B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
13. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
14. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
17. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
18. Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
19. Follow through with corrective procedures of Section 12.3.3.D.
20. Review, provide input, and make recommendations for variance requests.

21. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 12.3.2.B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
 22. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).
 23. **Make substantial improvement and post event damage assessments and determinations:**
 - (a) **Conduct damage assessments for damaged structures located within the SFHA.**
 - (b) **Complete substantial improvement/damage determinations in accordance with the provisions 12.3.3.B.4.**
 24. **In any lot or lots/areas that will be or have been removed from the special flood hazard area utilizing a Letter of Map Revision Based on Fill (LOMR-F), the top of fill level must meet the community's freeboard elevation at that location. If the top of fill level is below the freeboard elevation, all new structures, additions to existing buildings or substantial improvement must meet the required community freeboard elevation.**
- D. Corrective Procedures.**
1. ~~Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.~~
 2. ~~Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:~~
 - (a) ~~That the building or property is in violation of the floodplain management regulations;~~
 - (b) ~~That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and~~
 - (c) ~~That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.~~
 3. ~~Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.~~
 4. ~~Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.~~
 5. ~~Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to G.S. 143-215.58 and shall be punished at the discretion of the court.~~

1. **Stop Work Order:** The community may issue a Stop Work Order, which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the Notice of Violation or has otherwise remedied the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to remedy such violation or violations.

- (2) **Notice of Violation.** If the community determines that an owner, occupant, applicant or other responsible person has failed to comply with the terms and conditions of a permit, or the provisions of this ordinance, it shall issue a written Notice of Violation, by certified return receipt mail, to such applicant or other responsible person. Where the person is engaged in activity covered by this ordinance without having first secured a permit, the notice shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The Notice of Violation shall contain:
 - (a) The name and address of the owner or the applicant or the responsible person;
 - (b) The address or other description of the site upon which the violation is occurring;
 - (c) A statement specifying the nature of the violation;
 - (d) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit or this ordinance and the date for the completion of such remedial action;
 - (e) A statement of the penalty or penalties that may be assessed against the person to whom the Notice of Violation is directed, and;
 - (f) A statement that the determination of violation may be appealed to the community by filing a written notice of appeal within thirty (30) days after the Notice of Violation (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hour notice shall be sufficient).

2. **Additional Enforcement Actions.** If the remedial measures described in the Notice of Violation have not been completed by the date set forth for such completion in the Notice of Violation, any one or more of the following enforcement actions may be enacted against the person to whom the Notice of Violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Town of Waynesville shall first notify the owner, applicant or other responsible person in writing of its intended action. The Town shall provide reasonable opportunity, of not less than ten (10) days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hour notice shall be sufficient) to remedy such violation. In the event the applicant or other responsible person fails to remedy such violation after such notice and remedial period, the Town of Waynesville may take or impose any one or more of the following enforcement actions or penalties:
 - (a) **Termination of utility service and/or withhold or revoke Certificate of Occupancy:** The Town may terminate utilities and/or refuse to issue and/or revoke a Certificate of Occupancy for the building or other improvements and/or repairs conducted or being conducted on the site until the applicant or other responsible person has taken the remedial measures set forth in the Notice of Violation or has otherwise remedied the violation or violations described therein.
 - (b) **Suspension, revocation, or modifications of permit:** The Town may suspend, revoke, or modify the permit authorizing the development project. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the Notice of Violation or has otherwise remedied the violations described therein, provided such permit may be reinstated (upon such conditions as the community may deem necessary) to enable the applicant or

- other responsible person to take the necessary remedial measures to cure such violations.
- (c) Civil penalties: Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a Class 1 misdemeanor pursuant to North Carolina General Statute § 143-215.58.
- (i) Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Waynesville from taking such other lawful actions, pursuant to North Carolina General Statute § 153A, 160A, and 160D, as is necessary to prevent or remedy any violation.
- (ii) Enforcement by an appropriate equitable remedy issuing from a court of competent jurisdiction may be pursued if the offender fails to remedy the violation, pays assessed fines, and/or fails to file an appeal within the prescribed period of time. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate.
4. Administrative appeal; judicial review. Any person receiving a Notice of Violation may appeal the determination of the community, including but not limited to the issuance of a Stop Work Order, the assessment of an administratively-imposed monetary penalty, the suspension, revocation, modification, or grant with condition of a permit by the community upon finding that the holder is in violation of permit conditions, or that the holder is in violation of any applicable ordinance or any of the community's rules and regulations, or the issuance of a notice of bond forfeiture.
- (a) Any person receiving a Notice of Violation may appeal the determination of the floodplain administrator to the Zoning Board of Adjustment. The Notice of Appeal must be in writing and be received by the floodplain administrator and the clerk within thirty (30) days of the date of the Notice of Violation. In the absence of an appeal, the determination of the floodplain administrator shall be final.
- (b) All appeals shall be heard and decided by the community's designated Appeal Board, which shall be the Zoning Board of Adjustment, or their designees. The Zoning Board of Adjustment shall hear an appeal within a reasonable time and shall have the power to affirm, modify, or reject the original penalty, including the right to increase or decrease the amount of any monetary penalty and the right to add or delete remedial actions required for correction of the violation and compliance with the community's flood damage prevention ordinance, and any other applicable local, state, or federal requirements. In the absence of a petition for review of a quasi-judicial decision, the decision of the Board of Adjustment shall be final.
- (c) A petition for review of a quasi-judicial decision can be requested by any person with standing aggrieved by a decision or order of the community, after exhausting his/her administrative remedies. The petition shall be received by the clerk of Superior Court within thirty (30) days of the date of the local Board of Adjustment's decision.
5. Section 1316 Declaration: Section 1316 of the National Flood Insurance Act authorizes FEMA to deny flood insurance to a property declared by the State, County, or Municipal government to be in violation of the local floodplain management ordinance. A Section 1316 declaration shall be used when all other legal means to remedy a violation have been exhausted and the structure remains noncompliant. The community must coordinate a request for Section 1316 declaration to the FEMA Regional Office through the State NFIP Coordinator.

Once invoked, the property's flood insurance coverage will be terminated and no new or renewal policy can be issued; no flood insurance claim can be paid on any policy on the property, and disaster assistance will be denied. If a structure that has received a Section 1316 declaration is made compliant with the community's floodplain management ordinance, then the Section 1316 declaration can be rescinded by FEMA and flood insurance eligibility restored.

E. Variance Procedures.

1. The Board of Adjustment as established by the Town of Waynesville, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
2. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
3. Variances may be issued for:
 - (a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (b) Functionally dependent facilities if determined to meet the definition as stated in Section 17.5, provided provisions of Section 12.3.3.E.9(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - (c) Any other type of development, provided it meets the requirements of this section.
4. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location as defined under Section 17.5 as a functionally dependent facility, where applicable;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
5. A written report addressing each of the above factors shall be submitted with the application for a variance.
6. Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.

7. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
8. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
9. Conditions for Variances:
 - (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship; and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
10. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
 - (a) The use serves a critical need in the community.
 - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
 - (c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
 - (d) The use complies with all other applicable Federal, State and local laws.
 - (e) The Town of Waynesville has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance, **in accordance with North Carolina General Statutes §143-215.54A(b).**

12.3.4 Provisions for Flood Hazard Reduction.

A. General Standards.

In all Special Flood Hazard Areas the following provisions are required:

1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.

3. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
4. All new electrical, heating, ventilation, air-conditioning, plumbing, duct systems, and other building utility systems, equipment, and service facilities must be located at or above the Regulatory Flood Protection Elevation (RFPE) and/or specially designed to prevent water from entering or accumulating within the components and installed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the design flood elevation. Utility systems, equipment, and service facilities include, but are not limited to, HVAC equipment, water softener units, bath/kitchen plumbing fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, water heaters, fuel tanks, and electric outlets/switches.
 - (a) Replacements part of a substantial improvement must also meet the above provisions.
 - (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements comply with the standards for new construction consistent with the code and requirements for the original structure.
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
8. Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
9. Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
10. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 12.3.3.E.10. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 12.3.3.B.3.
11. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
12. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
13. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
14. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
15. When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

16. Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area.
17. Structural fill shall not be used unless design and construction of the structural fill accounts for the following:
 - (a) consolidation of the underlying soil under the weight of the fill and the structure,
 - (b) differential settlement due to variations in fill composition and characteristics, and
 - (c) slope stability and erosion control during conditions of the base flood.

B. Specific Standards.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 12.3.2.B, or Section 12.3.4.D, the following provisions, in addition to the provisions of Section 12.3.4.A, are required:

1. Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 17.4.
2. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 17.4. Structures located in Zones A, AE, AH, AO, A99 may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section 12.3.4.G.2. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 12.3.3.B.3, along with the operational plan and the inspection and maintenance plan.
3. Manufactured Homes.
 - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Section 17.4.
 - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
 - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Section 12.3.4.B.4.
 - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

4. Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - (b) Shall not be temperature-controlled or conditioned;
 - (c) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
 - (d) Shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
 - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
5. Additions/Improvements.
- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (ii) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
 - (b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard

door in the common wall, shall require only the addition to comply with the standards for new construction.

- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
- (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
 - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

~~(b)~~ (d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one-year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

- (i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
- (ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

6. Recreational Vehicles. Recreational vehicles shall either **meet the following**:
- ~~(a) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or~~
 - ~~(b) Meet all the requirements for new construction.~~
- (a) Placement of a Recreational Vehicle in the Regulatory Floodway or Non-Encroachment Area is prohibited. This includes both temporary and permanent placement.**
 - (b) Temporary Placement:**
 - (i) Be on site for fewer than 180 consecutive days; or**
 - (ii) Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions.)**
 - (c) Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.**

7. Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
- (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
- (c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
- (e) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

8. Accessory Structures.

~~When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:~~

- (a) **When accessory structures (sheds, detached garages, etc.) with a footprint of no more than 600 square feet are placed within A, AO, AH, AE and A99 flood zones, wet floodproofing may be permitted when the following criteria are met:**
 - (i) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - (ii) Accessory structures shall not be temperature-controlled;
 - (iii) Accessory structures shall be designed to have low flood damage potential;
 - (iv) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (v) Accessory structures shall be firmly anchored in accordance with the provisions of Section 12.3.4.A.1;
 - (vi) All service facilities such as electrical shall be installed in accordance with the provisions of Section 12.3.4.A.4; and
 - (vii) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 12.3.4.B.4(c).
 - (b) **All other accessory structures exceeding the size restrictions in Section 12.3.4.B.8.(a) above must comply with the elevation or floodproofing standards and certification requirements in accordance with Section 12.3.3.B.3.**
 - (c) **An accessory structure with a footprint less than 150 square feet or less in A, AO, AH, AE and A99 zones or that is a minimal investment of \$3,000.00 or less and that satisfies the criteria outlined above, is not required to meet the elevation or floodproofing standards of Section 12.3.4.B.2. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 12.3.3.B.3.**
9. Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

- (b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse, or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
- (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 12.3.4.B.2 of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
- (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
 - (i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

10. Other Development.

- (a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 12.3.4.F of this ordinance.
- (b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section 12.3.4.F of this ordinance.
- (c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 12.3.4.F of this ordinance.
- (d) Commercial storage facilities are not considered "limited storage" as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

C. [Reserved.]

D. **Standards for Floodplains without Established Base Flood Elevations.**

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 12.3.2.B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section 12.3.4.A, shall apply:

1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
 - (a) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sections 12.3.4.A and B.
 - (b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Sections 12.3.4.B and F.
 - (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Section 12.3.2.B and utilized in implementing this ordinance.
 - (d) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Section 17.4. All other applicable provisions of Section 12.3.4.B shall also apply.

E. Standards for Riverine Floodplains with Base Flood Elevations but Without Established Floodways or Non-Encroachment Areas.

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

1. Standards of Sections 12.3.4.A and B; and
2. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

F. Standards for Floodways and Non-Encroachment Areas.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 12.3.2.B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections 12.3.4.A and B, shall apply to all development within such areas:

1. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - (a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
 - (b) A Conditional Letter of Map Revision (CLOMR) has been ~~approved by FEMA~~ **issued by FEMA for proposed encroachments resulting in increases in the flood levels during the occurrence of the base flood discharge.** A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

(c) (c) A Letter of Map Revision (LOMR) must be obtained within six months of completion of the proposed encroachment, permitted in accordance with this section, if the encroachment results in changes to the floodway/non-encroachment area widths, and/or changes to the stream location.

2. If Section 12.3.4.F.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
3. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - (a) The anchoring and the elevation standards of Section 12.3.4.B.3; and
 - (b) The no encroachment standard of Section 12.3.4.F.1.

4. **Placement of recreational vehicles in the regulatory floodway or non-encroachment area is prohibited.**

G. **Standards for Areas of Shallow Flooding (Zone AO).**

Located within the Special Flood Hazard Areas established in Section 12.3.2.B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections 12.3.4.A and B, all new construction and substantial improvements shall meet the following requirements:

1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of one (1) foot, or at least four (4) feet above the highest adjacent grade if no depth number is specified.
2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 12.3.4.G.1 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Section 12.3.3.B.3 and Section 12.3.4.B.2.
3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

H. **Standards for Areas of Shallow Flooding (Zone AH).**

Located within the Special Flood Hazard Areas established in Section 12.3.2.B, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to Section 12.3.4.A and B, all new construction and substantial improvements shall meet the following requirements:

1. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

12.3.5 Legal Status Provisions.

A. **Effect on Rights and Liabilities Under the Existing Flood ~~Damage~~ Damage Prevention Ordinance.**

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted November 10, 1981, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding

instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of Waynesville enacted on November 10, 1981, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Haywood County is July 15, 1984.

B. Effect Upon Outstanding Floodplain Development Permits.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

C. Severability.

If any section, clause, sentence, or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

D. Effective Date.

This ordinance shall become effective upon adoption.

(Ord. No. O-11-21, § 5, 6-22-2021; Ord. No. O-38-22, § 1, 12-13-2022; Ord. No. O-22-24, § 5, 6-11-2024)

17.5 Definitions, Floodplain Damage Prevention.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. For the purpose of applying the standards of Section 12.3, where the definitions of this section differ with those of Section 17.4, the definitions of this section shall prevail.

A Zone is the Special Flood Hazard Area subject to inundation by the 1% annual chance flood where base flood elevations have NOT been determined.

