

ORDINANCE NO. 59

**SUBDIVISION ORDINANCE
OF THE
VILLAGE OF FLAT ROCK,
NORTH CAROLINA**

Adopted: May 14, 2009

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ARTICLE I GENERAL PROVISIONS

Section 100. Authority

The Village Council of the Village of Flat Rock, pursuant to the authority conferred by the North Carolina General Statutes, Chapter 160A, Article 19, Part 2, does hereby enact into law the following articles and sections.

Section 101. Title.

This ordinance shall be known and may be cited as the Subdivision Ordinance of the Village of Flat Rock, North Carolina.

Section 102. Purpose.

The purpose of this ordinance is to provide for the subdivision of land and the provision of streets and utilities that preserve the natural and cultural resources and open space within the Village of Flat Rock. Within the scope of the authority of NCGS 160A-372, the ordinance is intended to facilitate responsible stewardship of the natural, historic and cultural amenities of the community; to provide for orderly growth and development; to protect and enhance land and property values; to provide for development alternatives that may potentially lower development cost and infrastructure maintenance; and to provide options for developers and new buyers. More specifically, the purpose of this ordinance is to establish standards and procedures for the subdivision of land; to provide for the design, standards and installation of roads and utilities; to provide for the preservation of conservation areas, natural and cultural features and open space; to ensure the proper legal description, identification and recording of properties, easements and rights-of-way; and to promote the goals, policies and requirements identified in the land use plan and the zoning ordinance in order to promote the health, safety and general welfare of the citizens of the Village.

Section 103. Jurisdiction.

The provisions of this ordinance shall govern each subdivision as herein defined within the jurisdiction of the Village, subject to the provisions of Section 601.

Section 104. Prerequisite for plat recordation.

All plats for the subdivision of land must conform to the requirements of, and be submitted in accordance with, the procedures and specifications established by this ordinance. The description by metes and bounds in an instrument of transfer or other document used in the process of selling or transferring land will not exempt the transaction from compliance with this ordinance. No utility shall be extended nor any permit be issued by an administrative agent of the Village for the construction of any building or other improvement upon any land for which a plat is required until the requirements of this ordinance have been met.

Section 105. Conformance with other plans and ordinances.

All proposed subdivisions of land shall comply with the requirements of the zoning ordinance and any other officially adopted plans, maps or ordinances in effect in the area to be subdivided. The merging of densities across zoning district boundaries shall not be permitted except for properties located in a Residential Planned Unit Development (RPUD) overlay district as specifically noted on the approved site plan.

Section 106. Certificate of zoning compliance required prior to excavation or construction.

Prior to any excavation or filling of any lot or the commencement of any infrastructure improvements for a proposed subdivision, or the erection, construction, enlargement or alteration of any building or structure on a proposed subdivision lot, the Zoning Administrator shall have issued a certificate of zoning compliance for the subdivision. The Village may withhold a certificate of zoning compliance not issued before excavation or construction begins.

Section 107. Application to build subdivision.

Only property owners of record in the office of the Register of Deeds at the time of application may apply for a subdivision permit for their properties.

Section 108. Gated subdivisions.

Gated subdivisions proposed for development after the effective date of this ordinance shall be subject to approval by the Village Council consistent with the following criteria:

- (A) Gated subdivisions shall not be permitted in any location where the Village Council determines that such location interferes with roadway, pedestrian, or shared-use path networks outlined in an official plan adopted by the Village or NCDOT.
- (B) Entrances shall be designed to permit full access by police, fire, rescue and similar emergency vehicles and shall have written approval of all appropriate emergency service agencies prior to approval of the gate. Unmanned gates shall open automatically at the sound of a “yelp” from an emergency vehicle siren unless otherwise approved in writing by all appropriate emergency service agencies. In addition, a keypad at the entry gate shall be programmed to allow entry by emergency personnel. The developer and property owners association shall provide unfettered access to all private streets for emergency and law enforcement vehicles, and shall provide reasonable access for Village, county and state employees and vehicles operating within the scope of their official duties to perform those duties, and to all public utility companies and vehicles to perform installation and maintenance of public utilities infrastructure.
- (C) Entry gates shall have sufficient minimum gate widths and openings to allow safe passage of all vehicles permitted to use public roadways. Unless overhead barriers provide a minimum of thirteen feet, six inches of clearance at the lowest point, there must be at least one additional entry gate and one additional exit gate without overhead barriers or obstructions.

- (D) Any gatehouse, entry gate, external fence, wall, or berm shall be located outside any public street right-of-way and shall be designed to blend in, to the greatest degree feasible, with the proposed development and be attractive to motorists and pedestrians from adjoining public streets.
- (E) Gatehouses and entry gates shall be located outside any required buffer areas.
- (F) Entry gates shall be set back sufficiently far from public street entrances to meet NCDOT requirements, and shall provide for stacking and safe access for at least three passenger vehicles (at least fifty-four feet). An additional setback between the point of the access control device and the entry gate shall be required to allow a passenger vehicle that is denied access to turn around and exit safely onto a public street.
- (G) Two lane gates serving twenty-four or fewer homes shall have a minimum unobstructed clearance of sixteen feet in width. Two lane gates serving more than twenty-four homes shall have a minimum of eighteen feet in width.
- (H) All gatehouses, entry gates, external fences and walls shall be subject to review by the Village Council as part of the approval process and shall include any signage and illumination integral to subdivision gatehouses, entry gates, external fences and walls.

ARTICLE II WORD INTERPRETATION AND DEFINITIONS

Section 200. Word interpretation.

Except as specifically defined herein, all words used in this ordinance have their customary dictionary definitions. For the purposes of this ordinance, certain words or terms used herein are defined as follows:

- (A) The word “Village” means the Village of Flat Rock, North Carolina.
- (B) The words “Village Council” mean the Council of the Village of Flat Rock, North Carolina.
- (C) The words “Planning Board” mean the Village of Flat Rock Planning Board.
- (D) The word “ordinance” means the Village of Flat Rock Subdivision Ordinance.
- (E) The words “person” and “applicant” include an individual, firm, association, organization, partnership, corporation, company, trust, governmental unit, and any combination thereof.
- (F) The words “shall,” “must,” and “will” are mandatory; and the word “may” is permissive, except when the context of the particular use is negative, then it is mandatory (e.g., “may not”).

- (G) The words “zoning ordinance” mean the Zoning Ordinance of the Village of Flat Rock, North Carolina.
- (H) Words used in the present tense include the future tense and words used in the future tense include the present tense.
- (I) Words used in the singular number include the plural and words used in the plural number include the singular.
- (J) Words used in the masculine gender include the feminine gender.
- (K) Any reference to a section means a section of this ordinance, unless otherwise specified.
- (L) The word “day” or “days” means calendar days unless otherwise specified.

Section 201. Subdivision defined.

As used in this ordinance, the word “subdivision” is defined in NCGS 160A-376, as now or hereafter amended. The definition is as follows:

A “subdivision” means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of conveyance, sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to this part:

- (A) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Village as shown in this ordinance;
- (B) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (C) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors;
- (D) The division of a tract in single ownership whose entire area is no greater than two 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 Village as shown in this ordinance;
- (E) The division of land into plots or lots for use as a cemetery; and
- (F) Subdivisions resulting from proceedings to partition interests in lots or parcels pursuant to Chapter 46 of the North Carolina General Statutes (or any successor statute) resulting in the division of a lot or parcel into two or more lots or parcels except where the partition proceeding is brought to circumvent the provisions of this ordinance.

Section 202. Types of subdivisions defined.

For all subdivisions of land as defined in Section 201, the following categories of subdivisions shall be used to determine the procedures required for review:

- (A) *Conservation subdivision.* A subdivision in which the building lots are grouped or clustered on the development site in order permanently to conserve view corridors, conservation areas, active farmland, and tree canopies. Open space and minimum lot size requirements shall meet the standards established in the zoning ordinance.
- (B) *Conventional subdivision.* Any subdivision that isn't defined as a conservation subdivision.
- (C) *Major subdivision.* A subdivision not otherwise exempt from these regulations that results in the creation of more than ten lots.
- (D) *Minor subdivision.* A subdivision that is not otherwise exempt from the provisions of this ordinance and that does not meet the criteria for the definition of a major subdivision.
- (E) *Special subdivision.* The subdivision of land within an existing planned development, and the subdivision of land for specific uses not otherwise specified by this ordinance (which may include such examples as cemeteries and boundary line resolutions).

Section 203. Other definitions.

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

Adjacent or adjoining property. Any property that physically touches, by means of a common boundary or corner, any other property. Such terms shall also include the term contiguous property. For the purposes of this ordinance, property that is separated by a public or private road, a right-of-way, an easement, or body of water shall be considered adjacent or adjoining property.

