

**ZONING**  
**&**  
**WATERSHED PROTECTION**  
**ORDINANCE**  
**OF THE**  
**TOWN OF CAJAH'S MOUNTAIN**  
**NORTH CAROLINA**

WESTERN PIEDMONT COUNCIL OF GOVERNMENTS

ADOPTED June 7, 2021

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**ARTICLE I  
PURPOSE AND AUTHORITY**

For the purpose of promoting the health, safety, morals and the general welfare of the community, an ordinance regulating the uses of buildings, structures and land for trade, industry, commerce, residence, recreation, public activities or other purposes; the size of yards, courts and other open spaces; the location, design, height, bulk, number of stories and size of buildings and other structures, the density and distribution of populations; creating districts of said purposes, and establishing the boundaries thereof: defining certain terms used herein; providing for the method of administration, amendment and enforcement; providing penalties for violations; providing for a board of adjustment and defining the duties and powers of said board; repealing conflicting ordinances; and for other purposes pursuant to the authority granted by the General Statutes of North Carolina, Chapter 160-A, Article 19, Part 3.

**ARTICLE II  
SHORT TITLE**

This Ordinance shall be known as the "Zoning Ordinance of the Town of Cahaj's Mountain, North Carolina", and may be referred to as the "Zoning Ordinance", and the map which is identified by the title "Official Zoning Map, Cahaj's Mountain, North Carolina, "may be known as the "Zoning Map".

**ARTICLE III  
ENACTMENT CLAUSE**

The Town Council of the Town of Cahaj's Mountain, in pursuance of the authority granted by the General Statutes of North Carolina, particularly G.S. 160D-1-1, hereby ordains and enacts into law the following Articles and Sections.

**ARTICLE IV  
ZONING INTERPRETATION AND APPLICATION**

Section 40. Interpretation and Application.

In interpreting and applying this Ordinance, the requirements contained herein are declared to be the minimum requirements necessary to carry out the purposes of the Ordinance. Except as herein provided, this Ordinance shall not be deemed to interfere with, abrogate, annul, or otherwise affect in any manner whatsoever any easements, covenants, or other agreements between parties. Whenever the provisions of this Ordinance impose greater restrictions upon the use of the land or buildings or upon the height of buildings or require a larger percentage of lot to be left unoccupied than the provisions of other ordinances, rules, regulations, permits or any easements, covenants or other agreements between

parties, the provisions of this Ordinance shall govern, except as provided in Article XV of this Ordinance.

Section 41. Compliance with Ordinance.

No land, building, or structure shall be used, no buildings or structure shall be erected, and no existing building or structure shall be moved, added to, enlarged or altered except in conformity with this Ordinance.

Section 42. Zoning Jurisdiction.

The provisions of this Ordinance shall be applicable to all property within the corporate limits of the Town of Cahaj's Mountain.

Section 43. Bona Fide Farms Exempt.

This Ordinance shall in no way regulate, restrict, prohibit or otherwise deter any bona fide farm and its related uses.

Section 44. Front Yard

Setback Requirement for Connelly Springs Road. Due to imminent road improvements and widening projects for Connelly Springs Road (State Road 1001), the front yard setback requirement for any new structure in any use district along this highway shall be the front yard requirement for the use district plus twenty (20) feet.

## **ARTICLE V**

### **PROVISIONS FOR OFFICIAL ZONING MAP**

Section 50. Official Zoning Map.

The districts established in Article VII of this Ordinance as shown on the Official Zoning Map which, together with all explanatory matter thereon, are hereby adopted as part of this Ordinance.

Section 51. Identification of Official Zoning Map.

The Official Zoning Map shall be identified by signature of the Mayor, attested by the Town Clerk, and bearing the seal of the Town of Cahaj's Mountain. The Zoning Map shall be maintained for public inspection in the office of the local government clerk. The maps may be in paper or a digital format approved by the local government (G.S. 160D-105).

**ARTICLE VI  
DEFINITION OF TERMS**

Section 60. Interpretation of Certain Terms and Words.

For the purpose of interpreting this Ordinance, certain words or terms and herein defined. Unless otherwise stated, the following words shall for the purpose of this Ordinance have the meaning herein indicated.

- a. Words used in the present tense include the future tense.
- b. Words used in the singular tense include the plural and words used in the plural number include the singular.
- c. The word "person" includes a firm, association, organization, partnership, corporation, trust and company, as well as an individual.
- d. The word "lot" includes the word "structure".
- e. The word "building" includes the word "structure".
- f. The word "shall" is mandatory, not directory.
- g. The words "used" or "occupied" as applied to any land or buildings shall be construed to include the words "intended, arranged or designed to be used or occupied."
- h. The term "Zoning Enforcement Officer" shall include the term "Watershed Administrator".