Accessory Structure (Appurtenant Structure) means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

AE Zone is the Special Flood Hazard Area subject to inundation by the 1% annual chance flood where base flood elevations have been determined by detailed or limited detailed methods.

AH Zone is the Special Flood Hazard Area with a 1% annual chance of shallow flooding (usually areas of ponding), where average depths are between one (1) and three (3) feet. Base flood elevations derived from detailed hydraulic analyses are shown in this zone.

Alteration of a Watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

AO Zone is the Special Flood Hazard Area with a 1% annual chance of shallow flooding (usually sheet flow on sloping terrain) where average depths are between one (1) and three (3) feet. Average flood depths derived from detailed hydraulic analyses are shown in this zone.

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

Area of Future-Conditions Flood Hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

Area of Shallow Flooding means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. **Such flooding is characterized by ponding or sheet flow.**

Area of Special Flood Hazard. See Special Flood Hazard Area (SFHA).

Area of Future-Conditions Flood Hazard means the land area that would be inundated by the 1-percent-annual-chance (100- year) flood based on future-conditions hydrology.

Base Flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a Special Flood Hazard Area, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard," establishes the Regulatory Flood Protection Elevation.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Building. See Structure.

Chemical Storage Facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Community means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

Community Flood Hazard Area (CFHA) is an area that has been determined by the Floodplain Administrator (or other delegated, designated, or qualified community official) from available technical studies, historical flood information, and other available and reliable sources, which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety and general welfare. This includes areas downstream from dams.

Community Floodplain Management Map means any map produced by the community utilizing best available base flood elevation and floodway data that is from a federal, state, or other accepted technical source.

Community Rating System (CRS) means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Critical facility (also called critical action) means facilities for which the effects of even a slight chance of flooding would be too great. The minimum floodplain of concern for critical facilities is the 0.2 percent chance flood level. Critical facilities include, but are not limited to facilities critical to the health and safety of the public such as: emergency operations centers, designated public shelters, schools, nursing homes, hospitals, police, fire, and emergency response installations, vital data storage centers, power generation and water and other utilities (including related infrastructure such as principal points of utility systems) and installations which produce, use, or store hazardous materials or hazardous waste.

Design Flood. See Regulatory Flood Protection Elevation.

Development means any man-made change to improved or unimproved real estate, including, but not limited to:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The clearing, excavation, dredging, grading, filling, paving, drilling operations, mining, or alteration of land.
- c. Storage of equipment or materials.
- d. The subdivision of land as defined in this ordinance.
- e. The initiation of substantial change in the use of land or the intensity of use of land.

For stormwater calculation, development shall be considered any land disturbing activity that increases the amount of built upon area or otherwise decreases the infiltration of precipitation into the soil.

Development Activity means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

Digital Flood Insurance Rate Map (DFIRM) means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Disposal means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Dry Floodproofing means a combination of measures that make a building and attendant utilities and equipment watertight and substantially impermeable to floodwater, with structural components having the capacity to resist flood loads. Please refer to Technical Bulletin 3, *Requirements for the Design and Certification of Dry Floodproofed Non-Residential and Mixed-Use Buildings*, and available from the FEMA.

Elevated Building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Building and **Existing Structure** means any building and/or structure for which the "start of construction" commenced before the effective date of the floodplain management regulations adopted by a community.

Existing Manufactured Home Park or **Manufactured Home Subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

Expansion to an Existing Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood or Flooding means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.

- 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- 3. (Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

Flood Boundary and Floodway Map (FBFM) means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

Flood Insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

Flood Prone Area. See Floodplain.

Flood-Resistant Material means any building product [material, component, or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

Flood Zone means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Floodplain means any land area susceptible to being inundated by water from any source.

Floodplain Administrator is the individual appointed by the community to administer and enforce the floodplain management regulations.

Floodplain Development Permit means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Management Regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term

describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Floodway means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floodway Encroachment Analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirements of the National Flood Insurance Program.

Freeboard means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the Regulatory Flood Protection Elevation.

Functionally Dependent Facility means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hazardous Waste Management Facility means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest Adjacent Grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic Structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a Certified Local Government (CLG) Program; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a Certified Local Government (CLG) Program.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base

flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

- (b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light Duty Truck means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons, or
- (c) Available with special features enabling off-street or off-highway operation and use.

Lowest Adjacent Grade (LAG) means the lowest elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a recreational vehicle.

Manufactured Home Parks. The location of four (4) or more manufactured or mobile homes on a parcel of land, or as a deeded manufactured home park, shall constitute a mobile home park.

Map Repository means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products has the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data, the NC FRIS website (<http://FRIS.NC.GOV/FRIS> (<https://fris.nc.gov/>)) is the map repository. and for historical flood hazard data the Flood.NC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

Repositories of historical flood hazard data are available on the Flood.NC website (<https://flood.nc.gov/ncflood/>) and the FEMA Flood Map Service Center website (<https://msc.fema.gov/portal/home>).

Market Value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

Mean Sea Level means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

New Construction means structures for which the start of construction commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Non-Conversion Agreement means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.

Non-Encroachment Area (NEA) means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

Post-FIRM means construction or other development for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map.

Pre-FIRM means construction or other development for which the start of construction occurred before the effective date of the initial Flood Insurance Rate Map.

Principally Above Ground means that at least 51% of the actual cash value of the structure is above ground.

Public Safety and/or Nuisance means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational Vehicle (RV) means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use; and
- (e) Is fully licensed and ready for highway use.
- (f) Has no attached deck, porch, or shed, and
- (g) Has quick-disconnect sewage, water, and electrical connectors.

For the purpose of this ordinance: "Tiny Homes/Houses" and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures under this ordinance.

Reference Level means the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, A99. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within Special Flood Hazard Areas designated as Zone VE or Coastal A Zone.

Regulatory Flood Protection Elevation means the Base Flood Elevation plus the Freeboard. In Special Flood Hazard Areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus one (1) foot of freeboard. In Special Flood Hazard Areas where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

Remedy a Violation means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Repetitive Loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Repetitive Loss Property means any insurable building for which two or more claims of more than \$1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling 10-year period, since 1978. At least two of the claims must be more than ten days apart but, within ten years of each other. A RL property may or may not be currently insured by the NFIP.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage Yard means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Section 1316 means that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that FEMA finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

Severe Repetitive Loss Structure means any insured property that has met at least one of the following paid flood loss criteria since 1978, regardless of ownership. In either case, two of the claim payments must have occurred within ten years of each other. Multiple losses at the same location within ten days of each other are counted as one loss, with the payment amounts added together.

1. Four or more separate claim payments of more than \$5,000 each (including building and contents payments); or
2. Two or more separate claim payments (building payments only) where the total of the payments exceeds the current market value of the property.

Solid Waste Disposal Facility means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

Solid Waste Disposal Site means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special Flood Hazard Area (SFHA) means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial Damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of substantial improvement. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" cumulatively within a 5-year period, regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 12.3.3.E of this ordinance.

Technical Bulletin and Technical Fact Sheet means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

Temperature Controlled means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

Variance is a grant of relief from the requirements of this ordinance.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation (WSE) means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Watershed. The entire land area contributing surface drainage to a specific point or alternatively, the geographic region within which water drains to a particular river, stream, or body of water.