Administrative review and approval. Plan review and approval by the Zoning Administrator, without formal action by the Planning Board or the Village Council.

Agricultural uses. The use of land and accessory structures for the production of food crops, vineyards, orchards, feed, silvaculture, ornamentals, pasture, or flowers; the grazing or raising of domestic animals or fowl produced on site for food or for sale; the commercial propagation of plants in greenhouses; or the breeding of domestic or exotic animals. Agricultural uses are regulated in accordance with the provisions of the zoning ordinance.

Alley. A public way that affords only a secondary means of access to abutting property and is not intended for general traffic circulation.

Applicant. The owner or a person, firm or business entity acting as a documented agent for an owner, and submitting an application for a subdivision approval as required in Section 303 who is responsible for ensuring compliance with the terms and conditions of this ordinance.

Boathouse. A noncommercial accessory structure the principal purpose of which is waterfront mooring or storage of small boats. Such a structure may have one enclosed nonresidential level above the boat storage level, provided such area shall not contain more square footage than the boat storage level.

Buffering. The plants and landscaping required as a physical buffer between a subdivision regulated by the provisions of this ordinance and adjacent property, and located along one or more adjacent property boundary lines.

Buildable acreage. The net acreage of a lot or tract available for calculating land area for building, residential density, or landscaping. For the purpose of this ordinance, buildable acreage shall be the gross acreage of a lot or tract, less acreage of all areas that include existing and planned public or private rights-of-way, bodies of water, wetlands, floodplains and floodways. In addition, the buildable acreage for portions of a tract with a slope of sixty percent or greater (where such slope areas account for ten percent or more of the tract) shall be one-half the gross acreage.

Building. Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals or chattels.

Building or structure, accessory. A detached building or structure subordinate to the principal building on a lot and used for purposes customarily incidental to the principal building. An accessory building or structure shall be one that is located in a rear or side yard on the same lot with the principal building. Except as specifically provided, no dwelling units are permitted in an accessory building.

Carl Sandburg Home National Historic Site viewshed. All areas visible by line of sight from the property of the Carl Sandburg Home National Historic Site as identified and shown on a map developed and maintained by the Superintendent of the National Historic Site and adopted by the Village Council. For the purposes of this ordinance, the viewshed extends up to one air mile from the visual vantage areas of the site as identified on the viewshed map. A copy of the map shall be located in the office of the Village and in the Superintendent's office at the National Historic Site.

Cluster subdivision. A subdivision of land for detached single family dwelling units that permits the reduction of the required minimum lot sizes and dimensional requirements, subject to the dedication of required open space and conformance with the overall density permitted in the district in which the cluster subdivision is located.

Common area. Land and water areas within or related to a development that are reserved for public or private use for active or passive recreation for residents and guests of the development. The common areas may include, roads, man-made features and structures.

Community sewer system. Any wastewater disposal system serving two or more connections and not owned and operated by a unit of local government.

Conceptual plan. A plan for a proposed subdivision that presents the general development plan, including the property boundaries, the conservation areas within and adjacent to the property, the general location of the roads, the areas proposed for development and open space, and the proposed density, types of development, and buffering.

Conservation areas. Natural, historic and cultural features of a tract of land. These features shall include all bodies of water, perennial streams, wetland areas, Southern Appalachian bogs, land in a floodplain or floodway, areas with biological life unique to the area, areas with mature trees or vegetation, and any structure or landscape listed on the National Register of Historic Places.

Cul-de-sac. A dead-end local street provided with a vehicular turn around at its terminus and conforming to the requirements of Section 402 (B) (4).

Dedication. A gift or transfer by the owner of a right of use of land for a specified purpose or purposes. Because a transfer of property rights is involved, dedication must be made by written instrument, completed with an acceptance by the grantee or transferee, and recorded in the office of the Register of Deeds.

Driveway. A private access to not more than two lots of record that meet the requirements of this ordinance. A driveway 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 to serve more than two lots shall be deemed a public or private street.

Easement. A right of use or privilege owned by one in the land of another that restricts the rights of use or privilege of the owner of the land. The right of use or privilege may be for specified purposes and uses by the public or a person or entity.

Excavation. The cutting, filling or clearing of the land, thereby disturbing ten cubic yards or more.

Final plan. An as-built plan of the subdivision that delineates all of the completed improvements installed in accordance with the approved site plan for the subdivision.

Final plat. A plat representing a lot, parcel, subdivision or tract of land and designating the location and boundaries of individual properties, rights-of-way, open space, streets, easements and other information required by this ordinance. A final plat shall be prepared by a qualified professional, licensed in the State of North Carolina, in conformance with NCGS 47-30 and suitable for recording in the office of the Register of Deeds.

Floodplain. Any land area susceptible to being inundated by water from any source. For the purpose of this ordinance, such flood hazard areas are delineated on one or more Flood Insurance Rate Maps (FIRMs) issued for the Village by the Federal Emergency Management Agency

Floodway. The channel of a river or other watercourse 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 foot. For the purpose of this ordinance, base flood means the flood having a one percent chance of being equaled or exceeded in any given year. Floodways are delineated on one or more Flood Insurance Rate Maps (FIRMs) issued for the Village by the Federal Emergency Management Agency.

Gated subdivision. A subdivision where all entrances and exits are controlled by a physical barrier.

Health Department. The Henderson County Department of Public Health.

Improvements. Improvements shall mean all temporary and permanent features required or installed in the development of a subdivision in accordance with an approved site plan and the requirements of this ordinance. Such improvements may include, but are not limited to roads, sidewalks and pedestrian trails, utilities, sedimentation and erosion control facilities, stormwater detention and disposal facilities, buffering, landscaping, parks and recreational facilities.

Individual wastewater system. Any septic tank, ground absorption system, privy or other facility serving a single source and approved by the Health Department.

Individual water supply. A well, spring or reservoir used to supply one residential connection.

Individual water system. Any well, spring or other source used to supply fewer than fifteen residential connections or fewer than twenty-five year round residents and approved by the Health Department.

Lake. An impoundment of water, fed by natural streams, springs or the water table with a surface area of more than 50,000 square feet.

Lot. A parcel of land occupied or legally and physically capable of being occupied by a building, together with its customary accessory buildings, including the open space required by this ordinance or the zoning ordinance. For the purpose of this ordinance, the word “lot” shall also mean any number of contiguous lots or portions thereof in single or joint ownership.

Lot area. The total horizontal area of a lot within the lot lines, exclusive of the traveled way.

Lot of record. Any lot within the Village for which a plat has been recorded in the office of the Register of Deeds, or a lot described by a legal description that has been so recorded.

Lot types:

(A) *Corner lot.* A lot located at the intersection of two or more public or private streets.

- (B) *Flag lot.* A lot with access provided to the bulk of the lot by means of a narrow corridor having a minimum width of thirty feet at the adjacent road and a maximum length of two hundred fifty feet.
- (C) *Through lot or a double frontage lot.* A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

Master plan. A general development plan for a subdivision proposed to be developed in phases as specified in Section 307. The master plan shall conform to the approved conceptual plan.

Nonconforming use. Any lot, use of land, building or structure that does not conform with the use or dimensional requirements of the zoning districts.

NCDENR. The North Carolina Department of Environmental and Natural Resources.

NC DOT. The North Carolina Department of Transportation.

NC GS. North Carolina General Statutes.

Open space. Natural, landscaped or agricultural areas, excluding traveled ways and parking areas, that are dedicated to the public, donated to a land trust, or held in common by a legally constituted property owners association. Open space shall be held in perpetuity and may include ponds, lakes, wetlands, streams, floodplains and floodways. This term implies a space that is fundamentally different from and not to be confused with, the open space mentioned in the definitions for required yards (front, side, and rear) found in the zoning ordinance.

Park. An area, developed or undeveloped, for either passive or active recreational activities. The term park may include, but shall not be limited to, open fields, woodlands, water courses, multiuse courts, walkways, benches, swimming and wading pools, recreational fields, amphitheaters and golf courses (excluding miniature golf and driving ranges). The term “park” shall not include zoos, recreational vehicle parks, amusement parks, vehicular racing facilities or any for profit recreational facility or use.

Phase. A group of more than three lots in a development plan, including rights-of-way, common areas and associated improvements therein, and relating to stages of a master plan.

Planned mixed use development. A planned development where more than one principal building or principal use is proposed for a tract in single or unit ownership at the time of development. The development may include residential, commercial and institutional uses and shall be located within a planned mixed use development created pursuant to Section 1205 of the zoning ordinance.

Plat. A map or plan of a parcel of land that is to be, or has been subdivided.

Pond. A perennial impoundment of water, fed by natural streams, springs or the water table, with a surface area of less than 50,000 square feet.

