

**BOARD OF
ADJUSTMENT
JULY 13, 2021
5:00 PM**



**BRYANT H. WOMACK
BUILDING
40 COURTHOUSE ST.
COLUMBUS, NC 28756**

-
1. Call to Order
 2. Approval of Agenda
 3. Chairman, Vice-Chairman, Clerk Appointments
 4. Amended/Updated Ordinances
 5. Conflict of Interest
 6. Handouts
 7. Other Business
 - A. Recognitions
 8. Public Comments
 9. Adjournment

POLK COUNTY BOARD OF ADJUSTMENT

AGENDA ITEM

JULY 13, 2021 REGULAR MEETING

Agenda Item#: 3.

POLK COUNTY BOARD OF ADJUSTMENT

AGENDA ITEM

JULY 13, 2021 REGULAR MEETING

Agenda Item#: 4.

ATTACHMENTS:

Description	Type	Upload Date
Flood Damage Prevention Ordinance	Cover Memo	6/29/2021
Mobile Home Ordinance	Cover Memo	6/29/2021
Mobile Home Park Ordinance	Cover Memo	6/29/2021
Sign Ordinance	Cover Memo	6/29/2021
Subdivision Ordinance	Cover Memo	6/29/2021
Wireless Telecommunication Ordinance	Cover Memo	6/29/2021
Zoning Ordinance	Cover Memo	6/29/2021



POLK COUNTY FLOOD DAMAGE PREVENTION ORDINANCE

Adopted: September 3, 2008; Amended May 3, 2021¹

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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, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes (NCGS), delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare¹.

Therefore, the Board of County Commissioners of Polk County, North Carolina, does ordain as follows:

SECTION B. FINDINGS OF FACT.

- (1) The flood prone areas within the jurisdiction of Polk County 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 causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

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:

- (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.

SECTION 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 flooding¹;

- (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.

ARTICLE 2. DEFINITIONS.

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.

“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.

“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 flood¹.

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

“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.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“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 Federal Emergency Management Agency (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.

“Design Flood”: See “Regulatory Flood Protection Elevation¹.”

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“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 measures¹.

“Digital Flood Insurance Rate Map (DFIRM)” means the digital official map of a community, issued by the FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated¹.

“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.

“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 special flood hazard area, which may impede or alter the flow capacity of a floodplain¹.

“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 community¹.

“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) is completed before the effective date of the floodplain management regulations adopted by a community¹.

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

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

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the FEMA, 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)¹.

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the FEMA, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A¹.

“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 FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated (see also DFIRM)¹.

“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 FEMA. 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 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 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.

“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 materials¹.

“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 Program¹.

“Freeboard” means the height added to the 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 or culvert openings, precipitation exceeding the base flood, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the “Regulatory Flood Protection Elevation”¹.

“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 FIRM¹.

"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 use¹.

"Lowest Adjacent Grade (LAG)" means the 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 Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"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 carry 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>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository¹.

"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.

"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.

"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 report¹.

“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;
- (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. ¹

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, A99¹.

“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* two (2) feet 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.

“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.

“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”, 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.

“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 regulations¹.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance¹.

“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 NAVD 1988, 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.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, of Polk County and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability, including Extra-Territorial Jurisdictions (ETJs), as allowed by law¹.

SECTION 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 Flood Insurance Study (FIS) and its accompanying Digital Flood Insurance Rate Maps

(DFIRM), for Polk County dated September 3, 2008, which are adopted by reference and declared to be a part of this ordinance, all revisions thereto¹. The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:

Polk County Unincorporated Area, dated January 1, 1987

Town of Columbus, dated September 3, 2008

Town of Saluda, dated September 3, 2008

Town of Tryon, dated August 19, 1986

SECTION 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 Article 3, Section B of this ordinance.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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 Polk County 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.

SECTION 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 NCGS § 143-215.58¹. 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 Polk County from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Polk County Community Development Representative, 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.

SECTION 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 Article 3, Section 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 Article 3, Section B;
 - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
 - (v) The Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section 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) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to¹:
 - (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.
 - (c) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) 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 measures¹.

- (d) 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 Article 5, Section B(4)(d) when solid foundation perimeter walls are used in Zones A, AE, AH, AO, A99¹.
- (e) Usage details of any enclosed areas below the lowest floor.
- (f) 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.
- (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
- (i) 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.)¹.
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section 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 Article 5, Section F have been met.
- (g) The flood openings requirements.
- (h) Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only)¹.
- (i) A statement, that all materials below BFE/RFPE must be flood resistant materials.

(3) **Certification Requirements.**

- (a) Elevation Certificates¹
 - (i) An Elevation Certificate (FEMA Form 086-0-33) 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 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 086-0-33) 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 NAVD 1988. Any work done within the seven (7) 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 Finished Construction Elevation Certificate (FEMA Form 086-0-33) 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 Certificate¹
 - (i) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), 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 086-0-34), 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 Zones 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 Article 5, Section 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 Exemptions¹. 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 Article 5, Section B(6)(a);
 - (ii) Temporary Structures meeting requirements of Article 5, Section B(7); and
 - (iii) Accessory Structures less than 150 square feet, or \$5,000 or less and meeting requirements of Article 5, Section B(8).

(4) **Determinations for existing buildings and structures.**¹

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.

SECTION 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 to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special 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. 1334¹.
- (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 Article 5, Section F are met.

- (6) Obtain actual elevation (in relation to NAVD 1988¹) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to NAVD 1988¹ to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to NAVD 1988¹) of all public utilities in accordance with the provisions of Article 4, Section 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 Article 4, Section B(3) and Article 5, Section 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 BFE data has not been provided in accordance with the provisions of Article 3, Section 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 Article 5, Section D(2)(c), in order to administer the provisions of this ordinance¹.
- (12) When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Article 3, Section 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 ordinance¹.
- (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 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 Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs¹.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

SECTION 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 (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 feasible¹.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment 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 Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order¹.
- (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 Board of Adjustment following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NCGS § 143-215.58 and shall be punished at the discretion of the court¹.

SECTION E. VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by Polk County, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance¹.
- (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 Article 2 of this ordinance, provided provisions of Article 4, Section 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 Article 2 of this ordinance 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 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 may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance¹.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA 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) Polk County 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 variance¹.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.

SECTION 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*¹.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches¹.
 - (a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning

equipment, and other service equipment shall also meet the above provisions¹.

- (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 only comply with the standards for new construction consistent with the code and requirements for the original structure¹.
- (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 flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) 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.
- (9) 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 Article 4, Section 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 Article 4, Section B(3).
- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) 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.
- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) 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.
- (14) 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.
- (15) When a structure is located in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply¹.
- (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 area¹.

SECTION B. SPECIFIC STANDARDS.

In all Special Flood Hazard Areas where BFE data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section 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 Article 2 of this ordinance.

- (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 Article 2 of this ordinance. 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 Article 5, Section 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 Article 4, Section B(3), along with the operational plan and the inspection and maintenance plan¹.
- (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 Article 2 of this ordinance.
 - (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 NCGS 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 Article 5, Section 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 be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
 - (c) Shall include 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 above¹.

(5) Additions/Improvements¹.

- (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.

(6) Recreational Vehicles¹. Recreational vehicles shall either:

- (a) 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).

(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 Structures¹. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- (b) Accessory structures shall not be temperature-controlled;
- (c) Accessory structures shall be designed to have low flood damage potential;
- (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
- (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and
- (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(d).

An accessory structure with a footprint less than 150 square feet that is a minimal investment of \$5,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Article 5, Section B (2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

(9) Tanks¹. 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 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 Development¹.

- (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 Article 5, Section 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 Article 5, Section 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 Article 5, Section 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.

SECTION C. RESERVED.

SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section 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 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 Article 5, Sections 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 Article 5, Sections B and F.
 - (c) All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.
 - (d) When 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 Article 2. All other applicable provisions of Article 5, Section B shall also apply.

SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where 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 Article 5, Sections 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 point¹.

SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section 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 Article 5, Sections A and B, shall apply to all development within such areas¹:

- (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 discharge, 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. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) Manufactured homes may be permitted provided the following provisions are met:
 - (a) The anchoring and the elevation standards of Article 5, Section B(3); and
 - (b) The encroachment standards of Article 5, Section F(1).

SECTION G. STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AO).

Located within the Special Flood Hazard Areas established in Article 3, Section 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 Article 5, Sections A and B, all new construction and substantial improvements shall meet the following requirements¹:

- (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 two (2) feet, above the highest adjacent grade; or at least two (2) 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 Article 5, Section I(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 Article 4, Section B(3) and Article 5, Section B(2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

SECTION H. STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AH).

Located within the Special Flood Hazard Areas established in Article 3, Section 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 Article 5, Sections 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.

ARTICLE 6. LEGAL STATUS PROVISIONS.

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted April 18, 1988 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 Polk County enacted on April 18, 1988, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for each municipal jurisdiction within Polk County is as follows:

Town of Tryon: February 8, 1988;

City of Saluda: September 3, 2008;

Town of Columbus: September 3, 2008.

SECTION 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.

SECTION 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 Ordinance¹.

SECTION D. EFFECTIVE DATE.

This ordinance shall become effective 3rd day of May, 2021.

SECTION E. ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Board of County Commissioners of Polk County, North Carolina, on the 3rd day of May, 2021.

WITNESS my hand and the official seal of _____ this the _____ day of _____, _____.

Clerk to the Board

Chairman, Board of Commissioners



POLK COUNTY MOBILE HOME ORDINANCE

Adopted June 2004; Amended May 3, 2021¹

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Article I - Authority, Purpose, Jurisdiction and Legal Provisions

Section 101. Short Title

This Ordinance shall be titled Mobile Home Ordinance, Polk County, North Carolina, and may be cited as the Mobile Home Ordinance.

Section 102. Authority

Polk County hereby exercises its authority to adopt and enforce a mobile home ordinance under the provision granted by North Carolina General Statutes 153A-121 and 160D-909. A local government may adopt and enforce appearance and dimensional criteria for manufactured homes.¹

Section 103. Purpose

The purpose of this ordinance is to promote the protection of the health, safety and welfare of the communities and to provide an acceptable environment for all the residents with Polk County. This ordinance is designed to accomplish the following objectives:

- a. To secure safety from fire, panic and other dangers.
- b. To protect individuals from hazards associated with electrical dangers.
- c. To protect surrounding properties and residents.

Section 104. Jurisdiction

These regulations shall govern the entrance, movement and set-up of mobile homes within Polk County, North Carolina. These regulations apply to all lands lying within the territorial jurisdiction of Polk County and within the planning jurisdiction of any municipality whose governing body by resolution agrees to such regulation.¹

Section 105 Appeals and Variances

A. Appeals¹

Appeals may be taken by any person aggrieved, or by any official or board of Polk County affected by, any ruling or decision of the ordinance administrator to the Board of Adjustment. Such appeal shall be taken within 30 days of ruling or decision, as provided by the rules of the Board of Adjustment, by filing with the ordinance administrator and with the secretary of the Board of Adjustment a notice of appeal and specifying the grounds thereof. The ordinance administrator shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the ordinance administrator certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the ordinance administrator and on due cause shown.

B. Variances¹

The Board of Adjustment may authorize a variance from these regulations when, in the Board's opinion, undue hardship may result from strict compliance with this Ordinance. No variance shall

be granted unless the Board of Adjustment finds, when unnecessary hardships would result from carrying out the strict letter of a regulation, the Board of Adjustment shall vary any of the provisions of the regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

Section 106. Compliance with Other Ordinances

Any and all proposed movement, location, and inhabitation of mobile home within Polk County, North Carolina, shall comply with all the requirements of any officially adopted ordinance within Polk County, North Carolina.¹

Section 107. Effect of Existing Legislation

Where this Ordinance conflicts with existing ordinances, statutes, or regulations effective in the jurisdiction of this Ordinance and enacted by the County, State, or Federal Government or their agencies, then the ordinance, statute or regulation requiring the higher standard shall apply.

Section 108. Penalty

Any person or persons violating the provisions of this ordinance shall be guilty of a misdemeanor and shall be subject to fine and/or imprisonment as provided by General Statute 14-4. Each day's continuing violation of this ordinance shall be a separate and distinct offense. Nothing in this Section shall be construed to limit the use of remedies available to the County.

Article II Procedure for Securing Approval of Mobile Homes

Section 201. Approval Required

No mobile homes may be installed, moved or relocated within the territorial jurisdiction of Polk County until a permit has been issued by the Administrator, authorizing such installation.¹

Section 202. Procedures for Review and Approval of a Mobile Home

Prior to the installation of a mobile home, the applicant shall make application to the Administrator for a permit to install such a mobile home on forms required by the Polk County Planning and Zoning Department and the Polk County Building Inspection Department.

Section 203. Issuance of a Zoning Permit and Construction Permit

After receiving application that meets the requirements of this ordinance, the Administrator is authorized to issue a development compliance permit or building permit. A fee schedule shall be established by the Board of County Commissioners.

Article III Minimum Design Standards

This section sets forth minimum design standards which are stated as follows:¹

Section 301. Installation Requirements

- A. Each mobile home shall be installed with stabilization devices in accordance with the State of North Carolina regulations for installation of manufactured/mobile homes adopted and published by the North Carolina Department of Insurance.
- B. It is the responsibility of all mobile home owners to provide proper skirting and stairs. Specific requirements are as follows:

Skirting is required prior to issuance of certificate of occupancy. The skirting shall be of solid curtain wall material (i.e. treated wood, vinyl, metal, masonry). Materials are to be erected in a fashion as not to create a fire hazard or harbor trash or rodents. Skirting shall have an access door and be properly vented in accordance with State Regulations. Skirting shall be maintained in a good state of repair.¹

Article IV Definition of Terms

For the purposes of this ordinance, certain terms or words used herein shall be defined as follows:¹

Administrator: The person or persons appointed by the Polk County Board of Commissioners to administer and enforce the provisions of this ordinance.

Construction Permit: A permit issued by the Building Inspection Administrator authorizing the mobile home to be installed by the owner/agent in accordance with a site plan approved by the Administrator.

Developer: Any person, firm, trust, partnership, association, or corporation engaged in development, or proposed development.

Development Compliance Permit: A permit issued by the Administrator authorizing the applicant/developer to install a mobile home in accordance with the development regulations of Polk County.

Mobile Home/Manufactured home. A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

Shall: When used in this Ordinance, it is intended to indicate a mandatory requirement.

Stabilizing Devices: All components of the anchoring and support systems such as piers, footers, ties, anchoring equipment and any other equipment which supports the mobile home and secures it to the ground.

Article V. Effective Date

Effective date of this ordinance shall be the 3rd day of May, 2021.

Adopted this 3rd day of May, 2021.

Polk County Board of Commissioners

Attest:

Clerk to the Board

Approved as to Form:

County Attorney



Mobile Home Park Ordinance Polk County, North Carolina

Adopted December 1995, Amended January 6, 2003 and May 3, 2021

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Article I. Authority, Purpose, Jurisdiction and Legal Provisions

Section 101. Short Title

This ordinance shall be titled Mobile Home Park Ordinance, Polk County, North Carolina, and may be cited as the Mobile Home Park Ordinance.

Section 102. Authority

Polk County hereby exercises its authority to adopt and enforce a mobile park ordinance under the provision granted by North Carolina General Statute 153A-121, 160D-901 & 910.¹

Section 103. Purpose

The purpose of this ordinance is to promote the protection of the health, safety and welfare of the community and to provide an acceptable environment for what are in fact small communities of mobile homes. This ordinance is designed to accomplish the following objectives:

- a. To further the orderly layout of mobile home parks;
- b. To secure safety from fire, panic and other dangers;
- c. To provide adequate light and air circulation;
- d. To insure that facilities for vehicular circulation, parking, water supply and sewerage facilities, and recreation facilities are provided for mobile home park residents.

Section 104. Jurisdiction

These regulations shall govern the establishment of each and every mobile home park established after the effective date of this ordinance. Additionally, these regulations shall govern the alteration or expansion of existing mobile home parks after the effective date of this ordinance. These regulations apply to all lands lying within the territorial jurisdiction of Polk County and within the planning jurisdiction of any municipality whose governing body by resolution agrees to such regulation. No person or persons may locate or cause to be located, in regard to property under his possession or control, more than two (2) mobile homes on a tract of land without complying with the provisions of this ordinance. Mobile home sales lots shall not be subject to this ordinance.¹

Section 105. Appeals and Variances

A. Appeals¹

Appeals may be taken by any person aggrieved, or by any official or board of Polk County affected by, any ruling or decision of the ordinance administrator to the Board of Adjustment. Such appeal shall be taken within 30 days of ruling or decision, as provided by the rules of the Board of Adjustment, by filing with the ordinance administrator and with the secretary of the Board of Adjustment a notice of appeal and specifying the grounds thereof. The ordinance administrator shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the ordinance administrator certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or

property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the ordinance administrator and on due cause shown.

B. Variances¹

When unnecessary hardships would result from carrying out the strict letter of a regulation, the Board of Adjustment shall vary any of the provisions of the regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.
- (5) Any variance that is authorized is required to be entered in writing in the minutes of the Planning Board meeting and recorded with the final plan.

Section 106. Compliance with Other Ordinances

All proposed mobile home parks shall comply with all the requirements of any officially adopted ordinance in effect in the proposed area.

The sale of lots for the purpose of a mobile home park shall constitute a subdivision and; therefore, shall comply with the standards and procedure set forth in the Polk County Subdivision Ordinance.

Section 107. Effect of Existing Legislation

Where this Ordinance conflicts with existing ordinances, statutes, or regulations effective in the jurisdiction of this Ordinance and enacted by the County, State, or Federal government or their agencies, then the ordinance, statute or regulation requiring the higher standard shall apply.

Section 108. Penalty

Any person violating the provisions of this ordinance shall be guilty of a misdemeanor and shall be subject to fine and/or imprisonment as provided by General Statute 14-4. Each day's continuing violation of this ordinance shall be a separate and distinct offense. Nothing in this Section shall be construed to limit the use of remedies available to the County.

Section 109. Validity

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

Article II. Procedure for Securing Approval of Mobile Home Parks

Section 201. Approval Required

No mobile home park within the territorial jurisdiction of Polk County shall be established, altered or expanded until a permit has been issued by the Administrator, authorizing such construction.

Section 202. Procedures for Review and Approval of a Mobile Home Park Plan

Prior to the construction of a new mobile home park or the alteration or the expansion of an existing mobile home park, the Developer shall make application to the Administrator for a permit to construct or expand such a park. The application shall be accompanied by seven (7) copies of the proposed park plan. The application must be received at least twenty-one (21) days prior to a regularly scheduled meeting of the Polk County Planning Board, if the application and proposed park plan is to be reviewed by the Planning Board at that time. The Planning Board shall review the proposed plan for compliance with the design standards set forth in this Ordinance.¹

The park plan shall be drawn at a scale of twenty (20) feet to one (1) inch or larger and shall include the following information:

General Information:

1. Proposed name of mobile home park.
2. North arrow, graphic scale, and written scale.
3. Name of record owner, developer, and surveyor or engineer.
4. Vicinity map showing location of park.
5. Authorized signature of a Polk County Health Department representative verifying the representatives on-site visitation and consultation with the developer concerning the location of well and septic systems, if applicable.

Existing Site Data:

1. Total tract boundaries of the park, and a statement of total acreage of the property.

2. All existing rights-of-way, easements, sewer lines, fire hydrants, utility transmission lines, storm water drainage systems, water courses, buildings, wooded areas, and all other significant man-made or natural features within the proposed park and within fifty (50) feet from the boundaries of the park.
3. All existing streets on or abutting the park, including names, right-of-way widths, and type and width of surface treatment.
4. The ownership and use of neighboring properties, including if separated by a street, railroad, or other transportation corridor.¹

Proposed Site Data

1. Street right-of-way, pavement widths, and street names.
2. Preliminary plans for water, sanitary sewer systems, storm water systems, electricity and gas lines, showing connections to existing systems or proposals for developing new systems. Storm and sanitary sewer profiles, cross-sections and sizes shall be provided when required by the reviewing agencies.
3. Other easements and rights-of-way, including location, dimensions, and purposes.
4. Topographic maps when required by reviewing agencies.
5. Location, size, and number of proposed and existing mobile home sites, all existing and proposed automobile parking areas, and sanitary conveniences such as laundries and solid waste receptacles.
6. Any additional information and specifications as may be required by the reviewing agencies.
7. Existing right-of-way to public road at least forty-five (45) feet in width at the ingress/egress point of the park.
8. The plans must comply with the North Carolina Fire Code and/or other applicable codes. No authorization shall be issued without the prior approval of the county fire marshall, or designee.¹
9. Certificate for Mobile Home Park Approval.¹

Certificate of Approval for Mobile Home Park.

I, _____, Planning Board Chair, certify that the said Board fully approved the Mobile Home Park entitled _____.

Planning Board Chair

Date

Section 203. Issuance of Authorization and Compliance ¹

1. After receiving approval of the park plan by the Planning Board, the Administrator is authorized to issue an authorization letter. The intent of this authorization letter is to enable the execution of the park plan in the field and shall not be construed to entitle the recipient to offer spaces for rent or lease, or to operate a mobile home park as defined in this ordinance.
2. If the construction of the park has not begun within twelve (12) months from the issue date of the authorization letter, the Planning Board may grant an extension of the authorization letter if the developer appears before the Planning Board and shows cause.
3. The mobile home park may be developed in phases, construction must begin within twelve (12) months of issuance of authorization letter, unless extension is granted by the Planning Board. The phased development must be authorized in the approval process by the Planning Board.
4. When the construction, according to the plan approved by the Planning Board, of the roads, infrastructure, buffering, lighting, and other requirements in this ordinance are complete, the Administrator will issue a letter of compliance. The letter of compliance may be issued in phases, according to the plan approved by the Planning Board. This entitles the recipient to offer spaces for rent or lease, or to operate a mobile home park as defined in this ordinance. The plan shall be recorded in the Register of Deeds Office.

Article III. Minimum Design Standards

This section sets forth minimum design standards which are stated as follows: ¹

Section 301. Installation Requirements

1. Each mobile home shall be installed with stabilization devices in accordance with the State of North Carolina regulations for installation of manufactured/mobile homes adopted and published by the North Carolina Department of Insurance.

Section 302. Density Setbacks Requirements

1. The lot area for a mobile home park shall be at least two (2) acres, and the park shall have a minimum of four (4) mobile home spaces at first occupancy. All areas to be included in said park shall be clearly shown on the mobile home park plans in accordance with Article II, Section 202 of this Ordinance.
2. The following table provides the minimum required spaces based upon the type of water and sewer facilities to be provided:¹

For the purpose of this table, multi-user can be public water and sewer or private community water and sewer. Public sewer can also apply to private package treatment plants.

Minimum Mobile Home Space Density Requirements

	Individual Septic & Water Systems	Public Water & Individual Septic System	Public Sewer & Individual Water System	Multi-user Public Water & Sewer
Average Lot Density	1 lot per 40,000 sq. ft.	1 lot per 20,000 sq. ft.	1 lot per 20,000 sq. ft.	1 lot per 10,000 sq. ft.
Minimum frontage	50 ft.	50 ft.	50 ft.	50 ft.
Minimum Open Space Dedication	50%	50%	50%	50%
Exterior Development Setbacks	100 feet	100 feet	100 feet	100 feet

3. Open space must be dedicated for the time Mobile Home Park is in use. Buildings used for accessory, laundry or recreation purposes may be located in the open space area.
4. Structures permitted within the mobile home park site plan area shall be limited to mobile homes, their accessory structures, recreation area structures and mobile home park facilities.

Section 303. Streets and Driveways ¹

1. Each mobile home space shall abut a driveway or interior street within the park. Said driveways or interior streets shall be graded and surfaced with not less than four (4) inches of crushed stone or other suitable material on a compacted subbase. All driveways shall be a minimum width of ten (10) feet, and all interior streets shall be a minimum width of twenty (20) feet.
2. Two (2) parking spaces per space required.
3. The entrance to the park shall be graded and surfaced with not less than four (4) inches of crushed stone or other suitable material on a compacted subbase to a minimum width of forty (40) feet.

Section 304. Street Naming

1. In order to lessen confusion which could hamper the response time for emergency vehicles, the name of the mobile home park and the roads shall not duplicate nor closely approximate the name of an existing park, subdivision and roads within Polk County. All roads and street addresses shall be in accordance with the Polk County Property Address Ordinance.¹

Section 305. Utilities and Site Improvements ¹

1. An accessible, adequate, safe and potable supply of water shall be provided in each mobile home park. Where a municipal water supply is available, connection shall be made thereto and its supply used exclusively. When a municipal water supply is not available, individual wells or a central community water supply system shall be developed, and its supply used exclusively in accordance with the standards of applicable County and State agencies.
2. Adequate and safe sewage disposal facilities shall be provided in all mobile home parks. Such facilities shall include private package treatment plants, shared septic, and/or individual septic. Collection and sewage treatment systems complying with applicable requirements of County and State agencies shall be provided. Where a municipal sewer system is available, connection shall be made thereto and its supply used exclusively.
3. Lighting shall be located to illuminate the entrance street at its intersection with the public right-of-way. Light poles shall be located outside the public right-of-way and shall not cast light or glare onto the public road of such intensity as to impair the vision of motorists or interfere with the operation of vehicles. Adequate lighting shall be placed in the areas used for vehicular/pedestrian access including, but not limited to; recreational areas, stairs, sidewalks, crosswalks, intersections, or changes in grade. Lighting mitigation is required.
4. Cluster Box Units for mail delivery are required. Consult your local Post Office to meet required standards.
5. Screening – All mobile home parks shall be bounded by a buffer area with a minimum of ten (10) feet in depth as measured at right angles to the tract boundary lines. This space shall be used for no other purpose but landscaping, except where access roads cross it. Buffer areas shall be landscaped and consist of evergreens. All landscaping shall be at least four (4) feet in height at the time of planting, growing to six (6) feet within a year and maintained. A solid visual barrier fence, six (6) feet minimum in height, may be accepted as an alternate buffer.

Article IV. Definition of Terms

For the purposes of this ordinance, certain terms or words used herein shall be defined as follows:

Administrator: The person or persons appointed by the Polk County Board of Commissioners to administer and enforce the provisions of this ordinance.

Construction Permit: A permit issued by the Administrator authorizing the mobile home park developer to construct a mobile home park in accordance with a park plan approved by the Polk County Planning Board.

Developer: Any person, firm, trust, partnership, association, or corporation engaged in development, or proposed development, of a mobile home park.

Lighting Mitigation. Mitigating the impact of outdoor lighting fixtures in order to protect neighboring properties and roads from direct glare or hazardous interference of any kind. Lighting mitigation typically involves directing lighting fixtures away from adjacent properties but may also include the installation of planted buffers, screens, walls, etc.¹

Mobile Home/Manufactured home. - A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

Mobile Home Park: A parcel or contiguous parcels of land which have been so designated and improved that it contains four (4) or more manufactured/mobile home lots available to the general public for placement thereon of manufactured /mobile homes for occupancy.

Mobile Home Park Plan: A plan of a proposed mobile home park, prepared by the developer in accordance with Article II, Section 202, and presented to the Polk County Planning Board for approval.

Mobile Home Space or Lot: A piece of land within a mobile home park:

- a. whose boundaries are delineated in accordance with the requirements of this Ordinance;

- b. that is designed and improved in accordance with the requirements of this Ordinance or the Subdivision Regulations if the lot is to be offered for sale.

Shall: When used in this Ordinance, it is intended to indicate a mandatory requirement.

Stabilizing Devices: All components of the anchoring and support systems such as piers, footers, ties, anchoring equipment and any other equipment which supports the mobile home and secures it to the ground.

Article V. Effective Date

This ordinance, and any amendment to it, shall take effect and be in force from and after its adoption by the Board of County Commissioners of Polk County, North Carolina.

Effective date of this ordinance shall be 3rd day of May, 2021.

Adopted this 3rd day of May, 2021.

Chair of the Board of Commissioners

ATTEST:

Clerk to the Board of Commissioners

Approved as to content & form:

County Attorney



POLK COUNTY SIGN ORDINANCE

Adopted August 29, 1994; Amended June 15, 2015, November 20, 2017¹, May 3, 2021²

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AN ORDINANCE OF THE POLK COUNTY BOARD OF COMMISSIONERS, REGULATING THE
LOCATION, SIZE, HEIGHT, STANDARDS OF CONSTRUCTION, MAINTENANCE AND
REMOVAL OF SIGNS; AND PROVIDING FOR THE METHOD OF ADMINISTRATION, AND FOR
THE IMPOSITION OF PENALTIES FOR VIOLATION.

ARTICLE 1. AUTHORITY AND ENACTMENT CLAUSE

1.1 Purpose.

1.1.1 Polk County wishes to regulate signs placed for public observance within its jurisdictional boundaries under its general ordinance making powers to accomplish the following goals:

- A.** Preserve the scenic and aesthetic character of Polk County in order to protect and promote the development of the tourist industry and to provide for the protection of the health, welfare, and quality of life for residents and visitors.
- B.** Recognize the need for local businesses to adequately identify their products and services and to provide reasonable regulations while safeguarding their interests.
- C.** Preserve and increase the value of commercial and residential buildings and property in the area by creating a more visually harmonious environment.
- D.** Ensure the safety of motorists on public roads in Polk County by preventing the distracting influence of unregulated signs throughout the County.
- E.** Provide an improved environmental setting and community appearance by regulating existing billboards along our scenic highways.

1.2 Authority and Enactment.

1.2.1 By the authority granted by Chapter 153A-121(a), 136-129, 143-755, 160D-108 and 160D-903 of the North Carolina General Statutes, the Polk County Board of Commissioners hereby ordains and enacts into law the following articles and sections.²

ARTICLE 2. SHORT TITLE

2.1 Generally.

This Ordinance shall be known and may be cited as "The Sign Ordinance of Polk County, North Carolina."

ARTICLE 3. GENERAL PROVISIONS

3.1 Jurisdiction.

The provisions of this Ordinance shall apply to the unincorporated areas of Polk County, lying outside the extra-territorial jurisdiction of any incorporated city or town. No type of sign as herein defined may be erected, maintained, posted, placed, replaced, hung, painted, or repainted in any unincorporated area of Polk County outside the extra-territorial jurisdiction of any incorporated city or town except in accordance with this Ordinance.

3.2 Definitions.

The following words or terms shall have the meaning as herein defined:

Adjacent - A tract of real property contiguous to another tract of real property or separated by a road, river, or easement.

Amortization - A reasonable period for terminating the use of certain non-conforming signs.

Banners, Pennants, and Balloons - Any animated, rotating, fluttering, or non-stationary device made of flexible materials which attract attention.

Bona Fide Farm - Agricultural activities as set forth in North Carolina General Statute 160D-903.²

Canopy - An extension of the roof of a building or a freestanding structure that has a roof with support, but no walls.

Copy - The characters, letters, or illustrations displayed on a sign face.

Erect - To assemble, construct, build, raise, place, install, affix, attach, create, paint, draw, or in any other way bring into being or establish.

Façade - The entire building wall, including wall face, parapet, fascia, windows, doors, canopy, and roof on any complete elevation.

Frontage, Building - The linear length of only that portion of a building used by an individual tenant in a multiple-tenant development and which faces a public street or alley.

Grade - The lowest point at which a sign is attached to the ground.

Grandfather Clause - An exemption based on circumstances previously existing (e.g., The Federal Highway Act which provides that local governments may not cause to be removed existing signs from certain Federally-regulated highways without cash compensation).¹

Marquee - A permanent structure other than a roof attached to, supported by, and projecting from a building and providing protection from natural elements.

Person - Any person, firm, partnership, corporation, company, association, trust, or any other group or combination of individuals operating as a unit and including any trustee, receiver, assignee, or other similar representative thereof.

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

Sight Visibility Triangle - The land adjoining a street intersection that is kept clear of obstructions between three (3) and seven (7) feet above ground to protect the visibility and safety of motorists and pedestrians. The protected sight distance area is the triangle with legs that are the intersecting flow lines of two (2) streets at an intersection. Where local streets meet, the legs shall extend 35 feet away from the intersection of the flow lines. Where collector or arterial streets meet, the legs shall extend 45 feet away from the intersection of the flow lines.

Sign - Any words, lettering, numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric, or other material background structure designed to carry such devices, as are used to designate or attract attention.

Sign, Abandoned - Any conforming or legally non-conforming sign which has been discontinued for a period of 180 days or more, or a temporary sign for which the permit has expired. This is not intended to apply to seasonal type businesses which annually operate "in season". However, failure to operate any such seasonal business for a minimum of 190 consecutive days in a calendar year will deem these signs to have been abandoned.

Sign, Bulletin Board - A type of changeable copy sign displayed in a casement made of glass or plexiglass.

Sign, Business Vehicle - A sign that is placed upon, painted on, or attached to a vehicle which is parked or placed upon the owner's premises primarily for advertising purposes.

Sign, Changeable Copy - A sign that is designed so that characters, letters, or illustrations can be changed or rearranged without altering the face or surface of the sign.¹

Sign, Exempt - Any sign which is specifically listed as exempt from this Ordinance. Said listed exempt signs are not regulated by the terms of this Ordinance and shall not require a permit.

Sign, Externally Illuminated - A sign designed to have illumination from a detached light source, shielded so that no direct rays from the light source are visible elsewhere than on the lot where said illumination occurs. If such shielding is inoperative, such sign shall be deemed to be a directly illuminated sign.

Sign, Freestanding - The general term for any sign which is supported from the ground and not attached to a building.

Sign, Governmental - A sign that is constructed, placed, or maintained by local, state, or federal government or is required to be placed or maintained by local, state, or federal government.¹

Sign, Identification - A sign stating the name of a person or firm; or the name or description of a certain permitted use.

Sign, Illegal - Any sign erected or maintained in violation of a preceding ordinance or erected, altered, removed, or replaced in violation of this Ordinance.

Sign, Internally Illuminated - A sign designed to give forth artificial light directly (or through transparent or translucent material) from a light source within or attached to such sign.

Sign, Marquee - A sign attached to and made part of a marquee or any other similar projection from a building.

Sign, Monument - A freestanding sign with a base affixed flush to the ground which measures at least two-thirds the horizontal length of the sign.

Sign, Non-Commercial - Any sign which is not by definition an off-premise advertising sign, an off-premise directional sign, an on-premise advertising sign, or an on-premise directional or informational sign, and which sign displays a substantive message, statement, or expression that is protected by the First Amendment to the U.S. Constitution. Non-commercial signs shall not contain any reference to a business or product.

Sign, Non-Conforming - Signs that are erected and in place prior to the adoption of this Ordinance and which do not conform to the provisions of this Ordinance are declared non-conforming signs. A sign that is erected and that is in place and which conforms to the provisions of the Sign Ordinance at the time it is erected, but which does not conform to an amendment of this Ordinance enacted subsequent to the erection of said sign, is declared a non-conforming sign.

Sign, Off-Premise Advertising - Any sign advertising a product, service, business, or activity sold, located, or conducted elsewhere than on the premises on which the sign is located, or which said product, service, business, or

activity is sold, located, or conducted on such premises only incidentally, if at all.

Sign, Off-Premise Directional - Any off-premise sign indicating the location of or directions to a business, office, or other activity. The sign shall not include any information or message except the name of the business or activity, and directions or symbols indicating directions. If a sign exceeds the maximum area, it shall be construed as an off-premise advertising sign.

Sign, On-Premise Advertising - Any sign advertising or identifying a product, service, business, or activity sold, located, or conducted on the premises where the sign is located.

Sign, On-Premise Directional and Informational - Any on-premise sign which provides directions or information for persons on the premises including, but not limited to, entrance and exit signs, parking information, and handicapped access.

Sign, Painted Wall - A sign painted directly on any exterior building wall or door surface, exclusive of windows or door glass areas.

Sign, Pole - A freestanding sign which is permanently affixed to the ground by one (1) or more poles or other structure and which is not part of the building.

Sign, Portable - Any changeable copy sign designed or intended to be readily relocated. Said portable sign shall include signs on wheels, trailers, truck beds, or any device which is capable of or intended to be moved from one location to another, whether on the same premises or to a different premise, and which sign is not permanently attached to the ground or other structure. Signs defined as temporary signs are not included in this definition.

Sign, Projecting - A sign attached to a building or other structure and extending in whole or in part more than twelve (12) inches beyond the surface of the portion of the building line or extending over public property.¹

Sign, Roof - Any sign erected, constructed, or maintained on, upon, or over the roof of any building or structure and which is wholly or partially dependent upon the roof of the building structure for support.

Sign, Structure - Any structure which supports, has supported, or is capable of supporting a sign, including any decorative cover for said sign structure.

Sign, Temporary - A sign with or without a structural frame, whether attached to a permanent structure or freestanding, which is intended to be displayed for a limited time for a specific event, not to exceed a period of sixty (60) days. This definition shall not include a permanent sign display area with changeable copy, or signs defined as portable.

Sign, Wall - A sign erected on or fastened against the wall or roof area of a building structure with the exposed face of the sign in a plane approximately parallel to the plane of such a wall and not extending more than twelve (12) inches beyond the surface of the portion of the building wall or roof area on which erected or fastened.

Sign, Wayfinding - A systematics network of directional signs installed and maintained to guide the traveling public to civic, cultural, visitor, and recreational destinations.¹

Sign, Window - An identification sign affixed to, or painted upon, a window; or a sign within a building, placed no more than twelve (12) inches behind a window, and visible through the window.

Theatre - A building used for the presentation of motion pictures, live dramatic productions, musical concerts, ballet, or other theatrical performances. If such an edifice consists of, or contains, more than one (1) auditorium, it shall nevertheless be considered in these regulations to be a single theatre.

3.2.1 Area and Height of Signs Defined.

A. The area of a sign shall be considered to be that of the smallest rectilinear figure (but which shall have a continuous perimeter of not more than eight [8] straight lines), which encompasses all lettering, wording, design, or symbols together with any background difference on which the sign is located, if such background is designed as an integral part of, and related to, the sign. Any cutouts or extensions shall be included in the area of a sign, but supports and bracings which are not intended as part of the sign shall be excluded. Only one side of a multi-faced sign is included in the computation of the sign area.