X Zones means areas determined to be low to moderate risk flood zones and are located outside the community's delineated Special Flood Hazard Area (SFHA) and include the following:

- (a) Shaded - is the area of moderate flood hazard and can represent:
 - (1) 0.2% annual chance flood hazard area (500-year flood zone),
 - (2) Areas of 1% annual chance flood with average depth less than one (1) foot, or
 - (3) Areas of 1% annual chance flood with drainage areas of less than one (1) square mile.

- (b) Unshaded - is the area of minimal flood hazard determined to be outside of the 0.2% annual chance flood (500-year flood zone).

(Ord. No. O-11-21, § 38, 6-22-2021; Ord. No. O-05-22, § 17, 3-22-2022; Ord. No. O-38-22, § 1, 12-13-2022)

ADOPTED this _____ Day of _____, 2026.

TOWN OF WAYNESVILLE

J. Gary Caldwell, Mayor

ATTEST:

Candace Poolton, Town Clerk

APPROVED AS TO FORM:

Martha Bradley, Town Attorney

Town of Waynesville Staff Report

Subject: Rural Conservation District Text Amendment (Legislative Proceeding)
Ordinance Section: Multiple
Meeting Date: May 11th, 2026
Presenter: Elizabeth Teague, Development Services Director
 Olga Grooman, Assistant Development Services Director
 Alexander Mumby, Land Use Administrator

Background:

Pursuant to the Waynesville 2035 Comprehensive Plan, the Planning Board and Town Council established a Density Work Group to examine areas of the 2035 Future Land Use Map of the Comprehensive Plan and current zoning. Working with Jake Petrosky of Stewart, multiple areas were targeted for potential reduction of density, or “down-zoning.” The areas that the future land use map recommended reducing density included parts of Allen’s Creek, Country Club, Raccoon Creek, Francis Cove, Pigeon Street, Howell Mill and Hazelwood zoning districts. The group also discussed building height and allowable uses for the proposed district.

The resulting recommendation was to create a Rural Conservation District which would encompass primarily rural, undeveloped, and agricultural land in these areas. Minutes and Summaries of the Density Work Group can be found on the Town website at:

<https://www.waynesvillenc.gov/departments/development-services/density-work-group>

Before the amendment could be brought forward as a text amendment, however, the North Carolina State Legislature passed an omnibus bill at the end of 2024 that prohibited downzoning without the express initiation of the landowner. This would not prevent the creation of a text amendment for a new, lower-density district, but would prevent the Town’s initiating a map amendment to apply such an ordinance without a property owners’ agreement.

At the Planning Board’s direction, staff is bringing forward a version of the Rural Conservation District text amendment for review. If satisfactory, this text amendment could move forward to Council for adoption through the legislative process. If adopted, the Rural Conservation District would be available as a zoning district “on paper,” but not mapped. This creates an option for future conservation action by property owners who want to maintain the rural character of their area. Landowners could opt into the district either individually or as a group through a rezoning or map amendment request.

In the creation of the RCON district, the recommendation was made to cap maximum building height at 45’ from highest adjacent grade. This was determined to make sense in other low to medium density areas as well, and so the proposed ordinance includes changes to maximum building height for those districts. Similarly, in working with the Table of Permitted Uses to create a new column for the RCON, staff recognized improvements that could be made in the coding and formatting of the table itself. These recommendations do not take away any permitted uses from any district, but do change how they are identified in the table. Another related proposed change, was to lower the density threshold for which an SUP (which requires a quasi-judicial process). These recommendations can be separated out from the

creation of the RCON, as a stand alone text amendments if the planning board chooses. As presented in this ordinance, however, they are packaged together.

Ordinance:

The proposed ordinance would establish the RCON district as a new zoning option. It would:

- Add a new purpose and need statement to the descriptions of zoning types in LDS Section 2.2.
- Amend the Dimensional Standards Table (LDS Section 2.4.1) to establish a maximum base density of 2.5 units per acre and set a maximum allowed density through a special use permit set at 6 units per acre.
- Set the minimum lot size at half an acre. However, this may be reduced with a conservation design to a minimum lot size to 4,000 square feet by setting aside 40% of land for civic and open space (overall density would remain the same).
- Use the same setbacks as the Low Density Districts, unless part of a conservation or cottage subdivision.
- Caps the maximum building height in the RCON, to 45'.
- Amend the Permitted Uses Table (LDS Section 2.5.3) to create a new district column, and allow the same uses as in Waynesville's low-density districts along with agricultural uses.

The proposed ordinance also includes several related recommendations that came out of the work group and in subsequent discussions with the Planning Board, that could be brought forward separately without the RCON, if the Planning Board wants to separate them out:

- Decrease the base allowable density in residential districts and the threshold for requirements for a special use permit process.
- Decrease the maximum building height in low and medium density districts from 60' to 45' in Table 2.4.1.
- Amend the Permitted Uses Table to integrate the Railroad Overlay district, to re-label uses allowed in overlay districts, and to generally increase the legibility of the table

Consistency with the Comprehensive Plan:

The creation of the Rural Conservation District is an action item identified in the 2035 Comprehensive Plan. It specifically meets the following goals:

Goal 1: Continue to promote smart growth principles in land use planning and zoning.

- Encourage in-fill, mixed use, and context-sensitive development.
- Promote conservation design to preserve the important natural resources

Goal 3: Protect and enhance Waynesville's natural resources

- Conserve open space and farmland by promoting infill and encouraging development in the urbanized areas of town.
- Protect rural lands, iconic views, and mountain vistas

Suggested Motions for Action:

1. Motion to find the changes consistent / inconsistent with the 2035 Comprehensive Plan
2. Motion to recommend / not recommend approval by the Town Council

Attachments:

- Proposed Text Amendment Ordinance
- Consistency worksheet
- Draft Consent to downzone template
- Public Notice

DRAFT ORDINANCE FOR PLANNING BOARD CONSIDERATION

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE TEXT OF THE
TOWN OF WAYNESVILLE LAND DEVELOPMENT STANDARDS**

WHEREAS, the Town of Waynesville has the authority, pursuant to Article 7 of Chapter 160D of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend said regulations from time to time in the interest of the public health, safety, and welfare; and

WHEREAS, the Town of Waynesville has an adopted Comprehensive Plan, Waynesville 2035, Planning With Purpose,” which sets goals and provides a Future Land Use map to identify where certain types of growth and density should be allowed, and where growth should be restricted.

WHEREAS, the Comprehensive Plan includes the continuation of an urban services boundary which limits the extent to which the Town would extend utility services, and that the urban services boundary lies within the Town’s corporate and extra-territorial jurisdiction;

WHEREAS, the Town of Waynesville created a committee of Town Council and Planning Board representatives to make recommendations on suggested changes to zoning regulations based on the future land use map and the goals of the Comprehensive Plan, and that the committee brought forward several recommendations for text amendments to the Land Development Standards;

WHEREAS, the Town of Waynesville Planning Board has reviewed the proposed text amendments to the Land Development Standards (LDS) and recommends that they are consistent with the 2035 Comprehensive Plan and that they are reasonable and in the public interest because they implement goals of the plan to:

Goal 1: Continue to promote smart growth principles in land use planning and zoning.