Premises. Land, with its appurtenances; a distinct portion of real estate.

Private road. A dedicated private right-of-way that affords access to abutting properties and conforms to the requirements of Section 402 (B).

Private collector road. A private road that provides direct or indirect access to fifty or more existing and proposed dwelling units or lots within a subdivision. Direct access shall include all units or lots that have driveway frontage on such road. Indirect access shall include all units or lots that have driveway access on roads that exclusively or predominately use roads that connect with the collector road. The terminal section of a collector road may be designated a private local road, provided such section serves fewer than fifty dwelling units or lots and can not be extended in the future. A private collector road shall be designed and constructed in accordance with the standards in Section 402 (B).

Private local road. A private road that provides direct or indirect access to fewer than fifty existing and proposed dwelling units in a subdivision. Direct access shall include all units that have driveway frontage on such road. Indirect access shall include all units that have driveway access on roads that exclusively or predominately use roads that connect with the collector road. A private local road shall be designed and constructed in accordance with the standards in Section 402 (B).

Public road. A public right-of-way for vehicular traffic that affords access to abutting properties and conforms with the requirements of Section 402 (A).

Public wastewater system. Any sewage disposal system owned and operated by a local unit or combination of units of local government, or any wastewater treatment system having a discharge to surface waters when approved by NCDENR.

Public water system. Any water system owned by a unit of local government and serving more than one residential connection.

Qualified professional. A professional licensed or registered in the state of North Carolina and performing services only in his area of competence. This term shall include only registered land surveyors, registered engineers, registered architects, and registered landscape architects.

Recombination. The combining of previously subdivided and recorded lots or portions thereof, where the total number of lots is not increased and the resulting lots meet the requirements of this ordinance.

Register of Deeds. The Henderson County Register of Deeds.

Riparian buffer. An area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner..

Setback lines. Building setback lines as defined in and regulated by the zoning ordinance.

Site plan. A detailed development plan for the layout of a proposed subdivision or a phase of a proposed subdivision that contains the information and supporting documentation required by this ordinance. The site plan shall be prepared by a qualified professional.

Street (road). A public or private right-of-way for vehicular traffic serving more than two lots and affording the principal means of access to abutting properties. The term includes, but is not limited to, avenue, place, way, drive, lane, court, boulevard, highway, road or any other thoroughfare except an alley or driveway.

Street, private. A dedicated private right-of-way that affords vehicular access to abutting properties and conforms to the requirements of Section 402 (B).

- (A) An external private street dedicated and constructed within and as part of an approved subdivision is a street that adjoins adjacent properties outside of the planned subdivision.
- (B) An internal private street dedicated and constructed within and as part of an approved subdivision, is a street that does not adjoin any properties outside of the subdivision, other than its intersection with a public or private street that is not part of the approved subdivision.

Street, public. A public right-of-way for vehicular traffic that affords access to abutting properties and conforms to the requirements of Section 402 (A).

Street line. A line following the edge of the traveled way of any street or road and used for establishing a property setback.

Structure. Anything constructed or erected, including, but not limited to, a building, porch, deck or patio, that is located on the land or attached to something having permanent location on the land. Anything constructed or erected solely to provide ingress and egress to the site, ornamental enhancement of the property (exclusive of buildings), site stabilization, on-site utilities and lighting, or property fencing shall not be considered a structure for the purposes of this ordinance.

Subdivider. Any person that subdivides or develops any land deemed to be a subdivision as herein defined.

Technical review advisors. Advisors who, because of their training, background and experience, and on an individual basis, may be called upon to provide advice, information and guidance to the Zoning Administrator, the Planning Board, or the Village Council on the technical review of proposed plans and improvements for compliance with the provisions of this ordinance. The Village Council may establish a roster of technical advisors who, on the basis of their professional or licensing background, have expertise and experience in areas that may include engineering, land planning and surveying, architecture, historic preservation, real estate, natural resources or law. Upon request of the public body, such advisors may review and make recommendations on the technical sufficiency of the proposed plans and improvements within their respective areas of expertise.

Traveled way. That portion of an alley, road, street or highway upon which vehicles normally travel and that is marked by gravel, asphalt or packed dirt.

Tree canopy. The canopy created by the uppermost branches of a forested area.

Utility facilities. Public or private utility facilities that are required to provide electrical power, water, sewer, telephone, or natural gas. Such facilities include major above and below ground transmission lines, substations, pumping stations and water storage facilities. This definition shall not include communications towers and their accessory structures.

Yard. A required open space within a building lot, other than a court, on the same lot with a principal building, open, unoccupied and unobstructed by any structure or portion of a structure from the ground to the sky; provided, however, that fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in certain yard areas, subject to height limitations and requirements limiting obstruction of visibility.

Zoning Administrator. An official appointed by the Village Council and charged with enforcing and administering the zoning ordinance.

ARTICLE III PROCEDURES FOR SUBMISSION, REVIEW AND APPROVAL OF SUBDIVISIONS

Section 300. Final plat required for any subdivision of land.

A final plat shall be prepared, approved and recorded pursuant to the provisions of this ordinance for any subdivision of land.

Section 301. Final plat approval prerequisite to recordation.

No final plat of a subdivision within the jurisdiction of the Village shall be recorded in the office of the Register of Deeds until it has been approved in accordance with the provisions of this ordinance. To secure such approval of a final plat, the applicant shall follow the procedures established in this Article.

Section 302. Types of subdivisions.

Subdivisions, as herein defined, shall be classified as one of the following: Minor Subdivision; Major Subdivision; or Special Subdivision. Where applicable, a subdivision shall be classified as either a conventional subdivision or a conservation subdivision. All subdivisions, unless exempted from these regulations by Section 201, shall comply with the standards and review procedures specified herein.

Section 303. General application required for all subdivisions.

All applicants seeking to subdivide land shall complete the general application and other such applications as required for the classification of the proposed subdivision. All applications and supporting documentation shall be submitted to the Zoning Administrator in accordance with the provisions of this Article in both printed and digital forms, the digital format to be Adobe Acrobat (.PDF). Applicable fees shall be paid upon submission of the application to the Zoning Administrator.

Section 304. Procedures for review and approval of minor subdivisions.

(A) *Predevelopment conference and conceptual plan submission.*

The applicant for a minor subdivision shall designate the choice of conventional subdivision or conservation subdivision on the application. The applicant must submit a conceptual plan designating any conservation areas for the subdivision. The applicant shall submit the completed application and required documentation to the Zoning Administrator not fewer than twenty days before the next scheduled Planning Board meeting for a predevelopment conference to review the conceptual plan and supporting documentation. The purpose of the predevelopment conference is to familiarize the Planning Board with the proposed subdivision and the applicant with the requirements of the ordinance and the community's planning goals. The Planning Board shall review the submission and approve, approve with conditions, or disapprove the conceptual plan within thirty days of its first consideration of the plan.

(B) *Site plan review and approval.*

A site plan for a minor subdivision, prepared in conformance with the approved conceptual plan, shall be submitted with the general application to the Zoning Administrator with all completed materials, fees and supporting documentation not fewer than twenty days before a scheduled meeting of the Planning Board. The twenty day period shall not begin until all materials and supporting documentation have been completed and submitted. Prior to the scheduled Planning Board meeting, the Village shall notify all adjacent property owners, as identified by the applicant and confirmed by the Zoning Administrator, of the Planning Board's consideration of the proposed subdivision. The notice shall identify the name and location of the proposed subdivision and time, date and place of the Planning Board's meeting. Notices shall be mailed by first class mail to the identified property owners at least ten days prior to the Planning Board's scheduled meeting. The site plan shall be reviewed and approved, approved with conditions, or disapproved by the Planning Board within forty-five days after its first consideration of the plan.

(C) *Installation of improvements.*

Upon approval of the site plan by the Planning Board and conformance with any conditions of approval, and issuance of a certificate of zoning compliance by the Zoning Administrator, the applicant may proceed with the installation of the improvements specified in the site

plan. Prior to the submittal of a final plan, the applicant shall have installed all improvements specified in the site plan. If installation of such improvements is to be completed after the final plan approval, the applicant shall guarantee the completion of such improvements in accordance with the requirements of Section 907 of the zoning ordinance. Documentation of the completion of all improvements or the executed improvements guarantee shall be submitted to the Zoning Administrator with the final plan. The developer's engineer or other qualified professional shall provide written certification under seal to the Zoning Administrator that the improvements have been installed in accordance with the site plan and the requirements of this ordinance.