B. The height of a sign shall be measured as the vertical distance between the highest point of the sign (or its supporting structure if freestanding), whichever is highest, and the base of the sign at grade.

3.2.2 Illumination

A. Any light used for illumination shall be shielded so that the beams or rays of light will not shine into surrounding areas or on the public roadway.

B. Neither direct nor reflected light from any light source shall create a traffic hazard or distraction to operators of motor vehicles on public thoroughfares.

C. All forms of blinking or flashing lights, including strobe lights, are expressly prohibited as part of a sign or sign structure.

3.3 Protection Under First Amendment Rights.

Any sign, display, or device allowed under this Ordinance may contain, in lieu of any other copy, any otherwise lawful non-commercial message which does not direct attention to a business operated for profit, or to a commodity or service for sale; provided that such a sign complies with the size, lighting, spacing, setbacks, and other requirements of this Ordinance.

3.4 Exemption.

The following signs shall be exempt from the regulations of this Ordinance:

A. Flags.¹

B. Public Signs - Signs erected by government agencies or utilities having jurisdiction over the property on which it is erected.

C. Signs that display information pertinent to the safety or legal responsibilities of the general public with regard to a particular piece of property; provided that such signs are located on the premises to which the information on pertains. No advertising may be affixed to such signs.

D. Signs which are not visible beyond the boundaries of the lot upon which they are located, and/or from any public thoroughfare or right-of-way.

E. Temporary decorations or displays, when such are clearly incidental to, and are customarily and commonly associated with, any national, local, or religious holiday or celebration.

F. Temporary or permanent signs, or traffic control devices erected by governmental agencies, public utility companies or construction companies to warn of danger, or hazardous conditions; including signs indicating the presence of underground cables, gas lines, and similar devices, or signs providing directions around such conditions.¹

G. Governmental signs.¹

H. Vehicular Signs. Signs displayed on trucks, buses, trailers, or other vehicles which are being operated in the normal course of a business.

I. Temporary signs with or without a structural frame, whether attached to a permanent structure or freestanding, which is intended to be displayed for a limited time for a specific event, not to exceed a period of sixty (60) days. This definition shall not include a permanent sign display area with changeable copy, or signs defined as portable.

J. Wayfinding Signs when they meet the requirements of the Manual on Uniform Traffic Control Devices for Streets and Highways and DOT Guidelines for Wayfinding Signs along State Maintained Roadways.¹

K. Outdoor advertising to promote a bona fide farm provided the sign is no more than three feet long on any side and the sign is located on any bona fide farm property owned or leased by the owner or lessee of the bona fide farm.²

3.5 Application of Regulations.

3.5.1 Signs Prohibited - The following signs are prohibited within the jurisdiction of this Ordinance:

A. Any non-governmental sign which resembles a public safety warning or traffic sign.

B. Any sign which obstructs ingress or egress, creates an unsafe distraction for motorists, or obstructs the view of motorists entering a public road or highway.

C. Signs which incorporate flashing or blinking lights, or signs with moving parts or parts which simulate movement.

D. Signs which are erected or maintained on trees, or Painted or drawn upon rocks or other natural features, except as provided in Section 3.5.2(b).

E. Portable signs with an area of 24 square feet or larger.

F. Off-premise signs, unless exempt under 3.4.¹

3.5.2 Signs Exempt From Permit Requirements but Subject to Ordinance Provisions - The following signs do not require a sign permit; however, these signs shall conform to the standards and provisions of this Section and other applicable provisions of this Ordinance. Any such sign which does not meet the provisions of this Section or other applicable parts of this Ordinance shall be considered in violation of the Ordinance.

A. On-premise traffic control devices and directional signs shall not exceed twelve (12) square feet in area, and must comply with Section 3.5.4.¹

B. Security and warning signs. On-premise signs regulating the use of the premises, such as "No trespassing", "No Hunting", and "No Soliciting".¹

3.5.3 Regulation of Off-Premise Signs - It shall hereafter be unlawful to erect any off-premise sign within the jurisdiction of this Ordinance in Polk County, except as may be specifically permitted in these regulations. All existing off-premise signs, except those covered by Section 5.2.1, which do not conform with these regulations are declared non-conforming signs and shall be required to conform to the regulations of this Ordinance or removed in accordance with Article 6, Section 6.2.4 of this Ordinance.

3.5.4 Regulation of Certain On-Premise Residential Identification Signs - All signs and sign structures shall be outside any visibility triangle, ten (10) feet from property lines (except for road frontage), and may be internally or externally illuminated.

A. Single-Family Subdivision Identification Signs - Signs that identify a single-family, residential subdivision, located at an entrance to the subdivision.

Permitted Number: One (1) sign for the main entrance, not to exceed two (2) signs for the subdivision

Types: Monument or Pole

Maximum Size and Height: Sixteen (16) square feet; six (6) feet high

B. Multi-Family Complex Identification Signs - Signs which identify the name and/or address of an apartment, townhouse, condominium, or other multi-family residential complex, located at an entrance to such complex.

Permitted Number: One (1) sign for the main entrance, not to exceed two (2) signs for the complex.

Types: Monument, Wall, or Pole

Maximum Size and Height: Sixteen (16) square feet; six (6) feet high, except for wall signs, which shall be below the roofline, and no higher than twenty (20) feet from the ground.

C. Mobile Home Parks - Signs that identify the name and/or address of a mobile home park, located at an entrance to the park.

Permitted Number: One (1) sign for the main entrance, not to exceed two (2) signs for the park.

Types: Monument or Pole

Maximum Size and Height: Sixteen (16) square feet; six (6) feet high

3.5.5 Regulation of Identification Signs for Commercial or Industrial Uses - On-premise identification signs for all commercial and industrial uses shall conform to the following requirements:

A. Signs Adjacent to Residential Areas - Any on-premise identification sign for a commercial or industrial use erected within 100 feet of an existing residential use shall not exceed 36 square feet in area and ten (10) feet in height from grade.¹

B. Minimum Setbacks - All signs and sign structures must be located at least ten (10) feet from any property line (except for road frontage) and outside of all visibility triangles.

C. All signs may be internally or externally illuminated.

D. Lots With One (1) Commercial or Industrial Establishment Any establishment located on a lot with one (1) business may erect signs as follows:

Permitted Number: Maximum of two (2) signs, but in no case shall two (2) freestanding signs be allowed on the same lot.

Types: Monument, Pole, Wall, Marquee, Projecting, Awning, or Window

Maximum Size and Height:

- 1. Wall or Marquee Sign** - One (1) square foot per two (2) linear feet of building frontage on which sign(s) are attached, maximum of 100 square feet; the top of the sign shall be below the roofline and no higher than twenty (20) feet above ground.
- 2. Pole Sign** - One (1) square foot per five (5) linear feet of building frontage, maximum of 32 square feet; sign height shall not exceed a maximum of fifteen (15) feet.
- 3. Monument Sign** - One (1) square foot per three (3) linear feet of building frontage, maximum of 32 square feet, six (6) feet maximum height.
- 4. Projecting Sign** - One (1) square foot per two (2) linear feet of building frontage, up to a maximum of twenty (20) square feet; sign shall be located below the roofline, no higher than twenty (20) feet above ground.
- 5. Awning or Canopy Sign** - One (1) square foot per two (2) linear feet of awning or canopy, up to a maximum of twenty (20) square feet, no such sign shall extend above the top of the awning or canopy.
- 6. Window Sign** - Maximum area of twenty (20) square feet.

E. Multiple Establishments on Single Lots - Lots with two (2) to five (5) establishments on a single tract may erect one (1) monument sign with a maximum size of 32 square feet and height of six (6) feet, or one (1) pole sign with a maximum size of 24 square feet and height of fifteen (15) feet. Signs may be internally or externally illuminated.

In addition, each establishment on such a lot may erect one (1) sign as follows:

Types: Wall, projecting, awning, canopy, window, or marquee

Maximum Size and Height:

- 1. Wall or Marquee Sign** - One (1) square foot per two (2) linear feet of building frontage on which the sign(s) are to be attached, up to a maximum of 100 square feet; the top of all wall and marquee signs shall be below the roofline and no higher than twenty (20) feet above ground.
- 2. Projecting Sign** - One (1) square foot per two (2) linear feet of building frontage, up to a maximum of twenty (20) square feet; sign top shall be located below the roofline and no higher than twenty (20) feet above ground. The base of all projecting signs shall be no less than eight (8) feet above ground. Projecting signs shall not project from the exterior wall of a building more than four (4) feet.
- 3. Awning or Canopy Sign** - One (1) square foot per two (2) linear feet of awning or canopy, up to a maximum of twenty (20) square feet; no such sign shall extend above the top of the awning or canopy.
- 4. Window Sign** - Maximum area of twenty (20) square feet.

F. Developments with more than five (5) planned establishments planned as an integrated center may erect signs which may be internally or externally illuminated, and which are subject to the following provisions:

Center Identification Signs - One (1) monument or pole sign per street fronting the center, not to exceed a total of two (2) signs, identifying the name of the center.

The name of any major establishment within the center may serve as the name of the entire center. In addition to identifying the name of the center, the sign may identify individual establishments within the center.

1. Monument - Maximum sign area of sixty (60) square feet and height of six (6) feet.
2. Pole - Maximum sign area of forty (40) square feet. The top of the pole sign shall not exceed twenty (20) feet in height, and the base of the pole sign shall be at least seven (7) feet above ground.

Individual Establishment. No freestanding sign shall be displayed for individual establishments located within a center. Any establishment may display one (1) sign per street frontage, up to a maximum of two (2) signs, according to the following criteria:

1. Wall or Marquee Sign - One (1) square foot per two (2) linear feet of building frontage on which sign(s) are attached. Sign top shall be located below roofline and no higher than twenty (20) feet above ground.
2. Projecting Sign - One (1) square foot per two (2) linear feet of building frontage, up to a maximum of twenty (20) square feet; sign top shall be located below the roofline, no higher than twenty (20) feet above ground. The base of all projecting signs shall be no less than eight (8) feet above ground and shall not project from the exterior wall of a building more than four (4) feet.
3. Window Sign - Maximum of twenty (20) square feet.

G. Office and/or Industrial Centers - Office and/or industrial centers at least two (2) acres in size and planned as an integrated development may erect signs which may be internally or externally illuminated, and are subject to the following provisions:

Identification Signs - One (1) monument sign per street frontage, not to exceed a total of two (2) signs; maximum of sixty (60) square feet in area, six (6) feet maximum height.

Individual Building Signs - Where an office and/or industrial center is comprised of two (2) or more buildings, each individual building may erect one (1) monument sign, maximum of twenty (20) square feet in area, six (6) feet maximum height.

Individual Establishment Signs - Each individual establishment within an office and/or industrial building may erect one (1) wall sign. Total area of all such signs shall be of a size which does not exceed one (1) square foot per two (2) linear feet of building frontage on which sign(s) are attached. The sign top(s) shall be located below the roofline

In lieu of individual establishment signs, one (1) directory sign may be erected, maximum size 32 square feet.

H. Theaters as defined in these regulations are authorized to erect one (1) monument or one (1) wall sign based on the following criteria:

1. Monument - One (1) directly illuminated sign with a name of the theater and a changeable copy board displaying the name(s) of the current presentation(s), maximum of fifty (50) square feet per cinema screen, eight (8) feet high.

2. Wall Sign - One (1) directly illuminated sign with the name of the theater and a changeable copy board displaying the name(s) of the current and/or future presentation(s), maximum of fifty (50) square feet per cinema screen. The sign shall be located below the roofline.

I. Gasoline Stations - Automobile service and gasoline stations shall comply with all applicable sign regulations within this Section. The following additional regulations shall apply to all automobile service and gasoline stations:

Changeable Fuel Price Signs - Freestanding signs identifying the name of the business may include changeable copy. The area of the fuel price sign shall be included in determining the sign area for the business.¹

Gas Pump Signs - Each gas pump shall be permitted a total of one (1) square foot of sign area to identify the product dispensed.

J. Sports Score Boards - Baseball fields, football fields, golf courses, and similar outdoor sports premises, whether private or commercial, are permitted to have signs for the purpose of displaying the scores of such events. Signs are to be on, a part of, or adjacent to playing fields and intended to be viewed by the participants and/or spectators, and not intended for viewing by neighboring roads or properties.¹

3.5.7 Regulation of Institutional Signs - Signs erected by schools, churches, hospitals, governmental entities, and other public institutions. All setbacks are to be ten (10) feet measured from the property line (out of right of way), and outside of all sight visibility triangles. Such signs may contain two (2) faces, may be changeable copy, and may be internally or externally illuminated.

Permitted Number: One (1) sign per entrance, on the premises, not to exceed two (2) signs.

Types: Pole, Monument, or Wall

Maximum Size and Height: Sixty (60) square feet; ten (10) feet high from grade.¹

3.6 Construction and Maintenance Provisions.

3.6.1 Every sign and its supports, braces, guys, anchors, and electrical equipment shall be maintained in safe condition at all times. All signs shall be kept free from defective or missing parts or peeling paint and shall be able to withstand wind.

3.6.2 The Polk County Building Inspector shall possess the authority to order the painting, repair, or alteration of a sign which constitutes a hazard to the health, safety, or public welfare by reason of inadequate maintenance, dilapidation, or obsolescence. Notice to the owner shall be by personal service or registered mail, return receipt requested.

3.6.3 The immediate premises around a sign shall be kept free from debris. However, no person may damage, destroy, or remove any trees, shrubs, or other vegetation located within the right-of-way of any public street or road for the purpose of increasing or enhancing the visibility of any sign. Nor shall such work be performed on property that is not under the ownership or control of the person performing or responsible for such work, unless done pursuant to the express authorization of the person owning the property where such trees or shrubs are located.

3.6.4 Any sign permitted under this Ordinance must comply with any applicable requirements of the building code, electric safety code, and other applicable Federal, State, or County codes.

3.7 Reconstruction of Damaged Signs or Sign Structures.

3.7.1 Any conforming or permitted non-conforming sign or sign structure which has been damaged may be repaired and used as before, provided all repairs are initiated within thirty (30) days and completed within sixty (60) days of such damage. However, if the sign should be declared unsafe by the Polk County Building Inspector, the owner of the sign or the owner of record of the real property whereon the sign is located shall immediately correct all unsafe conditions in a manner satisfactory to the Polk County Building Inspector.

3.7.2 For purposes of this Section, a non-conforming sign or its structure shall be considered destroyed, and therefore not repairable, if it receives damage to the extent of more than 50% of its value as listed for tax purposes by the Polk County Tax Supervisor.

ARTICLE 4. PERMITS AND FEES

4.1 Permits Required.

After the effective date of this Ordinance, no sign shall be erected, altered, replaced, or relocated unless a permit has been obtained from the Polk County Building Inspector in accordance with this Section. All existing signs must also obtain permits in conformity with this Section and with the provisions of Article 5. Maintenance as provided in Section 3.6 shall not require a permit, provided the repairs do not exceed the provisions in Section 3.7.

4.2 Permit Application.

4.2.1 No permit shall be issued until an application has been completed for each separate sign structure along with the required initial permit fee. The permit shall be valid until revoked by the Polk County Building Inspector. Owners of all existing sign structures regulated by this Ordinance, except those exempted under Article 3, Section 3.5.2, shall be required to obtain a sign permit.

4.2.2 Applications for a sign permit to construct signs shall be obtained from the Polk County Building Inspector. Instructions for completing and processing the application and paying the required fees are included on the permit form.

4.3 Permit Fees.

A permit fee is required to be paid by the owners of each new and existing sign structure, except those exempted under Article 3, Section 3.5.2, in order to defray the costs of the administration, inspection, and enforcement expenses incurred by Polk County in administering the permit procedures. The fee schedules shall be determined by the Polk County Board of Commissioners.

4.4 Permit and Permit Emblem.

4.4.1 A permit along with a permit emblem shall be issued upon proper application, approval, and the payment of fees for lawful sign structures.

4.4.2 The erection of new sign structures shall not commence until a permit and emblem have been issued. The sign structure must be completely constructed and erected with the permit emblem affixed within 180 days from the date of issuance of the permit. During the 180-day period, the new sign structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in the appropriate rules and regulations of this Ordinance.

4.4.3 The permit emblem, which will have an identifying number, shall be placed on the sign structure in such a position as to be visible from the main traveled roadway of the adjacent highway.

4.5 Registering Existing Signs

4.5.1 The owners of all existing sign structures regulated by the terms of this Ordinance, constructed and in place prior to the adoption of a moratorium ordinance by the Polk County Board of Commissioners on August 6, 1990, shall be required to obtain a permit by the procedures set forth in this Article and to affix a County permit emblem within thirty (30) days after issuance of the permit unless exempted under Article 3, Section 3.5.2. The permit shall be obtained within a period of 365 days beginning with the effective date of this Ordinance.

4.5.2 All existing signs that require a permit that have not been registered within the 365-day period shall be in violation of the provisions of this Ordinance and subject to penalties provided in Article 6, Section 6.2.4.

4.5.3 If the existence of a sign erected prior to the passage of the moratorium ordinance is questioned, the issue will be resolved by the Polk County Building Inspector. The sign owner or any Polk County resident may appeal the decision of the Polk County Building Inspector within thirty (30) days of its decision. The appeals process shall follow the procedures in Article 6, Section 6.3. Any sign determined to have violated the moratorium shall be removed at the owner's expense.

4.6 Transfer of Permit.

The transfer of ownership of an off-premise sign structure for which a permit has been lawfully issued to the original owner shall not in any way affect the validity of the permit for that specific structure, provided that the Polk County Building Inspector is given notice of the transfer of ownership within thirty (30) days of the actual transfer.

4.7 Revocation of Permit.

4.7.1 Any valid permit issued for a lawful sign structure shall be revoked by the Polk County Building Inspector for any one of the following reasons:

- A.** Mistake of material facts by the issuing authority for which, had the correct facts been made known, the sign permit in question would not have been issued
- B.** Misrepresentation of material facts by the applicant on the application for the sign permit
- C.** Failure to construct sign structure and affix the permanent emblem within 180 days from the date of issuance of the permit
- D.** Any alteration of a sign structure for which permit has previously been issued which would cause that sign structure to fail to comply with the provisions of this Ordinance and the rules and regulations promulgated by the Polk County Board of Commissioners pursuant thereto
- E.** Any violation of Article 3, Section 3.7
- F.** Any abandoned sign
- G.** Failure to maintain a sign such that it reaches a state of dilapidation or disrepair as determined by the Polk County Building Inspector
- H.** Any violation of Article 5, Section 5.1.3

4.8 Notice Given for Refusing to Issue Permit.

4.8.1 Should the Polk County Building Inspector determine that a proposed sign and its structure would not

conform to the standards as set out in this Ordinance or the rules and regulations promulgated thereto by the Polk County Board of Commissioners, the Polk County Building Inspector shall refuse to issue a permit for that proposed sign structure.

4.8.2 When such non-compliance of this Ordinance has been determined, the Polk County Building Inspector shall so notify the owner of the proposed sign structure in question by registered mail, return receipt requested, in the form of a letter setting forth the reasons why the proposed sign structure in question does not comply, and shall also return the application and 75% of the application fee to the applicant.

ARTICLE 5. NON-CONFORMING SIGNS, ILLEGAL SIGNS, AND ABANDONED SIGNS

5.1 Non-Conforming Signs - Conformance Required.

5.1.1 General - Any sign legally in existence prior to the effective date of this Ordinance which does not satisfy the requirements of this Ordinance is declared non-conforming. The eventual elimination, as expeditiously and fairly as possible, of non-conforming signs is as much a subject of health, safety, and welfare as is the regulation of new signs.

5.1.2 All non-conforming off-premise advertising signs shall be made to conform to all provisions of this Ordinance unless explicitly prohibited by State or Federal law.¹

5.1.3 During the amortization period, an off-premise non-conforming sign may be continued and shall be maintained in good condition as defined in Section 3.6.1, but it shall not be:

- A.** Changed for another non-conforming sign
- B.** Structurally altered so as to prolong its life
- C.** Expanded to a larger size or greater height
- D.** Re-established after it has been discontinued for ninety (90) days or more
- E.** Re-established after damage and destruction as defined in Section 3.7.2

5.2 Non-Conforming Signs - Grandfathered.

5.2.1 Any off-premise sign legally in existence, i.e., holding a valid Department of Transportation permit, on a Federal Aid Primary Road, or on Interstate 26 prior to the effective date of this Ordinance which does not satisfy the requirements of this Ordinance is declared non-conforming, but shall not be amortized under Section 5.1.2 of this Ordinance.

5.2.2 Off-premise signs without valid permits shall be subject to the amortization regulations in Section 5.1.2.

5.2.3 Any on-premise sign in use prior to the effective date of this Ordinance which does not satisfy the requirements of this Ordinance shall be non-conforming, but such sign shall not be amortized under Section 5.1.2 of this Ordinance.

5.2.4 No grandfathered non-conforming sign shall be structurally altered, enlarged, moved, or replaced unless the sign is brought into compliance with the provisions of this Ordinance. Once the structural supports fail, the sign must be removed. All non-conforming signs, if any, which are not maintained and/or all non-conforming signs which are abandoned for a period of 180 days, shall be removed. For the purposes of this Ordinance a sign shall be considered as abandoned if no copy or advertising matter is exhibited on the advertising faces of the sign, or if

such copy is only partially legible, or if the business advertised has been abandoned.

5.3 Illegal Signs.

5.3.1 Nothing contained in this Ordinance shall be construed in any way to ratify or approve the erection and/or maintenance of any sign which was erected in violation of this or any prior ordinance of Polk County. Moreover, signs erected or altered in violation of this or any prior ordinance shall be removed as provided in this Section.

5.3.2 Any violation of the provisions of this Ordinance by any person is declared to be a public nuisance. Upon ascertaining a violation of the provisions of this Ordinance the Polk County Building Inspector shall cause to be served upon the offender, or his agent, and the owner, or his agent, or the occupant(s) of the premises, a written notice to abate which shall:

- A.** Describe the conditions constituting a nuisance under this Ordinance
- B.** Revoke the permit
- C.** Require removal within thirty (30) days of the notice

5.4 Abandoned Signs.

An abandoned sign, as defined within these regulations, is deemed an illegal sign and shall be subject to the provisions of Article 5.3.

ARTICLE 6. ADMINISTRATION, ENFORCEMENT, APPEALS, AND VARIANCES

6.1 Administration.

6.1.1 The Polk County Board of Commissioners shall appoint the Polk County Building Inspector (the Building Inspector) to be responsible for the administration and enforcement of this Ordinance. The Building Inspector is hereby given authority to administer and enforce the terms and conditions of this Ordinance as herein provided.

6.1.2 Complaints - Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint to the Building Inspector. Such complaint shall state fully the causes and basis thereof. The Building Inspector shall officially record such complaint, immediately initiate investigations, and take such actions thereon as are required by the provisions of this Ordinance.

6.2 Enforcement.

Violation of the provisions of this Ordinance shall be enforceable as set forth below:

6.2.1 Violation Notice - The Building Inspector shall have the authority to issue a Violation Notice for any violation of this Ordinance. A Violation Notice shall be delivered by certified mail, return receipt requested, to the owner of the sign. Whenever the owner of the sign cannot be located, this notice shall be delivered to the owner of record of the real property whereon the sign is located.

The Violation Notice shall identify the sign and shall describe the nature of the violation, refer to the Section of the Ordinance violated, and specify in detail what action must be taken to correct the violation.

6.2.2 Time to Remedy Violation - All violations shall be remedied within thirty (30) days. The 30-day period shall commence upon the service of the Violation Notice.

6.2.3 Extension of Time for Compliance - The Building Inspector shall have the authority to grant a single 30-day extension of time within which to remedy the violation. This single extension of time may be issued based upon a written request for an extension of time which sets forth valid reasons for not complying with the original 30-day time period.

6.2.4 Remedies for Failure to Comply - Pursuant to North Carolina General Statutes, Section 153A-123(f), the Building Inspector, in consultation with the County Attorney, may choose from the remedies set forth below to enforce the requirements of this Ordinance when there is a failure to comply with the Violation Notice. Those remedies are:

A. In addition to or in lieu of the other remedies set forth in this Section, the Building Inspector shall have the authority to issue a Remove Order for any sign or sign structure not corrected within the time allotted under the Violation Notice, or for a prohibited sign as established by this Ordinance. A Remove Order shall be delivered to the sign owner or to the owner of record of the real property whereon the sign is located in the same manner as set out for a Violation Notice, and shall not be effective until received. The recipient of the Remove Order shall be allowed thirty (30) days after the receipt of the Remove Order within which to remove the subject sign at his expense. The Remove Order shall identify the sign and the reasons for the issuance of the Remove Order and shall refer to the Section of the Ordinance violated.

B. In addition to or in lieu of the other remedies set forth in this Section, the Building Inspector may issue a citation setting forth a civil penalty of \$50.00 pursuant to the North Carolina General Statutes, Section 153A-123(c), to the owner of the sign in question or the owner of record of the real property whereon the sign is located whenever the owner of the sign cannot be located and notified of said citation. In the case of a continuing violation, each 24-hour period during which the violation continues to exist shall constitute a separate violation.

In the event the offender does not pay the penalty within ten (10) days of service of the citation, the civil penalty shall be collected by the County in a civil action in the nature of debt.

The violation of this Ordinance shall not constitute a misdemeanor, and in so providing, the Board of Commissioners hereby chooses to exercise the option provided by the North Carolina General Statutes, Section 153A-123(b).

C. In addition to or in lieu of the other remedies set forth in this Section, the County Attorney may seek injunctive relief in the appropriate court.

6.2.5 Removal of Dangerous Signs - The Building Inspector shall have the authority to issue an Unsafe Sign Notice should he find that a sign has become insecure or in danger of falling or otherwise unsafe. An Unsafe Sign Notice shall be delivered to the sign owner or to the owner of the real property whereon the sign is located in the same manner as set out for a Violation Notice, except that the recipient of the Notice shall forthwith in the case of immediate danger and in any case within ten (10) days of receipt, secure the sign in such a manner to be approved by the Building Inspector in conformance with the provisions of this Ordinance, or remove the sign.

If within ten (10) days the Notice is not complied with, the Building Inspector shall remove the sign at the expense of the recipient of the Notice.

6.3 Appeals.

Administrative decisions, Violation Notices, and Remove Orders issued by the Building Inspector may be appealed to the Polk County Board of Adjustment within thirty (30) days of receipt thereof. Pending appeal, the time limits set out in the Notice or Order shall be suspended. If the Polk County Board of Adjustment finds that the action of the Building Inspector has been taken for good cause and in accordance with the terms of this Ordinance, it shall so find and the time period for compliance shall run from the issuance of the Board's finding. If the Polk County Board of

Adjustment sustains the appeal of the petitioner, no further action will be taken by the Building Inspector.¹

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.²

6.4 Variances.

6.4.1 Where strict adherence to the provisions of the Ordinance would cause an unnecessary hardship, the Board of Adjustment may authorize a variance, if such variance can be made without destroying the intent of this Ordinance. Any variance thus authorized is required to be entered in writing in the minutes of the meeting of the Board of Adjustment and the reasoning on which the departure was justified set forth, upon a showing of all of the following:

Variances. - When unnecessary hardships would result from carrying out the strict letter of a regulation, the board of adjustment shall vary any of the provisions of the regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.²

6.4.2 Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.^{1, 2}

ARTICLE 7. LEGAL STATUS PROVISIONS

7.1 Conflict With Other Laws.

Wherever the regulations of this Ordinance impose more restrictive standards than are required in or under any other statutes, the requirements of this Ordinance shall govern. Whenever the provisions of any other statute require more restrictive standards than are required by this Ordinance, the provisions of such statute shall govern.

7.2 Separability.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any County of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

7.3 Effective Date.

This Ordinance shall take effect and be in force on and after the date of its adoption by the Polk County Board of Commissioners.

Adopted this 3rd day of May, 2021.

Polk County Board of Commissioners

Chair

ATTEST:

Clerk to the Board

County Attorney



Polk County Subdivision Ordinance

Adopted: November 21, 2011; Amended: April 7, 2014¹;
July 16, 2018²; October 7, 2019³; May 3, 2021⁴

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ARTICLE 1. PURPOSE AND APPLICABILITY

Article 1 – Purpose and Applicability

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ARTICLE 1. PURPOSE AND APPLICABILITY

SECTION 1.1 TITLE

This Ordinance shall be known and may be cited as the Subdivision Ordinance for Polk County, North Carolina, and may be referred to as the Subdivision Ordinance.

Section 1.2 Purpose

The purpose of this Ordinance is:

- (A) To establish standards and procedures for the subdivision and resubdivision of land within the territorial jurisdiction of Polk County.
- (B) To provide for the orderly and harmonious growth and development of the County.
- (C) For the coordination of streets and roads within proposed subdivisions with existing and planned streets and highways, and with other public facilities.
- (D) For the dedication or reservation of recreation or open space areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for streets and utilities.
- (E) For the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and general welfare.
- (F) To further facilitate adequate provisions of water, sewerage, parks and schools.
- (G) To facilitate the further resubdivision of larger tracts into smaller parcels of land.
- (H) To protect Polk County's natural assets/environment.
- (I) To preserve Polk County's rural atmosphere.

SECTION 1.3 COMPREHENSIVE PLAN

This Ordinance is based, in part, on the Comprehensive Plan and its goals and objectives. It should be noted that due to: severe topographic conditions, inadequate road access, distance from services, unique natural areas, soils that do not easily support soil drainage systems and/or the proximity to existing and incompatible land uses/zoning, all land may not be suitable to be subdivided for the purpose of dense development. The reviewing agency should take into consideration the goals and objectives of the Comprehensive Plan when reviewing subdivisions.

ARTICLE 1. PURPOSE AND APPLICABILITY

SECTION 1.4 JURISDICTION

This Ordinance, the regulations, and the procedures contained herein shall apply to and govern the creation of each and every lot, parcel or tract of land within the County of Polk, outside the jurisdiction of any incorporated municipality or an incorporated municipality's extraterritorial jurisdiction (ETJ).

SECTION 1.5 AUTHORITY, ADOPTION, AND EFFECTIVE

The Polk County Board of Commissioners hereby adopt this Ordinance pursuant to the authority and provisions conferred by the General Statutes of the State of North Carolina, Chapter 160D, Article 8.⁴

This Subdivision Ordinance shall take effect and be in force from and after its adoption by the Board of Commissioners of Polk County this 3rd day of May, 2021.

This Subdivision Ordinance is duly adopted by the Board of Commissioners of Polk County, North Carolina, this 3rd day of May, 2021.

Clerk

Chairman, Polk County Board of Commissioners

Approved as to Form: _____
County Attorney

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ARTICLE 2. LEGAL PROVISIONS

SECTION 2.1 GENERAL LEGAL PROVISIONS FOR SUBDIVISION PLAT APPROVAL

- (A) After the effective date of this Ordinance, no plat of a subdivision of land within Polk County's jurisdiction shall be filed or recorded until it has been submitted to and approved by Polk County and until this approval is entered in writing on the face of the plat by the Chairman of the Planning Board or the Administrator.
- (B) The Register of Deeds shall not file or record a plat of a subdivision of land located within the planning jurisdiction of the County that has not been approved in accordance with these provisions, nor shall the Clerk of Court order or direct the recording of a plat if the recording would be in conflict with this Ordinance.

SECTION 2.2 EXISTING AND FUTURE ORDINANCES

All proposed subdivisions of land must comply in all respects with the requirements of all Polk County, state, and federal regulations and requirements.

SECTION 2.3 PENALTIES FOR VIOLATION

- (A) It shall be a violation of this Ordinance, for any person who being the owner or the agent of the owner of any land located within the territorial jurisdiction of this Ordinance, to subdivide his land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this Ordinance and recorded in the Office of the Polk County Register of Deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The County, through its attorney or other official designated by the Polk County Board of Commissioners, may enjoin illegal subdivision, transfer or sale of land by action for injunction. Violators of this Ordinance shall not be guilty of a Class III misdemeanor nor subject to fine and/or imprisonment as provided by NCGS 14-4.
- (B) The violation of any provision of this Ordinance shall subject the offender to a civil penalty in the amount of 100 dollars to be recovered by the County. Violators shall be issued a written citation which must be paid within 10 days. Each day's continuing violation of this Ordinance shall be a separate and distinct offense.
- (C) This Ordinance may be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.
- (D) Nothing in this section shall be construed to limit the use of remedies available to the County. The County may seek to enforce this Ordinance by using any one, all, or a combination of remedies.
- (E) For the purpose of this Ordinance, a Deed of Trust shall not be considered a transfer or conveyance of real property.

ARTICLE 2. LEGAL PROVISIONS

SECTION 2.4 SUBDIVISION VARIANCES⁴

- (A) The Board of Adjustment may authorize a variance from these regulations when unnecessary hardships would result from carrying out the strict letter of the subdivision ordinance regulations. The Board shall hear and decide all variance requests in accordance with Article X, of the Polk County Zoning Ordinance.
- (B) In granting any variance, the Board of Adjustment shall hold an evidentiary hearing. The Board of Adjustment shall take into account the nature of the proposed subdivision, the existing use of land in the vicinity, the existing environmental conditions, the number of persons to reside or work in the proposed subdivision, and the probable effect of the proposed subdivision upon traffic conditions in the vicinity.
- (C) No variances shall be granted unless the Board of Adjustment finds a showing of all of the following:
- (1) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
 - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.
- Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. The concurring vote of four-fifths of the Board shall be necessary to grant a variance. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- (D) Any variance authorized by this ordinance is required to be entered in writing in the minutes of the meeting of the Planning Board and recorded on the final plat in the Office of the Register of Deeds of Polk County.

ARTICLE 2. LEGAL PROVISIONS

- (E) Board of Adjustment decisions pertaining to variances shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within 30 days after the decision is made and in writing.

SECTION 2.5 APPEALS⁴

Appeals from decisions of the Administrator or the Planning Board making an Administrative decision shall be taken to the Board of Adjustment. The Board of Adjustment shall hear and decide appeals in accordance with Article X, of the Polk County Zoning Ordinance.

Appeals from quasi-judicial decisions shall be subject to review by the superior court by proceedings in the nature of certiorari. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-4-3(b) by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

SECTION 2.6 AMENDMENTS

- (A) *Authority.* This ordinance may be amended by the Board of Commissioners by approval, in the usual form, of an ordinance specifying the changes to be made.
- (B) *Planning Board and Administration Review; Recommendation.*
- (1) All proposed amendments to this Ordinance, except those initiated by the Planning Board, shall be submitted to the Planning Board for its recommendations as to approval, approval with specified alterations, or denial.⁴
- (C) *Legislative Hearing and Notice.*⁴ No proposed amendment to this Ordinance shall be acted upon by the Board of Commissioners until after a public hearing thereon. A notice of the public hearing shall be published once a week for two successive calendar weeks in a newspaper having general circulation in the county. The notice shall be published the first time not less than ten days nor more than 25 days before the date set for the hearing. In computing such period, the day of publication is not included, but the day of the hearing shall be included.
- (D) *Limitation on Resubmittal.* Except when initiated by the Board of Commissioners or the Planning Board, no proposed amendment to this Ordinance failing of approval shall be considered in substantially the same form within one year of the date of failure to win approval.

ARTICLE 2. LEGAL PROVISIONS

SECTION 2.7 VALIDITY

Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 2.8 ABROGATION

This Ordinance shall neither repeal, abrogate, annul, impair or interfere with any existing subdivisions, the plats of which are properly recorded in the Office of Register of Deeds prior to the effective date of this Ordinance nor with the existing easements, covenants, deed restrictions, agreements or permits previously adopted or issued pursuant to law prior to the effective date of this Ordinance.

SECTION 2.9 ADMINISTRATION

The County Manager or his designee is hereby appointed to serve as the Administrator until such time the County Commissioners create a separate position of Administrator.

SECTION 2.10 PLAT APPROVAL REQUIRED FOR BUILDING PERMIT

No building permit may be issued for any construction on any proposed lot shown on a development plan until a final plat has been approved and recorded, except that a building permit may be issued for one (1) structure on one (1) lot shown on any approved development plan prior to recordation of a final plat. The Building Inspector shall deny building permits for subdivision lots created in violation of the terms and conditions of this Ordinance. Denial of a building permit based on a subdivision violation may be appealed to the Board of Adjustment for interpretation of the subdivision ordinance violation.⁴

SECTION 2.11 PLAT REQUIRED FOR LAND SUBDIVISION

All subdivision of parcels requires recordation of a plat. Parcels may not be subdivided by deed alone.

SECTION 2.12 CONFLICT WITH OTHER LAWS

In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the health, safety, morals or general welfare of Polk County. Where the provisions of any other statute or local ordinance are in conflict, the more restrictive or that imposing the higher standards shall govern.

SECTION 2.13 COMPUTATION OF TIME

Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that

ARTICLE 2. LEGAL PROVISIONS

day shall be excluded. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded.

SECTION 2.14 FEES

- (A) Reasonable fees sufficient to cover the cost of administration, inspection, publication of notice and similar matters may be charged to applicants for all permits issued under this ordinance. The amount of fees charged shall be set forth in the County's fee schedule as established by the Board of Commissioners and filed in the office of the Clerk to the Board.
- (B) All fees shall be paid upon submission of any signed application required by this Ordinance.

SECTION 2.15 PROPERTY OWNERS' ASSOCIATIONS

- (A) No preliminary plat for a subdivision for which a property owners' association will exist shall be approved until all required legal instruments have been reviewed by the County as to legal form and effect and approved by the County.
- (B) Property owners' associations or similar legal entities that are responsible for the maintenance and control of open space areas and common areas, including roads and infrastructure/drainage easements, shall be established by the developer who shall record in the Register of Deeds a declaration of covenants and restrictions that will govern the association or similar legal entity. All such agreements shall comply with applicable North Carolina state statutes. A copy of the recorded document shall be provided to the Administrator and such document shall include, but not be limited to, the following:
 - (1) Provision for the establishment of the association or similar entity is required before any lot in the development is sold or any building occupied and membership shall be mandatory for each homeowner and any successive buyer.
 - (2) The association or similar legal entity has clear legal authority to maintain and exercise control over such common open space areas.
 - (3) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas. Further, assessments levied can become a lien on the property if allowed in the master deed establishing the property owners' association or similar legal entity.
 - (4) The open space restrictions must be permanent, not just for a period of years.
 - (5) The association or similar legal entity must be responsible for liability insurance, applicable taxes, and the maintenance of open space, recreational facilities, private streets, infrastructure, and other facilities under its control.