- Encourage in-fill, mixed use, and context-sensitive development.
- Promote conservation design to preserve the important natural resources

Goal 3: Protect and enhance Waynesville’s natural resources

- Conserve open space and farmland by promoting infill and encouraging development in the urbanized areas of town.
- Protect rural lands, iconic views, and mountain vistas

WHEREAS, the Planning Board has reviewed and recommends the proposed text amendments for enactment by the Town Council; and

WHEREAS, the Town Council find this Ordinance is consistent with the Town’s 2035 Comprehensive Plan and that it is reasonable and in the public interest to “make decisions about resources and land use in accordance with North Carolina General Statutes.” and

WHEREAS, after notice duly given, a public hearing was held May 11, 2026 at a special called meeting of the Waynesville Planning Board, and on _____, at the regularly scheduled meeting of the Town Council;

NOW, THEREFORE, BE IT ORDAINED BY THE WAYNESVILLE TOWN COUNCIL, MEETING IN REGULAR SESSION ON _____, AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:

Amend Chapter 2 District Provisions to establish the Rural Conservation District as follows:

2.2 Districts by District Type.

The following 31 base districts are organized into categories that standardize various regulations while allowing some limited customization of each district.

District Category	District Name
Rural Conservation (RCON)	Rural Conservation District – Low Density (RCON)
Residential—Low Density (RL)	Country Club Residential - Low Density (CC-RL) Eagles Nest Residential - Low Density (EN-RL) Francis Cove Residential - Low Density (FC-RL) Hall Top Residential - Low Density (HT-RL)
Residential—Medium Density (RM)	Chestnut Park Residential - Medium Density (CP-RM) Dellwood Residential - Medium Density (D-RM) Howell Mill Residential - Medium Density (HM-RM) South Waynesville Residential - Medium Density (SW-RM)
Neighborhood Residential (NR)	Allens Creek Neighborhood (AC-NR) Love Lane Neighborhood (LL-NR) Main Street Neighborhood (MS-NR) Ninevah Neighborhood (N-NR) Pigeon Street Neighborhood (PS-NR) Plott Creek Neighborhood (PC-NR) Raccoon Creek Neighborhood (RC-NR) Sulphur Springs Neighborhood (SS-NR) Walnut Street Neighborhood (WS-NR)
Urban Residential (UR)	East Waynesville Urban Residential Neighborhood (EW-UR) Hazelwood Urban Residential Neighborhood (H-UR) Howell Mill Urban Residential Neighborhood (HM-UR)
Neighborhood Center (NC)	North Main Street Neighborhood Center (NM-NC) Pigeon Street Neighborhood Center (PS-NC) Raccoon Creek Neighborhood Center (RC-NC)
Business District (BD)	Central Business District (CBD) Hazelwood Business District (H-BD) South Main Street Business District (SM-BD)
Regional Center (RC)	Dellwood/Junaluska Regional Center (DJ-RC) Hyatt Creek Regional Center (HC-RC) Russ Avenue Regional Center (RA-RC)
Commercial Industrial (CI)	Commercial-Industrial (CI)

2.3 Purpose and Intent by District

2.3.1 Residential—Low Density Districts (RL) Purpose and Intent.

2.3.1 Rural Conservation District (RCON) Purpose and Intent.

- A. **The Rural Conservation District (RCON)** is established pursuant to the 2035 Comprehensive Plan as an owner-initiated district designation that promotes the preservation of agricultural lands, undeveloped floodplain, forest, mountainous areas, and open space. This district is primarily single-family homes, hobby farms, bona-fide farms, and other agricultural land, with limited allowance for other uses within the civic/institutional, agricultural, and infrastructure categories. New development and subdivisions shall promote low impact development approaches, focusing on large lot single family development with the option for higher density clustered development by conserving significant area for open and civic space. Use of the cottage development and conservation subdivision options found in section 15.9.5 is encouraged.



Re-format numbering on other Residential low-density districts starting at B as follows:

- B. **The Country Club Residential—Low Density District (CC-RL)** is an area predominately comprised of large lot subdivisions with the Waynesville Country Club serving as its social and recreational center. While single-family homes are the dominant residential use in this area, townhouses and accessory apartments are also permitted. Connections to the South Main Street Business District should be enhanced as new development takes place. A residential scale is required for all new development. Tree preservation and proliferation along the South Main Street corridor is critical to the ambiance of the area.
- C. **The Eagles Nest Residential—Low Density District (E-RL)** is a rural district characterized by beautiful views afforded by steep terrain. Water service is available throughout much of the area but sewer service is limited. Future development shall be sensitive to the terrain with grading minimized through the use of good design, clustered development and large lot development. Clear cutting for views is unacceptable; appropriate trimming of trees for vistas is preferred. As this is an area dominated by private development, it will be important in the future to acquire public park land especially at elevations exceeding three thousand (3,000) feet above mean sea level. Land conservation easements are encouraged. Possible road connections shall be evaluated as new streets are constructed in an effort to improve connectivity without jeopardizing the natural beauty of the area. Sidewalks are not required except in major residential developments due to the rural mountain character of the district.
- D. **The Francis Cove Residential—Low Density District (FC-RL)** is an area that will remain as a very sparsely developed area. Few urban services are available in this area to support dense development and the topography poses a limitation on development as well. Agricultural and residential uses will be the predominant future land use. Maintaining the rural character of this area will be an important focus. Clustering future development in small areas while leaving large areas undeveloped will be critical in achieving this goal.
- E. **The Hall Top Residential—Low Density District (HT-RL)** is a rural district characterized by steep terrain and narrow winding roads. Despite the difficulty of developing in this district and the limited provision of services, the proximity to the Russ Avenue and Dellwood/Junaluska Town Centers makes the location an attractive one for the variety of residential developments permitted in this area. Large lot development is the standard with cluster development respecting the terrain encouraged so as to leave as much open space as possible. Road design will also consider the terrain with narrow road widths permitted and sidewalks not required. Linking developments with trails is encouraged.