(D) *Final plan review, verification and approval.*

The applicant shall submit a final plan and supporting documentation to the Zoning Administrator within twelve months of the approval of the site plan. The applicant may apply for an extension of up to six months for such submission. Upon the expiration of the time period or any approved extension, the site plan approval shall become null and void. The Zoning Administrator may submit the final plan and supporting documentation to a technical review advisor for its review and recommendations within ten days of receiving all completed documentation. Upon request, the technical review advisor shall review the final plan and all supporting documentation, including the certification of the completion of improvements, and shall report its findings to the Zoning Administrator within ten days of its first consideration. Following verification, the Zoning Administrator shall approve or disapprove the final plan on the basis of its conformance with the approved site plan and the requirements of this ordinance within ten days after receiving the technical review advisor's report. Any requested variance or appeal of the Zoning Administrator's decision shall be submitted to the Planning Board for review and recommendation to the Village Council for approval, approval with conditions, or disapproval.

(E) *Final plat review, verification and approval.*

Within thirty days of the approval of the final plan, and before any lots are transferred, the applicant shall submit the final plat and supporting documentation to the Zoning Administrator. Following verification, the Zoning Administrator shall review and approve or disapprove the final plat on the basis of its compliance with the approved final plan and the installation of all required improvements. The Zoning Administrator shall approve or disapprove the final plat within ten days after receipt of all required documentation. Upon approval of the final plat, the applicant shall record the final plat and all requisite documents in the office of the Register of Deeds within thirty days after the approval of the final plat. The applicant shall submit copies of all recorded documents to the Zoning Administrator within ten days after recordation.

(F) *Limiting the use of the minor subdivision.*

The minor subdivision process may not be used a second time within five years from the date of the last application on property currently or previously owned (within the last five

years) by the applicant within 1,500 feet of any boundary line of the original tract of the minor subdivision.

Section 305. Procedures for review and approval of major subdivisions.

The review and approval process for a major subdivision shall include the conceptual plan, master plan (when applicable), site plan, final plan and the final plat. A general application and all supporting documentation shall be submitted to the Zoning Administrator not fewer than twenty days before a scheduled meeting of the Planning Board. The twenty day period shall not begin until all materials and supporting documentation have been completed and submitted.

(A) *Predevelopment conference and conceptual plan submittal.*

The applicant for a major subdivision shall designate the choice of using conventional subdivision or conservation subdivision on the application. The applicant must submit a conceptual plan for the subdivision. The applicant shall submit the completed application and required documentation to the Zoning Administrator not fewer than twenty days before the next scheduled Planning Board meeting for a predevelopment conference to review the conceptual plan and supporting documentation. The purpose of the predevelopment conference is to familiarize the Planning Board with the proposed subdivision and the applicant with the requirements of the ordinance and the community's planning goals. The Planning Board shall review and approve, approve with conditions or disapprove the conceptual plan within thirty days after its first consideration of the plan. If the subdivision is to be developed in phases, the applicant also shall submit a master plan of the entire subdivision.

(B) *Site plan review and approval.*

Upon approval of the conceptual plan, and, where applicable a master plan for phased subdivisions, the applicant may submit a site plan to the Zoning Administrator for the subdivision approved in the conceptual plan. The site plan and all supporting documentation shall be submitted not fewer than twenty days before a scheduled Planning Board meeting. Prior to the scheduled Planning Board meeting, the Village shall notify all adjacent property owners, as identified by the applicant and confirmed by the Zoning Administrator, of the Planning Board's consideration of the proposed subdivision. The notice shall identify the name and location of the proposed subdivision and time, date and place of the Planning Board's meeting. Notices shall be mailed by first class mail to the identified property owners at least ten days prior to the Planning Board's scheduled meeting. The Planning Board shall review and make a recommendation to the Village Council to approve, approve with conditions, or disapprove the site plan within forty-five days after its first consideration of the plan. The Planning Board may require reviews and recommendations from other agencies, and may, at its discretion, secure professional services to be used to review the site plan as provided in Section 308. The Planning Board and Village Council shall consider the compliance of the site plan with the requirements of this ordinance and the approved conceptual plan and the master plan, where applicable.

(C) *Installation of improvements.*

Upon approval of the site plan by the Village Council and compliance with any conditions of approval, the applicant may proceed with the installation of the improvements specified in the site plan. Prior to the submission of a final plan, the applicant shall have installed all improvements documented in the site plan. If installation of such improvements is to be completed after the final plan approval, the applicant shall guarantee the completion of such improvements in accordance with the requirements of Section 907 of the zoning ordinance. Documentation of the completion of all improvements or the executed improvements guarantee shall be submitted to the Zoning Administrator with the final plan. The developer's engineer or other qualified professional shall provide written certification under seal to the Zoning Administrator that the improvements have been installed or the improvements guarantee completed in accordance with the site plan and the requirements of this ordinance.

(D) *Final plan review, verification and approval.*

The applicant shall submit a final plan and supporting documentation to the Zoning Administrator within twelve months of the approval of the site plan. The applicant may apply for an extension of up to six months for such submission. Upon the expiration of the time period or any approved extension, the site plan approval shall become null and void. The Zoning Administrator may submit the final plan and supporting documentation to a technical review advisor for its review and recommendations within ten days of receiving all such documentation. Upon request, the technical review advisor shall review the final plan and all supporting documentation, including the certification of the completion of improvements, and shall report its findings to the Zoning Administrator within ten days of its first consideration. Following verification, the Zoning Administrator shall approve or disapprove the final plan on the basis of its conformance with the approved site plan and the requirements of this ordinance within ten days of receiving the technical review advisor's report. Any requested variance or appeal of the Zoning Administrator's decision shall be submitted to the Planning Board for review and recommendation to the Village Council for approval, approval with conditions, or disapproval.

(E) *Final plat review, verification and approval.*

Within thirty days of the approval of the final plan, and before any lots are transferred, the applicant shall submit the final plat and supporting documentation to the Zoning Administrator. Following verification, the Zoning Administrator shall review and approve or disapprove the final plat on the basis of its compliance with the approved final plan and the installation of all required improvements. The Zoning Administrator shall approve or disapprove the final plat within ten days after receipt of all supporting documentation. Upon approval of the final plat, the applicant shall record the final plat and all requisite documents in the office of the Register of Deeds within thirty days after the approval of the final plat. The applicant shall submit copies of all recorded documents to the Zoning Administrator within ten days after recordation.

Section 306. Procedures for review and approval of special subdivisions.

An applicant for a special subdivision shall submit a general application with all supporting documentation to the Zoning Administrator.

(A) *Review of special subdivisions for existing planned developments.*

Site plans for special subdivisions that are submitted as a part of an existing planned development shall be submitted to the Zoning Administrator not fewer than twenty days before a scheduled meeting of the Planning Board. The twenty day period shall not begin until the plans and all materials and supporting documentation have been submitted. The plans shall comply with all applicable requirements and review procedures of the zoning ordinance. The site plan shall be reviewed and approved, approved with conditions, or disapproved by the Planning Board within forty-five days after its first consideration of the application.

(1) *Installation of infrastructure improvements.*

Upon approval of the special subdivision by the Planning Board and compliance with any conditions of approval, the applicant may proceed with the installation of the infrastructure improvements specified in the site plan and the requirements of the zoning ordinance. Prior to the submittal of a final plan, the applicant shall have installed all improvements specified in the application. If installation of such improvements is to be completed after the final plan approval, the applicant shall guarantee the completion of such improvements in accordance with the requirements of Section 907 of the zoning ordinance. Documentation of the completion of all improvements or the executed improvements guarantee shall be submitted to the Zoning Administrator with the final plan. The Zoning Administrator shall provide written certification that the improvements have been installed or the improvements guarantee completed in accordance with the site plan and the requirements of this ordinance.

(2) *Final plan review, verification and approval.*

The applicant shall submit a final plan and supporting documentation to the Zoning Administrator within twelve months after approval of the site plan. The applicant may apply for an extension of up to six months for such submission. Upon the expiration of the time period or any approved extension, the site plan approval shall become null and void. The Zoning Administrator may submit the final plan and supporting documentation to a technical review advisor for its review and recommendations within ten days of receiving such documentation. Upon request, the technical review advisor shall review the final plan and supporting documentation, including the certification of the completion of infrastructure improvements or the improvements guarantee, and shall report its findings to the Zoning Administrator within ten days of its first consideration. Following verification, the Zoning Administrator shall approve or disapprove the final plan on the basis of its conformance with the approved site plan

and the requirements of this ordinance within ten days of receiving the technical review advisor's report. Any requested variance or appeal of the Zoning Administrator's decision shall be submitted to the Planning Board for review and recommendation to the Village Council for approval, approval with conditions, or disapproval.