ARTICLE 2. LEGAL PROVISIONS

- (6) The association or similar legal entity must be able to adjust the assessment to meet changing needs.
 - (7) Covenants for maintenance assessments shall run with the land.
 - (8) Provision insuring that control of such association will gradually be vested in the property owners' association.
 - (9) All lands so conveyed shall be subject to the obligation of the grantee or grantees to enforce maintenance and improvement of all common facilities.
- (C) The association shall be responsible for maintaining all public storm water drainage systems, private streets, easements, infrastructure and open space not being maintained by the County, State or other approved entity. The cost of such maintenance shall be an obligation of the association.
- (D) The developer shall place in a conspicuous manner upon the final plat of the subdivision prior to final plat approval a notation concerning control of all common areas owned/controlled by the association.
- (E) In the case of common ownership by a property owners' association, the restrictive covenants shall provide that, in the event the property owners' association fails to maintain the areas in common ownership according to the standards of this Ordinance, the County may, following reasonable notice, demand that deficiency of maintenance be corrected, or enter the open space to maintain it. The cost of such maintenance shall be charged to the property owners' association.
- (F) It shall be expressly stated within the restrictive covenants/property owners' association documents that it will be the responsibility of the developer or successors or assigns to enforce such covenants or restrictions until such time as control has been transferred to the Property Owners' Association Board of Directors. It shall be the sole responsibility of the developer, successor or assigns to correct any deficiencies prior to transfer of control over to the Property Owners' Association Board of Directors.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

Article 3. Subdivision Types & Review Procedures

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ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

REFERENCE TABLE

Approval Needed - Section:	2 lot	Family	Minor	Major Administrative	Major Quasi-judicial
3.2 - Technical Review Panel				x*	x*
3.5 - Pre-application meeting	(x)	(x)	x	x	x
3.6 - Two-Lot, Expedited Review for Three Lots ² , & Family Subdivisions	x	x			
3.7 - Minor Subdivisions			x		
3.8- Major Subdivisions				x	x
3.9 - Performance Guarantees				x*	x*
3.10- Presale of lots				x*	x*
4.2 - Sketch Plan for preapplication meeting	(x)	(x)	x	x	x
4.4 - Preliminary Plats			x	x	x
4.5 - Final Plats	x	x	x	x	x
4.6 - Information required on plats	x*	x*	x*	x*	x*
4.7 - Certifications and Other Documentation	x*	x*	x*	x*	x*
4.7.1 - Prelim Plats			x	x	x
4.7.2 - Final Plats	x	x	x	x	x
5.3 (B) - Environmental Impact Checklist				x	x
5.3 (C) - Environmental Impact Statement					x*
5.4 - Traffic Impact Analysis					x*
5.5 - Water & Sewer Requirements				x*	x*
5.6 - Lots	x	x	x	x	x
5.7 - Cluster			x*	x*	x*
5.8 - Open Space			x*	x*	x*
5.9 - Easements	x	x	x	x	x
5.10 - General Road Design	x*	x*	x	x	x
5.11 - Public Road Design			x*	x*	x*
5.12 - Private Roads	x	x	x	x	x
5.13 - Private Water & Sewer	x	x	x	x	x
5.14 - Stormwater Drainage Facilities				x*	x*
5.15 - Dam Safety			x*	x*	x*
5.16 - Flood Hazard Areas	x	x	x	x	x
5.17 - Fire Protection				x*	x*
5.18 Erosion & Sedimentation Control	x*	x*	x*	x*	x*
5.19 - Stream Bank Erosion	x*	x*	x*	x*	x*
5.20 - Clear Cutting	x*	x*	x*	x*	x*
5.21 - Steep Slope	x*	x*	x*	x*	x*
5.22 - Surveying	x	x	x	x	x

x* - if applicable (x) - recommended

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

SECTION 3.1 PURPOSE AND APPLICABILITY

The purpose of this Article is to establish an orderly subdivision process for Polk County. It is also the intent of this Article to provide a clear and comprehensive approval process that is fair and equitable to all interests including the petitioners, affected neighbors, County staff, related agencies, the Planning Board, and the Board of Commissioners. Approved plans shall be the guiding documents for final approval and permitting.

SECTION 3.2 TECHNICAL REVIEW PANEL

- (A) *Purpose.* The purpose of the Technical Review Panel (TRP) is to facilitate communication and coordination of administrative review and comment between departments and additional technical resources as requested by the Administrator.
- (B) *Powers and Duties.* At the discretion of the Administrator, the TRP shall review applications for major subdivision preliminary plats and amendments including major cluster subdivisions. The Administrator shall provide TRP recommendations to the Planning Board.
- (C) *Composition:*
 - (1) The members constituting the TRP, in any case where the Administrator exercises discretion under Section 3.2(B) to require TRP review, shall be selected by the Administrator, at the Administrator's discretion. Such members may be selected by the Administrator from:

County Departments:

Administrator (Planning Department)

County Manager

Building and Fire Inspections

Sheriff's Department

Health Department

Social Services Department

Polk County Agricultural Economic Development Director

Consulting Engineer (as designated by the County Manager)

Other County representatives appointed by the County Manager

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

Others, at the discretion of the Administrator, may include:

County Attorney

Professionally Recognized Technical Experts

Utilities Providers

Polk County Board of Education

Isothermal Planning & Development Commission

NC Department of Transportation (NCDOT)

NC Department of Environmental Quality (NCDEQ) ²

NC Division of Water Quality

NC Wildlife Resources Commission

US Army Corps of Engineers

US Department of Agriculture

Any Other Agencies or Officials Designated by the Administrator and/or the Planning Board

- (2) The Administrator shall coordinate the TRP review process, document the process, and may request the participation of professional experts or a representative from an adjacent municipality, county, regional or state agency if the Administrator determines that such entities can provide expertise concerning the proposed development.
- (3) Determinations regarding new street names or changes in street names must be reviewed by the Polk County 911 Administrator.

(D) *Administrative Procedures.*

- (1) Meetings of the TRP participants may be scheduled and held when necessary.
- (2) The applicant and representatives may be invited by the Administrator to participate in the review process.
- (3) Individual reviews may occur by TRP members and comments individually submitted to the Administrator.
- (4) The Administrator shall provide TRP recommendations in writing to the applicant and appropriate body.

SECTION 3.3 SUBDIVISION TYPES

The following subdivision types, each of which is defined in Article 6 of this Ordinance, shall be administered in accordance with the provisions specified herein: two-lot subdivisions, expedited review for three lots², family subdivisions, minor subdivisions, major subdivisions, and cluster development subdivisions. In addition, any other subdivision of land which does not fall within a category designated above shall be subject to review by the Planning Board pursuant to procedures reasonably necessary to ensure compliance with this Ordinance.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

SECTION 3.4 RECOMBINATIONS AND SUBDIVISION EXEMPTION PLATS

For plats implementing the recombination of previously subdivided land or for plats that do not meet the definition of a subdivision as set forth in Article 6, the following shall apply:

- (A) *Review Process.* The Administrator shall confirm that the plat does not meet the definition of a subdivision, and that minimum zoning lot sizes are met, if applicable.
- (B) *Recombination and Exemption Plat Special Requirements.*
 - (1) Prior to recording a plat for recombination, the applicant shall provide evidence to the Administrator that the recombination of all or portions of parcels of previously subdivided and recorded lands which have been recombined is in such a fashion where the resultant number of parcels is less than or equal to the original number of parcels and meets the requirements of this Ordinance, where applicable.
 - (2) Any plat or any part of a plat may be vacated by the owner at any time before the sale of any lot in the subdivision by a written instrument to which a copy of such plat shall be attached, declaring the same to be vacated. Such an instrument shall be approved by the map review officer.⁴

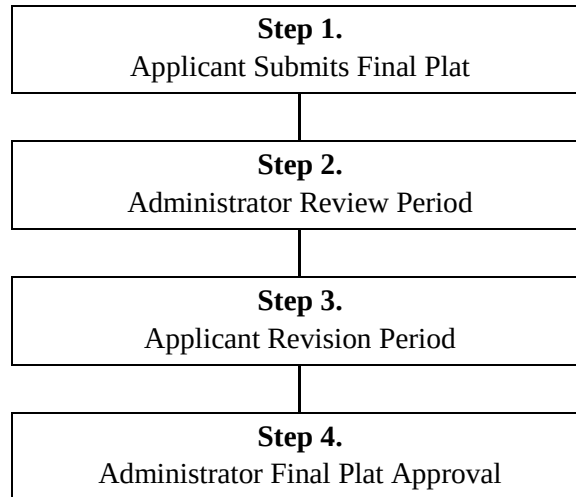
SECTION 3.5 PRE-APPLICATION MEETING

- (A) *Two Lot, Expedited Review for Three Lots², and Family Subdivisions.* It is recommended that the subdivider meet with the Polk County Administrator in a pre-application conference to informally discuss this ordinance and the subdivision of land in Polk County. It is recommended that a sketch plan of the proposed plat be provided to the Administrator for preliminary review.
- (B) *Minor, Major and Cluster Subdivisions.* The subdivider is required to meet with the Polk County Administrator in a pre-application conference to informally discuss this ordinance and the Minor or Major Subdivision of land in Polk County. A sketch plan for minor and major subdivisions and an environmental checklist for major subdivisions shall be provided to the Administrator for review. Requirements for the sketch plan are in Section 4.2. The environmental checklist regulations are in Section 5.3(B). The Administrator will determine if a traffic impact analysis will be required as specified in Section 5.4.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

SECTION 3.6 TWO-LOT, EXPEDITED REVIEW FOR THREE LOTS², AND FAMILY SUBDIVISIONS

- (A) *Two-Lot, Expedited Review for Three Lots², and Family Subdivision Review Process.* This is an administrative process. A subdivider may apply to the Administrator, for a final plat review process for Two Lot, Expedited Review for Three Lots², and Family Subdivisions. The steps in the boxes below correspond with a detailed description of each step of the process on the following pages.



Step 1. Applicant Submits Final Plat.

- (1) The applicant shall submit a final plat in accordance with the requirements set forth in Section 4.5.⁴
- (2) The Administrator may request reports from the Polk County Health and Human Services Agency³, the Polk County Soil and Water Conservation District, and other local, state, or federal officials, agencies, or consultants as deemed necessary.

Step 2. Administrator Review Period.

- (1) The Administrator shall review the plat in accordance with the requirements of this Ordinance and any other applicable ordinance. This review shall take not more than 15 working days. After conducting an application completeness review, the Administrator will notify the applicant of any deficiencies. The receipt of a revised application will restart the 15 day review period.
- (2) The Administrator may have any other applicable local, state, and federal officials, agencies, or consultants review the plat. The 15 working day limit may be extended up to 45 days if these agencies have been consulted and the Administrator is awaiting a reply.
- (3) Failure of the Administrator to act, in writing, on the preliminary plat within the specified response time shall be deemed as a basis for appealing to the Polk County Board of Adjustment.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

Step 3. Applicant Revision Period. The applicant shall revise the plat in accordance with the Administrator's review. All necessary revisions shall be made prior to approval by the Administrator. If no revisions are necessary, the final plat may be approved (see Step 4).

Step 4. Administrator Final Plat Approval. Following successful revision of the Final Plat by the applicant (if necessary), the Administrator shall approve the Final Plat by obtaining the applicable signatures as required by Section 4.7.2.

(B) *Family Subdivision Special Requirements.*

- (1) The subdivider shall submit with his application for a Family Subdivision written evidence that the subdivision is a division of land by a property owner among his immediate family, to wit: spouse, children, or their lineal descendants or ascendants, or the lineal descendants or ascendants of said property owner as a gift, or as a settlement of the property owners estate.
- (2) The family subdivision shall provide that each lot or parcel of land shall have direct access from an existing recorded right-of-way or shall have a recorded access easement from a public road. If a grantor has a recorded access easement, it must transfer along with the property.

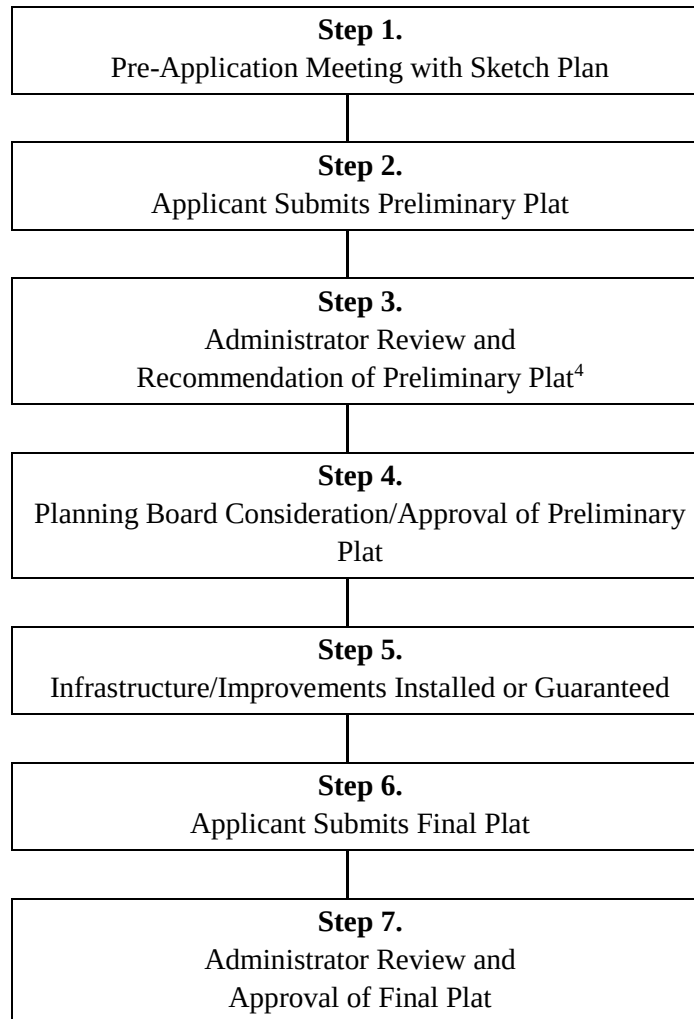
(C) *Expedited Review for Three Lots^{2, 4}*

- (1) The Applicant shall submit an application with a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:
 - a. The tract or parcel to be divided is not already exempt according to the Subdivision definition
 - b. No part of the tract or parcel to be divided has been divided in the 10 years prior to the division
 - c. The entire area of the tract or parcel to be divided is greater than five acres
 - d. After division, no more than three lots result from the division
 - e. After division, all resultant lots comply with all of the following:
 - i. Any lot dimension size requirements of the applicable land-use regulations, if any
 - ii. The use of the lots is in conformity with the applicable zoning requirement, if any
 - iii. A permanent means of ingress and egress is recorded for each lot.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

SECTION 3.7 MINOR SUBDIVISIONS

Minor Subdivision Review and Approval Process. This is an administrative process. The steps in the boxes below correspond with a detailed description of each step of the process on the following pages.



Step 1. Pre-Application Meeting with Sketch Plan. The applicant shall schedule a pre-application meeting with the Administrator. The applicant shall bring a Sketch Plan of the proposed development to the meeting that meets the requirements set forth in Section 4.2.

Step 2. Applicant Submits Preliminary Plat. The applicant shall submit an application, fee, Preliminary Plat that meets the requirements of Section 4.4, and other required materials.

Step 3. Administrator Review & Recommendation of Preliminary Plat.

(A) The Administrator shall review the plat in accordance with the requirements of this Ordinance and any other applicable ordinances. This review shall take not more than 15 working days. The

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

Administrator will conduct an application completeness review and notify the applicant of any deficiencies. The receipt of a revised application will restart the 15 day review period.

- (B) The Administrator may have any other applicable local, state, federal officials, agencies, or technical experts as specified in Section 3.2(C) (1). The 15 working day limit may be extended to a total of 45 days if these agencies have been consulted and the Administrator is awaiting a reply.
- (C) The Administrator shall make a written recommendation to the Planning Board regarding the preliminary plat to either (1) approve it, (2) approve it with modifications, or (3) deny it.
- (D) The Administrator shall notify the applicant of their recommendations and allow the applicant to resubmit the application, if modifications are required. If resubmittal is desired by the applicant, the revised application will be submitted for Step 3.

Step 4. Planning Board Consideration of Preliminary Plat.⁴

- (A) Following completion of Preliminary Plat review, the Administrator shall place the item on the agenda 15 days prior to the next regularly scheduled Planning Board meeting.⁴
- (B) The Planning Board shall review the plat in accordance with the requirements of this Ordinance, if applicable.
- (C) The Planning Board shall have 60 days within which to approve, approve with modifications, or deny the Preliminary Plat.
- (D) The Administrator shall notify the applicant, in writing, of the Planning Board's action.
- (E) Once notification of preliminary plat has been provided by the Administrator in writing, work may commence on roads and infrastructure.

Step 5. Infrastructure/Improvements Installed or Guaranteed. If public improvements are required, said improvements shall be installed and approved by the appropriate state or local agencies, or guarantees for their installation shall be secured before final plat approval in accordance with Section 3.9.

Step 6. Applicant Submits Final Plat. The applicant shall submit a Final Plat that meets the requirements of Section 4.5. This submittal shall include copies of any required NCDEQ² or NCDOT permit approvals.

Step 7. Administrator Review & Approval of Final Plat.

- (A) The Final Plat shall be submitted not more than one year after the date on which the Preliminary Plat was approved; otherwise, such Preliminary Plat approval shall be null and void unless a written extension of this limit is granted by the Planning Board on or before the one (1) year anniversary of the approval.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

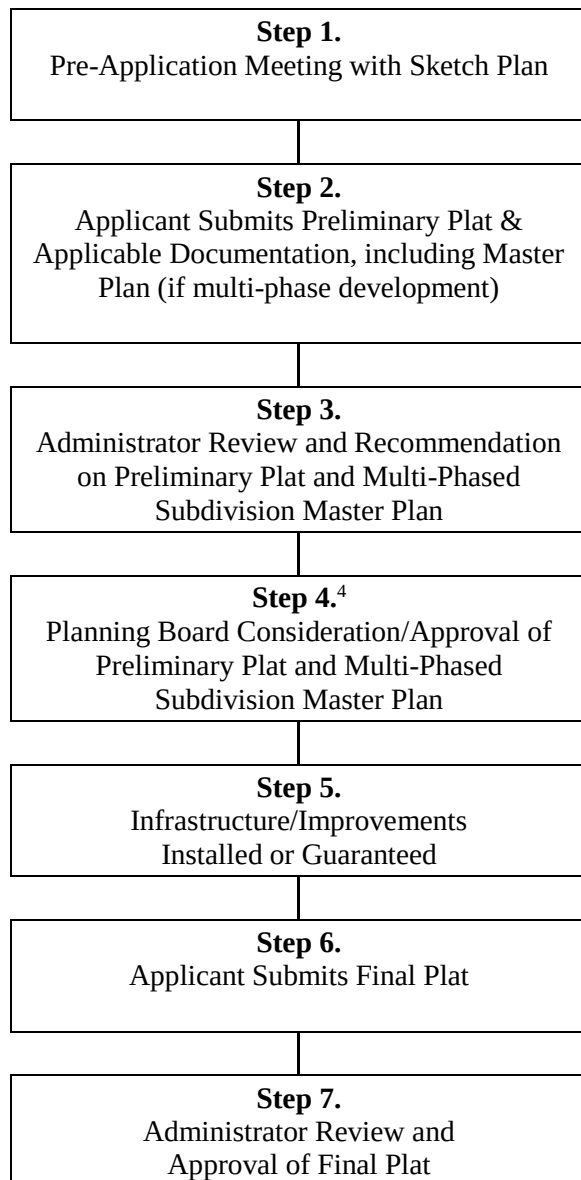
- (B) The Administrator shall review the plat in accordance with the requirements of this Ordinance and any other applicable ordinances. If the final plat conforms to the approved preliminary plat, all preliminary conditions of approval, and all other applicable requirements, the Administrator shall administratively approve the final plat within 15 working days from receipt of a complete final subdivision submittal. All required improvements shall be complete or a performance guarantee package shall be submitted in accordance with Section 3.9 and subsequently approved by the Planning Board.
- (C) The final plat must be recorded within fourteen (14) days and a copy of the recorded plat submitted to the Administrator.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

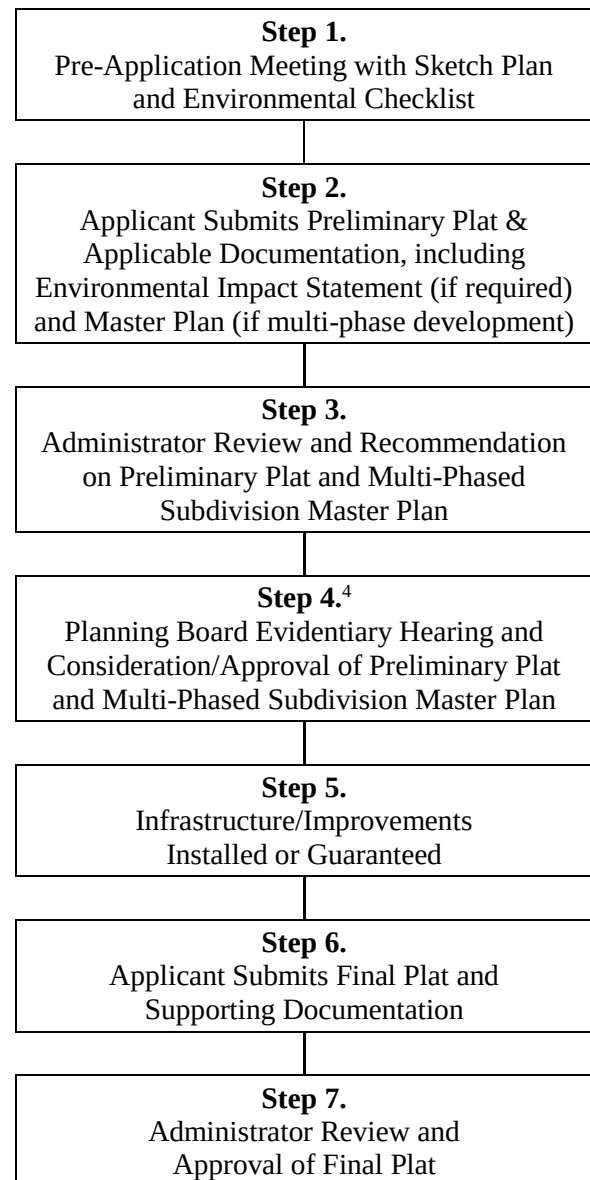
SECTION 3.8 MAJOR SUBDIVISIONS

Review and Approval Process for Single Phase and Multi-Phase Major Subdivisions. The Administrative and Quasi-Judicial Processes as specified in the boxes below correspond with a detailed description of each step of the process on the following pages. Major subdivisions that do not require a traffic impact analysis or the preparation of an environmental impact statement will be reviewed and approved through an Administrative Process. Major subdivisions that require a traffic impact analysis or the preparation of an environmental impact statement will be reviewed and approved through a Quasi-Judicial Process.

Administrative Process



Quasi-Judicial Process



Step 1. Pre-Application Meeting with Sketch Plan. The applicant shall schedule a required pre-application meeting with the Administrator. The applicant shall provide a Sketch Plan of the proposed

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

development that meets the requirements set forth in Section 4.2, and an environmental checklist as specified in Section 5.3(B). Multi-phase developments must include a Master Plan showing individual phases in accordance with Section 4.3.

Step 2. Applicant Submits Preliminary Plat & Applicable Documentation, including Environmental Impact Statement (if required) and Master Plan (if multi-phase development).

- (A) The applicant shall submit a Preliminary Plat in accordance with the requirements set forth in Section 4.4.
- (B) The applicant shall also submit with the plat an application, fee, and any other required documentation as set forth in Section 4.6.
- (C) For multi-phase development, Master Plan phase lines shall be shown on the Preliminary Plat.
- (D) For multi-phase development, when a subdivider proposes to construct new roads without initially subdividing lots, the subdivider may present a Preliminary Plat to the Planning Board for approval of the roads only. This option is provided to allow developers the flexibility of designing and platting lots after road construction in order to adjust the subdivision to the existing terrain. A second preliminary plat providing lot subdivision must be submitted for administrative approval by the Planning Board.
- (E) Preliminary plats for the phases shall be submitted not more than two (2) years after the date on which the Master Plan was approved, otherwise, such approval shall be null and void unless extended vested rights have been granted in accordance with NCGS 160D.108 or a development agreement has been approved in accordance with NCGS160D.1001-12.⁴
- (F) Approval of a Master Plan need not be renewed unless an increase in the number of lots, or overall density or a change in the connectivity to adjacent parcels or roads is proposed.

Step 3. Administrator Review and Recommendation on Preliminary Plat and Multi-Phased Subdivision Master Plan (if required).

- (A) The Administrator shall review the plat and multi-phased subdivision master plan in accordance with the requirements of this Ordinance and any other applicable ordinances. This review shall take not more than 15 working days. The Administrator will conduct an application completeness review and notify the applicant of any deficiencies. The receipt of a revised application will restart the 15 day review period.
- (B) The Administrator may have the TRP review the plat and multi-phased subdivision master plan. The 15 working day limit may be extended to a total of 45 days if these agencies have been consulted and the Administrator is awaiting a reply.
- (C) The Administrator shall make recommendations in writing to the Planning Board to approve, approve with modifications, or deny the Preliminary Plat and Multi-Phased Subdivision Master

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Plan (if required). If the quasi-judicial approval process applies, the recommendations shall be presented to the Planning Board as evidence at the evidentiary hearing by the Administrator. If the administrative approval process applies, the preliminary plat shall be presented to the Planning Board as specified in Section 3.7, Step 4.⁴

Step 4. Planning Board Quasi-Judicial Approval Process (if required).

- (A) Major subdivision preliminary plat approvals are quasi-judicial decisions approved by a simple majority vote of the Planning Board.
- (B) Once a recommendation of the Administrator on the preliminary plat, environmental impact statement, and master plan (if required) has been prepared, or the 45-day period elapses without a recommendation, the Planning Board shall hold an evidentiary hearing to consider action of the preliminary plat at its next regularly scheduled meeting. A quorum of the Planning Board is required for this hearing. In addition, notice shall be given to other potentially interested persons by publishing a notice once a week for two successive calendar weeks in a newspaper having general circulation in the area. The first notice shall be not less than ten (10) or more than twenty-five (25) days prior to the hearing. All owners of the proposed subdivision parcel(s) and all owners of parcels of land abutting the proposed subdivision parcel(s) as shown on the Polk County tax listing shall be mailed a notice of the public hearing by first class mail at the last address listed for such owners on the Polk County tax abstracts.⁴
- (C) In approving a preliminary plat, the Planning Board may attach fair and reasonable conditions to the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Planning Board. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular subdivision.
- (D) The applicant has the burden of producing competent, material and substantial evidence to establish the facts and conditions relating to preliminary subdivision plat approval including, but not limited to, an environmental impact statement, if required.
- (E) The Planning Board shall approve the preliminary plat if it has evaluated the application for approval through a quasi-judicial process and determined that the applicant has demonstrated the following:
 - (1) The proposed subdivision complies with all applicable standards and regulations of the ordinance and with all other applicable federal, state and county regulations.
 - (2) The proposed subdivision is in harmony with the County's currently adopted Comprehensive Plan as well as other plans adopted by the Board of Commissioners.
 - (3) Adequate facilities exist or will be provided prior to the time they are needed. For the purposes of this section, adequate facilities constitute those necessary for the functionality

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

of the subdivision in compliance with this Ordinance and include, without limitation, roads, utilities, stormwater management, and waste and wastewater treatment facilities.

- (4) The proposed subdivision shall not result in significant negative environmental impacts, whether direct, secondary, or cumulative. When making this determination, the Board shall give due consideration to any appropriate effective mitigating action(s) proposed or agreed to by the applicant.
- (5) The road system in the subdivision will connect to segments of the public road system with adequate capacity to handle the projected traffic flow, both on an average basis and at peak hours. Furthermore, the subdivision shall be so located and designed as to provide direct access to the subdivision without creating substantial additional traffic in residential neighborhoods outside the subdivision.
- (6) From a hydrological perspective, the proposed subdivision is not expected to interfere with any presently existing legal use of water nor is it expected to impact the long-term sustainable supply of groundwater. Any discharges of wastewater to surface waters or to the ground shall meet the pretreatment requirements of the state, as well as any requirements of a municipality if the discharge is going to a municipal treatment facility.

In making these determinations, the Planning Board may take into consideration any fair and reasonable conditions imposed pursuant to Step 4(C), above.

- (F) The Planning Board shall have up to 60 days to approve, approve with modifications, or deny the Preliminary Plat.
- (G) The Administrator shall notify the applicant, in writing, of the Planning Board's action. Once Preliminary Plat has been approved, work may commence on roads and infrastructure.
- (H) *Evidence/Presentation of Evidence at Evidentiary Hearing.* The provisions of this section apply to all evidentiary hearings.⁴
 - (1) All persons who intend to present evidence to the Planning Board shall be sworn in by the Chairman at the beginning of the hearing.
 - (2) All findings and conclusions necessary to the issuance or denial of the requested preliminary plat shall be based upon competent evidence (evidence admissible in a court of law).
 - (3) The Planning Board Chair has the authority to limit testimony that is irrelevant.
 - (4) The entirety of an evidentiary hearing and deliberation shall be conducted in open session.

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- (5) Parties to an evidentiary hearing have a right to cross-examine anyone presenting evidence.
- (6) Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.
- (7) If a Planning Board member has prior or specialized knowledge about a case, that knowledge shall be disclosed to the rest of the Board and parties present at the beginning of the hearing.
- (8) Members of appointed boards shall not vote on any administrative, advisory or legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Quasi-Judicial Decisions. - A member of any board exercising quasi-judicial functions shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

- (9) The Planning Board, in conducting the hearing, has the authority to issue subpoenas to compel testimony or the production of evidence deemed necessary to determine the matter.
- (I) *Modification of Application at Hearing.*
- (1) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Planning Board, the applicant may agree to modify the request for preliminary plat approval, including the plans and specifications submitted.
 - (2) Unless such modifications are so substantial or extensive that the Planning Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without a revised preliminary plat, the Planning Board may approve the preliminary plat with the stipulation that the plat will not be approved until plans reflecting agreed upon changes are submitted to the Administrator within 45 days.

Step 5. Infrastructure/Improvements Installed or Guaranteed. Prior to approval of the final plat, the subdivider shall have installed the improvements specified in this Ordinance or guaranteed their installation as provided in Section 3.9.

Step 6. Applicant Submits Final Plat. The applicant shall submit a Final Plat that meets the requirements of Section 4.5.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

Step 7. Administrator Review and Approval of Final Plat.

- (A) The Final Plat shall be submitted not more than two (2) years after the date on which the Preliminary Plat was approved through either the administrative or quasi-judicial approval process, otherwise, such approval shall be null and void unless a written extension of this limit (not to exceed six months) is granted by the Planning Board on or before the two (2) year anniversary of the approval. Final plat approval may occur in stages, not exceeding four (4) final plat recordings per each subdivision phase.
- (B) The Administrator shall review the Final Plat for compliance with the approved Preliminary Plat and Master Plan (if applicable), verify that all required infrastructure improvements have been completed or guaranteed in accordance with Section 3.9, and ensure that the Final Plat meets the requirements of Section 4.5.
- (C) The final plat must be recorded within fourteen (14) days and a copy of the recorded plat submitted to the Administrator.

SECTION 3.9 PERFORMANCE GUARANTEES

In lieu of requiring the completion, installation and dedication of all improvements prior to final plat approval, Polk County may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements as specified by the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a mutually agreed upon specified time period not to exceed one (1) year. Once agreed upon by both parties and the security required herein is provided, the final plat may be approved by the Polk County Planning Board, if all other requirements of this Ordinance are met. The Planning Board shall require a certified cost estimate from a licensed contractor or engineer for the cost of completion of such improvements.

- (A) The subdivider shall provide one of the following Performance Guarantees, elected at the subdivider's discretion, in lieu of installation:
 - (1) *Surety Performance Bond(s)*. The subdivider shall obtain a performance bond(s) from a surety bonding company authorized to do business in North Carolina. The bond(s) shall be payable to Polk County, and shall be in an amount not to exceed 1 ¼ times the entire cost, as estimated by the subdivider in conjunction with the Planning Board, and approved by the Planning Board for installing all required improvements. The duration of the bond(s) shall be until such time as the improvements are completed and accepted as such by Polk County.
 - (2) *Cash or Equivalent Security*. The subdivider shall deposit cash, an irrevocable letter of credit, or other instrument readily convertible into cash at face value, either with the County or in a non-interest bearing escrow account with a financial institution designated as an official depository of the County. The use of any instrument other than cash shall be subject to the approval of the Planning Board. The amount of deposit shall not exceed 1 ¼ times

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the cost, as estimated by the subdivider in conjunction with the Planning Board for installing all required improvements. If cash or other instrument is deposited in escrow with a financial institution as provided above, then the subdivider shall file with the Planning Board an agreement between the financial institution and himself guaranteeing the following:

That said escrow account shall be held in trust until released by the Planning Board and may not be used or pledged by the subdivider in any other matter during the term of the escrow; and

That in the case of a failure on the part of the subdivider to complete said improvements, the financial institution shall, upon notification by the Planning Board and submission by the Planning Board to the financial institution of an engineer's estimate of the amount needed to complete the improvements, immediately either pay to Polk County the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the county any other instruments fully endorsed or otherwise made payable to the County.

- (B) Upon default, meaning failure on the part of the subdivider to complete the required improvements in a timely manner as spelled out in the performance bond or escrow agreement, then the surety, or the financial institution holding the escrow account shall, if requested by the County, pay all or any portion of the bond or escrow fund to Polk County up to the amount needed to complete the improvements based on an engineering estimate. Upon payment, the Polk County Board of Commissioners, in its discretion, may expend such portion of said funds as it deems necessary to complete all or any portion of the required improvements. The County shall return to the subdivider any funds not spent in completing the improvements.
- (C) The Planning Board may release a portion of any security posted as the improvements are completed and recommended for approval by the Administrator. Within thirty (30) days after receiving the Administrator's recommendation, the Planning Board shall approve or not approve said improvements. If the Planning Board approves said improvements, then it shall immediately release any security posted.

SECTION 3.10 PRESALE OF LOTS

Pre-sale and pre-lease contracts are allowed only after a preliminary plat has been approved. The closing and final conveyance of lots subject to pre-sale and pre-lease contracts may not occur until after the final plat is approved and recorded. The buyer must:

- (A) Be provided a copy of the preliminary plat at the time the contract is executed;
- (B) Be notified that no final plat has been approved;

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- (C) Be advised that there is no guarantee that changes will not be made to the plat before final approval;
- (D) Be provided a copy of the final plat before final approval by the county; and
- (E) Be informed that the contract or lease may be terminated by the buyer/leasee if the final plat differs in any material way from the preliminary plat.

ARTICLE 3. SUBDIVISION TYPES & REVIEW PROCEDURES

SECTION 3.11 AGGREGATION

Two or more subdivisions shall be aggregated and treated as a single subdivision under this ordinance when (1) they are determined to be part of a unified plan of development, (2) they are physically proximate to one another and (3) there is a reasonable closeness in time between the completion of some or all of one subdivision and the submission of an application for authorization of another subdivision which is indicative of a common developmental effect. Each of the criteria listed below is indicative of a unified plan of development. Whenever one or more are found to exist, the reviewing authority may, but is not required to, determine that two or more projects are part of a unified plan of development.

- (A) The same person has control of the developments;
- (B) The same person has ownership or a significant legal or equitable interest in the developments;
- (C) There is common management controlling the form of physical development or disposition of parcels of the development;
- (D) A master plan or series of plans or drawings exists covering the developments sought to be aggregated;
- (E) There is a voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments sought to be aggregated;
- (F) There is a common advertising scheme or promotional plan in effect for the developments sought to be aggregated.

ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

Article 4 – Subdivision Plan Requirements

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ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

SECTION 4.1 PURPOSE

The purpose of this Article is to establish the requirements for plat and plan submittal for Subdivisions in accordance with the processes set forth in Article 3.

SECTION 4.2 SKETCH PLANS FOR PRE-APPLICATION MEETINGS

Sketch Plan Contents. A Sketch Plan shall be required for the pre-application meeting with the Administrator. Two (2) copies of the Sketch Plan shall be submitted for the pre-application meeting. The plan shall be scaled and show the approximate proposed layout of streets, lots, buildings, open spaces, and other features in relation to existing conditions. The Sketch Plan shall contain the information specified in Section 4.6.

SECTION 4.3 MASTER PLANS FOR PHASED MAJOR SUBDIVISIONS

- (A) *Master Plan Contents.* All phased Major Subdivision Master Plans shall include the information provided in Section 4.6.
- (B) *Master Plan Submittal Requirements.* Three (3) full-size copies for staff review; three (3) full-size copies and one (1) reduced (11 x 17) copy for the Planning Board.
- (C) Master Plans shall be submitted with the Preliminary Plat for the initial phase.

SECTION 4.4 PRELIMINARY PLATS FOR MINOR AND MAJOR SUBDIVISIONS

- (A) *Preliminary Plat Contents.* The Preliminary Plat shall depict or contain the information provided in Section 4.6. Where “proposed/actual” is noted, the proposed information shall be shown on the preliminary plat and the actual information shall be shown on the Final Plat. Preliminary Plats shall be clearly and legibly drawn at a scale of not less than two hundred (200) feet to one (1) inch acceptable to the Register of Deeds of Polk County.
- (B) *Certificates and Other Documentation.* All preliminary plats shall contain the certifications outlined in Section 4.7.
- (C) *Preliminary Plat Submittal Requirements.* Three full-size copies for staff review; three (3) full-size copies and one (1) reduced (11 x 17) copy for the Planning Board.

ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

SECTION 4.5 FINAL PLATS FOR ALL SUBDIVISIONS¹

- (A) *Final Plat Contents.* The final plats shall depict or contain the information provided in Section 4.6. Final plats shall be clearly and legibly drawn by a registered land surveyor currently licensed in the State of North Carolina by the NC State Board of Registration for Professional Engineers and Land Surveyors. The plat shall also be drawn at a scale of not less than two hundred (200) feet to one (1) inch and shall be drawn on a sheet acceptable to the Register of Deeds of Polk County.
- (B) *Certifications.* The final plat shall contain the certifications outlined in Section 4.7.
- (C) *Minor and Major Subdivision Final Plat Submittal Requirements.* Three (3) full-size paper copies for staff review; three (3) full-size paper copies and one (1) reduced (11 x 17) copy for distribution to the Planning Board; one (1) copy for signature; and one (1) full-size copy of the recorded plat.

SECTION 4.6 INFORMATION TO BE PROVIDED ON SKETCH PLANS/PRELIMINARY & FINAL PLATS^{1, 4}

The sketch plan, preliminary plat, and final plats shall depict or contain the information indicated in the following table. An X indicates that the information is required.

<i>Information</i>	<i>Sketch Plan</i>	<i>Master Plan</i>	<i>Preliminary Plat</i>	<i>Final Plat</i>
Name of proposed development	X	X	X	X
Location (including township, county, and state)	X	X	X	X
Name and address of owner of record		X	X	X
North arrow	X	X	X	X
Boundaries of the property, distinctly and accurately represented with all bearings and distances shown (drawn to scale)	X	X	X	X
Tax map number(s) of the property	X	X	X	X
Adjacent property owners and tax map numbers	X	X	X	X
The zoning classifications of the property to be developed and of adjoining properties (if applicable)	X	X	X	
Existing topographic conditions of the property	X	X	X	
Water courses, watershed, and preserved areas	X	X	X	
Date(s) of survey(s)			X	X
Original submittal date		X	X	
Revision dates		X	X	

ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

<i>Information</i>	<i>Sketch Plan</i>	<i>Master Plan</i>	<i>Preliminary Plat</i>	<i>Final Plat</i>
A sketch vicinity map showing the relationship between the proposed development and surrounding area	X	X	X	X
Scale of drawing in feet per inch in words or figures (no smaller than 1" = 200')		X	X	X
Graphic bar scale	X	X	X	X
Phase lines	X	X	X	
Proposed timetable for development	X	X	X	
Proposed lot lines and corners, lot and block numbers and other dimensions including acreage		X	X	X
Name, address, and registration number of registered land surveyor			X	X
Building setbacks in table format		X	X	X
Existing buildings or structures, railroads, and bridges on the property		X	X	X
Boundaries of floodplains or note stating that property is not within the floodplain	X	X	X	X
Designation of slopes greater than 50%		X		
A statement regarding the proposed amount of grading to take place (see Section 5.18)			X	
A statement regarding the proposed method of stormwater management		X	X	
Existing uses of the land within the proposed subdivision		X	X	
Proposed school sites, parks, or other open spaces		X	X	X
Environmental assessment checklist (see Section 5.3)	X			
Environmental impact statement (see Section 5.3)			X	
Landscaping plan, if applicable			X	
Lighting plan, if applicable			X	
The following data concerning streets:				
Existing street layout and right-of-way width	X		X	X
Proposed street types	X	X		
Proposed street types, including cross-sections			X	X

ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

<i>Information</i>	<i>Sketch Plan</i>	<i>Master Plan</i>	<i>Preliminary Plat</i>	<i>Final Plat</i>
Road name(s) and designation of private or public dedication			X	X
NCDOT written approval of any public road plans, if applicable			X	
For Family Subdivisions, a road maintenance agreement signed by all affected parties				X
Subdivision Roads Disclosure Statement prepared in accordance with NCGS 136-102.6(f)				X
Utilities:				
Utility and other right-of-ways or easements of record on and abutting to the subdivision			X	X
Transmission lines			X	X
Approximate location of natural gas lines			X	X
Approximate location of water and sanitary sewers existing, size and plans for connection to private community or public community or public systems			X	X
Storm sewers, culverts, detention ponds, and other drainage facilities, if any (proposed/actual)			X	X
Other infrastructure details deemed necessary by the Administrator			X	X
Site calculations:				
Total acreage	X	X	X	X
Total number of lots and/or units	X	X	X	X
Area of each lot in acres		X	X	X
Proposed acreage in street right-of-way		X	X	X
Proposed acreage & percent of overall development in open space		X	X	
Proposed acreage in parks, lakes, or other public land usage		X	X	
Average lot size			X	X
Overall density per acre		X	X	

ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

<i>Information</i>	<i>Sketch Plan</i>	<i>Master Plan</i>	<i>Preliminary Plat</i>	<i>Final Plat</i>
Overall percentage and acreage of open space		X	X	
Location of control corners				X
Location and description of all monuments, reference markers and property and lot corners designation of any and all wetlands				X

ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

SECTION 4.7 CERTIFICATIONS AND OTHER DOCUMENTATION

4.7.1 Preliminary Plats for Minor and Major Subdivisions

- (A) *Certificate of Approval for Preliminary Plat.* This certifies that the Polk County Planning Board approved the preliminary plat of the _____ subdivision on the _____ day of _____, 20__.

Chairman, Polk County Planning Board

- (B) Grading and Erosion Control Plan and a North Carolina Department of Environmental Quality (NCDEQ)² written approval, if applicable.
- (C) NCDEQ² written approval for a community or public sanitary sewer system, if applicable.
- (D) NCDEQ² written approval for a public or community water system, if applicable.
- (E) A written statement, if applicable, that:
- “The Polk County Health and Human Service Agency³ has expressed no opinion as to the suitability of private septic systems or water systems on this property. Each lot is subject to individual inspection and approval of septic systems.”
- (F) A copy of any required NCDOT driveway permit application.
- (G) Any other information considered by the subdivider, the Planning Board, the TRP, and/or Administrator to be pertinent to the review of the plat.

4.7.2 Final Plats for All Subdivisions^{1, 4}

- (A) *Certificates for All Plats.* The following certificates shall appear on all final subdivision plats. Refer to Section 4.7.2(B), (C), (D), and (E) for additional certificates required depending upon subdivision type.

- (1) *Certificate of Survey and Accuracy.* I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page _____ etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____, page _____ that the ratio of precision or positional accuracy as calculated is _____, that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, license number and seal this _____ day of _____ A.D., 20__.

Professional Land Surveyor

Official Seal

ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

License Number

_____ County, North Carolina

- (2) *Certificate of Ownership and Dedication.* I hereby certify that I am (we are) the owner(s) of the property shown and described hereon, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, and dedicate all roads and other easements to public use, where applicable.

Owner(s)

Date

- (3) *Certification of Private Water/Septic Systems (if applicable).* If the Health Department has not approved private water or septic systems, then the following written statement shall be included on the Plat:

“The Polk County Health and Human Services Agency³ has expressed no opinion as to the suitability of private septic or water systems on this property. Each lot is subject to individual inspection and approval of septic systems.”

- (B) *Certificates for Two-Lot, Expedited Review for Three Lots², and Family Subdivisions.*

- (1) *Certificate of Approval for Recording Final Plat.* I hereby certify that the subdivision plat shown hereon has been found to comply with the Polk County, North Carolina Subdivision Ordinance and that this plat has been approved for recordation with the Polk County Register of Deeds.

Administrator

Date

- (C) *Certificates for Minor Subdivision Final Plats.*

- (1) *Certificate of Approval for Recording Final Plat.* I, _____, Administrator, certify that the said Board fully approved the final plat of the Subdivision entitled _____.

Administrator

Date

- (D) *Certificates for Major Subdivision Final Plats.*

- (1) *Certificate of Approval of Design and Installation of Streets, Utilities, and Other Required Improvements (if applicable).* I hereby certify that all streets, public utilities and other required improvements have been installed in an acceptable manner and according to NC

ARTICLE 4. SUBDIVISION PLAN REQUIREMENTS

Department of Transportation and/or Polk County specifications and standards or as otherwise provided for in this Ordinance, or that guarantees for the installation of the required improvements in an amount and manner satisfactory to Polk County have been submitted.

Professional Engineer

Date

Registration Number

Official Seal

- (2) *Private Road Maintenance Statement (if applicable).* A maintenance statement for private roads shall be submitted to the Planning Board with the Final Plat and recorded at the Register of Deeds at the time the Plat is recorded.
- (3) *Watershed Certificate of Approval for Recording.* I certify that the plat shown hereon complies with the County's Watershed Protection requirements and is approved by Polk County for recording in the Register of Deeds office.

Administrator

Date

NOTICE: This property is located within a Public Water Supply Watershed-development restrictions apply.

- (4) *Flood Damage Prevention Certificate of Approval for Recording.* I certify that the plat shown hereon complies with the County's Flood Damage Prevention Ordinance requirements and is approved by Polk County for recording in the Register of Deeds office.

Administrator

Date

- (5) *Certificate of Approval for Recording Final Plat.* I, _____, Administrator, certify that the said Board fully approved the final plat of the Subdivision entitled _____.

Administrator

Date

ARTICLE 5. SUBDIVISION DESIGN STARDARDS

Article 5 – Subdivision Design Standards

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ARTICLE 5. SUBDIVISION DESIGN STANDARDS

SECTION 5.1 PURPOSE

The purpose of this Article is to establish the requirements for subdivision lot configuration, lot access, roadway layout, easements, and utilities to ensure sustainable and adequate subdivision design.

SECTION 5.2 GENERAL PROVISIONS

- (A) Each subdivision shall contain the improvements specified in this article, which shall be installed in accordance with the requirements of this Ordinance or guaranteed pursuant to an approved performance guarantee pursuant to Section 3.9 of this Ordinance.
- (B) Land shall be dedicated and reserved in each subdivision as specified in this Article.
- (C) Each subdivision shall be constructed in accordance with minimum county, state and federal design standards, as applicable.
- (D) In order to lessen possible confusion which could hamper the response time for emergency vehicles, the name of a subdivision shall not duplicate nor closely approximate the name of an existing subdivision within Polk County. The applicant is required to check with the Administrator prior to submission of the preliminary plat to avoid name duplication/similarity issues.¹
- (E) *Air Quality.* As required by NCGS Chapter 143, Article 21, all subdivisions shall show proof of compliance, if applicable, with air quality guidelines established by the Division of Environmental Management and NCDEQ².
- (F) *Farmland Preservation District Setback.* Where a major subdivision of land occurs, a minimum 100 foot setback for all buildings or other structures is required from any Farmland Preservation District. The County strongly encourages any subdivision located adjacent to a Farmland Preservation District to use the Conservation Subdivision Option (NCGS 200A-86, Conservation Subdivisions (Option)). The minimum 100 foot setback from Farmland Preservation Districts, where applicable, must be noted on development plans and final plats.
- (G) *Notice of Farmland Preservation District.* If the property proposed for a major subdivision lies within one-half (1/2) mile of any land in a Farmland Preservation District, the applicant must submit an affidavit certifying that the applicant is aware of existing Farmland Preservation Districts as identified on maps provided by the Polk County Office of the Natural Resource Conservation Service. In addition, a note on the final plat for a major subdivision shall state that the property lies within one-half (1/2) mile of land in a Farmland Preservation District.

ARTICLE 5. SUBDIVISION DESIGN STANDARDS

SECTION 5.3 ENVIRONMENTAL IMPACT STATEMENT

- (A) *Preserving Environmental Quality.* In concert with enhancing and preserving environmental quality, the policy of Polk County shall be to use all practicable means and measures to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations. Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment. There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of Polk County, including their enjoyment of the natural resources of the County. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities. In order to carry out the provisions of this chapter, it is the continuing responsibility of the County to use all practicable means, consistent with other essential considerations, to improve and coordinate plans, facilities, programs, and resources to the end that the County may:
- (1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - (2) Assure for all citizens safe, healthful, productive and aesthetically and culturally pleasing surroundings.
 - (3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety or other undesirable and unintended consequences;
 - (4) Preserve important historic, cultural, and natural aspects of the County's heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - (5) Achieve a balance between growth and resource use which will permit high standards of living and wide sharing of life's amenities;
 - (6) Enhance the quality of renewable resources and approach the optimum attainable recycling or sustaining of depletable resources; and
 - (7) Support the implementation of the County's currently adopted Comprehensive Plan.
- (B) *Environmental Impact Statement Required.* An environmental impact statement is required at the Preliminary Plat stage for all Major Subdivisions, if indicated by the following environmental checklist.

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ENVIRONMENTAL CHECKLIST

An environmental impact statement is required if the following environmental assessment rating results in a total of **100 points** or more: ¹

Item	Points
(1) 100 acres or greater, not including open space (defined in Section 5.8)	100
(2) Dependent on non-public groundwater supply	50
(3) 33% or greater of total project parcel(s) includes slopes of 30% or greater	30
(4) 33% or greater of total project parcel(s) located in a designated WS-II, WS-III, or WS-IV water supply area	25
(5) Not connected to a central public sewage treatment system	25
(6) 33% or greater of non-open space area located in a floodplain	25
(7) Parcel(s) located adjacent to a farmland preservation area	20
(8) Located adjacent to or surface water drains into designated state trout waters ⁴	20
(9) 33% or greater of total project parcel(s) includes hydric soils as defined by the US Department of Agriculture	20
(10) 33% or greater of total project parcel(s) includes prime farmland soils as defined by the US Department of Agriculture	15
(11) 33% or greater of total project parcel(s) includes slopes between 20% and <30%	15
(12) Includes a natural heritage area(s)	15
(13) Adjacent to land trust/conservation properties	15
(14) Includes or located within 2,500 feet (direct distance) of a historic property	15
TOTAL POINTS	390
(15) Cluster subdivision incentive	-50
TOTAL POINTS WITH INCENTIVE	340

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- (C) *Required Information.* The environmental impact statement must include the following when the Administrator determines the information is applicable:

Section 1

Description of the following:

- Proposed action;
- Existing environmental setting;
- Favorable and adverse environmental impacts;
- Identification and cost estimates of alternatives to the adverse impacts;
- Consistency with the County's currently adopted Comprehensive Plan;
- Adequacy of public facilities;
- Soil conditions/limitations and soil disturbing activities;
- Sensitive wildlife habitat areas and/or endangered animal and vegetative species;
- Sustainability of developed area for proposed density;
- Proposed open space, if applicable; and
- Consideration of any traffic impact analysis recommendations and their environmental impact (see Section 5.4).

Section 2

Descriptions of the following are required if there are points assigned to that item in the Environmental Checklist or requested by the Administrator:

- Impact on the agricultural resources (Section 5.3B - 7, 10);
- Impact on conservation/preservation areas (Section 5.3B - 12, 13, 14);
- Surface and/or groundwater hydrological impact analysis (Section 5.3B - 2, 3, 5, 11);
- Proposed wastewater treatment facilities and applicable agency approvals (Section 5.3B - 5);
- Impact on natural resources (Section 5.3 B - 3, 4, 6, 8, 9, 11).

Section 3

- (1) *Mitigation.* For each potential cumulative, direct or secondary negative impact which is identified in Section 1 and 2, the alternatives which were considered must be described and specific alternative actions explained. The proposed mitigation action(s) must be identified.
- (2) *Technical Basis.* The environmental impact statement must be prepared by and/or include people technically competent to assess impacts, including licensed/ commonly recognized experts when necessary. Such expertise may include, but not be limited to, hydrologists, engineers, economists, etc.

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SECTION 5.4 TRAFFIC IMPACT ANALYSIS

- (A) *Purpose.* A traffic impact study shall be required for any major subdivision generating more than 800 trips per day, as defined by the most current edition of Trip Generation (Institute of Transportation Engineers). The study will enable Polk County to assess the impact of a proposed subdivision on the highway system when that system is at or near capacity or a safety problem exists. Its purpose is to ensure that proposed developments do not adversely affect the highway network and to identify any traffic problems associated with access from the subdivision to the existing transportation network. The purpose of the study is also to identify solutions to potential problems and to present improvements to be incorporated into the proposed development.
- (B) *Conduct.* A traffic impact study shall be prepared by a qualified professional traffic engineer and/or certified transportation planner with previous traffic study experience. The procedures and standards for the traffic impact study are set forth in Section 5.4(E) of this Article.

Prior to the preparation of a traffic impact study, a scoping meeting shall be held, including the planning staff, the applicant, and the preparer of the study. The discussion at this meeting should set the study parameters, including the study area, planned and committed roadway improvements (by NCDOT or others), road links and intersections to be analyzed, preliminary traffic distribution, other planned developments to be considered, traffic growth rate, available data, periods for which analysis is to be performed, and other staff concerns. The qualifications of the preparer may be discussed at or prior to this meeting.

- (C) *[Reserved for future purposes.]*⁴
- (D) *Capacity Analysis of the Existing System.* An indication of the adequacy of the existing street system is a comparison of traffic volumes versus the ability of the streets to move traffic freely at a desirable speed. The ability of a street to move traffic freely, safely, and efficiently with a minimum delay is controlled primarily by the spacing of major devices utilized. Thus, the ability of a street to move traffic can be increased by restricting parking and turning movements, using proper sign and signal devices, and by the application of other traffic engineering strategies.

Capacity is the maximum number of vehicles which has a “reasonable expectation” of passing over a given section of roadway, during a given time period under prevailing roadway and traffic conditions. The relationship of traffic volumes to the capacity of the roadway will determine the level of service (LOS) being provided. Six levels of service have been selected for analysis purposes. They are given letter designations from A to F with LOS A representing the best operating conditions and LOS F the worst.

- (1) *LOS A.* Describes primarily free flow conditions. The motorist experiences a high level of physical and psychological comfort. The effects of minor incidents of breakdown are easily absorbed. Even at the maximum density, the average spacing between vehicles is about 528 feet or 26 car lengths.

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- (2) *LOS B.* Represents reasonably free flow conditions. The ability to maneuver within the traffic stream is only slightly restricted. The lowest average spacing between vehicles is about 330 feet or 18 car lengths.
 - (3) *LOS C.* Provides for stable operations, but flows approach the range in which small increases will cause substantial deterioration in service. Freedom to maneuver is noticeably restricted. Minor incidents may still be absorbed, but the local decline in service will be great. Queues may be expected to form behind any significant blockage. Minimum average spacings are in the range of 220 feet or 11 car lengths.
 - (4) *LOS D.* Borders on unstable flow. Density begins to deteriorate somewhat more quickly with increasing flow. Small increases in flow can cause substantial deterioration in service. Freedom to maneuver is severely limited, and the driver experiences drastically reduced comfort levels. Minor incidents can be expected to create substantial queuing. At the limit, vehicles are spaced at about 165 feet or nine car lengths.
 - (5) *LOS E.* Describes operation at capacity. Operations at this level are extremely unstable, because there are virtually no usable gaps in the traffic system. Any disruption to the traffic stream, such as a vehicle entering from a ramp, or changing lanes, requires the following vehicles to give way to admit the vehicle. This can establish a disruption wave that propagates through the upstream traffic flow. At capacity, the traffic stream has no ability to dissipate any disruption. Any incident can be expected to produce a serious breakdown with extensive queuing. Vehicles are spaced at approximately six car lengths, leaving little room to maneuver.
 - (6) *LOS F.* Describes forced or breakdown flow. Such conditions generally exist within queues forming behind breakdown points.
- (E) *General Requirements and Standards.* The traffic impact study shall contain the following information:
- (1) *General Site Description.* The site description shall include the size, location, proposed land uses, number of units and gross square footage by land use, existing land use and zoning, construction staging, and completion date of the proposed subdivision to the extent known or able to be described at the time the application is prepared. Types of dwelling units and number of bedrooms shall also be included. A brief description of other major existing and proposed land developments within the study area shall be provided. The general site description shall also include probable socio-economic characteristics of potential site users to the extent that they may affect the transportation needs of the site (i.e., number of senior citizens).
 - (2) *Transportation Facilities Description.* The description shall contain a full documentation of the proposed internal and existing external transportation system. This description shall include proposed internal vehicular, bicycle, and pedestrian circulation; all proposed ingress and egress locations; all internal roadway widths and rights-of-way, turn lanes,

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parking conditions, traffic channelizations; and any traffic signals or other intersection control devices at all intersections within the subdivision.

The report shall describe the entire external roadway system within the study area. Major intersections in the study area and all intersections or driveways adjacent to or within 800 feet of the site shall be identified and sketched. All existing and proposed public transportation services and facilities within one-mile of the site shall also be documented. Future highway improvements, including proposed construction and traffic signalization, shall be noted. All proposed traffic signals shall be approved by the NCDOT Division 14 Office. This information shall be obtained from North Carolina's Transportation Improvement Program and the Polk County Thoroughfare Plan. Any proposed roadway improvements due to proposed surrounding developments shall also be noted.

- (3) *Existing Traffic Conditions.* Existing traffic conditions shall be documented for all roadways and intersections in the study area. This shall include documentation of traffic accident counts as recorded by the NC Department of Transportation District Engineers Office, County law enforcement, and the NC Highway Patrol. Existing traffic volumes for average daily traffic, peak highway hour(s) traffic, and peak development generated hour(s) traffic, if appropriate, shall be recorded. Manual traffic counts at major intersections in the study area shall be conducted, encompassing the peak highway and development generated hour(s), if appropriate, and documentation shall be included in the report. Existing average daily or peak-hour traffic counts made within one year of the study date may be used subject to Administrator approval. A volume/capacity analysis based upon existing volumes shall be performed during the peak highway hour(s) and the peak development generated hour(s), if appropriate, for all roadways and major intersections expected to be impacted by development traffic. Levels of service shall be determined for each signalized intersection or roadway segment analyzed above.

This analysis will determine the adequacy of the existing roadway system to serve the current traffic demand. Roadways and/or intersections experiencing levels of service E or F shall be noted as congestion locations (see Section 5.4(D)).

- (4) *Transportation Impact of the Development.* Estimation of vehicular trips to result from the proposed subdivision shall be completed for the average weekday, the average daily peak hours of highway travel in the study area, and if appropriate, the peak hour of traffic generation by the subdivision. Vehicular trip generation rates to be used for this calculation shall be obtained from an accepted source such as the most current edition of Trip Generation (Institute of Transportation Engineers). These subdivision-generated traffic movements, as estimated, and the reference source(s) and methodology followed shall be documented. These generated volumes shall be distributed to the study area and assigned to the existing roadways and intersections throughout the study area. Documentation of all assumptions used in the distribution and assignment phase shall be provided. All average daily traffic link volumes within the study area shall be shown graphically. Peak hour turning movement volumes shall be shown for signalized and other major intersections, including all access points to the development. Pedestrian and bicycle volumes at school

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crossings and as otherwise applicable shall be reported. Any characteristics of the subdivision that will cause trip generation to vary significantly from average rates available in published sources shall be documented, including such factors as diversion of passer-by traffic, internal capture, staggered work hours, or use of transit.

- (5) *Analysis of Transportation Impact.* The total traffic demand that will result from construction of the proposed subdivision shall be calculated. This demand shall consist of the combination of the existing traffic, traffic generated by the proposed subdivision, and traffic due to other developments and other growth in traffic that would be expected to use the roadway at the time the proposed subdivision is completed. If staging of the proposed subdivision is anticipated, calculations for each stage of completion shall be made. This analysis shall be performed for average weekday traffic, the peak highway hour(s) and, if appropriate, peak development-generated hour(s) for all roadways and major intersections in the study area. Volume/capacity calculations shall be completed for all major intersections. It is usually at these locations that capacity is most restricted.

All access points and pedestrian crossings shall be examined for adequate sight distance and for the necessity of installing traffic signals. The traffic signal evaluation shall compare the projected traffic and pedestrian volumes to the warrants for traffic signal installation.

- (6) *Conclusions and Recommended Improvements.* Levels of service for all roadways and signalized intersections serving 10% or more of peak-hour project traffic shall be reported. All roadways and/or signalized intersections showing a level of service below D in urban or developed areas or below C in rural areas shall be considered deficient, and specific recommendations for the elimination of these problems shall be listed (see Section 5.4(D)). This listing of recommended improvements shall include, but not be limited to, the following elements: internal circulation design, site access location and design, external roadway and intersection design and improvements, traffic signal installation and operation including signal timing, and transit service improvements. All physical roadway improvements shall be shown on the preliminary plat.

- (F) *Submission and Implementation.* The traffic impact study will be submitted to the Administrator with, and as a part of, the major subdivision preliminary plat. The Administrator and such other agencies or officials as may appear appropriate in the circumstances of the case shall review the traffic impact study to analyze its adequacy in solving any traffic problems that will occur due to subdivision proposed on the preliminary plat. The Administrator may recommend that certain improvements on or adjacent to the site or on roadways or intersections for which the improvements are needed to adequately and safely accommodate subdivision traffic are mandatory for preliminary plat approval and may recommend that these improvements be included on the approved preliminary plat. The traffic impact analysis and its recommendations will be submitted as evidence at the evidentiary hearing.⁴

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SECTION 5.5 WATER AND SEWER REQUIREMENTS

Any major subdivision which has either a public water system or public sewage disposal system or both legally available or to be made available within 500 feet of its boundary as measured along a public right-of-way and/or easement shall have the available systems extended by the developer, at their cost, to provide service to each lot in the subdivision. Water and sewer installations shall be in accordance with the standards of Polk County. When not in conflict with these standards, fire hydrants shall be installed at intervals consistent with the North Carolina Fire Code along the water lines. Where public water and/or sewer are not made available to each lot, service shall be provided as specified in Section 5.13.

SECTION 5.6 LOTS

- (A) All lots shall abut on a dedicated public or private street except that up to two lots may be accessed by a private driveway easement that accesses a public or private street. In the case of a Family Subdivision, see Section 5.9(D).
- (B) Lot lines may be drawn to the right-of-way or the center of the road of any adjacent road except where an existing property line is drawn within an existing road right-of-way.
- (C) All lots identified in a watershed must also meet the requirements of the County's Watershed Protection Ordinance.
- (D) The Planning Board or Subdivision Administrator (two-lot, three-lot expedited, or family subdivisions) may approve the limited use of pan handle lots where it is impractical to serve an isolated lot by an existing or proposed road. A pan handle lot shall have a minimum road frontage of 35 feet for an access strip to an isolated building site. The access strip should not exceed 300 feet in length and the access strip shall not be used to calculate the minimum lot area unless such strip exceeds 70 feet in width.⁴
- (E) *Subdivision Lot Standards.* The following indicates minimum lot size, road frontage² and setbacks for zoned and unzoned areas of the County, as applicable.

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- (1) For Minor, Two-Lot, Expedited Review for Three Lots, and Family Subdivisions, the following table indicates minimum density and lot standards. Lot standards for areas zoned by Polk County are specified by the Polk County Zoning Ordinance.^{2,4}

Subdivision Lot Minimum Standards	Public Water and Public Sewer	Public or Community Water and Individual or Community Sewer	Individual Water and Individual or Community Sewer
Average Lot Density	2 lots per acre	1 lot per acre	1 lot per acre
Lot Standards Minimum Lot Area	1/2 acre	1 acre	1 acre
Minimum Road Frontage*	50	70	70
Minimum Road Frontage on Cul-de-Sacs	50	50	50
Front Setback	25	25	25
Side Setback	15	15	15
Rear Setback	25	25	25

*** Minimum road frontage requirement shall not apply to a lot in a family subdivision which is situated at the terminus of a family road easement.**

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(2) For Major Subdivisions, the following table indicates minimum lot standards, unless the zoning district is more restrictive. Lot width and yard setbacks for areas zoned by Polk County are specified by the Polk County Zoning Ordinance.^{2, 4}

Subdivision Lot Density/ Lot Dimensions	Public Water and Public Sewer	Public or Community Water and Individual or Community Sewer	Individual Water and Individual or Community Sewer
Average Lot Density	1 lot per 2 acres	1 lot per 3 acres	1 lot per 5 acres
Lot Standards Minimum Lot Area	1/2 acre	1 acre	1 acre
Minimum Road Frontage	50	70	70
Minimum Road Frontage on Cul-de-Sacs	50	50	50
Front Setback	25	25	25
Side Setback	15	15	15
Rear Setback	25	25	25

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- (3) *Major Subdivisions Utilizing Cluster Development.* The following table indicates minimum standards for Major Subdivisions that utilize cluster development as outlined in Section 5.7:²

Subdivision Lot Minimum Standards	Public Water and Public Sewer	Public or Community Water and Individual or Community Sewer	Individual Water and Individual or Community Sewer
Average Lot Density	1 lot per 2 acres	1 lot per 3 acres	1 lot per 5 acres
Lot Standards Minimum Lot Area	*	*	*
Minimum Open Space Dedication	50%	50%	50%
Minimum Road Frontage for Development	50 feet	50 feet	50 feet
Exterior Development Setback	50 feet	50 feet	50 feet
All Interior Setbacks	0 feet	0 feet	0 feet

***As required by applicable state and/or local permit requirements.**

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- (4) *Minor Subdivisions Utilizing Cluster Development.* The following table indicates minimum standards for Minor Subdivisions that utilize cluster development as outlined in Section 5.7:²

Subdivision Lot Minimum Standards	Public Water and Public Sewer	Public or Community Water and Individual or Community Sewer	Individual Water and Individual or Community Sewer
Average Lot Density	2 lots per acre	1 lot per acre	1 lot per acre
Lot Standards Minimum Lot Area	*	*	*
Minimum Open Space Dedication	50%	50%	50%
Minimum Road Frontage for Development	50 feet	50 feet	50 feet
Exterior Development Setback	50 feet	50 feet	50 feet
All Interior Setbacks	0 feet	0 feet	0 feet

***As required by applicable state and/or local permit requirements.**

SECTION 5.7 CLUSTER DEVELOPMENTS

- (A) The intent of a cluster development is to allow smaller than minimum lot sizes in order to preserve larger areas of open space and environmental resources.
- (B) Within subdivisions utilizing cluster development, the minimum lot size may be reduced in accordance with the table contained in Section 5.6 provided the average lot density per acre does not exceed that which is allowed without the use of such cluster development regulations.²
- (C) In a cluster development, a minimum of 50% of the total area of the parcel being subdivided shall be dedicated to open space.
- (D) If individual sewer or water is to serve the building lots, the owner of the subdivision must obtain written approval from the Polk County Health and Human Services Agency³ that these systems are adequate to serve the building lots. If there is any sharing of water and sewer facilities between the building lot owners, a maintenance plan of these facilities must be filed with the County.

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SECTION 5.8 OPEN SPACE

(A) *General Provisions for Open Space.*

- (1) Land designated as open space on the approved development plan shall be maintained as open space and may not be separately sold, subdivided, or developed.
- (2) Access from a dedicated public or private street, greenway, or trail shall be provided to all designated open space with a minimum 15 foot wide access to the open space area. Lakes used as open space shall provide adequate community access beyond this 15 foot minimum as determined by the Planning Board.
- (3) Open space shall be contiguous wherever possible.
- (4) County plans, particularly park and open space plans shall be considered when evaluating proposals for dedication.

(B) *Minimum Open Space Dedication.* Open space shall be dedicated in accordance with subsection 5.8(C). Percentages are based on total development area.

(C) *Types of Open Space.* All required open space shall be classified in accordance with this Section. Dedicated open space shall fit into one of the following categories and be classified as private common area open space or public open space.

- (1) *Playground.* Playgrounds are for active recreational use and provide sunny and shaded play equipment and play areas for children as well as open shelter with benches. Playgrounds may be part of other types of open space, such as parks, or may stand alone. Minimum Size: 10,000 square feet.
- (2) *Square.* Squares are areas for passive recreational use. Squares shall be bounded by streets on a minimum of 50% of their perimeter. Squares are encouraged to be entirely bounded by streets and/or lanes. Squares shall be planted parallel to all streets and shall contain canopy trees along street frontages. Minimum size: 2,000 square feet.
- (3) *Park.* Parks may be designed for passive and/or active recreational use. Parks shall be bounded by streets on a minimum of 10% of their perimeter. Large parks should create a central open space which services an entire neighborhood or group of neighborhoods; or incorporates physical features which are an asset to the community (i.e., lake or river frontage, high ground, significant stands of trees). Undergrowth should be limited and landscaping shall be installed in a manner that promotes attractiveness and safety. Parks may be combined with greenways and greenbelts and may include golf courses and community gardens. Minimum size: 1 acre.
- (4) *Green.* The green is an open space which is more natural. Like the square, it is small and surrounded by buildings. Unlike the square, it is informally planted and may have irregular

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topography. Greens are usually landscaped with trees at the edges and open lawns at the center. Greens should contain no structures other than benches, pavilions, and memorials; paths are optional. Minimum size: 20,000 square feet.

- (5) *Greenway.* Greenways are large, irregular open spaces designed to incorporate natural settings such as creeks and significant stands of trees within and between neighborhoods. Greenways are typically more natural and may contain irregular topography. Greenways shall be used for certain active recreational uses including, at a minimum, trails for walking, jogging, equestrian pursuits and biking. Greenways shall connect points of interest in the community such as schools, parks, and other civic uses.
- (6) *Greenbelt.* Greenbelts run along the perimeter of a neighborhood, and serve to buffer a neighborhood from surrounding non-compatible uses such as a highway corridor or industrial district, or a developed area from agricultural areas or adjacent towns. Greenbelts differ from the other types of open spaces in that they are left natural, and are not intended for recreational use.
- (7) *Agricultural Preserve.* Open spaces designated as Agricultural Preserves shall be used for active bona fide farms in the form of crop cultivation, the keeping of livestock, or equestrian facilities. Agricultural Preserves are encouraged to protect areas of agricultural and rural heritage and promote compatible active agricultural operations. Minimum size: 5 acres.
- (8) *Nature Preserve.* Open spaces designated as Nature Preserves shall be left largely undisturbed except for the optional clearing of underbrush for the provision of a walking trail (mulch or other natural material only). Nature Preserve areas are encouraged to protect large stands of trees, wildlife, and natural water features. Nature Preserves are the preferred form of open space for steep slopes in excess of 25% grade. Minimum size: 3 acres.

(D) *Open Space Ownership & Maintenance.*

- (1) Open space may be owned or administered by one or a combination of the following methods:
 - Ownership by a unit of government or private non-profit land conservancy;
 - Ownership by Homeowners Association;
 - Ownership by all individual property owners within the subdivision;
 - By individual private ownership such as a farmer, developer or other private entity that maintains the open space in accordance with the purposes of this Article (i.e., farming, equestrian facility, etc., excluding confined livestock operations);
 - Deed restricted open space easements on individual private properties.
- (2) The Polk County Board of Commissioners shall have the authority to accept or reject land dedications made as a requirement of this Section. They shall also have authority to sell

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land accepted pursuant to this section with the proceeds of such sale used only for the acquisition, expansion or improvement of recreation, park, or open space sites.

- (3) The developer will provide proof of registration of the Articles of Incorporation as specified in Section 2.15 with the appropriate state agency for the formation of the Property Owners' Association to the Planning Department.

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SECTION 5.9 EASEMENTS

- (A) *Utility Easements.* Utility easements shall be provided, where necessary, preferably centered on the side or rear lot lines and shall be at least ten (10) feet wide.⁴
- (B) *Family Subdivision Road Easements.* All lots within a family subdivision may be accessed by a minimum access 30' easement providing a road maintenance agreement is signed by all affected parties and recorded with the family subdivision plat.⁴
- (C) *Two-lot and Expedited Subdivision Driveway Easements.* A minimum of 30' easement that allows access to not more than three lots from an approved public or private road.⁴
- (D) *Water Course and Drainage Easements.*
 - (1) Where a subdivision is traversed by a water course, drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of such water course.
 - (2) If an easement is required for physical improvements to control drainage it must be shown on the final plat, including access to the easement for repairs.
 - (3) Said drainage way shall be of sufficient width to carry storm water runoff from a 10-year storm.

SECTION 5.10 GENERAL PROVISIONS FOR ROAD DESIGN⁴

- (A) *Street Names.*
 - (1) Proposed streets which are obviously in alignment with existing streets shall be given the same name.
 - (2) In assigning new names, duplication of existing names shall be avoided, and in no case shall the proposed name be phonetically similar to existing names in the County irrespective of the use of a suffix such as street, road, drive, place, court, etc. Street names shall be subject to the approval of the Property Address Administrator.

SECTION 5.11 PUBLIC ROAD STANDARDS

- (A) *Minor and Major Subdivision Public Road Design*
 - (1) All road design must comply with the Polk County Fire Code. All roads proposed for public use shall be annotated "public" on plans and plats and shall be designed and constructed in accordance with the standards necessary to make the roads eligible to be put on the State Highway Maintenance System at a later date. Such standards, hereafter referred to as "State Road Standards", are contained in a publication of the North Carolina Department of

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Transportation, Division of Highways, titled, “Subdivision Roads - Minimum Construction Standards”, a copy of which is available for review in the office of the Administrator. Designation as public shall be presumed an offer of dedication to the public; however, this does not guarantee that NCDOT will accept the proposed public roads or agree to assume the maintenance responsibility of the proposed public road. Pursuant to GS 136-102.6(d) the NCDOT District Engineer’s office must sign a certificate of approval of the design of the public road provided on the face of the final plat for any subdivision where public roads are proposed prior to County approval of the final plat.

- (2) If a request for dedication of public roads is made, inspection and approval by the NCDOT must have taken place, and roads must be inspected and approved by NCDOT, but acceptance is not required, before the final plat can be approved by the Planning Board.

(B) *Public Road Dedication and Maintenance.*

- (1) All roads proposed for public use by the developer and seller, including those proposed streets which are not eligible to be placed on the State Highway System because there are too few lots or residences, shall be dedicated to the public and shall be designed and constructed in accordance with the standards necessary to make the streets eligible to be put on the state system at a later date.
- (2) A written maintenance agreement sufficient for recording in the Office of the Register of Deeds shall be submitted with the final plat. Said maintenance agreement will provide for the subdivider or a property owner’s association to maintain the street, drainage facilities, and right-of-way until such time as the street is accepted for maintenance by the state.

SECTION 5.12 PRIVATE ROADS

(A) *Private Roads Defined.*

- (1) All new private roads shall directly connect to a state-maintained road or shall connect to a state maintained road by way of a private road/recorded access easement, meeting the standards of this section, unless a variance is granted pursuant to this Ordinance.
- (2) New roads within a subdivision may be designated by the subdivider as private, provided all streets proposed for private use shall be limited to the following:
 - Streets providing exclusive access to residential subdivisions and private resort developments.
 - Streets in subdivisions or portions of subdivisions serving too few lots for inclusion into the State Secondary Road System.
 - Streets providing exclusive access to family subdivisions.⁴

- (B) All private road design must comply with the Polk County Fire Code and be constructed to NCDOT “Subdivision Roads - Minimum Construction Standards”.