2.4.1 Table of Dimensional Standards by Residential District.

Standard	Rural Conservation (RCON)	Residential—Low Density (RL)	Residential—Med. Density (RM)	Neighborhood Residential (NR)	Urban Residential (UR)
1. Applicable Districts	RCON	CC-RL, EN-RL, FC-RL, HT-RL	CP-RM, D-RM, HM-RM, SW-RM	AC-NR, LL-NR, MS-NR, N-NR, PS-NR, PC-NR, RC-NR, SS-NR, WS-NR	EW-UR, H-UR, HM-UR
2. Development Standards					
a. Density (max base)	2.5 units/acre	6 4 units/acre	8 6 units/acre	10 8 units/acre	16 14 units/acre
b. Density (max with SUP)	6 units/acre	12 units/acre	12 units/acre	16 units/acre	24 units/acre
c. Civic Space (min) CH 7	Refer to Section 7.3	Refer to Section 7.3	Refer to Section 7.3	Refer to Section 7.3	Refer to Section 7.3
3. Lot Standards					
a. Lot Area—House	½ acre	½ acre	¼ acre	¼ acre	¼ acre
b. Lot Area—All bldg. types with rear vehicular access	4000 sqft with cluster development	Subject to density	Subject to density	Subject to density	Subject to density
c. Lot Width (min)—With rear vehicular access	60 ft	60 ft. n/a	50 ft. 16 ft.	50 ft. 16 ft.	50 ft. 16 ft.
d. Frontage at Fr Setback	n/a	n/a	n/a	n/a	n/a
e. Pervious Surface (min)	20%	20%	20%	10%	10%
4. Building Setback (min)					
a. Principal Front ¹	20 ft	20 ft.	10 ft.	10 ft.	10 ft.
b. Street Side/Secondary Front ¹	20 ft	20 ft.	5 ft.	5 ft.	5 ft.
c. Side (from adjacent lot)	10 ft	10 ft.	10 ft.	10 ft.	10 ft.
d. Setback Between Bldgs.	15 ft (10 ft)	15 ft. (10 ft.)	6 ft.	6 ft.	6 ft.
e. Rear	20 ft	20 ft.	6 ft.	6 ft.	6 ft.
5. Accessory Structure Setback					
a. Side	5 ft	5 ft.	5 ft.	5 ft.	5 ft.
b. Rear	5 ft	5 ft.	5 ft.	5 ft.	5 ft.
c. Other Standards	See Section 4.5	See Section 4.5	See Section 4.5	See Section 4.5	See Section 4.5
6. Building Height in Stories					
a. Principal Building (max)	3 stories	3 stories	3 stories	3 stories	3 stories
b. Acc. Structure (max)	2 stories	2 stories	2 stories	2 stories	2 stories
c. Max Height in Feet	45 ft	45 ft	60 ft	60 ft	60 ft
7. Outdoor Storage					
a. Residential Uses	Permitted in all districts ²	Permitted in all districts ²	Permitted in all districts ²	Permitted in all districts ²	Permitted in all districts ²
b. Nonresidential Uses	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted

¹ Where no right-of-way exists or if the right-of-way is only inclusive of the street pavement add 10 ft. See also 4.3.1.A.3.

² Customary storage as an accessory to residential use of the property.

³ A maximum of 60' in Building Height from highest adjacent grade to highest point on a roof.

ADOPTED this _____ Day of _____, 2025.

TOWN OF WAYNESVILLE

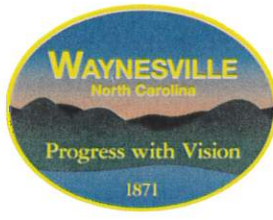
J. Gary Caldwell, Mayor

ATTEST:

Candace Poolton, Town Clerk

APPROVED AS TO FORM:

Martha Bradley, Town Attorney



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To: Town of Waynesville Planning Board
From: Alex Mumby, Land Use Administrator
Date: May 12th, 2026
Subject: Rural Conservation District

The Planning Board hereby adopts and recommends to the Town Council the following statement(s):

The zoning amendment **is approved and is consistent with the Town's Comprehensive Land Use Plan** because: _____

The zoning amendment and **is reasonable and in the public interest** because:

The zoning amendment **is rejected because it is inconsistent with the Town's Comprehensive Land Use Plan and is not reasonable and in the public interest** because _____

In addition to approving this zoning amendment, this approval is **also deemed an amendment to the Town's Comprehensive Land Use Plan**. The change in conditions taken into account in amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest, are as follows: _____

Planning Board Member _____, made a motion, seconded by _____

The motion passed _____. (*unanimously or vote results here*)

Ginger Hain, Planning Board Chair

Date

Esther Coulter, Administrative Assistant

Date

CONSENT TO DOWNZONING - EXAMPLE

I, _____, formally acknowledge and consent to the downzoning of a [Insert property acreage] property located at PIN: [_____ (ROAD NAME)]. I understand that this change in zoning designation from [Original Zoning District (abbr.)] to [New Requested Zoning District (abbr.)] will impact the permitted uses and development potential of the property.

Henderson County staff has informed me that the proposed downzoning is entirely voluntary and that I am not required to agree to the rezoning. The staff explained the process to me, and I understand my involvement is voluntary.

I voluntarily applied for rezoning of the property at PIN: [_____] on [DATE] which was processed by the Henderson County Planning Department. This statement serves as my formal consent and acknowledgment that I am aware of and agree to downzoning my property.

Printed Name

Signature Date _____

Additional Signatories, if applicable:

Printed Name

Signature Date _____

Printed Name

Signature Date _____



TOWN OF WAYNESVILLE

Development Services Department

PO Box 100

9 South Main Street

Waynesville, NC 28786

Phone (828) 456-8647 • Fax (828) 452-1492

www.waynesvillenc.gov

FOR PUBLICATION IN THE MOUNTAINEER: April 29 and May 6 (Wednesday) editions

Date: April 27th, 2026

Contact: Alex Mumby, Land Use Administrator

Notice of Public Hearing

Text Amendment – Legislative Hearing

Waynesville Planning Board

The Town of Waynesville Planning Board will hold a public hearing on Monday, May 11, 2026, at 5:30 p.m. in the Town Hall Board Room, located at 9 South Main Street, Waynesville, NC, to consider a text amendment establishing the Rural Conservation Zoning District.

For more information contact the Development Services Department at: (828) 356-1172, email: amumby@waynesvillenc.gov, mail: 9 South Main Street, Suite 110, Waynesville, NC 28786.

**Town of Waynesville Planning Board
Procedural Work Group
Meeting #1 Summary
April 23, 2026**

Present: Tommy Rose, Alex McKay, John Baus, Olga Grooman, Alex Mumby, Elizabeth Teague

Discussion of identified concerns and issues:

1. Generally

- Public does not understand the different types of procedures, and what the expectations are for the types of public hearings.
- Concern about public frustration and sense that they are not heard.
- Concern raised for safety if people are upset.

2. Administrative Meetings

- We want the public to speak and to let their feelings be heard.
- Importantly, we want the public to speak to the developer.
- Staff works with applications coming before the Board so that they are compliant with the ordinance – it feels like the Planning Board is just checking off on staff's recommendations.
- How does the public have opportunity to influence the design?

3. Quasi-judicial vs. administrative vs. legislative decisions

- Public coming to a hearing does not understand differences
- Need guidance on how and when Comprehensive Plan applies to decisions.
- Comprehensive Plan can be argued both ways – for conservation or for housing, either side could be argued. If the Plan just counts for legislative decisions why discuss it?
- Guidance for implementation of 160D lowered the Planning Board's influence because it took away the quasi-judicial procedure in major site plans and subdivisions. Quasi-judicial allows for more control and influence in decisions - planning board can include conditions or ask for concessions. Can we go back to require quasi-judicial in more applications?
- Staff recommendations are always in the affirmative. We should also allow for other viewpoints for how a project *is not consistent*. Find a way for staff to include both ways of interpretation or "pros and cons."
- Consistency Statements are subject to interpretation and the goals can be argued either way.
- How do we adjust the way we help the public to understand procedures generally?

4. Developer presentations

- Would like to hear more from the developer. Staff does a presentation and then the developer just affirms what staff says – gives the impression that staff is doing the work for them.
- Do required neighborhood meetings prior to the formal hearing help? How do we get information out to the public ahead of the public hearing?