(3) *Final plat review, verification and approval.*

Within thirty days of the approval of the final plan or the guarantee of the completion of improvements, if earlier, and before any lots are transferred, the applicant shall submit the final plat and applicable supporting documentation to the Zoning Administrator. Following verification, the Zoning Administrator shall review and approve or disapprove the final plat on the basis of its compliance with the approved final plan and the installation of all required improvements, or upon approval by the Village Council, an infrastructure improvements guarantee. The Zoning Administrator shall approve or disapprove the final plat within ten days of submittal of all required documentation. Upon approval of the final plat, the applicant shall record the final plat in the office of the Register of Deeds within thirty days after the approval of the final plat. The applicant shall submit copies of all recorded documents to the Zoning Administrator within ten days after recordation.

(B) *Review of other special subdivisions.*

For special subdivisions that do not involve planned developments, the applicant shall submit the general application to the Zoning Administrator for review and approval or disapproval. The Administrator shall approve or disapprove the special subdivision within ten days. The ten day period shall not begin until all required documentation has been submitted. The Zoning Administrator may require that the special subdivision be reviewed by a technical review advisor. Any requested variance or appeal of the Zoning Administrator's decision shall be submitted to the Planning Board for review and recommendation to the Village Council for approval, approval with conditions, or disapproval. Upon approval, and before any lots are transferred, the applicant shall record the final plat in the office of the Register of Deeds. The applicant shall submit copies of all recorded documents to the Zoning Administrator within ten days after recordation.

Section 307. Procedures for phased developments.

If an applicant proposes to construct a major subdivision in phases, the following procedures of Section 305 shall apply:

- (A) The applicant shall submit for review and approval a conceptual plan for the entire subdivision.
- (B) Upon approval of a conceptual plan, a master plan and appropriate supporting documentation shall be submitted for review and approval, approval with conditions, or disapproval.

- (C) Each phase of development shall be preceded by submittal and approval of a site plan. A site plan for one or more initial phases may be submitted simultaneously with submittal of the master plan.
- (D) As each phase is completed, a final plan shall be submitted and approved in accordance with the procedures for that phase.

Section 308. Technical review.

When technical services are required to provide the Zoning Administrator, Planning Board or Village Council with technical assistance in the administration of this ordinance, the party requiring such assistance may hire the appropriate technical review advisor(s).

**ARTICLE IV
MINIMUM DESIGN STANDARDS**

Section 400. General.

All subdivisions shall be designed and constructed in accordance with the minimum design standards set forth in this article, except as otherwise provided in this ordinance.

Section 401. Lot design.

All lots created under the provisions of this ordinance shall comply with the following design standards.

- (A) *Lot size and dimension.*

Except as otherwise provided in this section, all lots created in a subdivision regulated by this ordinance shall conform to the minimum size and other dimensional requirements of the zoning district in which it is located. For lots proposed within conservation and other cluster subdivisions, except RPUD-COD, the minimum lot size and other internal dimensional requirements are, subject to the provisions of Section 602 of the zoning ordinance and the applicable approval process in this ordinance and the zoning ordinance. For lots within a proposed RPUD-COD, minimum lot size, setbacks from private, internal streets and other internal yard requirements shall be appropriate for the site, the development plan and the district in which it is located, as approved by the Village Council.

- (B) *Special lot requirements.*

There are no size and dimensional requirements for lots proposed for open space uses, entrance ways and islands, sight easements and utility facilities and stations within a subdivision. All lots proposed for these uses and any other nonresidential use shall be

designated on all plans for the specifically intended use and shall be subject to the applicable process for the subdivision in which it is located. All open space areas shall be accurately located on the site plan and shall be labeled with an accurate description of the type and purpose of the open space (e.g., public park, forest, wetlands, etc.).

(C) *Lot configuration and frontage.*

(1) *Conservation subdivisions.*

Lots within a subdivision shall be designed to conform with the conservation areas delineated on the conceptual plan. Lots may vary in size and shape to meet the overall density and design plan for the subdivision. Flag lots may be permitted as a more reasonably suitable alternative to extending a road or a more conventional lot design when justified by topographic and natural features. Flag lots shall be reviewed for their effect on the local environment and their suitability for emergency access. All lots shall have a minimum of thirty feet on a public or private road as measured along the edge of the traveled way. The area within an existing street or street right-of-way shall not be used in calculating the required lot size or the density of the subdivision.

(2) *Conventional subdivisions.*

Where feasible, side lot lines should be at right angles or radial to the street on which they front. Flag lots may be permitted as a more reasonably suitable alternative to extending a road or a more conventional lot design when justified by topographic and natural features. Flag lots shall be reviewed for their effect on the local environment and their suitability for emergency access. All lots shall have a minimum frontage of not less than thirty feet on an approved road dedicated for public use as measured along the edge of the traveled way. Lot lines abutting an existing or proposed public road shall be drawn to the right-of-way of the road.

(D) *Setbacks.*

(1) *Conservation subdivisions.*

Lot lines shall be drawn to conform to the designated boundaries of the conservation areas shown on the conceptual plan. Building setbacks for individual lots shall conform to the cluster subdivision plan or special subdivision plan submitted and approved in accordance with the zoning ordinance.

(2) *Conventional subdivisions.*

Where feasible, lots should be located to minimize the impact on the conservation areas identified in the conceptual plan. Building setbacks for individual lots shall conform to the minimum setback requirements of the zoning district in which the subdivision is located.

(3) *Subdivisions with frontage on a scenic byway.*

The minimum setback from a scenic byway shall be one hundred feet as measured from the nearest edge of the traveled way, except in the C-1 commercial district and the PA performing arts district.

Section 402. Road design.

All new subdivision lots shall be contiguous to an approved public or private road as provided herein. Roads within all subdivisions shall be designed and constructed to the minimum standards required in Section 402(A) and dedicated for public use and offered for acceptance to the NCDOT or, conversely, must be built to Village standards set out in Section 402 (B) and maintained as private roads. Private roads shall be transferred to a property owners association for ownership and maintenance as provided in Section 405.

(A) *Public roads.*

All roads proposed for public use shall be designated as public on all site plans and plats. The roads shall be designed and constructed to meet the minimum design and construction standards of the NCDOT publication, Subdivision Roads, Minimum Construction Standards, dated January 1, 2000, or as hereafter amended. Designation as public shall be presumed an offer of dedication to the public. For subdivisions that include roads proposed for public use, the applicant shall submit a disclosure statement in conformance with NCGS 136-102.6 with the site plan and final plan. A written ownership and maintenance agreement acceptable to the Village Council, sufficient for recording in the office of the Register of Deeds, shall be submitted with the site plan and final plan in accordance with Section 405. Such agreement shall provide for the applicant or a property owners association to own and maintain the road, drainage easements and facilities, and rights-of-way until such time as the road is accepted for ownership and maintenance by the NCDOT.

(B) *Private roads.*

Roads within a minor or special subdivision or within a major subdivision in a conservation subdivision, may be designated as private on all site plans and final plans. The roads proposed for private use and dedication shall be designed and constructed to meet the minimum design and construction requirements as set forth in Section 402 (B) (1). For all subdivisions that include roads proposed for private use and dedication, the applicant shall submit a disclosure statement in conformance with NCGS 136-102.6 with the site plan and final plan. A written ownership and maintenance agreement acceptable to the Planning Board for a minor subdivision and acceptable to the Village Council for a major subdivision, and sufficient for recording in the office of the Register of Deeds, shall be submitted with the site plan and final plan in accordance with Section 405. Such agreement shall provide for the applicant to own and maintain the road, drainage easements and facilities, and rights-of-way until such time as the road is transferred to a property owners association for ownership and maintenance.

(1) *Standards for private roads.*

- (a) All roads designated for private use shall meet the minimum design and construction standards of this section. A variance from one or more of the standards specified in this section may be granted in order to preserve a natural or scenic feature of an identified conservation area or to reduce the negative impact of the road on a conservation area. Such variance to the standards shall be approved by the Zoning Administrator or the body designated to approve the subdivision in which the road is located, subject to the review of the variance by the fire chief for the area in which the subdivision is located.
- (b) Any such variance shall consider the potential impact of access for emergency vehicles to properties within the subdivision. Certification from an engineer is required for any reduction in NCDOT standards, that such reduction will meet the necessary safety requirements for weight and design limitations for fire and emergency vehicles and meet the twenty-five year storm drainage design. The following private road standards for local roads do not meet the minimum design standards of NCDOT as referenced in Section 402 (A) and will not be eligible for inclusion in the state roads system.