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- (C) *Maintenance of Private Roads.* All subdivision plats which include private roads shall be accompanied by a disclosure statement (NCGS 136-102.6) for recording, which provides for the maintenance of any kind and all private streets designated within a subdivision by a property owner's association.
- (D) *Two Lot, Expedited Review for Three Lots, and Family Subdivisions.*^{2,4} All lots with two lot, expedited review for three lots, and family subdivisions must abut a public or private road or be provided access to a public or private road via a recorded access easement meeting the requirements of the State Fire Code, where applicable. See easement requirements.

SECTION 5.13 PRIVATE WATER AND SEWER

- (A) *Submittal Requirements and Approval.*
- (1) If the subdivision in question is to have a community sewage disposal system other than one connected to a municipal system, the following is required:
- Depiction of the system and its location with sufficient area for repair if needed.
 - An engineered plan as to the system.
 - Sealed approval of the local Polk County Health and Human Services Agency.³
- (2) The local Health Department shall certify that the soil conditions are suitable to support a septic system.
- (3) All Preliminary Plats which will require the installation of any water and/or sewerage systems prior to final plat approval shall be accompanied by a written application and/or notice submitted to the appropriate state or local agency responsible for approving the particular system or systems.
- (B) *Subdivisions with Individual Water and Sewage Disposal Systems.* Individual septic systems and individual wells shall conform to those requirements as set forth by the local Health Department or agency currently in authority as to sewer disposal. There shall be no requirement as to a well or septic system being in place prior to sale of any lot or parcel.
- (C) *Water Quality and Quantity Standards.*
- (1) No water supply system shall deliver water without first having said water tested by a certified laboratory and such test approved by the State and/or agency thereof having responsibility for Water Quality Assurance. (This provision shall not apply to an individual well providing water to a single-family residence located on the property of the well.)
- (2) Any and all Water Systems including but not limited to individual wells shall comply with the appropriate Standards set forth by the State and/or any agency granted authority to regulate and/or otherwise enforce regulations.

ARTICLE 5. SUBDIVISION DESIGN STANDARDS

SECTION 5.14 STORMWATER DRAINAGE FACILITIES

The Preliminary Plat shall be accompanied by evidence satisfactory to the Planning Board as to the proposed method of providing for stormwater drainage. If a NCDEQ stormwater management permit is required, such permit shall be submitted with the Preliminary Plat. ⁴

SECTION 5.15 DAM SAFETY

Any dam constructed within a subdivision which is greater than fifteen (15) feet in height (measured from the lowest point on downstream top of the dam to the highest point on the fill) and is also greater than ten (10) acre-feet in area (measured from the top of the dam) shall comply with the North Carolina Dam Safety Law of 1967 and the North Carolina Administrative Code Title 15, Subchapter 2K.

SECTION 5.16 FLOOD HAZARD AREAS

In areas of flood hazard, identified on the Flood Insurance Rate Map of Polk County, North Carolina, as Zones A and AE, all subdivisions shall be designed to minimize flood damage in accordance with the provisions of the Polk County Flood Damage Prevention Ordinance.

ARTICLE 5. SUBDIVISION DESIGN STANDARDS

SECTION 5.17 FIRE PROTECTION

In major subdivisions without a public water supply and having one or more lots more than one road mile from the nearest state approved fire water source, the developer shall provide a fire water source or sources within the subdivision meeting state specifications in such a manner that no lot is located more than one road mile away from such a fire water source.

SECTION 5.18 EROSION AND SEDIMENTATION CONTROL¹

The Preliminary Plat shall be accompanied by a written statement from the North Carolina Department of Environmental Quality (NCDEQ)² that any required soil erosion and sedimentation control plan has been approved, if required.⁴

SECTION 5.19 STREAM BANK EROSION

Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity in accordance with the North Carolina Sedimentation Pollution Control Act, NCGS 143.34.12, Chapter 113A, Article 4, and the North Carolina Administrative Code Title 15, Chapter 4, and any locally adopted erosion and sedimentation control ordinances.

SECTION 5.20 CLEAR CUTTING

This Section shall not apply to two-lot or family subdivisions.

- (A) *Standard.* Properties shall not be clear-cut during the conduct of forestry activities. To maintain the visual character of the site from adjoining properties and right-of-way, a vegetated perimeter buffer shall be maintained while tree harvesting for forestry occurs. A 32-foot wide buffer of naturally existing vegetation shall be maintained along all boundaries of the property being forested that adjoin other properties. Along public rights-of-way, a 50-foot buffer of naturally existing vegetation shall be maintained, exclusive of areas required for access to the site.
- (B) *Penalties.* Site plans proposing development of properties that failed to maintain such a buffer during forestry activities shall be denied for a period of three years from the date of clearing.

ARTICLE 5. SUBDIVISION DESIGN STANDARDS

SECTION 5.21 STEEP SLOPE

- (A) *Purpose.* The primary purpose for the slope protection standards is to minimize grading, land instability and the removal of vegetation in order to:
- (1) Protect the quality of wetlands and water courses below the slope from increased sedimentation;
 - (2) Protect steep slope plant and animal habitat from disturbance and development; and
 - (3) Preserve the aesthetic quality of the natural terrain.
- (B) *Steep Slope Areas.*
- (1) Slope is the relationship of vertical rise to horizontal run, expressed as a percentage. Steep slope areas shall be defined as land areas that:
 - (a) Have a grade of 40% or more; and
 - (b) Have an area of 5,000 square feet or greater.
 - (2) Steep slope areas refer to natural grades and shall not include man-made grades. Slope calculations shall use the smallest contour interval for which maps are available. Steep slope areas shall be determined irrespective of tract boundaries.
 - (3) Steep slope areas shall be clearly indicated on all site plans, development plans, preliminary plats and final plats.⁴
- (C) *Steep Slope Development Limitations.* Development and land disturbing activity on steep slope areas shall be conducted only in accordance with the following requirements. Compliance with these requirements shall be determined by the approving authority.
- (1) Development shall be designed and constructed in order to minimize disturbance to the natural landform as much as possible. Development shall demonstrate appropriate terrain-adaptive design and construction techniques. An inability to design a particular development without significant disturbance to the natural landform may indicate that the site should not accommodate the full amount of proposed development. Alternate site design and construction measures shall be encouraged to mitigate the effects of development on steep slopes. The grade of reconstructed slopes shall not exceed 50%. Non-load bearing retaining walls shall be encouraged in order to reduce the amount of disturbance to the natural slope.
 - (2) On any tract proposed for construction, no more than 15% of the steep slope area on the tract shall be graded. For purposes of this calculation, the land areas of individual steep

ARTICLE 5. SUBDIVISION DESIGN STANDARDS

slope areas on the tract shall be added together to establish the total steep slope area for the tract.

- (3) Development shall be designed and arranged in order to minimize the impact of street construction on steep slope areas.⁴

SECTION 5.22 SURVEYING

Prior to the approval of the Final Plat, permanent reference points shall have been placed in accordance with the following requirements:

- (A) *Subdivision Corner Tie.* At least one corner of the Subdivision shall be designated by course and distance (tie) from a readily discernible reference marker. If a corner is within 2,000 feet of a U.S. Coast and Geodetic Station or North Carolina Grid System coordinated monument, then this corner shall be marked with a monument so designated by computed X & Y coordinates which shall appear on the map with a statement identifying this station or monument. When such a monument or station is not available, the tie shall be made to some pertinent and readily recognizable land marker or identifiable point, physical object or structure.
- (B) *Monuments.* Within each block of a subdivision at least two (2) monuments designed and designated as control corners shall be installed. The surveyor shall employ additional monuments if and when required. All monuments shall be constructed of concrete and be at least four (4) inches in diameter or square and not less than three (3) feet in length. Each monument shall have imbedded in the top or attached by a suitable means a metal plate of noncorrosive materials and marked plainly with the point, the surveyor's registration number, the month and year it was installed, and the word "Monument" or "Control Corner". A monument shall be set at least 30 inches in the ground with at least six (6) inches exposed above the ground unless this requirement is impractical.

ARTICLE 6. DEFINITIONS

Article 6 – Definitions

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ARTICLE 6. DEFINITIONS

SECTION 6.1 WORD INTERPRETATION

For the purpose of this Ordinance, certain words shall be interpreted as follows:

- (A) Words in the present tense include the future tense.
- (B) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
- (C) The word “person” includes a firm, association, corporation, trust, and company as well as an individual.
- (D) The words “used for” shall include the meaning “designed for”.
- (E) The word “structure” shall include the word “building”.
- (F) The word “lot” shall include the words, “plot”, “parcel”, or “tract”.
- (G) The word “shall” is always mandatory and not merely directory.

SECTION 6.2 ACRONYMS

Below is a list of acronyms (other than zoning districts) and their meanings found throughout the Ordinance:

- BFE: Base Flood Elevation
- EIS: Environmental Impact Statement⁴
- NC: North Carolina
- NCDEQ: North Carolina Department of Environmental Quality²
- NCDOT or DOT: North Carolina Department of Transportation
- NCGS or GS: North Carolina General Statute
- POA: Property Owners’ Association
- ROW: Right-of-way
- SR: Secondary Road in the North Carolina Secondary Road system
- TRP: Technical Review Panel⁴
- US: United States of America

ARTICLE 6. DEFINITIONS

SECTION 6.3 GENERAL DEFINITIONS

A

Administrator

The County Manager or any other person designated by the Polk County Manager to administer and enforce this Ordinance.

Applicant

A person, firm or corporation submitting an application for development or subdivision and upon whom final responsibility for ensuring compliance with the terms and conditions of the Ordinance rests.

B

Board of Commissioners

The Polk County Board of Commissioners.

Bona Fide Farm

The production and activities relating, or incidental to, the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market, as defined by NCGS 106-581.1.

C

Cluster Subdivision Incentive

A fifty (50) point deduction from the environmental checklist (Section 5.3) if the proposed major subdivision will be a cluster subdivision.

D

Dedicated Greenway or Trail

Greenways are large, irregular open spaces designed to incorporate natural settings such as creeks and significant stands of trees within and between neighborhoods.

Dedication

A gift, by the owner, of a right of use of land for a specified purpose or purposes. Because a transfer of property rights is entailed, dedication must be made by written instrument, and is completed with an acceptance.

Disclosure Statement

A separate and distinct document prepared by the applicant and approved by the Planning Board which fully and completely discloses the status of any street or road upon which the house, lot, or parcel fronts. A copy of the Disclosure Statement shall be provided to the purchaser of the subject real estate.

ARTICLE 6. DEFINITIONS

Dwelling Unit

A building, or portion thereof, providing complete and permanent living facilities for one family.

E

Easement, Driveway⁴

A private access easement to one or two proposed or recorded lots which meet the lot standards of this Ordinance for area and dimensions. A driveway easement may be paved or unpaved, platted or described by metes and bounds, or may be otherwise described or shown as an easement or right-of-way. Any drive, access, road, easement or right-of-way proposed or designed to serve more than two lots shall be defined as a public or private street.

Easement (Right-of-Way)

A grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation, or persons, including access easements.

Environmental Impact Statement (EIS)

An EIS is prepared if the potential impacts of a project are likely to be significant. An EIS provides an extensive evaluation of a project's direct, secondary, and cumulative impacts, and confirmation that such impacts have been avoided, or otherwise mitigated.

Evidentiary Hearing⁴

A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.

F

Farmland Preservation District

A farmland preservation district includes any Voluntary Agricultural District or Enhanced Voluntary Agricultural District which has been approved under the Polk County Agricultural District Ordinances.

G

Groundwaters

Those waters occurring in the subsurface under saturated conditions.

H

Hydrological Assessment

An analysis which considers the impact of a proposed action on the movement of water through the environment on, above, or below the surface of the Earth. The hydrological assessment must include the following:

- The proximity of the proposed water source to the area of use or application;

ARTICLE 6. DEFINITIONS

- All impoundments, streams, groundwater sources, or watercourses that receive water runoff from the proposed actions and any anticipated impact on those waters;
- All economically and technically feasible alternatives to the proposed source, including, but not limited to, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery;
- The potential environmental impacts that may result from the transport and use of water from the proposed source, and the potential environmental impacts that may result from use of the other water sources identified;
- Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for existing legal uses and reasonably anticipated future needs of the water supply planning region in which the proposed water source is located;
- Consultations with local governments affected by the proposed transport and use;
- The value of the existing capital investment in water-related infrastructure made by the applicant;
- If a groundwater supply will be utilized, an assessment of the environmental/public benefits impact of individual wells versus central/community wells;
- Actions proposed to preserve surface water quality;
- Whether the proposed action will have an impact on the long-term sustainable supply of groundwater.

I

Impacts, Cumulative

Those effects that result from the incremental effects of the original direct impact combined with the impacts of other past, present, and reasonably foreseeable projects in the area. By itself, a proposed project may not constitute a significant stressor; however, multiple development activities, which individually may be insignificant, can collectively degrade the surrounding ecosystem beyond its ability to recover.

Impacts, Direct

Those effects caused by a project that occur at the same time and place. Direct impacts result from project construction and the project itself. Some examples include:

- Wetlands that are filled and wetland acreage lost when a new road is built through a wetland;
- Cleared forested areas for a project's construction cause mortality or displacement of wildlife; and
- Cleared forested areas cause impacts to water quality and aquatic life from exposed soils running off of the construction site into adjacent wetlands, streams, or reservoirs.

Impacts, Secondary

Those effects which are removed in distance as a result of the project's construction and operation. Secondary impacts are sometimes thought of as "chain reaction" effects. In such cases, an initial project can cause changes in land use, population density, and growth rates that may affect air, water, or other natural cultural systems. The effects of these chain reactions (e.g., commercial/subdivision development in

ARTICLE 6. DEFINITIONS

rural areas) may add to other impacts already occurring in the vicinity of the initial project. There are two types of secondary impacts and a project may include one or both of these:

- **Encroachment-Alteration Effects:** The physical presence of the project may affect the function of natural systems through a series of secondary effects.
- **Growth-Inducing Effects:** The presence of a project may affect the pattern or density of development. Some projects are proposed to serve development that is already present, or planned, some are planned to attract new growth, and others will serve a combination of both. These changes in the pattern or density of development would not occur if the project is not implemented.

Impacts, Significant Negative

A reasonable likelihood of more than a moderate (reasonable/not excessive) adverse impact on physical or social environmental quality. Significance is a measure of relevance to the environment (context and intensity) and does not lend itself to a formula or quantifiable test. The context may vary with the physical location/setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

J

K

L

Legislative Hearing⁴

A hearing to solicit public comment on a proposed legislative decision.

Lot

A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposed of transfer title.

Lot Size

The total horizontal area within the lines of a lot.

M

Marginal Access Street

A strip of land, owned publicly or privately, set aside primarily for vehicular service access to the back side of properties otherwise abutting a street, an alley.

Master Plan

A tentative plan showing the proposed development of a tract of land for which platting and development is to be carried out in two or more stages.

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Mitigation (Mitigative Measures)

The use of any or all of the following actions listed in descending order of preference: (1) avoiding the impact by not taking a certain action; (2) minimizing the impact by limiting the degree or magnitude of the action by using appropriate technology or by taking affirmative steps to avoid or reduce the impact; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected critical area or buffer; (4) reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal; (5) compensating for the impact of replacing, enhancing, or providing substitute critical areas and environments; and (6) monitoring the impact and taking appropriate corrective measures.

N

Natural Resources

Existing natural elements including slope, water supply (ground and surface water), watersheds, floodplains, state designated Trout waters, hydric soils, and/or air quality.

O

Open Space

Area to provide for a predominately pervious land surface providing spaces for landscaping and other visual enhancements, pedestrian circulation, and wildlife habitat. The following are not designated open space: vehicular use area such as drives, parking lots and service areas, and buildings. Pedestrian amenities, both pervious and impervious are permitted in open spaces.

P

Performance Guarantee

An unconditional written understanding, approved by the Planning Board whereby a guarantor agrees that the developer, subdivider or applicant will pay the costs of stated construction improvements if performance is not made as stated.

Plan

A graphic representation or map of the tract of land to be developed indicating all proposed divisions of land, their uses, improvements, and other information as may be required to fully disclose the applicant's intentions. The purpose of a plan is to provide general and specific information and is not intended to be a recordable document.

Plat

A map or plan of a parcel of land which is to be subdivided and is intended to be a recordable document.

Plat, Final

A plat which conforms with the provisions of this Ordinance, the mapping requirements set forth in G.S. 47-30 and The Manual of Practice for Land Surveying in North Carolina. The final plat shall be prepared

ARTICLE 6. DEFINITIONS

in accord with this Ordinance and in such a fashion as to be suitable for recording by the Polk County Register of Deeds.

Plat, Preliminary

A tentative plat, including supporting data, indicating a proposed subdivision design, prepared by a NC licensed land surveyor in accordance with this Ordinance and the statutes of the state of North Carolina.

Public Facilities

Facilities owned and operated by a public agency including but not limited to the school system, health care, recreation, emergency services, Sheriff, fire, or other facilities to which the public has access.

Q

Quasi-Judicial – see Evidentiary Hearing. ⁴

R

Recombination

The combining of portions of previously subdivided and recorded lots if the total number of lots is not increased as established by this Ordinance.

Road or Street, Private

A dedicated private right-of-way which affords access to abutting properties and conforms to the requirements of Section 5.12 of this Ordinance.

Road or Street, Public

A dedicated public right-of-way for vehicular traffic which affords access to abutting properties and conforms with the requirements of Section 5.11 of this Ordinance. A public street is intended to be taken over by the NC Department of Transportation upon completion. ⁴

S

Setback

The distance from an established property boundary or other line defined in this Ordinance that established the buildable area on the lot.

Sewage Disposal System, Public

Any sewer system owned and operated by a local government or authority established by governmental authority.

Sewer System, Community

Any privately owned sewer system serving more than one residence.

ARTICLE 6. DEFINITIONS

Sewer System, Individual

Any septic tank or ground absorption system serving a single source or connection and approved by the Polk County Health and Human Services Agency³.

Sketch Plan

A sketch preparatory to the preliminary plat to enable the subdivider to save time and expense in reaching general agreement with the Administrator as to the form of the plat and the objectives of this Ordinance.

Subdivider

Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision⁴

All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Article:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the local government as shown in its subdivision regulations.
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- (4) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the local government, as shown in its subdivision regulations.
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

Subdivision, Cluster Development

A type of major or minor subdivision that is intended to allow smaller than minimum lot sizes with dwelling units clustered in smaller areas in order to preserve larger areas of open space and environmental resources.

Subdivision, Expedited Review for Three-Lot²

- (1) The Administrator shall require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:
 - a. The tract or parcel to be divided is not already exempt according to the Subdivision definition
 - b. No part of the tract or parcel to be divided has been divided in the 10 years prior to the division

ARTICLE 6. DEFINITIONS

- c. The entire area of the tract or parcel to be divided is greater than five acres
- d. After division, no more than three lots result from the division
- e. After division, all resultant lots comply with all of the following:
 - i. Any lot dimension size requirements of the applicable land-use regulations, if any
 - ii. The use of the lots is in conformity with the applicable zoning requirement, if any
 - iii. A permanent means of ingress and egress is recorded for each lot.

Subdivision, Family

A subdivision containing no more than eight lots for the purpose of conveying the resulting parcels or lots to a grantee or grantees who are in any degree of lineal kinship to the grantor, or to a grantee or grantees who are within three degrees of collateral kinship to the grantor. Degrees of kinship shall be computed in accordance with NCGS 104A-1. Lots can be conveyed as a gift, as settlement of the property owner's estate or for a nominal consideration. This term also includes the conveyance of a lot or tract for the purpose of dividing lands among the tenants in common, all of whom, by intestacy or by will, inherited the land from a common ancestor.

Subdivision, Major

A subdivision of land by a property owner into 9 or more lots or parcels for the purpose of sale or development (whether immediate or future).

Subdivision, Minor

A subdivision of land by a property owner into 8 or fewer but more than two (2) lots or parcels for the purpose of sale or development (whether immediate or future).

Subdivision, Two-Lot

A subdivision that involves not more than two (2) lots.

T

U

V

W

Wastewater Treatment Facility

The facility or group of units used for the treatment of industrial or domestic wastewater for sewer systems and for the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units is discharging into state waters. Wastewater treatment plant specifically excludes any facility or group of units used for pre-treatment, treatment, or handling of industrial water, wastewaters, reuse waters, and wastes which are not discharged into state waters. Such facilities have been approved by the appropriate state agencies.

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Water Supply System, Public

A municipal water supply system or a system for the provision to the public of piped water for human consumption that serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:

- Any collection, treatment, storage, distribution facility under the control of the operator of the system and used primarily in connection with the system; or
- Any collection or pretreatment storage facility not under the control of the operator of the system that is used primarily in connection with the system.

Water System, Community

Any privately owned water system serving 15 or more residential connections or serving more than 25 year-round residents. Plans and specifications for any community water system require written approval from the North Carolina Department of Environment, Health and Natural Resources, Division of Health Services, Water Supply Branch.

Water System, Individual

A source of water serving a single connection.

Water System, Private

Any water system serving from two (2) to 14 connections, inclusively or 25 or less year-round residents.

X

Y

Z



POLK COUNTY WIRELESS TELECOMMUNICATIONS ORDINANCE

Adopted: June 2, 2014; Amended: January 24, 2017¹, July 16, 2018², March 18, 2019³,
March 16, 2020⁴, May 3, 2021⁵

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ARTICLE I

Section 101. Title.

This Ordinance shall be known as “The Wireless Telecommunications Ordinance” of Polk County, North Carolina.

Section 102. Authority and Enactment.

This Ordinance is adopted under the authority and provisions of the Wireless Telecommunication Facilities, North Carolina General Statutes 160 D, Article 9, Part 3. Wireless Telecommunication Facilities.⁴

Section 103. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Ordinance is to provide for the public health, safety and welfare by ensuring that residents, businesses and public safety operations in Polk County have reliable access to telecommunications networks and state of the art mobile broadband communications services. However, the construction of towers may cause unusual problems and hazards to the residents and visitors of Polk County. The ordinance is to regulate the construction of towers to avoid potential damage to adjacent properties from tower failure, and falling ice or other such debris, to maximize the use of existing and new towers in order to reduce the number of towers needed, to minimize potential hazards to low flying law enforcement and medical helicopters, to restrict towers that adversely detract from the natural beauty of the county by discouraging visual eyesores and to minimize the negative economic impact on tourism. By enacting this Ordinance it is Polk County’s intent to minimize impacts on surrounding areas, encourage coordination among suppliers of telecommunications, encourage the use of existing buildings and structures as locations for telecommunications facilities, ensure structural integrity and safety, ensure Polk County has sufficient wireless infrastructure to support its public safety communications throughout the County, and to ensure access to reliable wireless communications services throughout all areas of Polk County.

Section 104. Jurisdiction.

This Ordinance, the regulations and the procedures contained herein shall apply to and govern each and every lot, parcel or tract of land within the County of Polk, outside of the jurisdiction and ETJ of any incorporated municipality.

ARTICLE II

Section 201. Definitions.

The following definitions apply:

Abandonment – Cessation of use of a wireless support structure for wireless telecommunications activity for at least the minimum period of time specified under this ordinance.

Accessory Equipment - Any equipment serving or being used in conjunction with a wireless facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

Administrative Approval - Approval that the Planning Director or designee is authorized to grant after administrative review.

Administrative Review - Non-discretionary evaluation of an application by the Planning Director or designee.² The procedures for administrative review are established in Section 303 of this Ordinance.

Antenna - Communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Base Station - A station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.

Carrier on Wheels or Cell on Wheels (COW) - A portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure (COWs are exempt from zoning regulations). For the purposes of this ordinance, temporary shall be defined as limited to 60 days within a 365-day period.³

Collocation - The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

Concealed Wireless Facility - Any wireless facility that is integrated as an architectural feature of an existing structure or any new wireless support structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the facility or wireless support structure is not readily apparent to a casual observer.

Electrical Transmission Tower - An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.

Eligible Facilities Request - A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

Equipment Compound - An area surrounding or near the base of a wireless support structure within which are located wireless facilities.

Existing Structure - A wireless support structure, erected prior to the application for an eligible facilities request, collocation or substantial modification under this ordinance that is capable of supporting the attachment of wireless facilities. The term includes but is not limited to, electrical transmission towers, buildings and water towers.^{2, 3}

Fall Zone - The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Monopole - A single, freestanding pole-type structure supporting one or more antennas.

Ordinary Maintenance - Ensuring that wireless facilities and wireless support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity; for example, the strengthening of a wireless support structure's foundation or of the wireless support structure itself. Ordinary maintenance includes replacing antennas of a similar size, weight, shape and color and accessory equipment within an existing equipment compound and relocating the antennas to different height levels on an existing monopole or tower upon which they are currently located. Ordinary maintenance does not include substantial modifications.

Public Safety Facilities - For the purpose of transmitting and relaying critical voice and data communications for public safety including but not limited to emergency services, law enforcement and fire protection services.⁴

Replacement Pole (Tower) - Pole (tower)⁴ of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation. Requires removal of the wireless support structure it replaces.

Small Wireless Facilities - Facilities that meet the following conditions:^{2, 3}

(1) The facilities—

- (a) are mounted on structures 50 feet or less in height including their antenna facility, or
- (b) are mounted on structures no more than 10 percent taller than other adjacent structures, or
- (c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under the FCC and FAA; and

(5) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards.

Substantial Modification - The mounting of a proposed wireless facility or wireless facilities on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the following criteria:

- (i) increases the existing vertical height of the wireless support structure by (a) more than ten percent (10%), or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;
- (ii) adds an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than twenty (20) feet, or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);
- (iii) increases the square footage of the existing equipment compound by more than 2,500 square feet.

Tower - A lattice-type structure, guyed or freestanding, that supports one or more antennas.

Utility Pole - A structure owned and/or operated by a public utility, municipality, electric membership corporation or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

Water Tower - A water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

Wireless Facility or Wireless Facilities - The set of equipment and network components, exclusive of the underlying wireless support structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling and associated equipment necessary to provide wireless telecommunications services.

Wireless Support Structure - A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities.²

ARTICLE III

Section 301. Permits Required for Wireless Facilities and Wireless Support Structures.

No wireless facility or wireless support structure shall be constructed, altered, reconstructed or expanded in Polk County without a valid Wireless Facility and Wireless Support Structure Permit as provided in this Ordinance.

Provided, however, no permit shall be required for the following:⁴

- (1) *Public Safety Facilities.* A wireless facility or wireless support structure associated with a public safety facility so long as it complies with the following:
 - (a) The wireless facility or support structure shall not exceed 200' in height.
 - (b) A fall zone as defined in the Ordinance shall be provided and shall only encroach on property owned by the State of North Carolina or a local government.
 - (c) Additional antennas may be collocated on public safety facilities provided they meet the requirements of Section 302.
 - (d) Replacement poles located on property owned by the State of North Carolina or a local government.
- (2) *Amateur Radio Antennas and Antenna Support Structures.* Amateur radio antennas or antenna support structures of amateur radio operators to heights of 90 feet or lower.

Section 302. Administrative Review and Approval.

The following types of permit applications are subject to the review process as provided in Section 303:

- (1) New wireless support structures that are less than sixty (60) feet in height as measured from the ground;
- (2) Replacement poles located on public property or within utility easements or rights-of-way;
- (3) COWs;
- (4) Collocations;
- (5) Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification as defined in this ordinance;
- (6) Ordinary maintenance of existing wireless facilities and wireless support structures, as defined in this Ordinance; and
- (7) Small Wireless Facilities including facilities placed on utility poles.^{2, 3}

Section 303. Administrative Review.

- (1) *Content of Application Package-For New Sites.* All administrative review application packages must contain the following (if applicable):
 - (a) Administrative review application form signed by applicant;

- (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue application. Such submissions need not disclose financial lease terms;
 - (c) Drawings which must depict improvements related to the applicable requirements including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements; and
 - (d) Documentation from a licensed professional engineer of calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this ordinance.
- (2) *Content of Application Package-For Other Sites/Facilities.* All administrative review application packages must contain the following:
- (a) Administrative review application form signed by applicant; and
 - (b) For collocations, written verification from a licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas, or a fall zone that measures at a minimum within the parcels lot lines, a circle whose center is the base of a telecommunications tower and whose radius is equal to one and one-half the tower's height documented by a N.C. licensed engineer and shall be marked by signage indicating the perimeters of the fall zone.¹
 - (c) For Carrier on Wheels or Cell on Wheels (COW) drawings must depict improvements related to the applicable requirements including boundaries, setbacks, topography, elevation sketch and dimensions of COW. Height of which shall not exceed 120', and must be located 150' from any structure and 150' from any property line.³
- (3) *Procedure and Timing.*
- (a) Applications for Administrative Approval. Within ten (10) days of the receipt of an application for a small wireless facility and thirty (30) days of the receipt of an application otherwise subject to administrative approval, the Planning Director will ^{2, 3}:
 - (i) Review the application for conformity with this Ordinance. An application under this Section 303 is deemed to be complete unless the Planning Director notifies the applicant in writing, within ten (10) calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take ten (10) calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within ten (10) calendar days, the application shall be reviewed and processed within thirty (30) calendar days from the initial date the application was received. If the applicant requires a period of time beyond ten (10) calendar days to cure the specific deficiencies, the thirty (30) calendar days deadline for review shall be extended by the same period of time;
 - (ii) Make a final decision to approve or disapprove the application; and
 - (iii) Advise the applicant in writing of its final decision. If the Planning Director denies an application, it must provide written justification of the denial, which must be based on substantial evidence of inconsistencies between the application and this Ordinance.
 - (iv) Failure to issue a written decision within thirty (30) calendar days shall constitute an approval of the application.

- (4) *Wireless Facility & Wireless support Structure Permit.* A Wireless Facility & Wireless Support Structure Permit shall be issued following approval of the application under administrative review in accordance with the process and standards in this Ordinance.
- (5) *Appeals of Administrative Decisions.* Appeals of administrative decisions shall be filed with the Planning Director within 30 days of the date of the written decision. Appeals of administrative decisions shall be heard by the Board of Adjustment.

Section 304. Board of Adjustment – Non-Administrative.

- 1) Any wireless facility or wireless support structures not meeting the requirements of Section 303 above, may be permitted upon the granting of a Wireless Facility and Wireless Support Permit by the Board of Adjustment, subject to:
 - (a) The submission requirements of Section 303 (1), and 304;
 - (b) The applicable standards of Section 304 below;
 - (c) A completed application and five (5) copies of all supporting documentation identified in Section 304 shall be submitted to the Planning Director for review at least thirty (30) days prior to a regularly scheduled Board of Adjustment meeting or special called meeting by the Board of Adjustment;
 - (d) The Planning Director shall review the completed application for compliance with Section 304. Any application not containing all information required by Section 304 shall be returned to the applicant for correction and resubmission. If the Planning Director deems it necessary, they may retain, at the permit applicant's expense, one or more professional engineers to assist them in reviewing any technical requirements;
 - (e) The Planning Director shall be responsible for submitting a notice to the local newspapers and to all known property owners abutting the property where the proposed tower is to be located. The notice shall state that the Board of Adjustment will review and consider the application at their next meeting;
 - (f) The Board of Adjustment shall consider the application at their next regularly scheduled or special called meeting.
 - (g) The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by agent or attorney.
 - (h) After the quasi-judicial hearing, the Board of Adjustment shall within forty-five (45) days take action on the permit application based on consideration of substantial evidence contained in the record. The Board shall either (1) deny it, (2) approve it, or (3) approve it subject to one or more conditions. A majority of the members shall be required to render a decision. Upon rendering a decision on the permit application, the Board shall issue a notice of decision with written findings of fact as to whether the proposed use meets each of the criteria listed in Section 304. If the Board of Adjustment fails to act within the specified time period, the application shall be considered approved;
 - (i) The permittee or its agent shall record the Site Development Plan in the Register of Deeds office before obtaining a building permit for the subject tower. If a building permit is not obtained within twenty-four (24) months after the wireless facility and wireless support structure permit is issued, the permit shall expire.
- (2) Content of Permit Application Package. All permit application packages must contain the following:

- (a) *Site Development Plan.* A site development plan prepared by a NC Registered Land Surveyor containing the following:
- (i) The tower applicant's name and property owner's name and their addresses, scale, north arrow, vicinity map, tax parcel identification number, and the tower's latitude and longitude coordinates.
 - (ii) The name, address, signature and seal of the surveyor preparing the site development plan.
 - (iii) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall zone.
 - (iv) The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.
 - (v) All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
 - (vi) All existing towers on the property or any towers whose fall zone encroaches onto the property.
 - (vii) The proposed tower's location, the proposed fall zone and the location of all support structures and guy line anchors.
 - (viii) The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the most recent available datum.
 - (ix) All proposed access roads, easements or right-of-ways on or to the site, and any other improvements to the site.
- (b) *Preliminary Design Plan.* A preliminary tower design plan prepared by a NC Registered Professional Engineer which shall contain the following:
- (i) The applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.
 - (ii) The name, address, signature and seal of the engineer preparing the preliminary tower design plan.
 - (iii) A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings and any other proposed improvements including access roads and utility connections within and to the proposed site.
 - (iv) A tower elevation showing the proposed lighting, all proposed antennas and other appendages.
 - (v) An elevation of each proposed set of guy line anchors.
 - (vi) The proposed tower design loads.
 - (vii) A map and description showing the service area(s) for the proposed tower's antenna(s) and/or other devices.
- (c) Wireless support structures shall be subject to the following:
- (i) Shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:

1. Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers;
 2. Support structures greater than one hundred (100) feet but less than one hundred-fifty feet (150) shall support at least three (3) telecommunications providers;
 3. Support structures greater than one hundred-fifty (150) feet in height shall support at least four (4) telecommunications carriers.
- (ii) The equipment compound area surrounding the wireless support structure must be of sufficient size to accommodate accessory equipment for the appropriate number of telecommunications providers in accordance with Section 304(9).
- (3) *FAA and FCC Compliance Statements.* The applicant shall provide written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations.
- (4) *Fees.* The total fees for reviewing a non-administrative permit application shall be in accordance with the fee schedule as set by Polk County. Applications for new wireless support structures with proposed wireless facilities shall be considered together as one application requiring only a single application fee.
- (5) Concealed wireless facilities shall be designed to accommodate the collocation of other antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
- (6) *Setbacks.* Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone. Property located within the tower's fall zone shall not be subdivided as long as the tower is standing.
- (7) *Height.* Wireless support structures shall not exceed a height equal to two hundred (200) feet from the base of the structure to the top of the highest point, including appurtenances.
- (8) *Aesthetics.*
- (a) *Lighting and Marking.* Wireless facilities or wireless support structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
 - (b) *Signage.* Signs located at the wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this Ordinance shall prohibit signage that is approved for other uses on property on which wireless facilities are located (*e.g.*, approved signage at locations on which concealed facilities are located).
 - (c) *Structure.* Tower colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable Federal or State regulations. The tower and equipment shall be located, designed, and/or screened to blend with the existing natural, or built surroundings to reduce the visual impacts, and to be compatible with neighboring land uses and the character of the community.^{2, 3}
- (9) *Accessory Equipment.* Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the wireless facility or wireless

support structure. Any equipment not used in direct support of such operation shall not be stored on the site.

- (10) *Fencing.* Ground mounted accessory equipment and wireless support structures shall be secured and enclosed with a fence not less than eight (8) feet in height.

ARTICLE IV

Section 401. Miscellaneous Provisions.

- (1) **Abandonment and Removal.** If a wireless support structure is abandoned, and it remains abandoned for a period in excess of twelve (12) consecutive months, the County may require that such wireless support structure be removed only after first providing written notice to the owner of the wireless support structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the wireless support structure within sixty (60) days of receipt of said written notice. In the event the owner of the wireless support structure fails to reclaim the wireless support structure within the sixty (60) day period, the owner of the wireless support structure shall be required to remove the same within six (6) months thereafter. The County shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.
- (2) **Variance.** When unnecessary hardships would result from carrying out the strict letter of this ordinance, an applicant may submit a completed application for a variance in accordance with Article X, of the Polk County Zoning Ordinance. The Board of Adjustment shall hear and decide all variance requests in accordance with Article X, of the Polk County Zoning Ordinance.
- (3) **Appeals.** The Board of Adjustment shall hear and decide appeals of administrative decisions arising out of this ordinance in accordance with Article X, of the Polk County Zoning Ordinance.
- (4) **Decisions of the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402.⁵** A petition for review shall be filed with the Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with Section 10.8.1 of this subsection. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

ARTICLE V

Section 501. Wireless Facilities and Wireless Support Structures in Existence on the Date of Adoption of this Ordinance.

- (1) Wireless facilities and wireless support structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.
- (2) **Activities at Non-Conforming Wireless Support Structures.** Notwithstanding any provision of this Ordinance:
 - (a) Ordinary maintenance may be performed on a non-conforming wireless support structure or wireless facility.
 - (b) Collocation of wireless facilities on an existing non-conforming wireless support structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the administrative approval process defined in Section 303; provided

that the collocation does not substantially modify the size of the equipment compound at that location or otherwise substantially modify the existing non-conformity.

- (c) Substantial modifications may be made to non-conforming wireless support structures utilizing the non-administrative permit process defined in Section 304 of this Ordinance.

ARTICLE VI

Section 601. Severability

Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 602. Conflict with Other Laws

Whenever the regulations of this Ordinance conflict with the requirements of another North Carolina or federal statute or Polk County Ordinance, the more restrictive standard shall govern.

Section 603. Effective Date

This Ordinance shall take effect and be in force on the 3rd day of May, 2021, adopted on the 3rd day of May, 2021.

Commission Chair

Attest:

Clerk to the Board

Approved as to content & form:

County Attorney



Polk County Zoning Ordinance

Adopted 10/16/17; Amended 12/18/17; 4/16/18; 2/4/19; 10/7/19; 6/21/2021

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Article I. Authority and Enactment clause

For the purpose of promoting health, safety, morals and general welfare, and by authority granted by the General Assembly of the State of North Carolina, General Statutes, particularly Chapter 160D, the Polk County Board of Commissioners hereby ordains and enacts into law the following articles and sections. ^{xxv}

Article II. Short Title

This ordinance shall be known and may be cited as "The Zoning Ordinance of Polk County, North Carolina."