Ideas:

- Create a handout for the public to give out before a hearing so they understand. Could even be a poster in the room explaining what type of hearing or procedure is happening. (Example submitted by Tommy attached)
- Ask the developer to present first. Require more from the developer in terms of their application and presentation – make them answer the criteria for themselves and argue their case before the Board instead of relying on staff's analysis.
- Find ways to educate public about Waynesville's Comprehensive Plan and the LDS/zoning. Help people understand about the how the different types of hearings are implemented for different types of development.

Chapter 15 Addendum

Public Participation Guide

Part A – Quasi-Judicial Proceedings

A.1 Purpose

The purpose of this section is to provide guidance to the public regarding the nature of quasi-judicial proceedings and to assist participants in understanding how to provide comments that are most relevant and effective in the decision-making process.

A.2 Nature of Quasi-Judicial Proceedings

Quasi-judicial proceedings are conducted in a manner similar to a court hearing. The Planning Board (or other decision-making body) is required to evaluate the application based on the standards set forth in the Land Development Standards (LDS).

Decisions must be based on competent, material, and substantial evidence presented during the hearing and contained within the record.

A.3 Basis for Decision

In a quasi-judicial proceeding, the decision-making body must determine whether the application meets all applicable requirements of the Land Development Standards and any required findings of fact.

If those standards and findings are met, the application may be approved, approved with conditions, or denied based on the evidence presented.

A.4 Role of Public Input

Public comment is an important part of the process and is encouraged. Comments are most effective when they provide information that relates directly to the applicable standards and required findings.

Relevant input may include, but is not limited to:

- Site-specific observations
 - Traffic or safety considerations
 - Impacts on surrounding properties
 - Environmental or infrastructure considerations
 - Other factors that relate to the standards under review
-

A.5 Consideration of Comments

All comments provided during the hearing are received and made part of the record. However, the decision-making body may only rely on information that is relevant to the applicable standards and supported by evidence.

General opinions, preferences, or unrelated concerns may be heard but may not be determinative in the final decision unless they relate to an applicable standard or required finding.

A.6 Communication with the Applicant

Public comments are directed to the Planning Board as part of the official record of the hearing. However, applicants are present and may hear all comments provided during the proceeding.

While the decision-making body must base its decision solely on the applicable standards and evidence, members of the public may choose to share perspectives, concerns, or suggestions that are directed toward the applicant.

Such comments can be helpful in informing the applicant of community perspectives and may be considered by the applicant in the design, modification, or implementation of the project, either during the current review process or in future proposals.

Members of the public are encouraged to express their comments respectfully and clearly so that both the decision-making body and the applicant can understand the information being shared.

A.7 Conditions of Approval

As part of a quasi-judicial decision, the Planning Board may impose reasonable conditions that are directly related to the application and necessary to ensure compliance with the Land Development Standards or to mitigate identified impacts.

A.8 Guidance Prior to Public Comment

To assist participants, the Chair or designated official may provide a brief explanation prior to public comment outlining:

- The nature of the proceeding
- The standards applicable to the decision
- The types of information that are most helpful for consideration

Part B – Legislative Proceedings

B.1 Purpose

The purpose of this section is to provide guidance to the public regarding the nature of legislative proceedings and to assist participants in understanding how decisions are made and how public input can be most effective.

B.2 Nature of Legislative Proceedings

Legislative proceedings involve policy decisions, such as zoning map amendments, text amendments, or other actions that establish or modify regulations governing land use.

These decisions are typically made by elected officials, with the Planning Board often providing a recommendation as part of the process.

B.3 Basis for Decision

In legislative proceedings, decisions are made based on a range of considerations, which may include:

- Consistency with adopted plans and policies
- Community needs and priorities
- Long-term planning goals
- Input from the public and other stakeholders

Unlike quasi-judicial proceedings, legislative decisions allow for broader discretion and consideration of community perspectives.

B.4 Role of Public Input

Public comment is an important and influential part of legislative proceedings.

Members of the public are encouraged to share their perspectives, concerns, and preferences, as these may be considered in the decision-making process.

Input may address:

- Community impacts
 - Compatibility with surrounding uses
 - Traffic, safety, or infrastructure concerns
 - Alignment with community values or planning goals
-

B.5 Consideration of Comments

In legislative proceedings, the decision-making body may consider a wide range of input, including opinions and preferences, in addition to factual information.

Public comment is one of several factors that may influence the final decision, along with adopted plans, staff recommendations, and other relevant considerations.

B.6 Communication with the Applicant

Applicants are present during legislative proceedings and may hear all public comments provided during the meeting.

Even in cases where the Planning Board's role is advisory and the final decision is made by another governing body, public comments can be helpful in informing the applicant of community perspectives.

Such input may be considered by the applicant in refining the proposal, addressing concerns, or making modifications prior to final action.

Members of the public are encouraged to express their comments clearly and respectfully so that both the decision-making body and the applicant can understand the information being shared.

B.7 Relationship to Other Decision-Making Bodies

In many legislative matters, the Planning Board provides a recommendation, and the final decision is made by the Town Council or other governing body.

Public input provided at the Planning Board level may also be shared or considered as part of the broader decision-making process.

B.8 Guidance Prior to Public Comment

To assist participants, the Chair or designated official may provide a brief explanation prior to public comment outlining:

- The nature of the proceeding
- The role of the Planning Board
- How public input may be considered in the process

Part C – Administrative Proceedings

C.1 Purpose

The purpose of this section is to provide guidance to the public regarding the nature of administrative reviews and to assist in understanding how these decisions are made and how questions or concerns may be addressed.

C.2 Nature of Administrative Proceedings

Administrative reviews are conducted by staff and do not involve a public hearing or discretionary decision by the Planning Board.

These reviews are based on whether an application complies with the applicable requirements of the Land Development Standards and other adopted regulations.

C.3 Basis for Decision

In an administrative review, the decision is based solely on whether the application meets the established technical and regulatory requirements.

If the application complies with all applicable standards, it is approved. If it does not comply, it must be revised or may be denied.

C.4 Public Visibility and Transparency

Administrative items may be publicly available or included on agendas to ensure transparency and public awareness of development activity.

However, these items do not include a public hearing or formal public comment period.

C.5 Role of Public Input

Because administrative decisions are based strictly on established requirements, there is no opportunity for public comment to influence the outcome of the review.

Members of the public who have questions or wish to better understand an application are encouraged to contact planning staff for additional information regarding the applicable standards and review process.

C.6 Communication with the Applicant

Application materials, including applicant contact information, are generally part of the public record.

Members of the public may choose to contact the applicant directly to ask questions, share perspectives, or better understand the proposed project.

While such communication is outside of the formal review process, it may be helpful in providing context and may be considered by the applicant in project design or future revisions, where applicable.

C.7 Consideration of Information

Administrative decisions must be based solely on compliance with the Land Development Standards and applicable regulations.

Community input, whether shared with staff or the applicant, does not alter the requirement that the application meet all established standards.

C.8 Guidance and Information Access

To assist the public, staff may provide information upon request regarding:

- The status of an application
- Applicable standards and requirements
- Opportunities for future public involvement, if any

Section D – Application Review Framework and Findings Guidance

D.1 Purpose

The purpose of this section is to ensure that the public, applicants, and decision-making bodies have a clear understanding of the standards and findings that will be used to evaluate an application.