ITEM	ROAD CLASSIFICATION	
	Collector	Local
Number of dwelling units served	50+	4-49
Right-of-way width:		
Roads	50 ft.	45 ft.
Cul-de-sac (radius)	70 ft.	50 ft.
One way sections	30 ft.	30 ft.
Sight distance on vertical curves	150 ft.	110 ft.
Centerline radius	100 ft.	90 ft.
Maximum grade:		
Gravel	N/A	12%*
Paved	16%*	18%*
Minimum road width:		
Traveled way	18 ft.	18 ft.
Cul-de-sac (radius)	35 ft.	35 ft.
One way section	12 ft.	12 ft.
Construction standards:		
Stone Base (CABC) compacted	8 inches	6 inches
Paved	1-1/2 in. BSCS	1-1/2 in. BSCS
Compacted Shoulder width	6 ft. @1% slope	5 ft. @1% slope
Cut Slope**	1:1	½ :1
Fill slope	2:1	1-1/2:1
Ditch slope	3:1	2:1

* The length of sections of roads with the maximum permitted grade shall not exceed 300 feet.

**The cut slope shall be subject to the evaluation of the specific terrain, soils and vegetation by a technical review advisor.

- (c) Paved road surfaces shall be required in all subdivisions except for subdivisions of five lots or fewer for which the Village Council may give written approval for gravel road surfaces. Where a gravel road surface is approved, a paved apron (not less than ten feet in length and twenty feet in width at the public road) in order to protect the integrity of the public road edge and to prevent washout of gravel onto the public road shall be required.

(2) *Super elevations, banking and guard rails.*

Super elevations of curves, banking and guardrails may be required on sections of road where slope and alignment create potential safety problems. (Super elevation means changing the slope of the roadway to offset centripetal force.)

(3) *Entrance way standards for private roads.*

Entrance way architectural features, including but not limited to fencing, stone or masonry walls and posts, gate houses and gate structures, shall be designed and located to allow for emergency and service vehicles to enter through the gates or entrance features without obstructions, or to bypass the features. The location of such entrance features shall be outside of the required site visibility area of the intersection, and set behind a radius of ninety feet measured perpendicularly to each road centerline. The entrance features shall be spaced at least twenty feet apart for two-way traffic and at least twelve feet apart for one-way traffic.

(4) *Dead end, cul-de-sac and turn-around standards for private roads.*

Where feasible, roads should be looped to avoid cul-de-sacs or dead ends. Where cul-de-sacs are used, such road sections should not exceed 1,500 feet. All dead end roads that exceed 300 feet in length shall have a cul-de-sac that meets the standards of this section or shall provide a “Y” or “T” turn-around, an island or roundabout, suitable for emergency vehicles. Proposed dead end roads that may be used for future extension shall be designed in conformance with the foregoing standards.

(5) *Drainage, bridge and culvert standards for private roads.*

All bridge and culvert structures that are crossed by private roads shall be designed and constructed to meet the minimum NCDOT standards. Side ditches and storm culverts for private roads shall be designed and constructed to carry the volume of water from a twenty-five year storm. Site plans shall designate the location, size and type of all bridges and culverts.

(6) *Construction standards for private roads.*

The sub-base for roads shall be composed of soil types suitable for supporting the road and compacted to generally accepted engineering standards. The road shall be constructed with a compacted stone base (CABC). Used asphalt shall not be used as a base course. The road surface shall be constructed to drain surface water to the side ditches. Roads proposed for slopes greater than twelve percent should be located, to the extent feasible, along the contour of the land. On unpaved roads, sections of road with a twelve percent or greater grade shall be paved. The paved section shall extend fifty feet from any point on the road that has a twelve percent grade.

(C) *Intersections.*

(1) The proposed intersection of all roads should be designed to meet the following criteria:

- (a) Property lines and street designs at intersections should be established and designed to provide adequate sight distances for vehicles.
- (b) Offset intersections are to be avoided. Intersections that cannot be aligned should be separated by a minimum length of 150 feet between road centerlines.
- (c) Where proposed roads intersect, the grade of the proposed roads must not exceed a maximum grade of five percent for one hundred feet from the intersection.

(D) *Right-of-way and shoulder stabilization.*

All areas of a road right-of-way disturbed by the construction or improvement of a road, whether for public or private designation, or the installation or repair of utilities, shall be seeded in accordance with Henderson County regulations, within ten days from the completion of the final grading.

(E) *Road names and signs.*

All proposed road names and addresses, whether for public or private designation, shall be pre-approved by Henderson County in accordance with applicable Henderson County ordinances. The applicant shall provide road name signs and the requisite regulatory signs for all roads within a subdivision in accordance with applicable Henderson County ordinances and applicable county and NCDOT policies.

(F) *Existing off-site access.*

For a proposed subdivision that does not have a minimum of fifty feet of frontage on an existing public road or a recorded right-of-way with a minimum width of fifty feet that intersects a public road, the subdivision shall not be divided into more lots than provided in

the table below, regardless of the total acreage in the tract. No more than one lot may be created if the grade of the access right-of-way road exceeds eighteen percent, regardless of the total acreage or the width of the right-of-way.

Minimum Public Access

EXISTING RIGHT-OF-WAY WIDTH AT THE NARROWEST POINT:	MAXIMUM NUMBER OF LOTS PERMITTED UP TO:
Less than 20 feet	1
20 to 30 feet	3
More than 30 but less than 40 feet	12
40 to 50 feet	49
50 feet and more	No Maximum

- (G) *Sidewalks and pedestrian trails required for cluster subdivisions and special subdivisions for planned developments.*

Cluster subdivisions and planned developments requiring subdivision review and approval shall provide pedestrian sidewalks along one side of all public or private roads within the development. The sidewalks shall be a minimum of five feet in width and paved with a minimum of four inches of concrete on a compacted sub-base. The Planning Board may recommend and the Village Council may permit pedestrian trails to be used to supplement or substitute for required sidewalks. The ownership and maintenance of all sidewalk and pedestrian trails shall comply with the provisions in Section 405.

- (H) *Driveway connections within residential subdivisions fronting on a scenic byway.*

Individual lots within a residential subdivision fronting on a scenic byway shall be accessed by an internal street network and shall not have driveway connections to a scenic byway.

Section 403. Utility design.

- (A) *Water supply.*

Every lot proposed for development within a subdivision shall be provided with a water supply that conforms to the minimum requirements of the applicable county and state regulations and the standards of this section. Water pressure requirements shall be as determined by the City of Hendersonville and the fire department with jurisdiction over the development site.

- (1) *Public or individual water supply.*

Where a public or individual water supply system is proposed, a written certification from an engineer licensed in North Carolina and stating that there is adequate water capacity and pressure to serve the location and the number of lots

proposed shall accompany the application for a subdivision. The applicant shall provide written notice that the plans for a public or individual water supply system have been submitted to the approving agency. A site plan may be approved or approved with conditions, contingent upon the final approval from such agency. The water system shall be installed and approved by the requisite agency prior to final plan approval.

The extension or installation of any public water supply system to a new subdivision within the Village shall require written approval by the Village Council.

(2) *Individual water system.*

For subdivisions in which the water supply is proposed to be an individual water system, plans and specifications for such system shall be submitted to the Environmental Health Division of the Health Department for approval prior to final plan submittal.

(3) *Individual water supply.*

For subdivisions in which the water supply is proposed to be an individual well for each lot, the installation of the well is not required prior to the final plat approval. Where individual water supply systems are to be used with an individual waste water system to serve individual lots within a proposed subdivision, the applicant and owner shall submit a copy of the septic suitability permit issued by the Environmental Health Division of the Health Department for each lot prior to final plan submittal.

(4) *Fire suppression.*

A written notice from the appropriate fire official and confirming that the lots and proposed structures have adequate water available, and that access to the lots is sufficient for providing fire protection to the facility and adjacent properties shall be required for all subdivisions.

(5) *Location and placement of water storage facilities.*

Water storage facilities shall be located to reduce the visibility of such facilities from adjacent properties and visibility within the Village. The facility shall not be located where the uppermost point of the storage facility extends above the elevation of the top of the tree canopy on the crest of the ridge on which it is located.

When visible from other properties or rights-of-way, water storage facilities shall be landscaped and painted in such a manner as to camouflage the facilities to reduce their visibility. Paint colors and textures should blend with the surrounding vegetation and reduce reflection and glare.

(B) *Wastewater disposal systems.*

Every lot proposed for development within a subdivision shall be provided with a wastewater disposal system that conforms to the minimum requirements of applicable county and state regulations and the standards of this ordinance.

(1) *Public wastewater systems.*

A proposed subdivision shall connect to a municipal sewage disposal system when such system is located within 500 feet of the property boundary of the proposed subdivision. For subdivisions proposed to be served by a public wastewater system, the applicant shall submit with the application for a subdivision a letter from the agency with regulatory authority that states that there is capacity to serve the location and number of lots proposed. The applicant shall provide written notice that the plans for the public wastewater system have been submitted to the approving agency. A site plan may be conditionally approved contingent upon the final approval of the waste water system by such agencies. The public wastewater system shall be installed and approved by the requisite agencies prior to final plat approval. The extension or installation of any public wastewater system to a new subdivision within the Village shall require written approval by the Village Council.