Article III. Applicability & Jurisdiction

Section 3.1 Jurisdiction.

The provisions of this ordinance shall be applicable to the unincorporated areas of the county lying outside of any extra territorial zoning districts as specifically identified and delineated on the zoning map entitled "Official Zoning Map, Polk County, North Carolina." Parts of the county not identified as the zoning area shown on this map are not affected by these regulations.

Section 3.2 Exemption. ^{xix}

This ordinance shall in no way regulate, restrict, prohibit, or otherwise affect bona fide farms within the jurisdiction of this ordinance, now enacted, or hereafter amended or revised. Any use of such property for nonfarm purposes, however, shall be subject to this ordinance.

According to General Statute 160D-903, a building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue or (ii) is enrolled in the present use value program. ^{xxv} Failure to maintain the requirements of this section for a period of three years after the date the building or structure was originally classified as a bona fide purpose shall subject the building or structure to applicable zoning and development regulation ordinances in effect on the date the property no longer meets the requirements. For purposes of this section, "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

Article IV. Application of Regulations.

Section 4.1 Use, occupancy and erection of buildings.

No building, structure, or land shall hereafter be used or occupied, and no building, structure or parts thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the districts in which they are located, except as hereinafter provided. Please refer to Article 9 for administrative regulations and procedures.

Section 4.2 Limitation on number of principal buildings on one lot.

Except as hereinafter provided in Section 6.2.3, 6.2.5, 7.3, and 7.4^{xiv}, only one principal building and its customary accessory buildings may hereafter be erected on any lot. Except as otherwise provided in this Ordinance, a mobile home shall in no event be considered a customary accessory building.

Section 4.3 Sharing of yard requirements.

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

Section 4.4 Reduction of lot and yard areas prohibited.

No yard or lot existing at the time of passage of this ordinance shall be reduced in size of area below the minimum requirements set forth herein.

Section 4.5 Road access.

No building shall hereafter be erected on a lot unless there is legal access to such lot adequate to serve the purposes of the building.

Section 4.6 Off-street parking.^{xii}

Off-street automobile parking or automobile storage space shall be provided on every lot at the time any principal building is enlarged or increased in capacity, or at the time one (1) type of use is converted to another, or whenever any of the following uses listed in Section 4.7 are hereafter established. Such space shall be provided with vehicular access to a street or alley and shall not be provided in a setback area required by the provisions of Article 7. Each automobile space shall consist of an improved hard-surface or crushed stone, unless otherwise specified, not less than one hundred sixty two (162) square feet (18' by 9') in an area exclusive of adequate access drives and maneuvering space.

Parking Lot Landscaping Requirements

Trees and shrubs are required in and around parking lots with more than ten spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, help absorb runoff, reduce glare from parking lots, and to help filter exhaust from vehicles.

1. Where parking areas with more than ten spaces adjoin a public right-of-way, a landscaped planting strip 10 feet wide shall be established and continuously maintained between the public right-of way and parking area(s). Parking areas within 50 feet of the right-of-way shall have a visually modifying screen or barrier that meets one of these standards:
 - a. evergreen shrubs shall be planted 30 inches apart as measured from the center, and attain a height of at least 48 inches within four years of installation;
 - b. the screen or barrier is of the same material as the principal building; or

c. there is an earthen berm at least two feet high, with a minimum crown width of two feet and a width to height ratio of no greater than 2:1; shrubs shall be planted on top of the berm that will attain a height of at least 36 inches within four years of installation and shall be planted 30 inches apart.

No screen is required at parking lot entrances or exits, and no screen shall obstruct vision within 50 feet of an entrance, exit or intersection. The landscaped planting strip shall be covered with living material, including groundcover and/or shrubs, except for mulched areas directly around the trees, so that no soil is exposed.

2. Parking areas with more than five spaces shall have at least one deciduous tree for every five (5) parking spaces, with some appropriate clustering of trees permitted, and 6-foot by 18-foot projecting landscaped islands generally every 10 parking spaces. Whenever possible, interior parking spaces should have a continuous planter strip six (6) feet wide between rows of parking. Where appropriate, provisions shall be made to ensure that adequate pedestrian paths are provided throughout the landscaped areas. In all cases, at least one deciduous tree shall be provided for a parking lot regardless of the number of spaces provided.

3. Areas in a parking lot not used for driveways, maneuvering areas, parking spaces, or walks shall be permanently landscaped with suitable materials and permanently maintained.

Law Enforcement Center – natural tree line buffers around the exterior of the parcel to be maintained, unless security issues will not allow.^{xvi}

Section 4.7 Minimum Parking Requirements.

The required number of off-street parking spaces shall be equal in number to at least the minimum requirements for the specific uses set forth below: `

Residential Uses

Single-family residence

Required Parking Spaces

2 spaces

Multifamily residence

1½ spaces per dwelling unit

Guest house

2 spaces

Mobile home

2 spaces for each mobile home

Public and Semi-Public Uses

Required Parking Spaces

Bowling alleys

1 space for each employee, 2 spaces for each lane

Churches

1 space for each 4 seats in the main sanctuary

Elementary school and
junior high school

1 parking space for each classroom
administrative office

Equestrian centers & facilities, multi-discipline ^{xii}	1 space per 5 fixed seats in the largest assembly room, provided that every one hundred sixty-two (162) square feet of fenced ground area (i.e. riding rings) shall count as 1 parking space without the necessity of an improved hard-surface or crushed stone.
Events, show & festivals ^{xii}	1 space per 5 fixed seats in the largest assembly room, provided that every one hundred sixty-two (162) square feet of fenced ground area (i.e. riding rings) shall count as 1 parking space without the necessity of an improved hard-surface or crushed stone
Hospitals and nursing homes	1 space for each 2 beds, exclusive of bassinets, and 1 space for bassinets, and 1 space for each physician and nurse, and 1 space for each 2 additional employees
Public or private libraries	1 space for each 150 square feet of gross floor area for public use, plus 1 space for each 2 employees on the shift of greatest employment
Public utility buildings	1 parking space for each 200 feet of gross floor area
Skating rinks (ice and roller skating)	1 space for each 100 square feet of floor (rink) areas used for amusement, plus 1 space for each 4 fixed seats in the principal building
Senior high school	1 parking space for each 20 students for which the building was designed plus 1 parking space for each classroom and administrative office
Sanitariums, rest and convalescent homes	1 space for each 6 beds plus 1 space for each staff or visiting doctor plus 1 space for each 4 employees
Spectator sports facilities, any size	1 space per 5 fixed seats in the largest assembly room, provided that every two (200) hundred square feet of fenced ground area (i.e. riding rings) shall count as 1 parking space without the necessity of an improved hard-surface or crushed stone
Theaters, community recreation centers	1 space per 4 fixed seats in the largest assembly room, or one space for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or one space for each 150 square feet of gross floor area, whichever is needed by the facility

Business Uses**Required Parking Spaces**

Antique and gift shops	6 spaces per shop
Automobile sales and repair garages	1 space for each 2 employees at maximum employment on a single shift and 2 spaces for each 300 square feet of repair or maintenance space
Automobile washing establishments	1 space for each 2 employees at maximum employment on a single shift; 5 spaces shall also be located at the entrance and exit of the facility
Courthouse ^{xvi}	1 space per 4 fixed seats in the, assembly room, or one space for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or one space for each 150 square feet of gross floor area, whichever is needed by the facility. ^{xxv}
Customary home occupation I & II ^{xi}	Parking necessary to conduct business shall be provided. Parking must be off-street and on-site. Parking must be screened so as to obstruct views of the parking area from adjacent properties, streets or roadways, and to maintain the character of the neighborhood.
Doctor's or dentist's office	4 parking spaces per doctor in addition to 1 space for each employee
Drive-in restaurants	1 space per employee, plus parking space equivalent to 5 times the size of the main building
Drive in theaters	Reserved parking space off the street shall be provided for patrons awaiting admission in an amount not less than 30 percent of the vehicular capacity
Law Enforcement Center ^{xvi}	1 space per each 400 square feet of gross floor area for office areas plus 1 space for each 4 beds.
Motels, tourist homes, tourist courts	1 space for each sleeping room plus 1 additional space for each 3 employees
Offices, business	1 parking space for each 400 square feet of gross floor area
Public or private clubs, including golf courses (clubhouse)	1 parking space for each 200 square feet of gross floor space

Restaurants	1 space per employee, plus parking space equivalent to 1 space per 3 seats or stools
Roominghouses, boardinghouse, and hotels	1 space for each sleeping room plus 1 additional space for each 3 employees
Retail uses not otherwise indicated in this section	1 space for each 250 square feet indicated in this section of total floor area
Service stations	3 spaces for each grease rack plus 2 spaces for each gas pump
Roadside stands	6 off-street parking spaces

Wholesale and Industrial Uses **Required Parking Spaces**

Wholesaling, industrial plants and truck terminals	1 space per employee at peak shift
Vineyards/Winery	1 space per employee, plus 1 space for every 3 seats in any tasting room open to the public

4.7.1 Shared Parking^{xix}

Where multiple uses exist within a building or a development project, an applicant will:

- a. meet the required minimum parking requirements; or
- b. provide documentation by a registered engineer or qualified professional to evaluate and certify shared parking using ULI (Urban Land Institute) or ICSC (International Council of Shopping Centers) International Guidelines for shared parking.

Section 4.8 Combined parking space.

The required parking space for any number of separate uses may be combined in one (1) lot but the required space for one (1) use may not be assigned to another use, except that one-half of the parking space required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night or Sundays.

Section 4.9 Parking spaces provided within four hundred (400) feet of principal use.

If the off-street parking space required cannot be reasonably provided on the same lot on which the principal use is located, such space may be provided within four (400) hundred feet of the main entrance to such principal use, provided such land is in the same ownership or long-term lease as the principal use. Said land shall be used for no other purpose so long as no other adequate provisions of this ordinance have been made for the principal use. In such cases, the applicant for a zoning compliance or zoning permit for the principal use shall submit with his application an instrument duly executed and acknowledged, which subjects said land to parking use in connection with the principal use or for which it is made available. Upon the payment of the

necessary fee and the issuance of a zoning compliance or zoning permit, the Zoning Administrator shall cause said instrument to be registered in the office of the Register of Deeds of Polk County.

Section 4.10 Off-street loading and unloading spaces.

Every building or structure used for business, or wholesale or industry shall provide space as indicated below for the loading and unloading of vehicles. Such space shall have access to a public street or alley. For the purposes of this article, an off-street loading space shall consist of an improved hard-surface or crushed stone and have minimum dimensions of nine (9) feet wide, thirty (30) feet long, with fourteen (14) feet overhead clearance.

- a. Retail business: One (1) space for each three thousand (3,000) square feet of floor area or fraction thereof, unless differently required by Section 4.8.
- b. Wholesale or industry: One (1) space for each ten thousand (10,000) square feet of floor area or fraction thereof.

Section 4.11 Temporary use permits for manufactured/mobile homes.

In the event of a medical condition where a family member requires close supervision or constant care, the Board of Adjustment may issue a temporary use permit whereby a mobile home or a manufactured home may be placed in the rear yard of a residential dwelling as an accessory structure. Such temporary use permit shall be issued for a period of time not to exceed twelve months and may be renewed by the Zoning Administrator so long as the hardship continues to exist.

Article V. Establishment of Districts and Boundaries and Map.

Section 5.1 Establishment of districts.

For the purpose of the ordinance, the area designated on the zoning map is hereby divided into the following districts:

Residential (R)

Agricultural-residential (AR)

Residential estate/low density (RE-1)

Residential estate/low density (RE-2)

Residential estate/very low density (RE-5)

Multifamily residential (MR)

Neighborhood Commercial (NC)

Highway commercial (HC)

Industrial (I)

Multiple use (MU)

Family Farm (FF)

Agricultural-residential/very low density (AR-5)

Equestrian (E) ^{viii}

Equestrian Village (EV) ^{xiv}

Government and Public Facilities District (GPF) ^{xvi}

Section 5.2 District boundaries.

The boundaries of the districts as herein established are shown upon the map accompanying this ordinance entitled "Official Zoning Map, Polk County, North Carolina," and made a part thereof. The zoning map and all the notations, references and other information shown thereon is hereby made a part of this ordinance the same as if such information set forth on the map were all fully described and set forth herein. The zoning map properly attested is on file in the office of the Zoning Administrator and is available for inspection by the public.

Section 5.3 Rules governing boundaries.

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

- a. Where district boundaries are indicated as approximately following the centerlines of streets or highways, street lines or railroad rights-of-way lines or such lines extended, such centerlines, street lines, or railroad right-of-way lines shall be construed to be said boundaries.
- b. Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be said boundaries.
- c. Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map.
- d. In unsubdivided property or where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by use of the scale appearing in the map.
- e. Where district boundaries are indicated as approximately following the centerline of stream beds, or river beds, such centerlines shall be considered to be such boundaries. ^{xxv}

Section 5.4 Statement of District Intent

5.4.1 Residential district (R).

The residential district (R) is intended to provide locations for residential purposes, and limited private and public uses which do not detract from the residential character of the neighborhood. This district is further intended to prohibit business and industrial land uses and any other uses that would interfere with the developing or continued use of land for residential purposes.

5.4.2 Agricultural-residential district (AR).

The agricultural-residential district (AR) is intended to provide areas for general agricultural purposes, and low density residential purposes. This district is further intended to protect from scattered and uncoordinated development, and to discourage any use that because of its size or character would create unusual requirements and costs for providing public services such as water supply, refuse, and sewerage disposal before such services are generally needed.

5.4.3 Residential estate/low density district (RE-1).

The residential estate/low density district (RE-1) is intended as a district in which the principal use of land is for low density residential purposes and for other residentially related facilities designed for serving the residents of these districts. These districts consist primarily of single-family detached dwelling units placed on relatively large lots with considerable open spaces between structures, thus creating a low density residential environment. Nonresidential uses are limited in order to maintain the low density character and to preserve the natural features of those areas. Likewise, dimensional requirements pertaining to lot size, building setbacks, and yard requirements, have been established to promote the general welfare of the community.

5.4.4 Residential estate/low density district (RE-2).

The residential estate/low density district (RE-2) is intended as a district in which the principal use of land is for low density residential purposes and for other residentially related facilities designed for serving the residents of these districts. These districts consist primarily of single-family detached dwelling units placed on relatively large lots with considerable open spaces between structures, thus creating a low density residential environment. Nonresidential uses are limited in order to maintain the low density character and to preserve the natural features of those areas. Likewise, dimensional requirements pertaining to lot size, building setbacks, and yard requirements, have been established to promote the general welfare of the community.

5.4.5 Residential estate/very low density district (RE-5).

The residential estate/very low density district (RE-5) is intended as a district in which the principal uses of land are for (1) nonprofit private equestrian courses, nature centers and recreational facilities , (2) private stables and (3) very low density residential purposes and for other residentially related facilities designed for serving the residents of these districts. These districts consist primarily of single-family detached dwelling units placed on large lots with considerable forestation or open spaces between structures, thus creating a very low density residential environment. Nonresidential uses are limited in order to maintain the very low density character and to preserve the natural features of those areas.

Likewise, dimensional requirements pertaining to lot size, building setbacks, and yard requirements have been established to promote the general welfare of the community.

5.4.6 Multifamily residential district (MR).

The multifamily residential district (MR) is intended to provide an area for the development of single and multifamily uses such as apartments and condominiums.

5.4.7 Highway commercial district (HC).

The highway commercial district (HC) is intended to provide for the orderly development and concentration of highway commercial uses at appropriate locations, and to encourage the development of these locations so as to minimize traffic hazards. The principal use of this district is to provide for the provision of products and services to tourists and the motoring public in areas adjacent to interstate and other major highways.

5.4.8 Industrial district (I).

The industrial district (I) is intended to provide for the orderly development of industry which will provide increased employment and which will not be detrimental in terms of creating a damaging environment in the surrounding area.

5.4.9 Neighborhood Commercial (NC).

The neighborhood commercial district (NC) is intended to provide suitable locations for limited, neighborhood-oriented, commercial businesses and service activities in close proximity to residential neighborhoods, schools, and hospitals. This district is designed to allow for a mix of residential, commercial, business and service uses to serve the residents, occupants, patients, students, and visitors to the area, in limited areas, along major traffic arteries and at key intersections, to preserve the traffic carrying capacity of the streets, to provide for off-street parking, and to limit building illumination to minimum needed for safety. The type of uses allowed, and the standards established for development in this district, should be compatible with the residential character of the area, and not to encourage extensive development, but rather to provide concentrations of general commercial and business activities. This district should currently have water and sewerage services or be expected to have such services available in the foreseeable future.

5.4.10 Multiple Use (MU).

The multiple use district (MU) is intended to provide locations for most types of land uses allowed in the other zoning districts. Uses in this district should not endanger the public health and safety, not substantially injure the surrounding property values, and be in harmony with the surrounding area. In light of historic development patterns in this district, and in consideration of the significant impact of large scale residential development within Polk County, special provision is made with respect to major subdivisions.

5.4.11 Family Farm (FF).

The family farm district (FF) is intended to provide locations for most types of land uses allowed in the other zoning districts. Uses in this district should not endanger the public health and safety, not substantially injure the surrounding property values, and be in harmony with the surrounding area.

5.4.12 Agricultural Residential Very Low Density (AR-5)

The agricultural-residential/very low-density district (AR-5) is intended to provide areas for general farming purposes (including agriculture, horticulture and forestland), support of farming activities, and very low-density residential purposes. The district consists primarily of rural residential properties with acreage and individual/family farming operations, for example, vineyards, orchards, soybeans, hay and timber production; beef, goat, pig, dairy and horse farms and stables; and small specialty farms such as produce gardening, flower/nurseries and beekeeping. This district is intended to protect from scattered and uncoordinated development, particularly higher-density, suburban-type subdivisions that are typically incompatible with farming activities (for reasons such as traffic, water demands, and objections to the noises, smells, hours and machinery of farming), and to discourage any use that because of its size or character would create unusual requirements and costs for providing public services such as water supply, refuse and sewerage disposal. The district is not intended to attract or support major agri-businesses such as corporate pig or poultry farming, cattle feed lots or fertilizer manufacturing plants. The district does allow small businesses, non-intrusive to neighboring properties, to be conducted on a resident's property; examples would include artist/craft studio; research/writing/transcription; farrier; carriage supply sales; acupuncture/massage; accounting; woodworking; technology/web design. Uses in this district should not endanger the public health and safety, not substantially injure the surrounding property values, and be in harmony with the surrounding area.

5.4.13 Mobile Home Overlay (MHO)ⁱ

The mobile home overlay zoning classification (MHO) is intended to provide a means for homeowners to provide housing for family members on the lot on which the homeowners' home is located. A medical hardship, as specified in Section 4.2 of this Ordinance, is not necessary in order for a mobile home to be situated on a lot located within an MHO district. MHO districts are an overlay zone, affecting the underlying zoning district only as stated herein.

5.4.13.1 Uses Authorized. The uses authorized in an MHO district, including permitted uses, permitted uses with conditions, and special uses, shall be the same as for the underlying zoning district(s) with one exception: accessory mobile homes shall be permitted as special uses subject to the standards contained herein.

5.4.13.2 Development Standards. Dimensional and other development standards shall be the same as for the underlying zoning district(s) except as modified herein.

5.4.13.3 Special Use Permits. Special use permits shall be limited to a specific hardship relating to a specific primary resident of the accessory mobile home. If the identity of that primary resident of the accessory mobile home or the nature of his or her hardship changes, a new special use permit shall be necessary to continue use of the accessory mobile home. The Board of Adjustment shall issue a special use permit to allow the placement of an accessory mobile home in an MHO district only upon making the following findings:

- a. The lot on which the accessory mobile home is to be placed contains an existing single-family home in which the owner(s) of the lot reside (*resident owner*).
- b. The accessory mobile home is clearly accessory to the existing single-family home on the property; the gross floor area of the accessory mobile home may not exceed 75% of the gross floor area of the existing single-family home.
- c. The accessory mobile home shall have a primary resident who is either a member of the family of the *resident owner* of the existing single-family home or the spouse of a member of such family. The accessory mobile home shall not be used as an income-producing property. For purposes of this section, a person shall be considered a member of the family of the *resident owner* if he or she is within the third degree of kinship, by blood or adoption, computed in accordance N.C.G.S. § 104A-1 (First: parents, children; Second: grandparents, grandchildren, siblings; and Third: great grandparents, great grandchildren, aunts, uncles, nieces, nephews).
- d. A substantial hardship exists which will be alleviated by the placement of the accessory mobile home. This hardship may be financial.
- e. The accessory mobile home shall be situated on the property in such a manner as to minimize its impacts on adjoining property owners.

5.4.13.4 Revocation of a Special Use Permit. The Board of Adjustment may revoke a special use permit issued for placement of an accessory mobile home in an MHO district on the following grounds:

- a. The primary resident identified in the application for a special use permit no longer resides in the home.
- b. The hardship identified in the application for a special use permit no longer exists.
- c. Any other violation of the terms of the special use permit or the special use standards contained herein.

5.4.13.5 Additional Responsibilities of the Resident Owner. The *resident owner* shall have the following additional responsibilities with regard to an accessory mobile home:

- a. Record in the Office of the Register of Deeds the special use permit before a building permit may be issued.
- b. File an annual report with the Planning Department on forms provided by the County indicating the status of the accessory mobile home. This report shall be in the form of an affidavit swearing to the truth of the matters contained therein.
- c. Remove the accessory mobile home within 90 days of the following:
 - 1) The accessory mobile home no longer serves as the residence for a family member of the *resident owner*.
 - 2) Revocation of the special use permit authorizing the accessory mobile home.

5.4.14 Equestrian (E).

The Equestrian district is intended to provide locations for most types of land uses allowed in the other zoning districts, including, without limitation, residential uses (including but not limited to clustered developments and group developments), show and event uses, commercial uses, and other uses consistent with and beneficial to the orderly development of mixed-use equestrian communities and/or resorts. Uses in this district are intended (i) to create, preserve, maintain, and enhance equestrian community and/or resort developments in Polk County; (ii) to preserve, maintain, and enhance the lifestyle and activities associated with equestrian community and/or resort developments; and (iii) to identify and encourage the types of land uses that are supportive of mixed-use developments with such equestrian character.

5.4.15 Equestrian Village (EV) ^{xiv}.

The Equestrian Village district is intended to provide locations for most types of land uses allowed in the Equestrian District, including, but not limited to, multi-family residential uses, show and events uses, commercial uses and other uses consistent with and beneficial to the orderly development of mixed-use equestrian communities and/or resorts and particularly those consistent with mixed-use village and resort developments. Uses in this district are intended (i) to create, preserve, maintain and enhance equestrian community and/or resort developments in Polk County; (ii) to preserve, maintain and enhance the lifestyle and activities associated with an equestrian community and/or resort developments; and (iii) to identify and encourage the types of land uses that are supportive of mixed-use developments with such equestrian character.

5.4.16 Government and Public Facilities District (GPF) ^{xvi}

Government and Public Facilities District is intended to accommodate public, quasi-public, and institutional facilities. It is intended for offices, storage, and other facilities for the operation of local, state, or federal government.

Article VI. Permitted Use Table.

P = Permitted

P* = Permitted with conditions

S = Allowed as a Special Use

Blank Space = Not Permitted

	EV	E	GPF	RE1	RE2	RE5	AR	R	MR	NC	HC	I	MU	FF	AR5
Accessory buildings	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Accessory dwelling unit ^{xiii}													P		
Agricultural building (10 acres or more) ^{xxi}	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Agricultural building (less than 10 acres) ^{xxi}	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Automobile, truck, & farm Implement sales & service ^{xii}		P					S				P	P	P	P	S
Bed & Breakfast	P	P					P		P	P	P		P	P	P
Cemetery <i>*see 6.2.7 for restrictions</i>				P*	P*	P*	P*	P*	P*	P	P		P	P	P*
Church, synagoge, temple, or other religious Building <i>*see 6.2.1 for restrictions</i>	P	P		P*	P*	P*	P*	P*	P*	P	P		P	P	P*
Clubs, public or private <i>*see 6.2.1 for restrictions</i>	P	P		P*	P*	P*	P	P			P		P	P	P*
Community recreation centers	P	P	P	P	P	P	P	P	P	P			P	P	P
Courthouse ^{xvi}			P												
Convenience stores, including those that sell petroleum and petroleum products	P	P							S	S	P		P	P	
Customary home occupations, Class I ^{ix}	P	P		P	P	P	P	P	P	P	P	P	P	P	P
Customary home occupation, Class II ^{ix}		P											P		P
Day care facility ⁱⁱ <i>*see 6.2.8 for restrictions</i>				P*	P*	P*	P*	P*	P*	P	P*	P*	P*	P*	P*
Duplex ^{xii}		P					P	P	P	P	P	P	P	P	P
Equestrian centers & facilities, multi-discipline <i>*see 6.2.11 for restrictions</i>	P	P*													
Events, shows & festivals	P	P													
Golf courses & country clubs		P		P	P	P	P	P	P	P	P	P	P	P	
Guest House <i>*see 6.2.3 for restrictions</i>		P		P*	P*	P*	P*	P*	P*	P	P	P	P	P	P*

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Blank Space = Not Permitted

	EV	E	GPF	RE1	RE2	RE5	AR	R	MR	NC	HC	I	MU	FF	AR5
Heliport, public & private* <i>see 6.2.12 for restrictions</i>		P*													
Hospitals & clinics							P			P	P		P	P	S
Kennels ^{iv} * <i>see 6.2.9 for restrictions</i>					P*	P*	S			S	S		S	P	S
Laundry & dry cleaning services ^{xii}	P	P								S	P	P	P	P	
Law Enforcement Center ^{xvi}			P												
Libraries, public or private	P	P	P				P		P	P			P	P	P
Manufacturing, Light		P										P	P	P	S
Manufacturing												P	S	P	
Mobile or Manufactured Home, Individual							P						P	P	P
Mobile or Manufactured Home Parks							P		P				P	P	
Modular Home		P		P	P	P	P	P	P	P	P	P	P	P	P
Motels & hotels	P	P									P		S	P	
Museum	P	P													
Multifamily residences	P	P							P	P	P		P	P	
Nature-Oriented Non-Motorized Outdoor Recreation ^{vi}	P	P					S		S	S	P	P	P	P	
Nursery and/or landscape business, & greenhouse							P			P	P		P	P	P
Offices, business, medical, professional & public, including banks	P	P	P							P	P	P	P	P	
Offices pertaining to permitted use	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Printing, publishing, & engraving establishments	P	P								S	P	P	P	P	

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S = Allowed as a Special Use

Blank Space = Not Permitted

	EV	E	GPF	RE1	RE2	RE5	AR	R	MR	NC	HC	I	MU	FF	AR5
Public safety facilities (fire, police, etc...)	P	P	P				P			P	P	P	P	P	S
Quarantine Facilities ^{xxii}	P	P													
Radio & TV stations & studios ^{xii}	S	S									S	S	S	S	
Recreational facilities, for profit (bowling alleys, skating rinks, etc...)	P	P					S		S	S	P	P	S	P	
Recreational facilities, non-profit (parks, playgrounds, nature centers, equestrian courses, etc...)* <i>see 6.2.4 for restrictions</i>	P	P*	P	P*	P*	P*	S						S	P*	S
Recreational Vehicle (RV) ^{xv, xxii} * <i>see 6.2.16 for restrictions</i>	P*	P*		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Recreational Vehicle (RV) & Park and/or Camp Areas ^{xv, xvii} * <i>see 6.2.14 for restrictions</i>	P*	P*					S				P		S	P	
Restaurants, excluding fast food & drive thru services	P	P								P	P		P	P	S
Restaurants, including fast food & drive thru services	P	P									P	P	P	P	
Rest & convalescent homes, sanitariums	P	P					P	P	P	P	P	P	P	P	S
Residential Vacation Rentals ^{ix, xix, xxv}	P	P								P			P		P
Retail trade, commercial services, sales and rental of merchandise & equipment	P	P								S	P	P	P	P	S
Retail business customarily serving residential neighborhoods & conducted within an enclosed building									S	P	P		P	P	
Roadside stands selling home grown products							P				P		P	P	P
Sawmill							P						P	P	S
Schools, public or private ^{xxii}	P	P	P	P	P	P	P	P	P	P			P	P	P
Schools; vocational schools, business schools, & special schools ^{xvii, xxii}	P	P	P	P								P	P	P	

P = Permitted

P* = Permitted with conditions

S = Allowed as a Special Use

Blank Space = Not Permitted

	EV	E	GPF	RE1	RE2	RE5	AR	R	MR	NC	HC	I	MU	FF	AR5
Service stations ^{xii}	P	P									P	P	P	P	
Single family residences		P		P	P	P	P	P	P	P	P	P	P	P	P
Solar Energy Generating Facility, Major ^{vii}												S	S		
Solar Energy Generating Facility, Minor ^{vii} <i>*see 6.2.10</i>												P*	P*		
Spectator sport facilities 500 or more spectators ^{xxii} <i>*see 6.2.13 for restrictions</i>	P*	P*										S	S	S	
Spectator sport facilities less than 500 spectators ^{xxii} <i>*see 6.2.13 for restrictions</i>	P*	P*					S	S	S	S	S	S	S	P	
Stables, private <i>*see 6.2.5 for restrictions</i>	P	P		P*	P*	P*	P						P	P	P
Storage & warehousing ^{xii}	S	S										P	S	P	
Theaters	P	P								S	P		P	P	
Towers <i>*see Polk County Wireless Telecommunication Ordinance</i> ^{xix, xxiv}	P*	P*	P	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Towers (Non-Administrative Approval, Section 304 <i>*Polk County Wireless Telecommunication Ordinance</i>) ^{xix, xxiv}	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*
Truck terminals											P	P	P	P	
Utility buildings and facilities, public <i>*see 6.2.6 for Restrictions</i>			P	P*	P*	P*	P*	P*	P*	P*	P	P	P	P	P*
Veterans' Affairs Office ⁱⁱⁱ			P	P						P	P	P	P		
Veterinarian clinics, animal shelters ^{xii, xxii} <i>*see 6.2.9 for Restrictions</i>	P	P			P*	P*	S			S	S		S	P	S
Vineyard/Winery	P	P													
Waste Handling, Treatment, Processing, Management or Disposal Facility														S	
Wholesale sales, retail sales & supply houses											P	P	P	P	

Section 6.1 Reserved for Future Purposes

Section 6.2 Other Restrictions

6.2.1 Churches and clubs (public or private) provided they are located not closer than fifty (50) feet from any property line with required off-street parking spaces and separated from side and rear property lines by a planted buffer strip at least ten (10) feet in width. The buffer strip shall be composed of two staggered rows of evergreen shrubs or sheared evergreen trees so that an effective screen year-round is present.

6.2.2 Clubs, public or private, provided they are located not closer than fifty (50) feet from any property line with required off-street parking spaces and separated from side and rear property lines by a planted buffer strip at least ten (10) feet in width. The buffer strip shall be composed of two staggered rows of evergreen shrubs or sheared evergreen trees so that an effective screen year-round is present.

6.2.3 Guest house, provided that it shall be placed according to applicable setbacks from any property line and provided that not more than one (1) such facility shall be permitted on any lot. A guest house meeting these requirements may be situated on the same lot as a single family residence.

6.2.4 Nonprofit private equestrian courses, nature centers and recreational facilities, provided that the parcel of land proposed for development shall contain no less than two hundred (200) acres; all structures shall be so placed as not to be closer than three hundred (300) feet from any property line; activities proposed shall in no way have deleterious affects (such as, but not necessarily limited to noise, excess traffic and other effects that go beyond the property line) on adjoining RE-2 and RE-5 developments; the parcel shall be so located as to provide for ingress and egress from the site directly onto a major thoroughfare having an existing or planned right-of-way at least sixty (60) feet in width and shall in no way traverse single-family subdivisions.

6.2.5 Private stable for not more than one (1) horse on a lot or parcel at least two (2) acres in area; and provided further, that for each additional horse stabled thereon, an additional contiguous two (2) acres of land shall be provided. In no instance shall a horse be stabled nearer than seventy-five (75) feet to any property line abutting an existing residence.^{xxv}

The RE-5 districts also allow for horse farms, including the boarding of horses and the extension of on-site riding lessons, provided any stable, barn, or structure required be setback at least three hundred (300) feet from all abutting residentially zoned land.

6.2.6 Provided all structures shall be set back at least thirty (30) feet from the property line and all exposed apparatus shall be safely enclosed and landscaped.

6.2.7 Only when associated with a church.

6.2.8 Provided all state and/or county regulations are met.

6.2.9 Animal shelters and kennels owned by non-profit corporations that serve the needs of the county and its citizens.

6.2.10 *Solar Energy Generating Facilities.*^{vii} Solar energy generating facilities shall be subject to the following restrictions.

6.2.10.1 All solar energy generating facilities shall require approval from all applicable state and federal agencies as well as the affected energy provider.

6.2.10.2 Placement of solar energy generating equipment shall be based on preserving existing site features to the extent practical.

6.2.10.3 Solar energy generating facilities are exempt from parking requirements if there is not a building component.

6.2.10.4 Perimeter setback requirements shall be a minimum of forty (40) feet from property lines and not closer than two hundred (200) feet of any residence other than that of the property owners. Necessary ingress and egress from vehicles and utility and transmission lines may be located within the perimeter setback. Fences may not encroach into the setbacks.

6.2.10.5 Freestanding solar energy generating facilities shall be a maximum of twelve (12) feet in height as measured from the grade at the base of the structure (panel) to the apex of the structure (panel). Freestanding solar energy facilities shall not be visible from the interstate highways, US highways or scenic by-ways as designated by the North Carolina Department of Transportation or Polk County.

6.2.10.6 No more than 75% of a solar energy generating facility tract of property may be covered with panels (i.e. 20 acre tract required if 15 acres of panels to be installed.)

6.2.10.7 Copies of any lease agreement and plan for removal of facility/equipment shall be provided to Polk County.

6.2.10.8 Glare resistant solar panels shall be used in all applications.

6.2.10.9 Rooftop solar energy generating facilities should not be considered as rooftop equipment on any building type and therefore, does not require screening.

6.2.10.10 All solar energy generating facilities shall be completely enclosed with a six (6) feet high:

- (a) Black or green chain link fence or
- (b) Masonry wall or
- (c) Wooden fence that contains spacing no greater than six (6) inches.

If the solar energy generating facility is within two hundred (200) feet of a residence other than that of the property owners, a chain link fence is required with vegetation screening.

6.2.10.11 Lighting mitigation is required.

6.2.10.12 Solar energy generating facilities shall be maintained in good working condition and be free from debris and nuisances. When the facilities are no longer utilized for energy generation for a period of six (6) months or longer, the property owner shall have the panels and switch gear removed.

6.2.11 *Equestrian centers & facilities, multi-discipline.* Equestrian centers & facilities, multi-discipline may be allowed pursuant to the use tables in Article VI, provided:

6.2.11.1 All buildings and accessory buildings (permanent or temporary) used or intended for “Equestrian centers & facilities, multi-discipline” uses (as opposed to buildings and accessory buildings for uses permitted in Multiple Use Districts) shall be placed so as to be at least one hundred feet (100') from any property line; and

6.2.11.2. The parcel shall be so located as to provide for ingress and egress from the site directly onto a major thoroughfare having an existing or planned right-of-way at least sixty (60) feet in width and shall in no way traverse any single-family subdivisions, except single-family subdivisions within the “Equestrian” district.

6.2.12 *Heliports.* Heliports may be allowed pursuant to the use tables provided in this Article, subject to the following restrictions:

6.2.12.1 The Heliport shall comply with all applicable Federal Aviation Administration aircraft operation requirements.

6.2.12.2 The Heliport shall be used for the operation of helicopters for emergency, medical, public safety, and transportation purposes.

6.2.12.3 The Heliport shall not be used to provide prospective lot purchasers “flyover” views, for any other real estate promotional or real estate marketing purposes, or for sight-seeing tours.

6.2.12.4 All helicopters traveling to or from the Heliport shall, to the fullest extent practicable, travel along the air corridors above Interstate I-26 or U.S. Highway 74 while traveling in Polk County airspace.

6.2.12.5 The hours of operation for the Heliport shall be limited to 7 a.m. to 10 p.m. The limitation on the hours of operation shall not be applicable to emergency, medical, fire or law enforcement services.

6.2.13 *Spectator Sport Facility.* Spectator sport facilities, whether accommodating less than 500 spectators or accommodating 500 or more spectators, may be allowed pursuant to the use table provided in this article. Uses permitted with conditions shall be subject to the following restrictions:

6.2.13.1 Lighting for outdoor spectator sport facilities shall meet the following standards:

- a) Lighting installations shall be designed to achieve an average level no greater than the minimal illuminance levels for the activity as recommended by the Illuminating Engineering Society of North America (IESNA).
- b) Lighting used to illuminate the surface shall be turned off by 11:30 pm.

c) Lighting shall be designed by a lighting professional having experience with lighting installations.

d) There shall be no maximum or minimum height restrictions relating to lighting installations on towers as defined by the Zoning Ordinance.

e) Commercial lighting in any stadium will employ engineered lighting which will mitigate spillover and direct lighting into the stadium area.

6.2.13.2 Spectator Sports Facility shall not include motorized sports.

6.2.14 *Recreational Vehicle & Travel Trailer Parks, Service & Camp Areas.* Recreational vehicle & travel trailer parks, service & camp areas may be allowed pursuant to the use tables provided in this Article. Uses permitted with conditions shall be subject to the following restrictions:

6.2.14.1 Maximum of 15 units per acre

6.2.14.2 10% common space required

6.2.14.3 No site/space lease or continuous rental thereof shall exceed 6 months.

6.2.14.4 A 100 foot setback shall be required along property lines where the RV/Camp area meets or adjoins properties not owned by the Developer. The setback established pursuant to this section shall contain an earthen berm at least 2 feet high, with a minimum crown of 2 feet and a width to height ratio of no greater than 2:1, shrubs shall be planted on top of the berm that will attain a height of at least 72” within 4 years of installation and shall be planted 30” apart. In lieu of installing an earthen berm, Developer may utilize any natural berms, provided that any such natural berm meets or exceeds the criteria of this section.