This section is intended to improve transparency, support effective public participation, and provide consistency in the review and decision-making process.

D.2 Identification of Applicable Standards and Findings

For applications requiring Planning Board review, the Planning Department shall identify and provide the applicable standards, criteria, and required findings of fact that must be considered in rendering a decision.

These standards and findings shall be based on the Land Development Standards and any other applicable adopted regulations.

D.3 Preparation of a Findings Framework

For quasi-judicial and other applicable proceedings, the Planning Department shall prepare a summary of the required findings of fact in a clear and organized format.

This summary may include:

- A list of each required finding
- A brief description of what each finding addresses
- Relevant considerations associated with each finding

This information is intended to assist all participants in understanding how the application will be evaluated.

D.4 Public Availability

The identified standards and findings framework shall be made available to the public in advance of the hearing whenever practicable, including as part of agenda materials or supporting documentation.

Providing this information in advance is intended to assist members of the public in preparing comments that are relevant to the decision-making process.

D.5 Use in Board Deliberation

The Planning Department may provide a structured worksheet or similar tool for use by the Planning Board during the hearing and deliberation process.

Such materials are intended to:

- Assist the Board in evaluating each required finding
- Promote consistency in decision-making
- Ensure that conclusions are supported by evidence in the record

D.6 Relationship to Public Participation

The standards and findings framework provided by the Planning Department may also serve as a guide for public input.

Members of the public are encouraged to consider these standards and findings when preparing comments, as input related to these areas is most relevant to the decision-making process.

D.7 No Change to Decision Standards

Nothing in this section shall be interpreted as modifying the standards, criteria, or findings required by the Land Development Standards.

This section is intended solely to clarify and communicate how those standards are applied in the review of specific applications.

Section E – Examples of Application Review and Public Participation

E.1 Purpose

The purpose of this section is to provide examples of how the application review framework and public participation guidance may be applied in practice.

These examples are illustrative and are intended to help the public understand how different types of proceedings are conducted and how input may be most effectively provided.

E.2 Quasi-Judicial Example – Hall Top Road Apartments

This example reflects a quasi-judicial proceeding in which the Planning Board evaluated an application based on specific findings of fact outlined in the agenda and supporting materials.

Findings Framework Provided to the Public

For this application, the Planning Department identified the following key areas that the Planning Board was required to evaluate:

1. **Consistency with the Character of the Surrounding Area**
Whether the proposed development is compatible with the existing development pattern and character of the surrounding neighborhood.
2. **Traffic Access and Safety**
Whether the proposed access points, traffic circulation, and related improvements provide safe and adequate ingress and egress for vehicles and pedestrians.
3. **Availability of Utilities and Infrastructure**
Whether adequate public utilities and services, including water, sewer, stormwater management, and emergency services, are available to support the development.
4. **Potential Nuisance Impacts**
Whether the proposed use would create adverse impacts such as excessive noise, lighting, odor, or other conditions that could affect nearby properties.
5. **Impact on Surrounding Properties**
Whether the development would negatively affect the use, value, or enjoyment of adjacent or nearby properties.
6. **Protection of Public Health, Safety, and Welfare**
Whether the proposed development promotes and protects the general health, safety, and welfare of the community.

The Planning Board used a structured worksheet during deliberation to evaluate each of these findings based on the evidence presented.

Public Participation Guidance

Members of the public were encouraged to provide comments related to these findings.

Examples of relevant input included:

- Observations about traffic patterns or safety concerns
- Site-specific impacts on neighboring properties
- Drainage, infrastructure, or service-related concerns
- Other information directly related to the findings listed above

General concerns or preferences were heard but could only be considered if they related to one or more of these findings.

Communication with the Applicant

Public comments were heard by both the Planning Board and the applicant. Even where comments were not directly tied to the findings, they provided valuable feedback to the applicant and could be considered in project design or future modifications.

E.3 Legislative Example – Chick-fil-A Amendment

This example reflects a legislative proceeding in which the Planning Board considered a proposed amendment and provided a recommendation based on broader planning considerations.

Review Framework Provided to the Public

For this application, the Planning Department identified the following key areas for consideration:

1. **Traffic Flow and Circulation**
Evaluation of how vehicles enter, exit, and move through the site, including potential impacts on surrounding roadways and intersections.
2. **Pedestrian Access and Connectivity**
Consideration of whether safe and accessible pedestrian routes are provided, including connections to adjacent properties, sidewalks, and nearby intersections.
3. **Compatibility with Surrounding Uses**
Whether the proposed changes are consistent with the character and use of nearby properties and the surrounding area.
4. **Site Layout and Operational Impacts**
Review of how the design and operation of the site—including drive-through activity, parking, and circulation—may affect the property itself and adjacent areas.
5. **Safety Considerations**
Identification of any potential safety concerns for vehicles, pedestrians, or nearby residents resulting from the proposed amendment.

6. Consistency with Planning Goals

Consideration of whether the proposed amendment aligns with adopted plans, policies, and long-term community development goals.

Unlike quasi-judicial proceedings, these considerations are not limited to specific findings of fact and allow for broader discussion and discretion in the decision-making process.

Public Participation Guidance

Members of the public were encouraged to provide input related to these considerations.

Examples of relevant input included:

- Concerns about traffic congestion or circulation patterns
- Observations regarding pedestrian safety or accessibility
- Compatibility with nearby residential or commercial uses
- Suggestions for site design improvements
- Broader perspectives on how the project fits within the community

Public input was considered alongside staff recommendations and planning policies in forming a recommendation.

Communication with the Applicant

Public comments were heard by both the Planning Board and the applicant. Even in cases where the Planning Board's role was advisory and the final decision rests with another governing body, public input provided valuable feedback to the applicant.

Such comments may be considered by the applicant in refining the proposal, addressing concerns, or making modifications prior to final action.

E.4 Administrative Example – Minor Site Plan Review (Illustrative Example)

This example reflects an administrative review, in which staff evaluates an application for compliance with established standards and no public hearing is conducted.

Review Framework Provided to the Public

For this type of application, the Planning Department reviews the proposal against applicable technical and regulatory requirements, which may include:

- Zoning compliance (permitted use, setbacks, height)
- Parking and access requirements

- Stormwater and drainage standards
- Utility availability and capacity
- Other applicable Land Development Standards

These requirements are applied objectively to determine whether the application complies with all applicable regulations.

Public Visibility

Administrative applications may be publicly available or included in reports or agendas to ensure transparency and public awareness of development activity.

However, these items do not include a public hearing or formal public comment process.

Public Participation Guidance

Because administrative decisions are based strictly on whether the application meets established standards, there is no opportunity for public comment to influence the outcome of the review.

Members of the public are encouraged to:

- Review available application materials
 - Contact planning staff for additional information regarding the project and applicable standards
-

Communication with the Applicant

Application materials, including applicant contact information, are generally part of the public record.

Members of the public may choose to contact the applicant to ask questions or better understand the proposed project.

While such communication is outside of the formal review process, it may provide helpful context and may be considered by the applicant in project design or future revisions.

Key Distinction

In administrative reviews, the decision is based solely on whether the application meets established standards.

Unlike quasi-judicial or legislative proceedings, public input does not influence the outcome of the review.