(2) *Individual wastewater systems.*

For subdivisions in which the sewage disposal system is proposed to be an individual wastewater system, the installation of the system is not required prior to the final plan approval. Where an individual wastewater system is to be used with an individual water supply to serve individual lots within a proposed subdivision, the applicant and owner shall submit a copy of the septic suitability permit from the Environmental Health Division of the Health Department for the property prior to final plan submittal. For major subdivisions with soils that are identified during the pre-application conference as having septic suitability problems by the Soil Conservation Service, the lots proposed for development with such problem soils shall be approved by the Environmental Health Division of the Health Department as a condition of the site plan approval.

(C) *Sedimentation and erosion control.*

Applicants for all subdivisions regulated by this ordinance and who propose disturbing more than one hundred square feet of land within the subdivision, shall submit with the application a written notice from Henderson County and verifying that a soil erosion and sedimentation control plan has been submitted or that no such plan is required.

(D) *Stormwater drainage.*

Stormwater drainage facilities shall be designed by an engineer licensed in the State of North Carolina and constructed to prevent on-site and downstream erosion and sedimentation, and, where feasible, designed to follow existing natural drainage. The facilities shall be designed to prevent flooding or standing water and to reduce the impact of stormwater discharge into identified conservation areas. Unless otherwise approved, stormwater discharge points shall be located within the site and, where feasible, discharge through vegetated areas and buffers into existing natural drainage. Where proposed stormwater drainage cannot be designed to follow natural drainage, new or alternative systems shall be designed and constructed to minimize the erosion and sedimentation problems within the proposed subdivision and on adjacent properties. New stormwater facilities shall be designed for a ten year storm. The system shall be designed, constructed and maintained to discharge storm water from the site in a manner that does not exceed the predevelopment storm water discharge. Where retention or detention facilities are used, a landscaping plan for screening such facilities shall be submitted. Alternative storm water drainage systems that address the predevelopment standard are encouraged. The storm water drainage plan shall incorporate the entire project site.

(E) *Underground location of all utilities.*

All proposed utility systems, including distribution and service lines serving or located within a subdivision, shall be located in common easements and underground. To the extent feasible, gas and water lines shall be located in the same trench, and all wiring and cable shall be consolidated for installation in a separate trench. Where utilities and supporting facilities cannot be placed underground because of safety, code requirements or function, provisions for screening or minimizing the visual impact of such utilities shall be incorporated in the site plan for the subdivision. For the purposes of this ordinance, utilities shall include, but not be limited to, public water and wastewater disposal systems; electricity; cable television; natural and propane gas; and telephone. Communications towers and related equipment and facilities shall not be considered utilities. Within ten days of the completion of the installation and covering of the trench with fill, the applicant shall be responsible for having the disturbed area replanted. Where practical, existing above ground utilities shall be relocated underground.

(F) *Off-site improvements.*

When a proposed subdivision impacts existing facilities that do not meet minimum design standards, an applicant may be required to construct off-site improvements on rights-of-way, easements or other property in order to meet the design standard or to minimize the potential impact on existing facilities.

Section 404. Other design standards.

(A) *Riparian buffers adjacent to streams, lakes and designated wetlands.*

- (1) All tracts of land that include streams, lakes and designated wetlands, and for which a subdivision approval is sought, shall have riparian buffers as herein described along such streams, the water's edge of such lakes and the borders of designated wetlands. All structures, including any extensions or enlargements thereof, and other impervious surfaces shall be located outside of the required buffer area. Notwithstanding the foregoing, bridges over streams and paved driveways and roads providing ingress to and egress from lots or tracts of land may be constructed over or along such streams, and boathouses may be located within the buffer area along the water's edge of a lake if such bridges, driveways, roads and boathouses are properly engineered, designed and constructed so as to minimize the impact on the buffer area.
- (2) The buffer area along perennial streams [streams shown on a USGS 1:24,000 (7.5 minute) scale topographic map] shall include the land that lies within the area that is fifty feet in width on each side of the stream, as measured horizontally from the edge of the stream bed at normal pool. The buffer area around lakes and designated wetlands shall include an area fifty feet in width, as measured horizontally from the water's edge of a lake at normal pool or the border of a designated wetland. The twenty-five foot buffer area adjacent to a perennial stream or along the water's edge of a lake or wetlands border shall be left or, if disturbed during construction, reestablished in natural vegetation, while the remainder of the buffer area shall be planted with grass or other indigenous vegetation if the natural vegetation is removed. In buffer areas that are required to be disturbed during construction, the application for a certificate of zoning compliance or the site plan and master plan (where applicable) shall indicate the areas to be disturbed and the type and placement of the vegetation proposed to be used to restore the area.
- (3) Nothing contained in this section shall be construed to prevent a property owner from ordinary and customary maintenance of riparian buffer areas, such as the cutting and removal of dead trees and other plant materials, the trimming of brush, the mowing of grass, and other similar grounds maintenance activities.

(B) *Utility easements and rights-of-way.*

Easements for utilities using pipes shall be a minimum of twenty feet in width and easements for utilities using cables and wires shall be a minimum of fifteen feet in width. Easements for all lots shall be located along adjacent rights-of-way or centered along the side or rear lot lines. To the extent possible, utilities shall be located in areas of the subdivision that will minimize adverse impacts on the identified conservation areas. The location and width of utility easements shall be determined in coordination with the utility companies serving the subdivision.

The Village may assist with condemnation in instances where a developer has demonstrated good faith in negotiating for easements but is unsuccessful. The Village, however, will NOT participate in the cost of extending private infrastructure including any and all costs associated with condemnation and purchase. These costs shall be the sole responsibility of the developer.

(C) *Drainage easements.*

Drainage easements for open storm water management systems that intersect property boundaries shall be a minimum of ten feet in width.

(D) *Preservation of natural cover.*

Land to be subdivided shall be laid out and improved in reasonable conformity with the existing topography in order to minimize grading, cut and fill, and to retain, insofar as possible, the natural contours, reduce stormwater runoff, and conserve the natural cover and soil. No top soil shall be removed from any lots shown on any subdivision plan except for the purpose of improving such lots for development (the foot print of proposed structures and driveways) and for the laying out of streets shown therein.

(E) *Setback required for subdivisions adjacent to the Carl Sandburg Home National Historic Site.*

All proposed subdivisions or extensions of existing subdivisions adjacent to a property line of the Carl Sandburg Home National Historic Site shall have a minimum setback of thirty-five feet from the closest point of the park property boundary to the closest corner of any structure or to the closest point of any land disturbance on the property. Within the identified setback, there shall be no clearing and no structures erected or located. All existing trees and vegetation shall be retained, and a landscaped buffer as provided in Section 404 (G) shall be required where existing vegetation has been removed, does not exist, or is deemed insufficient by the Zoning Administrator in consultation with the Superintendent of the Carl Sandburg Home National Historic Site.

(F) *Review of subdivisions located within the Carl Sandburg Home National Historic Site viewshed.*

The applicant for a proposed subdivision or the extension of an existing subdivision located within the Carl Sandburg Home National Historic Site viewshed as herein defined shall submit the conceptual plan for the subdivision to the Superintendent of the Carl Sandburg Home National Historic Site for review. The Superintendent shall have thirty days to review the conceptual plan and make recommendations to the applicant and the Planning Board. The Superintendent may recommend alternative designs for road and lot layout, open space and vista protection, and buffering in order to mitigate the impact of the subdivision on the National Historic Site.

(G) *Buffering.*

Where required by this ordinance, or as a condition recommended by the Planning Board or required by the Village Council, a vegetative buffer shall be planted and maintained by the applicant or his successors in title in accordance with the standards set forth in Section 613 of the zoning ordinance.

(H) *Lighting.*

Exterior lighting along streets, sidewalks, trails or parking areas within a subdivision regulated by this ordinance shall be provided electricity or gas through underground wiring or piping. The lighting shall be designed to direct light towards the ground area to be lighted and to reduce the impact of the light on drivers and adjacent properties. The light fixtures and poles shall be designed for modest height and style that is appropriate for the proposed adjacent uses.

(I) *Preservation of existing vegetation along scenic byways and designated public roads.*

For proposed new subdivisions or the expansion of existing subdivisions with frontage on a scenic byway, existing vegetation shall be retained for a depth of at least one hundred feet, as measured from the edge of the traveled way. For proposed new subdivisions or the expansion of existing subdivisions with frontage on a designated public road, existing vegetation shall be retained for a depth of at least thirty-five feet, as measured from the edge of the traveled way. Such existing vegetation shall be identified in the conceptual plan as part of the conservation areas. The development plans shall include provisions to preserve the existing vegetation and limit its disturbance or removal.

Section 405. Ownership and maintenance of private roads, common areas and open spaces; property owners association.