6.2.14.5 Quiet hours shall be observed from 11 p.m. to 7 a.m.

6.2.14.6 All internal streets within RV/camp area shall be surfaced with a minimum of six inches of compacted stone and shall be maintained in a smooth, well-graded condition. All internal roads shall be capable of supporting the imposed load of fire apparatus in accordance with the Fire Apparatus Roads Standards in the North Carolina Fire Code.

6.2.14.7 Water – an accessible, adequate, safe and potable supply of water shall be required.

6.2.14.8 Sewer/Septic – approval by the Polk County Health Department shall be required for any installation, alteration or use of a sewage disposal system.

6.2.15 *Reserved for Future Purposes.*

6.2.16 *Recreational Vehicle.*^{xv}

6.2.16.1 *Recreational Vehicle in Zoning Districts - E, EV, AR, HC, MU and FF zoning districts.*

(1) One per parcel, provided:

- a. the recreational vehicle has a valid operational permit from the Health Department for water and a wastewater disposal system, and connected to the wastewater disposal system,
- b. the recreational vehicle is ready for highway use (defined as: fully licensed, own wheels or jacking system, attached to the site only by quick disconnect utilities, with no permanently attached additions, and has a current license plate, if applicable),
- c. apply for a zoning permit that is required to be renewed annually; or

(2) One per parcel during the construction of personal residence provided: ^{xxv}

- a. the recreational vehicle is ready for highway use as defined above and has a valid operational permit from the Health Department for water and a wastewater disposal system, and connected to the wastewater disposal system,
- b. the owner has a valid residential building permit for the parcel upon which the recreational vehicle is located,
- c. apply for a zoning permit that is required to be renewed annually; or

(3) One per parcel while stored upon the owner's property on which there is a residence built and is utilized for the owner's personal use; or

(4) In recreational vehicle and travel trailer parks or service and camp areas.

6.2.16.2 Recreational Vehicle in Zoning Districts *RE1, RE2, RE5, R, MR, NC, I and AR5* zoning districts:

One per parcel while stored upon the owner's property on which there is a residence built and utilized for the owner's personal use.

Article VII. Dimensional Requirements

Section 7.1 General Provisions^{xxv}

- A. Along each property line which is adjacent to a residential district, the property owner or developer shall place and maintain a buffer strip fifteen (15) feet wide upon which shall be planted an evergreen screen hedge to provide appropriate screening against noise, glare, fumes, dust, and other harmful effects. The buffer strip may utilize existing evergreen vegetation.
- B. All lots identified in a watershed must also meet the requirements of the Polk County Watershed Ordinance.
- C. All new lots shall meet the requirements of *Subdivision Ordinance* except that the minimum lot sizes shall meet the dimensional requirements in the table below.
- D. It is not permitted to average the lot areas to meet the minimum lot areas established in this Article. However, Cluster Developments shall be allowed in accordance with the Subdivision Ordinance, so long as the maximum density shall be equal to one dwelling unit per the minimum lot size listed in the dimensional table below. For example, if the minimum lot size is 43,560 square feet (1 acre), then the maximum density is one unit per acre.

Section 7.2 Dimensional Table ^{xxv}

District	Max. Building Height from main floor (Ft)	Min. District Size (Acres)	Min. District Frontage on all Thoroughfares (Ft.)	Min. Lot Size – No Public/ Water or Sewer (Sq. Ft.)	Min. Lot Size – With Public/ Water or Sewer (Sq. Ft.)	Min. Lot Width (Ft)	Min. Front (Ft) Setback	Min. Side (Ft) Setback	Min. Rear (Ft) Setback
Equestrian (E)	50 ²	900	-	43,560 ¹ (1 acre)	10,890 ¹ Plus 3,000 for each additional unit (max. 12 dwelling units per acre) for multi-family residential use; 21,780- (1/2 acre) for all other uses	70	25	15	25
Equestrian Village (EV) ^{xiv}	60 ³	25	-	-	Maximum average density of 12 living units per acre within the area in each site specific plan ⁴		25	15	25
Government and Public Facilities (GPF) ^{xvi}	40	10	-	-	-	100	50	50	50
Residential Estate/Low Density (RE-1)	40	-	-	43,560 ¹ (1 acre)	43,560 ¹ (1 acre)	150	50	25	25
Residential Estate/Low Density (RE-2)	40	-	-	87,120 ¹ (2 acres)	87,120 ¹ (2 acres)	200	50	50	50
Residential Estate/Very Low Density (RE-5)	40	-	-	217,800 ¹ (5 acres)	217,800 ¹ (5 acres)	200	50	50	50
Residential (R)	40	-	-	43,560 ¹ (1 acre)	21,780 ¹ (½ acre)	70	25	15	25
Agricultural Residential (AR)	40	-	-	43,560 ¹ (1 acre)	21,780 ¹ (½ acre)	100	25	25	25
Multifamily Residential (MR)	40	-	-	- ¹	10,890 ¹ Plus 3,000 for each additional unit (max. 12 dwelling units per acre)	70	25	15	25

*These requirements also apply to existing nonconforming lots in the AR5 district.

¹Any major subdivision of land in this category (as major subdivision as defined in the Subdivision Ordinance), shall subject all such subdivided land to the minimum lot area requirements and all other requirements for major subdivisions as set forth in the Subdivision Ordinance. (All references to the Subdivision Ordinance shall refer to the Subdivision Ordinance as the same may be amended from time to time.)

²For the purposes of Max. Building Heights for equestrian centers or facilities, multi-discipline, height shall be the vertical distance from the highest finished-grade ground level within 25 feet of the structure to the highest point on the structure.

³For the purposes of Max. Building Height for a building in the Equestrian Village (EV) District, the height shall be measured from the main floor to the highest eave of the building. ^{xiv}

⁴All lots and units in an Equestrian Village (EV) District shall have both public water and public sewer. The Min. Lot Size (density) in the Equestrian Village (EV) District shall be measured by the average density of living units per acre within the area in each site specific plan, without regard to the ownership of lots or units within that area. For the purposes of the Min. Lot Size (density) in the Equestrian Village (EV) District, the total number of living units in an Equestrian Village Development shall be that number calculated by adding (i) the number of all multi-family residential units to (ii) one-half the sum of all Bed & Breakfast guestrooms plus all Motel & hotel guestrooms. A minimum of 15% of the total area within the Equestrian Village (EV) district shall be Open Space dedicated on a recorded site specific plan. ^{xiv}

Section 7.2 Dimensional Table

(cont.)

District	Max. Building Height from main floor (Ft)	Min. District Size (Acres)	Min. District Frontage on all Thoroughfares (Ft.)	Min. Lot Size – No Public/ Water or Sewer (Sq. Ft.)	Min. Lot Size – With Public/ Water or Sewer (Sq. Ft.)	Min. Lot Width (Ft)	Min. Front (Ft) Setback	Min. Side (Ft) Setback	Min. Rear (Ft) Setback
Neighborhood Commercial (NC)	40	-	-	21,780 ¹ (½ acre)	21,780 ¹ (½ acre)	80	50 or 75 from road centerline whichever is greater	20	20 or 25 adjacent to a Resid. area
Highway Commercial (HC)	40	-	1,000 ft. and separated by 1/4 mile of resid. Zoned frontage	- ¹	- ¹	100	30	25	25
Industrial	40	1 acre	-	87,120 ¹ (2 acres)	87,120 ¹ (2 acres)	200	50	25	25
Multiple Use	40	1 acre	-	43,560 ¹ (1 acre)	43,560 ¹ (1 acre)	70	25	15	25
Family Farm	40	1 acre	-	43,560 ¹ (1 acre)	21,780 ¹ (½ acre)	70	25	15	25
Agricultural Residential Very Low Density (AR-5)	40	-	-	217,800 ¹ (5 acres)	217,800 ¹ (5 acres)	200	50	50	50
*Family Subdivision				--- *43,560 (1 acre)	--- *43,560 (1 acre)	--- *150	--- *50	--- *25	--- *25

*These requirements also apply to existing nonconforming lots in the AR5 district.

¹Any major subdivision of land in this category (as major subdivision as defined in the Subdivision Ordinance), shall subject all such subdivided land to the minimum lot area requirements and all other requirements for major subdivisions as set forth in the Subdivision Ordinance. (All references to the Subdivision Ordinance shall refer to the Subdivision Ordinance as the same may be amended from time to time.)

²For the purposes of Max. Building Heights for equestrian centers or facilities, multi-discipline, height shall be the vertical distance from the highest finished-grade ground level within 25 feet of the structure to the highest point on the structure.

³For the purposes of Max. Building Height for a building in the Equestrian Village (EV) District, the height shall be measured from the main floor to the highest eave of the building. ^{xiv}

⁴All lots and units in an Equestrian Village (EV) District shall have both public water and public sewer. The Min. Lot Size (density) in the Equestrian Village (EV) District shall be measured by the average density of living units per acre within the area in each site specific plan, without regard to the ownership of lots or units within that area. For the purposes of the Min. Lot Size (density) in the Equestrian Village (EV) District, the total number of living units in an Equestrian Village Development shall be that number calculated by adding (i) the number of all multi-family residential units to (ii) one-half the sum of all Bed & Breakfast guestrooms plus all Motel & hotel guestrooms. A minimum of 15% of the total area within the Equestrian Village (EV) district shall be Open Space dedicated on a recorded site specific plan. ^{xiv}

Section 7.3 Group Development^{xxv}

In the case of two (2) or more principal buildings to be constructed on a plot of ground of at least two (2) acres not subdivided into the customary streets and lots and which will not be so subdivided, the application of the terms of this ordinance may be waived by the county Zoning Administrator in a manner that will be in harmony with the character of the neighborhood, provided:

7.3.1 Such uses are limited to those permitted within the zoning district in which the project is located. In no case shall the board authorize a use prohibited in the district in which the project is to be located.

7.3.2 The overall intensity of land use is no higher and the standard of open space is no lower than that permitted in the district in which the project is located.

7.3.3 The distance of every building from the nearest property line shall meet the front yard setback, rear yard setbacks, and side yard setback requirements of the district in which the project is located.

7.3.4 The building heights do not exceed the height limits permitted in the district in which the project is located.

7.3.5 All sanitation and utility services shall be reviewed by and approved by the county sanitarian/ Environmental Health.

7.3.6 A design plan showing how the requirements of Subsection[s] 7.3.1-7.3.5 will be met is submitted along with the application for a group development. The procedure for approval of group development plans shall consist of the submission of a design plan showing the proposed layout, including the location of buildings, driveways, off-street parking spaces and recreation areas, etc., to the Zoning Administrator for study and final approval.

Section 7.4 Equestrian Village Development^{xiv, xxii}

A plan showing the layout of the proposed buildings and internal roads of an Equestrian Village Development shall be reviewed by the Zoning Administrator. At the time of such review, the property owner or the developer shall also submit to the Zoning Administrator documentation from the North Carolina Department of Transportation approving the site's access to the public road; documentation from the public water and public sewer utilities or service providers confirming that there is sufficient capacity to service the proposed development; documentation from the Fire Marshal approving the access to and the layout of the proposed Development; and documentation from the Emergency Management Director confirming adequate public safety facilities and services exist, or can be reasonably provided to serve the needs of the proposed use. After approval by the Zoning Administrator, the plan shall be recorded in the Office of the Register of Deeds of Polk County, North Carolina.

Section 7.5 Equestrian District Development^{xxii}

At the time of review of development, the property owner or the developer shall also submit to the Zoning Administrator documentation from the North Carolina Department of Transportation approving the site's access to the public road; documentation from the public water and public sewer utilities or service providers confirming that there is sufficient capacity to service the proposed development; documentation from the Fire Marshal approving the access to and the layout of the proposed Development; and documentation from the Emergency Management Director confirming adequate public safety facilities and services exist, or can be

reasonably provided to serve the needs of the proposed use. These requirements do not apply to single family residential.

Article VIII. Nonconforming Situations.^{xxv}

Section 8.1 Purpose

The purpose of this Article is to avoid undue hardship by permitting the continued use of any building, structure, or property that was lawful at the time of the enactment of this Ordinance or any applicable amendment thereof even though such use, structure or property does not conform to the provisions of this Ordinance. Any nonconformity created by an establishment or change in the zoning districts or text of these regulations shall be regulated by the provisions of this Article. This Article is also established to require that non-conforming situations be terminated under certain circumstances.

Section 8.2 Extension or Enlargement of Nonconforming Situations

- A. Except as specifically provided in this Section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.
- B. A nonconforming use may be extended through any portion of a completed building that, when the use was made nonconforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- C. A nonconforming use may not be extended to cover more land than was occupied, or manifestly designed and arranged to be occupied, by that use when it became nonconforming. Per Subsection 8.2(G) below, nothing herein shall prevent the reconstruction, replacement, or expansion of a single-family dwelling unit that is nonconforming as to use.
- D. The volume, intensity, or frequency of use of property where a non-conforming situation may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this Article occur.
- E. Physical alteration of nonconforming structures or structures containing a nonconforming use is unlawful if it results in:
 - 1) An increase in the total amount of space devoted to a non-conforming use;
 - 2) Greater non-conformity with respect to dimension restrictions such as yard requirements, height limitations, or density requirements; and
 - 3) The enclosure of previously unenclosed areas, even though those areas are or were used in connection with the nonconforming activity.
- F. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovations—work estimated to cost more than ten percent but less than 60 percent of the taxed value of the structure to be renovated—may be done provided that the work will not result in a violation of any other paragraph in this Article. In no case, however, shall work costing more

than 60 percent of the taxed value of the structure be done, singularly or cumulatively, within any five-year period.

- G. Any structure used as a single-family dwelling unit and maintained as a nonconforming situation may be constructed, enlarged, or replaced, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements. Nothing herein shall prevent the maintenance, repair, extension or construction of a residential accessory building or swimming pool, provided it is done in the conformance with the requirements of this Ordinance.

Section 8.3 Nonconforming Lots of Record

Where the owners of a legally existing lot of record at the time of the adoption of this Ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the area or lot width requirements of this ordinance, such lot may be used as a building site provided all other dimensional and use requirements are met. This Section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it.

Section 8.4 Re-establishment of a Nonconforming Situation Prohibited

- A. If a nonconforming use is abandoned for a period of one year or more, the use shall not be allowed to re-establish. All new uses in said structure shall thereafter be conforming.
- B. Any nonconforming building or structure or any building or structure containing a nonconforming use for which major repair or reconstruction is proposed in any amount equal to 60 percent or more of the taxed value of the building or structure or which has been damaged by any cause to an extent equal to 60 percent or more of its taxed value shall only be repaired and/or constructed and used as a conforming structure and a conforming use.
- C. Per Subsection 8.2(G) above, nothing herein shall prevent the reconstruction or replacement of a single-family dwelling unit that is nonconforming as to use.

Section 8.5 Nonconforming Uses

- A. A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert back to a nonconforming use.
- B. A nonconforming use shall not be changed to another nonconforming use nor shall a nonconforming structure be replaced after it has been destroyed except upon approval by the Board of Adjustment.
- C. If a nonconforming use and a conforming use, or any combination of nonconforming uses exist on one lot, the use made of the property may be changed only to a conforming use.
- D. Conforming uses may be established or re-established in nonconforming buildings or structures provided that off-street parking is provided as required by this Ordinance and provided no other provisions of this Ordinance for the establishment of new uses is violated.

Article IX. Administration and Enforcement. ^{xxv}

Conflicts of Interest:

(a) Governing Board - A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) Appointed Boards - Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) Administrative Staff - No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) Quasi-Judicial Decisions - A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(e) Resolution of Objection - If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(f) Familial Relationship - For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Section 9.1 Zoning Administrator

To provide the general administration, interpretation and enforcement of this ordinance the Polk County Board of Commissioners shall appoint a Zoning Administrator who will be directly responsible to, and report periodically, to the Board.

It is the intent of this ordinance that all questions relative to its general administration, interpretation and enforcement shall be presented to the Zoning Administrator. Appeal from his determinations and decisions shall be made to the Board of Adjustment. Further recourse shall be taken to the courts as established by law. It is also the intent of this ordinance that the county commissioners shall not hear or pass on disputed questions

of interpretations or enforcement of it. The duties of the county commissioners in connection with this ordinance shall only include those related to the calling and holding of public hearings and voting upon any proposed amendments to or repeal of this ordinance, as provided by law.

If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with, or to prevent violation of its provisions.

If a ruling of the Zoning Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment in accordance with Section 10.4 below.

Section 9.2 Certificate of zoning compliance required.

No buildings, or other structures shall be erected, moved, added to, or structurally altered until a certificate of zoning compliance has been issued by the Zoning Administrator. No certification of zoning compliance shall be issued except in conformity with the provisions of this ordinance.

Section 9.3 Application for certificate of zoning compliance.

All applications for certificate of zoning compliance shall be accompanied by two (2) sets of plans showing the dimensions and shape of the parcel to be built upon, the exact sizes, uses and locations on the parcel of buildings already existing, if any, and the locations, dimensions and uses of the proposed buildings or alterations. The application shall include such other information as may be necessary to determine conformance with and provide for the enforcement of this ordinance. A fee shall be charged for the processing of each such application. In addition, any other information called for on the application form shall also be included.

Section 9.4 Health department approval of water supply and sewage disposal facilities.

The zoning administrator shall not issue a certificate of zoning compliance for any use, building or purpose proposed for a location outside of any incorporated municipality without written approval of any and all needed or proposed water supply and sewage disposal facilities from the county sanitarian. Issuance and use of a certificate of zoning compliance shall be subject to all terms and qualifications imposed by the county sanitarian.

Section 9.5 Certificate of occupancy required.

A certificate of occupancy issued by the Zoning Administrator is required in advance of:

1. Occupancy or use of a building hereafter erected, altered or moved.
2. Change of use of any building or land.

A certificate of occupancy, either for the whole or a part of a building shall be applied for coincident with the application for a certificate of zoning compliance and shall be issued within ten (10) days after the erection or structural alteration of such building or part shall have been completed in conformity with the provision of

this ordinance. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this ordinance. If the certificate of occupancy is denied, the Zoning Administrator shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the Zoning Administrator and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

Section 9.6 Fees.^v

The Board of Commissioners shall adopt and periodically update a schedule of fees for application and processing as specified in this ordinance.

Section 9.7 Zoning violations.

Any of the following shall be a violation of this ordinance and shall be subject to the enforcement remedies and penalties provided herein and by North Carolina State Law.

9.7.1 Development without permit. To engage in any development, site preparation, use, demolition, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this ordinance without all required permits, certificates, or other forms of authorization as set forth in this ordinance.

9.7.2 Development inconsistent with permit. To engage in any development, site preparation, use, demolition, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

9.7.3 Violation by act of omission. To violate, by act of omission, any term, variance, modification, condition, or qualification placed by the Board of Commissioners or its agent boards upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

9.7.4 Use in violation. To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure, or to use any land, or to conduct any activity in violation or contravention of this ordinance or any other regulation made under the authority conferred thereby.

9.7.5 Continue a violation. To continue any of the above violations is a separate and distinct offense.

Section 9.8 Inspections and investigations.

9.8.1 Inspections. The Zoning Administrator shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter on any premises within the planning jurisdiction of the County at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement actions under this ordinance and state law.

9.8.2 Investigations. The Zoning Administrator shall have the power to conduct such investigations as he or she may reasonably deem necessary to carry out their duties as prescribed in this ordinance and, for this purpose, to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this ordinance.

9.8.3 Supporting documentation. The Zoning Administrator shall have the power to require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this ordinance.

9.8.4 Administrative search warrants. No person shall obstruct, hamper or interfere with the Zoning Administrator while carrying out his or her official duties. If the owner or occupant of any property refuses to permit inspections or otherwise obstructs an investigation or other actions of the Zoning Administrator in the performance of his or her duties, the Zoning Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor.

Section 9.9 Enforcement procedures.

9.9.1 Notify the owner or occupant of violation. When the Zoning Administrator becomes aware of a violation of this ordinance, it shall be his or her duty to notify the owner or occupant of the land, building, structure, or use of the violation. The owner or occupant shall promptly remedy the violation.

9.9.2 Notice of violation. If the owner or occupant of the land, building, structure, or use in violation fails to take prompt corrective action, the Zoning Administrator shall give the owner or occupant written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

- A. That the activity, land, building, structure, or use is in violation of this ordinance;
- B. The nature of the violation, and citation of the section(s) of this ordinance violated;
- C. The measures necessary to remedy the violation; and
- D. Mechanisms available to appeal the decision of the Zoning Administrator.

9.9.3 Appeal. Any owner or occupant who has received a notice of violation may appeal in writing the decision of the Zoning Administrator to the Board of Adjustment in accordance with Section 10.4 below.

9.9.4 Notice of decision. The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by registered mail, certified mail return receipt requested, or by posting notice conspicuously on the property. Such notice of decision shall inform the recipient of the timeframe within which compliance shall be required, and the remedies available to the County as provided by state law and this Ordinance.

9.9.5 Failure to comply with notice of violation, notice of intent, and decision of the board of adjustment. If the owner or occupant of a property fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law or by Section 9.7

Section 9.10 Remedies.

Any or all of the following procedures may be used to enforce the provisions of this ordinance.

9.10.1 Injunction. Any violation of this ordinance or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceedings pursuant to state law.

9.10.2 Civil penalties. Any person who violates any provision of this ordinance shall be subject to the assessment of a civil penalty under the procedures provided in Section 9.13.

9.10.3 Denial of permit, application or certificate. The Zoning Administrator shall withhold or deny any permit, application, certificate, or other authorization on any land, building, structure, or use in which there is an uncorrected violation of a provision of this ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

9.10.4 Special use permit or temporary certificate. The Zoning Administrator may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security bond approved by Zoning Administrator.

9.10.5 Stop work orders. Whenever any land disturbing activity is commenced and/or a building, structure, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Zoning Administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with the applicable North Carolina Building Code.

9.10.6 Revocation of permits or certificates. The Zoning Administrator may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any of the following: substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked.

9.10.7 Criminal penalties. Violations of this ordinance shall not constitute a Class 1 Misdemeanor as provided by NCGS 14-4 but shall be civil in nature only.

Section 9.11 Civil penalties - Assessments and procedures.

9.11.1 Responsible parties. The owner or occupant of any land, building, structure, use of land, or part thereof, and any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this ordinance may be held responsible for the violation and subject to the civil penalties and remedies provided herein.

9.11.2 Notice. No civil penalty shall be assessed until the person alleged to be in violation has been notified in accordance with Section 9.9. If after receiving a notice of violation under Section 9.9, the owner or other violator fails to take corrective action, a civil penalty may be imposed under this section in the form of a citation. The citation shall be served in the same manner as of a notice of violation. The citation shall state the nature of the violation, shall state the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 15 days of the date of the citation.

9.11.3 Continuing violation. For each day the violation is not corrected after the citation is issued, the violator will be guilty of an additional and separate offense and subject to additional civil penalties.

Section 9.12 Other powers and actions.

In addition to other enforcement provisions contained in this Article, the County may exercise any and all enforcement powers granted to it by state law or common law.

Section 9.13 Remedies - Cumulative and continuous.

9.13.1 Cumulative violations. All remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

9.13.2 Repeat violations. If an owner or occupant repeats the same violation within a five year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies.

9.13.3 Penalties. Any person who violates any provision of this ordinance shall be subject to assessment of a civil penalty in the amount of:

- A. \$50.00 for the first violation;
- B. \$100.00 for the second violation;
- C. \$200.00 for the third violation; and
- D. \$500.00 for the fourth and each succeeding violation.

9.13.4 Demand for payment. The Zoning Administrator shall make written demand for payment upon the owner or the person in violation and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

9.13.5 Nonpayment. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter may be referred to legal counsel to institute a civil action for recovery of the civil penalty.

Article X. Board of Adjustment.^x

Section 10.1 Composition, Term and Qualifications of Members.

This Ordinance provides for the appointment and compensation of a Board of Adjustment consisting of five or more members, each appointed for three years. In the filling of vacancies caused by the expiration of the terms of existing members, the county commissioners shall, if practicable, have at least one resident of each designated zoning area as a member of the Board of Adjustment; otherwise, the provisions of G.S. 153A-25 regarding qualifications for appointive office shall apply to board of appointments. The county commissioners shall appoint and may provide compensation for five^{xxiii} alternate members to serve on the Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular

members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

Section 10.2 Duties.

The Board of Adjustment shall hear and decide Special Use Permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of this ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals, requests for variances and Special Use Permits. The Board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

Section 10.3 Notice of Hearing.

Notice of hearings conducted pursuant to this article shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjacent to the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the county may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the county shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

Section 10.4 Appeals.

The Board of Adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- 10.4.1** Any person who has standing under G.S. 160D-1402(c) or the county may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the County Clerk. The notice of appeal shall state the grounds for the appeal.
- 10.4.2** The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- 10.4.3** The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- 10.4.4** It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.

- 10.4.5** The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- 10.4.6** An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- 10.4.7** Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- 10.4.8** The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the county would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
- 10.4.9** When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D-1402(j).
- 10.4.10** The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

A majority of the members shall be required to decide to determine an appeal made in the nature of certiorari in accordance with Section 10.7 *et seq.* below.

Section 10.5 Special Use Permits.^{xxv}

A Special Use Permit from the Board of Adjustment is required for all special uses. The Board of Adjustment shall hear and decide Special Use Permits in accordance with standards and procedures specified in this ordinance and may issue Special Use Permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified herein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the

conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided.

10.5.1 Application. When a Special Use Permit is required by the terms of this Ordinance, application for such permit, along with a fee established by resolution of Board of Commissioners, shall be made in accordance with this Section. A completed application for a Special Use Permit must be received by the Zoning Administrator at least 30 days prior to the date of a Board of Adjustment meeting in order to be scheduled for such meeting.

10.5.2 Site Plan. The application for a Special Use Permit shall be accompanied by a site plan conforming to the requirements of the Zoning Administrator.

10.5.3 Quasi-Judicial Hearings on Applications for Special Use Permits. Once the Zoning Administrator is in receipt of a complete application and seven copies of a complete site plan, he or she will schedule the application for a public hearing before the Board. The Zoning Administrator shall mail the Notice of Hearing in accordance with Section 10.3 of this Article. The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by agent or attorney.

10.5.4 Board action on applications for Special Use Permits. After the public hearing, and on consideration of the record, the Board shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more conditions. A majority of the members shall be required to decide an application for a Special Use Permit in accordance with Section 10.7 *et seq.* below. The Board shall not approve an application for a Special Use Permit, with or without conditions, unless it makes each of the following findings of fact:

- (1) the proposed use complies with the standards for such use, if any, contained in this Zoning Ordinance;
- (2) the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use;
- (3) the proposed use will not be detrimental or injurious to property, property uses or property values, or to public improvements, in the neighborhood of such proposed use; and
- (4) the proposed use is designed and will be operated in such a manner as to be in harmony with the neighborhood in which it is to be located.

10.5.5 Recordation/Effect of Approval. The Special Use Permit shall be filed with the Polk County Register of Deeds by the Clerk to the Board of Adjustment within one month from the date of approval. All Special Use Permits that are granted shall run with the property or structure for which the Special Use Permit is being sought and not with the owner of the property or structure.

Section 10.6 Variances.

When unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

10.6.1 Application. When a variance is requested the applicant shall submit a completed application for such permit, along with a fee established by resolution of Board of Commissioners.

10.6.2 Quasi-Judicial Hearings on Applications for Variances. Once the Zoning Administrator is in receipt of a complete application and a complete site plan, he or she will schedule the application for a public hearing before the Board. The Zoning Administrator shall mail the Notice of Hearing in accordance with Section 10.3 of this Article. The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by agent or attorney.

10.6.3 Board action on applications for variances. After the quasi judicial hearing, and on consideration of the record, the Board shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more conditions. A concurring vote of four-fifths of the Board shall be necessary to grant a variance in accordance with Section 10.7, *et seq.*

10.6.4 Recordation/Effect of Approval. The approved variance shall be filed with the Polk County Register of Deeds by the Clerk to the Board of Adjustment within one month from the date of approval. All variances that are granted shall run with the property or structure for which the variance is being sought and not with the owner of the property or structure.

Section 10.7 Voting.

The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

10.7.1 Recusal.

A member of the Board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section 10.8 Quasi-Judicial Decisions and Judicial Review.**10.8.1 Quasi-Judicial Decisions.**

The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board of Adjustment. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

10.8.2 Judicial Review.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Section 10.8.1 of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Section 10.9 Oaths.

The Chair of the Board or any member acting as Chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

Section 10.10 Subpoenas. ^{xxv}

The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160D-1402(c) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of

Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Article XI. Amendments

Section 11.1 Procedure.^{xix}

This ordinance, including the zoning map, may be amended from time to time, but no amendment shall become effective unless it shall have been proposed by, or shall first have been submitted to, the Polk County Planning Board for review and recommendation. The planning board shall have thirty (30) days within which to submit its report. If the planning board fails to submit its report within the thirty-day period, it shall be deemed to have approved the proposed amendment prior to adopting or rejecting any zoning amendment, the Board of County Commissioners shall adopt one of the following statements which shall not be subject to judicial review:

- (1) A statement approving the zoning amendment and describing its consistency with the comprehensive plan and explaining why the action taken is reasonable and in the public interest.
- (2) A statement rejecting the zoning amendment and describing its inconsistency with the comprehensive plan and explaining why the action taken is reasonable and in the public interest.
- (3) A statement approving the zoning amendment and containing at least all of the following:
 - a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The Board of County Commissioners shall not require any additional request or application for amendment to the comprehensive plan.
 - b. An explanation of the change in conditions the Board of County Commissioners took into account in amending the zoning ordinance to meet the development needs of the community.
 - c. Why the action was reasonable and in the public interest.

A public hearing shall be held by the Board of County Commissioners before adoption of any proposed amendment to this ordinance. A notice of such public hearing shall be given in accordance with state statutes.

Section 11.2 Planning board study.^{xix}

Every proposed amendment or repeal of this ordinance shall be referred to the planning board for its recommendation and report, provided that no proposal shall be required to be considered by the planning board within ten (10) days from filing of the proposal with the Zoning Administrator. Prior to consideration of a proposed zoning amendment by the Board of Commissioners, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the comprehensive plan. The planning board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board. Each application shall be signed and shall contain at least the following information:

- a. The applicant's name in full, applicant's address, address or description of the property to be zoned or rezoned. When instituting a zoning change, the applicant must pay all advertising and mailing costs incurred by the County.
- b. Applicant's interest in the property and the type of zoning or rezoning requested.
- c. If the proposed change would require a change in the zoning map, an accurate diagram of the property proposed for rezoning showing:

- 1) All property lines with dimensions and directions shown on the map as north, east, west, and south (north arrow);
 - 2) Adjoining streets with rights-of-way and paving widths;
 - 3) The location of all structures, the use of all land;
 - 4) Zoning classification of all abutting zoning districts, the names and addresses of current abutting property owners;
 - 5) Comprehensive site plan if the application is for commercial, industrial, multifamily or mobile home developments.
- d. A statement regarding the changing conditions, if any, in the area or in the county generally, that make the proposed amendment reasonably necessary to the promotion of the public health, safety and general welfare.
 - e. Any other relevant information which the Planning Board or Zoning Administrator may request.

Article XII. Definitions

Except where specifically defined below, all words used in the present tense include the future tense; the singular number includes the plural; the word “building” includes the word “structure”; the word “lot” includes the word “plot” or “parcel”; the term “shall” is always mandatory; the word “used” or “occupied,” as applied to any land or building shall be construed to include the words “intended”, arranged or designed to be used or occupied.

Accessory building. A building, subordinate to the main building on a lot and used for a purpose customarily incidental to that main or principal building.

Accessory dwelling unit. ^{xiii} A residential dwelling unit, including a mobile home (if permitted in zoning district), located on the same lot as a single-family dwelling unit, either within the same building as the single-family dwelling unit or in a detached building. The parcel must be a minimum of one acre in size or the minimum required lot size of zoning district, whichever is greater.

Agricultural building ^{xxi}. A structure on agricultural land designed, constructed, and used to house farm implements, livestock, or agricultural produce or products used by the owner, lessee, or sub-lessee or their immediate families, their employees, and persons engaged in the pick up or delivery of agricultural produce or products grown or raised on the premises. The term “agricultural building” shall not include dwellings.

Automobile, truck, farm equipment & farm implement sales and service (Major and Minor). An establishment primarily engaged in the sales, repair, or maintenance of motor vehicles, motorized farm equipment, and farm implements. Major repairs and maintenance includes paint, body, fender repair and painting, and major engine overhaul. Minor repairs and maintenance include brake, muffler, upholstery work, tire repair and change, lubrication, tune-ups, and transmission work. Both major and minor repairs and maintenance are to be performed within a completely enclosed building.

Bed & Breakfast. A private residence, several rooms of which are set aside for overnight guests whose paid accommodations include breakfast. It must meet all legally required tax, fire, building, health, and other requirements for this size and use of property. This establishment advertises publicly and can legally post a sign. Reservations may be made directly with the property owner.

Bona fide farm. ^{xv, xix} The production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture:

- (1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- (2) The planting and production of trees and timber.
- (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- (4) Aquaculture as defined in G.S. 106-758.
- (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- (6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.
- (7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain.

For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue.
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d. A forest management plan.

Building. Any structure used or intended for supporting or sheltering any use or occupancy. ^{xxv}

Building, principal. A building in which is conducted the main or principal use of the lot on which said building is situated.

Building height ^{xxi}. In measuring a building ^{xxiii}, or part thereof, to determine compliance with the maximum height provisions, measurement will be taken from the level of the highest point, or part thereof, and shall not include ornamental cupolas, weathervanes, belfries, chimneys, flag or radio poles, unless otherwise defined.

Cemetery. Land used or intended to be used for the interment of the dead and dedicated for cemetery purposes.

Church, Synagogue, Temple, Or Other Religious Building. A building used for public religious worship.

Club, public or private. Buildings or facilities owned or operated by a corporation, association, or persons for a social, educational, or recreational purpose; but not for profit or to render a service that is customarily carried on as a business.

Cluster Development. A type of major subdivision that is intended is to allow smaller than minimum lot sizes with dwelling units clustered in smaller areas in order to preserve larger areas of open space and environmental resources.

Community Recreation Center. A place, structure, area, or other facilities used for and providing religious, fraternal, social, and/or recreational programs generally open to the public and designed to accommodate and serve significant segments of the community.

Convenience Stores, Including those that sell petroleum and petroleum products. Small franchised or unfranchised stores or markets that sell groceries, consumer goods, foods and petroleum products such as gasoline, diesel fuel, and motor oil.

Customary home occupation, Class I. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residence purposes and does not change the character thereof, and in connection with which there is no display and no person, not a resident on the premises, is employed specifically in connection with the customary home occupation, except that not more than one (1) assistant may be employed; provided further, that no mechanical equipment is installed or used except such that is normally used for domestic or professional purposes, and that not over twenty-five (25) percent of the floor space of any structure is used for home occupations.

Customary Home Occupation, Class II. Includes uses conducted entirely within dwellings as permitted under Customary Home Occupation, Class I, and adds permitted uses that are conducted entirely within an accessory building of:

- (1) No greater than 2,500 square feet on a parcel size of 1 to 1.5 acres; or
- (2) No greater than 4,000 square feet on a parcel size of over 1.5 acres.

Use restrictions as to mechanical equipment applicable to Customary Home Occupation, Class I shall not apply to uses conducted entirely within an accessory building. Permitted uses must be clearly incidental and secondary to the primary use of the parcel for residential purposes and should not change the character thereof. Outdoor displays are not permitted.

Permitted uses must be carried on by at least one occupant of the dwelling with no more than four nonresident employees.

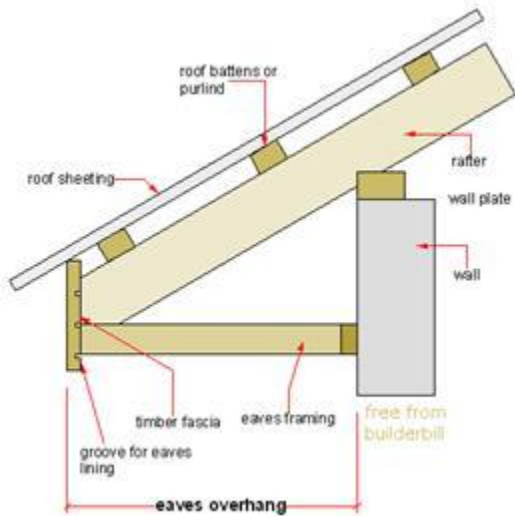
Reference Section 4.6, 4.7, 4.9 and 4.10 for Parking Requirement.

Day Care Facility. A place that provides for the care of children or adults. Those receiving care do not reside in the facility, are present primarily during daytime hours, do not regularly stay overnight, are not all related to each other by blood or marriage and are not legal wards or foster children of those providing care.

Duplex. A single building consisting of two separate dwelling units (other than a two-family dwelling including accessory apartment), providing the two dwelling units are not simply attached by an unenclosed passageway (e.g., covered walkway). ^{xxv}

Dwelling Unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. ^{xxv}

Eaves. ^{xv} The projecting overhangs at the lower edge of the roof, located at the bottom of the fascia; not including dormers, chimneys or ornamental features (non-habitable).



Equestrian centers & facilities, multi-discipline. A building or group of building, structures, place, area or other facilities providing uses and services necessary or incidental to horsemanship/horse activities, shows, events, races, competitions, auctions, stabling (whether permanent structures or temporary or semi-permanent structures, such as tents); care and upkeep, including, but not limited to, Hunter, Jumper, Polo, Dressage, Cross Country, Western, Driving, Fox Hunting, Breed Shows, Young Horses, and endurance events.

Equestrian Village Development.^{xiv} A group of two or more buildings built in a mixed-use village or resort format, either incorporating or located within one thousand feet of the main arena of a bona fide Equestrian center & facility, multi-discipline use. The Equestrian Village Development must be upon an area of land that includes not less than twenty-five (25) acres; that has direct and immediate access to a State road; that has both public water and public sewer service; that has multifamily residential units constituting a minimum of 20% of the total units in the area; and that has Open Space dedicated on a recorded site specific plan constituting a minimum of 15% of its total area.

Events, shows & festivals. A building or group of buildings, structures, place, area or other facilities providing or facilitating uses and services necessary or incidental to any fair, festival, show, event, concert, performance, auction, pageant or similar activity where patrons are admitted to enjoy, engage or participate in entertainment or competitions.

Family. Any number of individuals living together as a single housekeeping unit and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel.

Golf Courses & Country Clubs. Land, buildings, and related facilities owned or operated by a for-profit or nonprofit corporation, association, or group of individuals or a municipality, operated for the social and/or recreational sports use of its public or private membership.

Group Development. A group of two (2) or more principal buildings built on a plot of land not less than two (2) acres not subdivided into the customary streets and lots and which will not be subdivided. Examples would be: row houses, apartment courts, housing projects, school and hospital campuses, shopping centers and industrial parks.

Guest House. A separate and complete dwelling unit located on the same lot as the structure of a single-family dwelling but not intended for year-around use.

Heliport, public or private. A building, place, area, structure, or other facilities, private or open to the public, designed or used for any or all phases of operation of helicopters, such as take-off, landing, taxiing, terminal operation, loading, unloading, hangar storage, maintenance, repair, and service thereof.

Hospitals & Clinics. Institutions designed for the diagnosis, treatment and care of human illness or infirmity and providing health services, primarily for inpatients and including as related facilities, laboratories, outpatient departments, training facilities and staff offices.

Kennels. Any premises, except where accessory to an agricultural use, where domestic animals, such as dogs and cats, are boarded, trained, or bred.

Laundry & Dry Cleaning Services. A dry cleaning, self-service laundry and/or laundry establishment which may have a pick-up and drop-off window for customer service and provided the operation and all chemicals related thereto shall be in compliance with all applicable standards and requirements of the Environmental Protection Agency (EPA) and all other applicable agencies.

Law Enforcement Center.^{xvi} Law enforcement administration, training and detention facility.

Libraries, Public or Private. Facilities or buildings where literary, musical, artistic, or reference materials are kept for public or private reference use.

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

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

Lot width. The distance between side lot lines measured at the building line.

Major Subdivision. Major Subdivision shall have the same meaning, and shall be defined, as set forth in the Subdivision Ordinance of Polk County as now adopted or as may be hereafter amended.

Manufactured home (Mobile home). A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.^{xxv}

Manufacturing, Light. The manufacturing, compounding, processing, assembling, packaging or testing of goods or equipment, including research activities, conducted entirely within an enclosed structure, with no outside storage, serviced by a modest volume of trucks or vans and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust or pollutants. (International Zoning Code ICC 2003)

Mobile home. See *Manufactured home*.^{xxv}

Mobile home, accessory. A mobile home, as defined herein, intended to be situated on a lot with an existing single-family home pursuant to a Special Use Permit (MHO)ⁱ.

Mobile Home Park. A parcel or contiguous parcels of land which have been so designated and improved that it contains four (4) or more manufactured or mobile home lots available to the general public for placement thereon of manufactured or mobile homes for occupancy.

Modular Home. Single-family, detached housing of which the principal structural components are prefabricated off-site and in conformity with the North Carolina Residential Code IRC, and shall include structures commonly known as modular homes. As used in this Zoning Ordinance, regulations and provisions regarding “modular homes” only apply to single-family residences and do not restrict or regulate the construction of buildings for commercial, multifamily residential, or other uses^{xiv}.

Motels & Hotels. Any buildings or portions thereof containing ten or more lodging units, with or without separate restaurant facilities, primarily for transients, including hotels, tourist cabins and tourist courts, but not including bed and breakfast inns as defined herein.

Multifamily Residences. Buildings or portion thereof designed for occupancy by three or more families living independently in which they may or may not share common entrances and/or other spaces. Individual dwelling units may be owned as condominiums, or offered for rent.

Museum. A building or group of buildings, structures, place, area or other facilities operated as an institution for the acquisition, preservation, study and/or exhibition of works, materials or data of artistic, scientific and/or historical value.

Nature-Oriented Non-Motorized Outdoor Recreation.^{vi} Recreational uses of land conducted outside of a building, characterized by moderate impacts on the natural environment. Such uses may be for-profit, not-for-profit or provided by a governmental entity and may be composed of a place, structure, area, or facility providing nature-oriented non-motorized recreational activities generally open to the public and designed to accommodate and serve significant segments of the community. Examples of nature-oriented non-motorized outdoor recreational activities include, but are not limited to, hiking, noise-suppressed zip-lining, canoeing, kayaking, mountain biking, horseback-riding and orienteering.

Nonconforming lot. A lot existing at the establishment or revision of this Ordinance (and not created for the purposes of evading the restrictions of this Ordinance) that does not meet the minimum area requirements of the district in which the lot is located.

Nonconforming use. A structure or land lawfully occupied by an existing use which does not conform with the permitted uses for the zoning district in which it is situated, either at the effective date of this ordinance or as a result of subsequent amendments to this ordinance. This term also refers to the activity that constitutes the use made of the property.

Nonconforming situation. A situation that occurs when, at the establishment or revision of this Ordinance, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed

maximum height limitations, because the relationship between existing buildings and land (in such matters as density and setback requirements) is not in conformity with this Ordinance, or because land or buildings are used for purposes made unlawful by the Ordinance.

Nursery, Landscape Business, & Greenhouse. A nursery is a place where plants are propagated and grown to usable size. They can be retail nurseries which sell to the general public, wholesale nurseries which sell only to other nurseries and to commercial landscape gardeners and private nurseries which supply the needs of institutions or private estates.

A greenhouse is a permanent structure, designed to protect plants. This structure may or may not have a permanent heating system installed in it. For the purposes of this Ordinance, cold frames (temporary structures covered with plastic or other materials, supported by metal pipes) are included in this definition.

Landscaping is the business of improving the appearance of a piece of land by planting flora or altering the contours of the ground.

Offices, Business, Medical, Professional, & Public buildings including banks. Land, buildings, and other facilities used by establishments primarily engaged in providing goods or services to business establishments or individuals on a contract or fee basis.

Open Space.^{xiv} Areas having a predominantly pervious land surface providing spaces for landscaping and other visual enhancements, pedestrian circulation, waterways and water features, and wildlife habitat. Open space does not include automobile roadways, parking lots, paved service and maintenance areas, and buildings. Amenities and trails (whether pervious or impervious) accommodating pedestrians, bikes, golf carts and other low-speed vehicles, and horseback traffic are permitted in open spaces.

Parking space. A storage space of not less than one hundred sixty two (162') square feet for one (1) automobile plus the necessary access space. It shall always be located outside the dedicated street or highway right-of-way.

Planning board. The Polk County Planning Board.

Printing, Publishing, & Engraving Establishments. Establishments primarily engaged in rendering services to business establishments or individuals on a contract or fee basis such as, but not limited to, engraving, advertising, mailing, photocopying, duplicating, and providing business signs and plaques.

Public sewage system. A common sewer directly controlled by a public authority.^{xxv}

Public Safety Facilities. Buildings and facilities used in providing public safety services such as police, fire, ambulance, and emergency services.

Public water supply system.

- a. A system for the provision, to the public, of piped water for human consumption if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes:
 1. any collection, treatment, storage, and distribution facility under control of the operator of such system and used primarily in connection with such system; and
 2. any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.

- b. A public water system is either a “community water system” or a “non-community water system”:
 1. “Community water system” means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
 2. “Non-community water system” means a public water system which is not a community water system.

Quarantine Facility. A facility at which animals regulated by local, state, or federal agencies are restricted and tested prior to being permitted to enter into the general population.

Radio & TV Stations & Studios. Land, buildings, and equipment used for the production, transmittal, or reception of signals or programming over the airwaves as a commercial or public service, including, without limitation, telephonic, radio, television, or cable television. For purposes of this ordinance, the term shall not include a non-commercial individual use such as residential television antennas, satellite dishes, or ham radio antennas, or a commercial use that is purely incidental to other business activities of the owner. The facilities may include a tower, pole, or similar structure which supports or incorporates, or is intended to support or incorporate, one or antennas operated for commercial or public purposes above ground, whether freestanding, guyed, or affixed to a building. *Refer to Wireless Telecommunications Ordinance, if applicable. ^{xxv}

Recreation Facilities, For Profit. A place, structure, area, or other facilities operated for profit and providing religious, fraternal, social, and/or recreational programs generally open to the public and designed to accommodate and serve significant segments of the community

Recreation Facilities, Not for Profit. A place, structure, area, or other facilities not operated for profit and providing religious, fraternal, social, and/or recreational programs generally open to the public and designed to accommodate and serve significant segments of the community.

Recreational Vehicle. A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are travel trailer, camping trailer, truck camper, motor home, recreational park trailer and park trailer (park models).

Recreational Vehicle (RV) Park and/or Camp Areas. An establishment primarily engaged in operating sites to accommodate camping (tent and/or cabin), park model homes and/or recreational vehicles. These establishments may provide access to facilities, such as laundry rooms, recreational halls, playgrounds, stores and snack bars. An RV park will generally contain two (2) or more park model homes or recreational vehicles.

Residential Vacation Rental (Tourist Homes). ^{xii} The rental of any single-family dwelling, duplex, guest house, timeshare, accessory/garage apartment or multi-family or any portion thereof, for occupancy, dwelling, lodging or sleeping purposes for any period of time less than 90 days. The term does not include other transient lodging such as hotels and motels, and bed & breakfast establishments, which are otherwise authorized under these regulations.

Exceptions. The following activities and / or uses shall not be deemed residential vacation rentals and the requirements of this section shall not apply to them.

- Incidental residential vacation rentals, defined to mean no more than two such rentals in any calendar year where the total annual rental period for both rentals does not exceed two weeks provided no advertisement of the availability of unit.

Restaurants, Excluding Fast Food & Drive-Through Services. Establishments that sell food not already prepared for consumption on or off the premises and do not include drive-in or drive-up facilities for ordering.

Restaurants, Including Fast Food & Drive-Through Services. Establishments that sell food already prepared for consumption, packaged in paper, Styrofoam or similar materials, and may include drive-in or drive-up facilities for ordering.

Rest & Convalescent Homes, Sanitariums. Facilities for the care of the aged and infirm whose principal need is a home with such sheltered and custodial care as their age and infirmities require. Medical care is only occasional, such as may be required in the home of any individual.

Retail Trade, Commercial Services, Sales, & Rental of Merchandise & Equipment. Establishments engaged in selling or renting goods, merchandise, or services to the general public or businesses for personal, household, or commercial consumption. The establishments may also render services incidental to the sale of such goods. The establishment may process some of the products which it sells so long as such is processing incidental to such retail sales. The term shall not be deemed to include establishments in which the sale of goods or merchandise is incidental to another use, such as junk yards and wrecking yards as defined by NCGS 136-143.

Retail Business Customarily Servicing Residential Neighborhoods & Conducted within an Enclosed Building. Establishments engaged in selling goods, merchandise, or services to the general public for personal or household consumption. The establishments may also render services incidental to the sale of such goods. The establishment may process some of the products which it sells so long as such is processing incidental to such retail sales. The term shall not be deemed to include establishments in which the sale of goods or merchandise is incidental to another use, such as junk yards and wrecking yards as defined by NCGS 136-143.

Right of way (Easement). A grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation, or persons, including access easements. For the purposes of this ordinance, right of way is included in the measurement of setbacks on federal, state, county, and municipal roads only.^{xxv}

Roadside Stands Selling Home-Grown Products. A business establishment selling primarily home-grown or home manufactured products, operated next to a dedicated public or private right-of-way for vehicular traffic which affords the principal means of access to abutting property.

Sawmill. A facility in which logs are converted to lumber by running them through a saw.

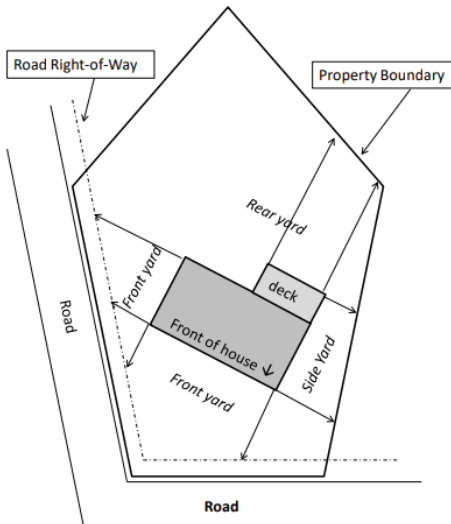
Schools, Public or Private. Land, buildings, and facilities operated by publicly or privately elected or appointed school officials in which the complete educational curriculum program and activities are under the control of these officials and which is supported primarily by public or private funds.

School; Vocational Schools, Business Schools, and Special Schools.^{xvii} Land, buildings, and facilities that do not offer a complete educational curriculum and that are operated by publicly or privately elected or appointed school officials in which the education program and activities are under the control of these officials and which is supported primarily by public or private funds.

Service Station. An establishment where flammable or combustible liquids or gases used as fuel are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles. Such an establishment shall be

permitted to offer for sale at retail other convenience items as a clearly secondary activity and shall be permitted also to include a free-standing automatic car wash.

Setback. A continuous strip of land, measured perpendicular from the plane of the building out to the closest property line or road right-of-way.^{xxv}



Single family residence. A building or portion thereof providing complete living facilities for a family. The term “single family residence” shall not be deemed to include a motel, hotel, tourist home, mobile home, manufactured home, modular home or structure designed or, in fact, used for transient residence. A single family residence may also consist of another dwelling unit, such as an accessory apartment or garage apartment, provided the floor area of the accessory unit does not exceed forty percent of the floor area of the single-family dwelling unit, and further provided the accessory unit’s exterior design and entry locations preserve the appearance of the single-family dwelling unit.

Single family residence (Multiple Use District Only). A building or portion thereof providing complete living facilities for a family. The term “single family residence” shall not be deemed to include a motel, hotel, tourist home, mobile home, manufactured home, modular home or structure designed or, in fact, used for transient residence.

Solar Energy Generating Facility.^{xii} A solar electrical energy generating facility that is not an accessory solar energy device. The energy beneficiary(ies) shall not be located on the energy facility site. A *Solar Energy Generating Facility, Minor* tract shall not exceed twenty acres. A *Solar Energy Generating Facility, Major* tract shall measure more than twenty acres but shall not exceed fifty acres.

Special Use Permit. A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. This definition includes permits previously referred to as “conditional use permits” or “special exceptions.”^{xxv}

Spectator Sport Facility (500 or More Spectators). An indoor or outdoor place, structure, area, arena, or other facility used for providing spectator seating, sanitation facilities, food, or parking for 500 or more sports spectators.

Spectator Sport Facility (Less than 500 Spectators). An indoor or outdoor place, structure, area, arena, or other facility used for providing spectator seating, sanitation facilities, food, or parking for 500 or less sports spectators.

Stable, Private. A privately owned building in which livestock is kept. It most commonly means a building that is divided into separate stalls for individual animals.

Storage & Warehouse Facility. Structures or premises in which goods, merchandise or equipment are stored for eventual use or distribution.

Street or road. A dedicated and accepted public right-of-way for vehicular traffic which affords the means of access to abutting properties.

Structure. Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent locations on the ground, excluding a conventional rail, plank, board, picket or wire fence so long as it is not located within the public or maintenance right of way of any road.

Subdivision. Subdivision shall all have the same meaning, and shall be defined, as set forth in the Subdivision Ordinance of Polk County as now adopted or as may be hereafter amended.

Theater. An indoor or outdoor facility used primarily for the presentation of live stage productions, performances or motion pictures.

Timeshare. A type or form of ownership of real property in which multiple parties hold rights to use and occupy certain real property, and each user is allotted a period of time in which they may use and occupy the subject property and as further defined in Article 4 of Chapter 93A of the North Carolina General Statutes which is incorporated herein by reference as if fully set forth herein.

Tower. A tower, pole, or similar structure, exceeding 20 feet in height, which supports or incorporates, or is intended to support or incorporate, one or more private, commercial or public sign, antenna, light, or other item above ground, whether freestanding, guyed, or affixed to a building. The term shall include mobile towers. *Refer to Wireless Telecommunications Ordinance.^{xxv}

Truck Terminal. A building or area where cargo is loaded to and discharged from trucks.

Utility Buildings and Facilities, Public. A structure or facility used by a public or quasi-public utility agency to store, distribute, generate electricity, gas, telecommunications, and related equipment, or to pump or chemically treat water. This does not include storage or treatment of sewage, solid waste or hazardous waste.

Veterans' Affairs Office. A building or structure, or portion thereof, whose purpose is to assist veterans and their families in the presentation and processing of claims as they may be entitled to under Federal, State or local laws, and otherwise assist veterans.

Veterinarian Clinics, Animal Shelters. Veterinarian clinics are facilities where professionals skilled in diseases and care of animals and/or reptiles provide outpatient or inpatient care of chronically ill animals or reptiles. Animal shelters are private, governmental or nonprofit organization facilities devoted to the welfare, protection and humane treatment of animals. The boarding of animals is an incidental use in such facilities.

Waste Handling, Treatment, Processing, Management or Disposal Facility. Includes, but is not limited to, Sanitary Landfill, Municipal Solid Waste Sanitary Landfill, Construction/Demolition Landfill, Dump, Open Dump, Waste Incineration Facility, Hazardous Waste Landfill or Processing Facility, Radioactive Waste Processing or Disposal Facility, Medical Waste Processing or Disposal Facility, Waste Transfer Facility, State Regulated Compost Facility, Industrial Process Waste Landfill or Processing Facility, Industrial Solid Waste Facility, Waste Treatment and/or Processing Facility and Septage Management Facility (not including state approved land application sites). Reference shall be made to the North Carolina General Statutes and to the North Carolina Administrative Code for further definition of each of the foregoing. (Exempts Polk County Government from these restrictions when operating a facility for the citizens of Polk County).

Wholesale Sales, Retail Sales, & Supply Houses. Establishments engaged in retail sales of goods or merchandise directly to the general public for personal or household consumption or to retailers for resale to the general public and rendering services incidental to the sale of such goods. Such an establishment may process some of the products which it sells so long as such is processing incidental to such retail or wholesale sales.

Article XIII. Legal Status Provisions.

Section 13.1 Validity.

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

Section 13.2 Conflict with other laws.

In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the health, safety, morals or general welfare of Polk County. Where the provisions of any other statute or local ordinance are in conflict, the more restrictive or that imposing the higher standards shall govern.

Section 13.3 Effective date.

This ordinance, and any amendment to it, shall take effect and be in force from and after its adoption by the Board of County Commissioners of Polk County, North Carolina.

Effective date of this ordinance shall be day of June 21, 2021; Adopted this day of June 21, 2021.

Chairman of the Board of Commissioners

ATTEST:

Approved as to content & form:

Clerk to the Board of Commissioners

County Attorney

Adopted 02-Aug-99; amended 03-Dec-01; 04-Nov-02; 02-Dec-02; 19-Jun-06, 16-Oct-06, 19-Feb-07, 24-May-07, 10-Sep-07, 31-Jan-08; 16-Aug-10; 03-Oct-11; 10-Sep-12; 15-Oct-12; 22-Apr-13; 5-Aug-13; 21-Oct-13;

- ⁱ Creating the MHO Mobile Home Overlay zoning classification; establishing standards 10.20.09
- ⁱⁱ Replacing the use classification and definition of Child Care Facilities with Day Care Facility 8.31.09
- ⁱⁱⁱ Creating a new use classification of Veterans' Affairs Office 8.31.09
- ^{iv} An Ordinance Amending the Zoning Ordinance of Polk County 8.16.10
- ^v An Ordinance Concerning Zoning Administration and Enforcement. 10.3.11
- ^{vi} An Ordinance Concerning Nature-Oriented Non-Motorized Outdoor Recreation 9.10.12
- ^{vii} An Ordinance Concerning Solar Energy Generating Facilities 10.15.12
- ^{viii} An Ordinance Establishing a New Zoning District Equestrian 4.22.13
- ^{ix} An Ordinance Concerning Customary Home Occupation Class II and Residential Vacation Rentals 8.5.13
- ^x An Amendment to Clarify and Modernize Zoning Ordinance Regarding Board of Adjustment 10.21.13
- ^{xi} An Amendment to Define Parking Requirements for Customary Home Occupation Class I & II.2.3.14
- ^{xii} An Amendment to Enlarge Equestrian District & Expanding Uses, Redefining Tourist Home, Parking.2.3.14
- ^{xiii} An Amendment Concerning Accessory Dwelling Units; Authorize Dwelling Units in MU 4.20.15
- ^{xiv} An Amendment Establishing Equestrian Village District, Amending Ordinance & Rezoning Map 11.16.15
- ^{xv} An Amendment Concerning Bona Fide Farms, Recreational Vehicles & Eaves 2.8.16
- ^{xvi} An Ordinance Establishing the Polk County Government and Public Facilities Zoning District 7.18.16
- ^{xvii} An Ordinance Concerning Schools; Vocational Schools, Business Schools & Special Schools in RE1 10.3.16
- ^{xviii} An Ordinance Rezoning Certain Areas EV 12.5.16
- ^{xix} Zoning Ordinance Update 10.16.17
- ^{xx} Shared Parking 12.18.17
- ^{xxi} Agricultural Building 4.16.18
- ^{xxii} E/EV Vet Clinics, Quarantine Facilities, Church, Schools & Map Amendment 4.16.18
- ^{xxiii} Board of Adjustment Alternates; Building Height 2.4.19
- ^{xxiv} Tower10.7.19
- ^{xxv} 160D update.CU to SU.6.21.2021

POLK COUNTY BOARD OF ADJUSTMENT

AGENDA ITEM

JULY 13, 2021 REGULAR MEETING

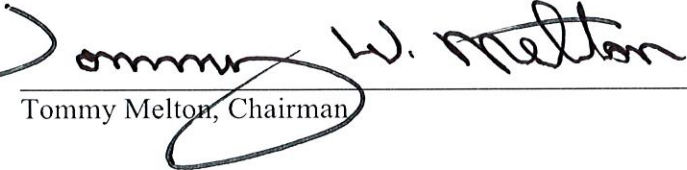
Agenda Item#: 5.

ATTACHMENTS:

Description	Type	Upload Date
Conflict of Interest	Cover Memo	6/29/2021

**County of Polk, North Carolina
Conflict of Interest Policy**

Approved this the 21st day of June, 2021



Tommy Melton, Chairman

ATTEST



Ange High, Clerk to the Board

APPROVED AS TO FORM



Jana Berg, County Attorney

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Article I. Forward

Section 1.01 Purpose of the Policy

To protect Polk County's interest when any of its employees, officials or other agents acting on the County's behalf are contemplating entering into a transaction or arrangement that might benefit or be perceived as benefitting the private interest of one of its County officials, employees or agents or otherwise engage in any other activity or conduct that might pose an actual or perceived conflict of interest.

Article II. Policy

County officials, employees and others acting on Polk County's behalf must be free from actual and perceived conflicts of interest that could adversely influence their judgment, objectivity or loyalty to the County in conducting County business activities and assignments. The County recognizes that its officials and employees may take part in legitimate financial, business, charitable and other activities outside their County position, but any potential conflict of interest raised by those activities must be disclosed promptly to the County Manager.

Article III. Scope

This policy shall apply to all Polk County Officials, employees, board members and agents of the County

Article IV. Definitions

Section 4.01 Private Interest

A conflict of interest refers to a situation in which private interests or personal considerations may affect or be perceived as affecting any County official, employee's or agent's judgment in acting in the best interest of Polk County. It includes using or being perceived as using their position, confidential information or corporate time, material or facilities for private gain or advancement or the expectation of private gain or advancement. A conflict may occur when such actual or perceived interest benefits any member of the County official's family, an employee's family, an agent's family, or their friends or business associates.

Section 4.02 Financial Interest

A financial interest is any interest, including loans, which shall yield directly or indirectly, a monetary or other material benefit to a County official, employee or agent of the County.

Section 4.03 Familial Relationship

A close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. It shall include the step, half, and in-law relationships.

Article V. Rules

Section 5.01 Personal interest

County officials, employees, board members or agents of the County shall not engage in any business or financial transaction or have a personal interest, direct or indirect, which is or could be perceived as being incompatible with the proper discharge of official duties in the public interest or

that would tend to impair or be perceived as impairing their independence of judgment or action in the performance of their official duties.

Personal interest includes an interest arising from blood or marriage relationship, or close business or political association, or close friendship. In such instances, County officials, employees and others shall disclose to the County Manager by memo or by other appropriate written document, such involvement, or disqualify themselves from acting in an official capacity on the matter, or both.

Members of the governing board shall not vote on any legislative decision if the landowner of a property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

Members of appointed boards shall not vote on advisory or legislative decisions regarding land use development where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other association relationship.

Administrative staff shall not make a final decision on an administrative decision for land use development if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member, or the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the County Manager.

Section 5.02 Incompatible Employment

County employees shall not engage in or accept private employment or render services for private interest when such employment or service is or would be perceived as being incompatible with the proper discharge of their official duties or would tend to impair or be perceived as impairing their independence of judgment or action in the performance of their official duties

Section 5.03 State/Federal Funding Selection

County employees, officials and agents shall not participate in the selection, award, or administration of a contract or grant supported by a State or Federal award if he or she has a real or apparent conflict of interest. A conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract or grant.

Section 5.04 Gifts and Gratuities

County officials, employees, and agents of the County must neither solicit nor accept gratuities, favors, or anything of monetary value from vendors, contractors or parties to subcontracts.

Section 5.05 Confidential Information

County officials, employees and agents of the County shall not, without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the County, nor

shall they use such information to advance the financial or other private interest of themselves or others.

Article VI. Sanctions for Policy Violations

Violation of this policy by any County official, employee, or agent may result in disciplinary action, up to and including censure, reprimand or termination.

POLK COUNTY BOARD OF ADJUSTMENT

AGENDA ITEM

JULY 13, 2021 REGULAR MEETING

Agenda Item#: 6.

ATTACHMENTS:

Description	Type	Upload Date
Special Use Handout	Cover Memo	6/29/2021
Appeal Handout	Cover Memo	6/29/2021
Variance Handout	Cover Memo	6/29/2021



SPECIAL USE PERMITS IN POLK COUNTY

Under the Polk County Zoning Ordinance, certain types of land uses are described as “Special Uses”. Special Uses are considered after the landowner applies for a Special Use Permit from the Board of Adjustment. This handout is designed to help guide landowners through the permitting process. This document is an overview; the specific requirements are contained in the Polk County Zoning Ordinance and Rules of Procedure for Quasi-Judicial Proceedings.

How do I know if I need a Special Use Permit?

Check with the **Polk County Planning & Zoning Department** to determine the zoning district in which your property lies. Polk County Zoning Ordinance, The Permitted Use Table, will indicate uses permitted and if the proposed project requires a Special Use Permit.

How is a Special Use Permit Granted?

The Polk County Zoning Ordinance requires four conditions be met before a Special Use Permit is granted:

- 1) the proposed use complies with the standards for such use, if any, contained in this Zoning Ordinance;
- 2) the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood
- 3) the proposed use will not be detrimental or injurious to property, property uses or property values, or to public improvements, in the neighborhood of such proposed use; and
- 4) the proposed use is designed and will be operated in such a manner as to be in harmony with the neighborhood in which it is to be located.

Who decides whether to approve it?

The five-member Polk County Board of Adjustment is responsible for interpreting and applying the conditions set forward in the Polk County Zoning Ordinance. They will conduct an evidentiary hearing to hear evidence and ultimately decide whether or not to grant the Special Use Permit.

How do I begin the process?

- 1) talk to a Planning & Zoning staff member; they will assist you with the process;
- 2) a completed Special Use Application must be filled out 30 days prior to the Special Use Evidentiary Hearing; the application should include any information that will help prove the use satisfies the four requirements;
- 3) pay a \$100 filing fee;
- 4) provide seven copies of a site plan which meets the requirements of the Zoning Administrator.

What happens next?

An application must be received by the Zoning Administrator at least 30 days prior to the next scheduled Board of Adjustment meeting - usually the first Tuesday of each month - in order to be placed on the agenda. Once the Zoning Administrator is in receipt of a complete application and seven copies of a site plan, an evidentiary hearing is scheduled. The Board of Adjustment Secretary will mail written notice to the landowner and all adjacent property owners, as well as posting a sign with notice of the evidentiary hearing at the proposed Special Use Permit site. This notice will state the time and place of the evidentiary hearing. No communication with Board of Adjustment members is allowed prior to the evidentiary hearing.

The Evidentiary Hearing

The purpose of the evidentiary hearing is to allow everyone with an interest in the Special Use Permit application to present *competent, material, and substantial evidence*. The Board is searching for *facts*, not opinions. The burden of proof lies with the applicant to provide evidence to support their case.

Anyone wishing to speak at the evidentiary hearing must identify themselves and be sworn in at the beginning of the evidentiary hearing. Anyone expecting their views to be considered must be present at the evidentiary hearing, or represented by an attorney. Letters and petitions will not be accepted.

The Board Chair will preside over the evidentiary hearing. He or she alone makes rulings on all *procedural* matters, including evidentiary objections.

The Zoning Administrator typically presents preliminary evidence in the case, providing the Board with evidence concerning the Special Use application. The applicant then presents evidence, followed by anyone else who has been sworn in and wishes to present evidence on behalf of the applicant. Anyone presenting evidence may be cross-examined and questioned by Board members. Following the Board questioning, anyone in opposition to the proposed Special Use who has been duly sworn in may present evidence.

After all evidence has been heard, the Board will hear closing arguments from all sides. Closing arguments provide an opportunity for the applicant to summarize how the evidence supports their position.

The Board typically reconvenes in one to two weeks. They will discuss their findings and reach a conclusion. Anyone may be present for this open deliberation, but no input from the audience is generally allowed.

After the evidentiary hearing and consideration of the record, the Board will take action on the application, either 1) denying it, 2) approving it, or 3) approving it subject to conditions. A majority vote of the Board members is required to approve the Special Use Permit.

A written decision is submitted a few days later and mailed to the applicant and others requesting the written decision. At that point, the Board's decision is final. The Special Use Permit will be filed with the

Register of Deeds by the Clerk to the Board of Adjustment within one month of the date of approval.

All Special Use Permits run with the property or structure for which the permit is being sought and not with the owner of the property or structure.

What if my application is not approved?

Applicants and other interested parties have 30 days following the final written decision to file an appeal with Superior Court.

How long does the Special Use Application Process Take?

The process takes approximately two to three months.

Do other ordinances apply to this reference sheet?

This handout is an overview, and the general information can be applied to other ordinances.

North Carolina General Statute 160D-102:

Evidentiary hearing. - A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.



ZONING APPEALS IN POLK COUNTY

Under the Polk County Zoning Ordinance, any person who has standing may appeal an administrative decision to the Board of Adjustment. This handout is designed to help guide the process. This document is an overview; the specific requirements are contained in the Polk County Zoning Ordinance and Rules of Procedure for Quasi-Judicial Proceedings.

When can an Appeal be processed?

Polk County Zoning Ordinance requires:

- 1) the Board may only hear actual cases where a staff decision (determination) has been issued;
- 2) only the persons with standing can appeal actual or constructive notice of the decision;
- 3) the appeal must be filed within 30 days from receipt of the written notice of determination.

Who decides whether to reverse or affirm decision?

The five-member Polk County Board of Adjustment is responsible for interpreting and applying the conditions set forward in the Polk County Zoning Ordinance. They will conduct an evidentiary hearing to hear evidence and ultimately decide whether to reverse or affirm the decision.

How do I begin the process?

- 1) talk to a Planning & Zoning staff member; they will assist you with the process;
- 2) a completed Appeal Application must be filled out 30 days prior to the evidentiary hearing; the application should include any

information that will help prove the determination was made in error;

- 3) provide seven copies of site information and determination letter/notice.

What happens next?

An application must be received by the Zoning Administrator at least 30 days prior to the next scheduled Board of Adjustment meeting - usually the first Tuesday of each month - in order to be placed on the agenda. Once the Zoning Administrator is in receipt of a complete application and seven copies of site information and determination letter/notice, an evidentiary hearing is scheduled. The Board of Adjustment Secretary will mail written notice to the landowner and all adjacent property owners, as well as posting a sign with notice of evidentiary hearing at the site for appeal. This notice will state the time and place of the hearing.

No communication with Board of Adjustment members is allowed prior to the hearing.

The Evidentiary Hearing

The purpose of the evidentiary hearing is to allow everyone with an interest in the Appeal application to present *competent and relevant evidence*. The Board is searching for *facts*, not opinions. The burden of proof lies with the applicant to provide evidence to support their case.

Anyone wishing to speak at the evidentiary hearing must identify themselves and be sworn in at the beginning of the evidentiary hearing. Anyone expecting their views to be considered must be present at the evidentiary hearing, or represented by an attorney. Letters and petitions will not be accepted.

The Board Chair will preside over the evidentiary hearing. He or she alone makes rulings on all *procedural* matters, including evidentiary objections.

The Zoning Administrator typically presents preliminary evidence in the case, providing the Board with evidence concerning the Appeal application. The applicant then presents evidence, followed by anyone else who has been sworn in and wishes to present evidence on behalf of the applicant. Anyone presenting evidence may be cross-examined and questioned by Board members. Following the Board questioning, anyone in opposition to the proposed Appeal who has been duly sworn in may present evidence.

After all evidence has been heard, the Board will hear closing arguments from all sides. Closing arguments provide an opportunity for the applicant to summarize how the evidence supports their position.

The Board typically reconvenes in one to two weeks. They will discuss their findings and reach a conclusion. Anyone may be present for this open deliberation, but no input from the audience is generally allowed.

After the evidentiary hearing and consideration of the record, the Board will take action on the application, either reverse or affirm, wholly or partly, or may modify the decision appealed. A majority of the Board members must vote to reverse the Administrative decision. A written decision is submitted a few days later and mailed to the applicant and others requesting the written decision. At that point, the Board's decision is final.

What if the decision is not reversed?

Applicants and other interested parties have 30 days following the final written decision to file an appeal with Superior Court.

How long does the Appeal Application Process Take?

The process can take anywhere from two to three months.

Do other ordinances apply to this reference sheet?

This handout is an overview, and the general information can be applied to other ordinances.



ZONING VARIANCES IN POLK COUNTY

Under the Polk County Zoning Ordinance, a landowner may request a Variance from zoning restrictions when unnecessary hardships would result from strict enforcement of the Ordinance. To obtain a Variance, the landowner must make an application to the Polk County Board of Adjustment. This handout is designed to help guide landowners through the Variance process.

What Does a Variance Do?

A Variance allows a property owner to use property in a way that would not otherwise be allowable under the terms of the Zoning Ordinance. Variances serve as a safety valve that allows certain types of adjustments to be made when the rules fail to fit unanticipated situations.

When can a Variance be granted?

A Variance may be granted only when these four requirements are met:

1. Unnecessary hardship would result from the strict application of the Ordinance. It is not necessary for the landowner to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that the circumstances exist that may justify the

granting of a Variance shall not be regarded as a self-created hardship; and

4. The requested Variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

The Board does not have the authority to grant a Variance when to do so would 1) result in the extension of a nonconformity or 2) permit a land use, building or structure which is not permitted within the applicable zoning district.

Who decides whether to approve it?

The Zoning Administrator is responsible for interpreting and applying the conditions set forward in the Polk County Zoning Ordinance. The Polk County Board of Adjustment acts as zoning court to decide whether the requirements for a Variance have been met. The burden of proof lies with the applicant to make and prove their case.

How do I begin the process?

- 1) talk to a Planning & Zoning staff member; they will assist you with the process;
- 2) obtain and fill out an application; the application should include what the landowner wished to do with the property and any information that will help prove the use satisfies the four requirements;
- 3) pay a \$100 filing fee;
- 4) provide seven copies of a site plan which meets the requirements of the Zoning Administrator.

What happens next?

An application must be received by the Zoning Administrator at least 30 days prior to the next scheduled Board of Adjustment meeting - usually the first Tuesday of each month - in order to be placed on

the agenda. After the written application is filed, an evidentiary hearing is scheduled. The Board of Adjustment Secretary will mail written notice to the landowner and all adjacent property owners and post notice on the site. This notice will state the time and place of the hearing.

The Evidentiary Hearing

The purpose of the evidentiary hearing is to allow everyone with an interest in the Variance to present *competent and relevant evidence*. The Board is searching for *facts*, not opinions.

Anyone who wishes to speak at the evidentiary hearing must identify themselves and be sworn in. Anyone expecting their views to be considered must be present at the evidentiary hearing, or represented by an attorney. Letters and petitions will not be accepted. Either four or five members of the Board must be present at the meeting. A Variance requires a super majority of at least four votes to approve. A simple majority decision of the members present is not sufficient.

The Board Chair will preside over the evidentiary hearing. He or she alone makes rulings on all *procedural* matters, including evidentiary objections.

The Zoning Administrator typically presents preliminary evidence in the case, providing the Board with evidence concerning the Variance application. The applicant then presents evidence, witnesses and/or experts, followed by anyone else who has been sworn in and wishes to present evidence of behalf of the applicant. Anyone presenting evidence may be cross-examined and questioned by Board members. Following the Board questioning, anyone in opposition to the Variance who has been duly sworn in may present evidence.

After all evidence has been heard, the Board will hear closing arguments from all sides. Closing arguments provide an opportunity for the applicant to summarize how the evidence supports their position.

The Board typically reconvenes in one to two weeks.

The Board will discuss, during the hearing, their findings and reach a conclusion. Anyone may be present for this open deliberation, but no input from the audience is generally allowed.

A written decision is submitted a few days later and mailed to the applicant and others requesting copies of

the written decision. At that point, the Board's decision is final.

What if my application is not approved?

Applicants and other interested parties have 30 days following the final written decision to file an appeal with Superior Court.

How long does the Variance Application Process Take?

The process can take anywhere from two to three months.

Do other ordinances apply to this reference sheet?

This handout is an overview, and the general information can be applied to other ordinances.

POLK COUNTY BOARD OF ADJUSTMENT

AGENDA ITEM

JULY 13, 2021 REGULAR MEETING

Agenda Item#: A.