(A) *Conveyance of common areas and facilities.*

Title to all land areas and facilities, including but not limited to private roads, parking areas, open space, recreational facilities, landscaping, lighting, signage, and waste pick-up and storage facilities, within and a part of the proposed subdivision, that are intended for common ownership, and as shown on the site plan, shall be conveyed to a legally constituted property owners association concurrently with the filing of the record plat of the subdivision in the office of the Register of Deeds and prior to the conveyance of any lot in the subdivision. The maintenance of such common areas and facilities shall be guaranteed by recorded restrictive covenants running with the land that describe the common areas and provide for their improvement and maintenance. Prior to approval of a site plan for a subdivision, the applicant shall submit to the Zoning Administrator for review and approval the legally enforceable instrument(s) that set forth the means for permanent maintenance of the subdivision's common areas and facilities.

(B) *Property owners association.*

Prior to the recording of a plat of subdivision for any subdivision that will have common areas and facilities, the applicant shall create a property owners association and submit to the Zoning Administrator copies of all documents pertaining to the organization and operation of such association. The instruments shall include the following provisions:

- (1) Open space areas shall be reserved in perpetuity.
- (2) The association shall be responsible for liability insurance, local taxes, and the maintenance of all common areas and facilities of the subdivision.
- (3) The association shall assess its members for pro rata shares of its operational and maintenance costs.
- (4) The association shall have the right periodically to adjust the assessments to meet the changing needs of the subdivision.

ARTICLE V ADMINISTRATIVE PROVISIONS

Section 500. General procedure for final plat approval.

No final plat of land within the Village's jurisdiction shall be filed or recorded until it has been approved as set forth in this ordinance, and until this approval is entered in writing on the face of the final plat by the Mayor and is attested by the Village Clerk, except as otherwise provided herein.

The Register of Deeds shall not file or record a plat of a subdivision of land located within the Village's jurisdiction that has not been approved in accordance with the provisions of this ordinance, nor shall the Clerk of the Superior Court order or direct the recording of a plat if the recording of such plat would be in conflict with this section.

Section 501. Effect of final plat approval on dedications.

Pursuant to NCGS 160A-374, the approval of a final plat does not constitute or effect the acceptance by the Village or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility shown on the final plat and shall not be construed to do so.

Section 502. Zoning Administrator.

The Zoning Administrator shall administer and enforce this ordinance in accordance with the provisions of this Article.

Section 503. Enforcement of ordinance.

- (A) After the effective date of this ordinance, a plat of a subdivision within the jurisdiction of this ordinance that is filed or recorded in the office of the Register of Deeds without the approval of the Village will be null and void for purposes of this ordinance.
- (B) Any person who, being the owner or the agent of the owner of any land located within the area of jurisdiction of this ordinance, subdivides 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 this ordinance and recorded in the office of the Register of Deeds, except in strict conformity with G.S. 160A-375 (b), shall be subject to a civil penalty as specified herein. The Village through its attorney may enjoin such transfer or sale by action for injunction. All administrative actions relating to such land, including the issuance of any grading, construction, building, or occupancy permit shall be suspended. This ordinance will not affect the sale or transfer of any land, a plat of which was recorded prior to the effective date of this ordinance.
- (C) In order properly to enforce the provisions of this ordinance, prior to the beginning of any construction, reconstruction, use, or alteration of any land, building, or structure, the appropriate permit must be obtained from the Village. No permit will be issued unless there has been a determination made that the proposed use, building, or structure complies with the requirements of this ordinance.
- (D) *Warning citation.* Prior to issuing a citation for a violation of this ordinance, the Zoning Administrator shall issue and serve upon the offender a warning citation providing the following information:
 - (1) The nature of the violation, including the specific section(s) of the ordinance that is (are) being violated;
 - (2) A reasonable period of time within which the violation shall be remedied. A reasonable period of time shall be deemed thirty days unless there is a risk to public health or safety, in which case the warning citation may require the violation to be remedied more promptly;
 - (3) A statement that if the violation is not corrected within the prescribed time, a subsequent citation will be issued, thereby causing the person cited to incur additional penalties until the violation is remedied; and
 - (4) A time, date and place for a hearing to be held before the Zoning Administrator, which time shall not be more than thirty days from the date of the warning citation.
- (E) *Hearing.* At the hearing on the warning citation, the person cited for the violation and any interested party shall have the right to appear before the Zoning Administrator and give evidence concerning the alleged violation. Rules of evidence applicable in a court of law

shall not apply. At the hearing, the Zoning Administrator may rescind, modify or take no action with respect to the issued warning citation. If no action is taken, or if the person cited for the violation fails to attend the hearing, the warning citation shall remain in full force and effect and the violation cited therein must be remedied within the time period prescribed in the original warning citation.

Section 504. Appeals.

Appeals from the decisions of the Zoning Administrator shall be taken to the Planning Board. Appeals from the Planning Board shall be taken to the Village Council. Appeals from the Village Council shall be taken to the appropriate court of record as provided by law. All appeals shall be filed within thirty days of the date of the respective order or decision issued.

Section 505. Penalties for violation.

- (A) The violation of any provision of this ordinance shall subject the offender to a civil penalty in the amount of \$1,000.00 to be paid to the Village. Violators shall be issued a written citation, the penalty for which shall be paid within ten days.
- (B) Each day's continuing violation shall constitute a separate and distinct offense and shall be subject to additional penalties of one hundred dollars per day.
- (C) This ordinance may be enforced by appropriate equitable remedies ordered by a court of competent jurisdiction.
- (D) Nothing in this section shall be construed to limit the use of remedies available to the Village. The Village may seek to enforce this ordinance by using any one, all, or a combination of remedies.
- (E) All legal costs incurred by the Village shall be assessed to the violator.

Section 506. Variances.

The Village Council, on recommendation of the Planning Board, may authorize a variance from this ordinance when, in its opinion, undue hardship may result from strict compliance. In granting any variance the Village Council, on recommendation of the Planning Board, shall make the findings required below, taking into account the nature of the proposed subdivision, the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision, the environmental impact and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. No variance shall be granted unless the Village Council finds in favor of the applicant on at least one of the following:

- (A) That there are special circumstances or conditions affecting the property such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of its land.

- (B) That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
- (C) That granting the variance will prevent the loss of valuable natural or historic resources and will facilitate the preservation of open space.

Furthermore, no variance shall be granted unless the Village Council shall find in favor of the applicant on both of the following:

- (A) That the circumstances giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels that are subject to the provisions of this ordinance.
- (B) That the granting of the variance will not be detrimental to the public health, safety and welfare, or injurious to other property in the territory in which the property is situated.

Section 507. Amendments.

The Village Council may from time to time amend the terms of this ordinance, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have forty-five days from the time the proposed amendment is submitted to it within which to submit its report. If the Planning Board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment.

No amendment shall be adopted by the Village Council until a public hearing has been held on such amendment. Notice of the hearing shall be published in a newspaper of general circulation in the Village at least once a week for two successive weeks prior to the hearing. The initial notice shall appear not more than twenty-five days or less than ten days prior to the hearing date. In computing the ten and twenty-five day periods, the date of publication is not to be counted, but the date of the hearing may be counted.

Section 508. Fee schedule.

The Village Council may establish, and modify from time to time, a fee schedule for the issuance of applications, permits and certificates, the granting of variances, and for appeals pursuant to this ordinance. Applications filed under this ordinance shall be accompanied by payment of all applicable fees.

ARTICLE VI
LEGAL STATUS PROVISIONS

Section 600. Severability.

Should any section or provision of this ordinance be declared 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 601. Abrogation.

This ordinance shall not repeal, abrogate, annul, impair or interfere with any existing subdivisions, the plats of which were properly recorded in the office of the Register of Deeds prior to the effective date of this ordinance, or existing easements, covenants, deed restrictions, or agreements, or permits issued pursuant to law prior to the effective date of this ordinance.

Section 602. Effect of existing legislation; conflict with other laws.

Standards set forth in the zoning ordinance shall be applicable to subdivisions established under this ordinance. Where this ordinance conflicts with the zoning ordinance or any existing ordinances, statutes or regulations effective in the jurisdiction of this ordinance and enacted by the county, state or federal government, then the ordinance, statute or regulation requiring the higher standard shall apply.

Section 603. Prior subdivision ordinances.

This ordinance shall supersede the Village's prior subdivision ordinance (Ordinance No. 15, adopted August 12, 1999, as amended on December 9, 2004).

Section 604. Effective date.

This ordinance shall take effect and be in force from and after the date of its adoption this 14th day of May 2009.

Michelle Hill
Village Clerk

Robert V. Staton
Mayor

APPROVED AS TO FORM:

Sharon B. Alexander
Village Attorney