Section 61. Definitions.

- 61.1 Accessory Use. A use customarily incidental and subordinate to the principal use of building and located on the same lot with such principal use or building.
- 61.2 Administrative Decision. Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.
- 61.3 Alley. A public or private thoroughfare which affords only a secondary means or access to abutting property and not intended for general traffic circulation.
- 61.4 Approval Authority. The Town Council, Planning Board, Board of Adjustment, Town Manager, Town Planner, or other board or official designated by this Ordinance as being authorized to grant the specific zoning or land use permit approval that constitutes a site specific development plan.
- 61.5 Best Management Practices (BMP). A structural or nonstructural management-based

practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

- 61.6 **Billboard.** An outdoor structure or display, pictorial or otherwise, either freestanding or attached to a building, which advertises or attracts attention to a business, commodity, service or other activity conducted, sold or offered elsewhere than on the premises on which said sign is located. Such off-premises signs shall not exceed sixteen (16) square feet in area per side.
- 61.7 **Boarding House.** A building where, for compensation, lodging and/or meals are provided for not more than ten (10) persons.
- 61.8 **Buffer Strip.** A buffer strip as required by certain sections of this Ordinance shall be one of or equal to the following:
- a. A six-foot high wood, basket weave type face;
  - b. A six-foot high solid picket type fence with the pickets being placed facing the adjoining property;
  - c. A six-foot high, open type fence with evergreen vegetation planted facing the adjoining property and completely blocking the view from one area to another;
  - d. A six-foot high masonry wall;
  - e. A planted vegetative buffer that shall reach a minimum height of six (6) feet that will use a species that forms a continuous year-round opaque screen within three (3) years after planting
  - f. Additional suitable landscaping as determined by the Town Planner. This landscaping may include existing vegetation.

Each application for a zoning permit or certificate of occupancy for those use districts where a buffer is required shall include information as to the location and type of buffer to be erected. In some instances a fence or wall may be required by the Planning Board. Once the buffer strip is erected, it shall be properly maintained. (Amended 11/2/99)

- 61.9 **Buffer, Watershed.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded waters and from the bank of each side of free-flowing streams.
- 61.10 **Building.** Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattels.
- 61.11 **Building, Accessory.** A building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building, and located on the same lot therewith.



- 61.12 **Building Height.** The vertical distance measured from the average elevation of the finished lot grade at the building line to the highest point of the roof beams adjacent to the front of the wall in the case of a flat roof, to the average height of the gables in the case of a pitched roof, and to the deck line in the case of a mansard roof.
- 61.13 **Building. Principal.** A building in which is conducted the main or principal use of the lot on which said building is situated.
- 61.14 **Building Setback Line.** A line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutters, and similar fixtures), and the street or highway right-of-way line when measured perpendicularly thereto.
- 61.15 **Built-Up On Area.** That portion of a development that is covered by impervious or partially impervious cover including buildings, structures, pavement, gravel, recreation facilities, etc., excluding wooden slatted decks and the water area of swimming pools.
- 61.16 **Business Sign.** A sign which directs attention to goods, commodities, products, services, or entertainment sold or offered upon the premises where the sign is located.
- 61.17 **Cellar.** A story having more than one-half of its height below the average level of the adjoining ground. A cellar shall not be counted as a story for purposes of height measurement.
- 61.18 **Clinic.** An establishment where patients are admitted for special study and treatment by one or more licensed practitioners in medically related arts.
- 61.19 **Cluster Development.** Buildings concentrated together in specific areas to minimize infrastructure and development costs while achieving the allowable density. Allows the preservation of natural open space for recreation, common open space, and preservation of environmentally sensitive features.
- 61.20 **Condominium.** A system of separate ownership of individual unit's in multiple-unit building.
- 61.21 **Customary Home Occupation.** Any use conducted entirely within the dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof, and in connection with which there is no display, no outside storage, no stock-in-trade nor commodity sold on the premises; provided further that no person not a resident on the premises is employed in connection with the activity, except that not more than two assistants may be employed by the following occupations: physician, dentist, attorney, chiropractor, veterinarian, and other licensed professional services approved by the Board of Adjustment. Such occupation shall be carried on solely within the main dwelling and shall not occupy more than twenty-five percent (25%) of the total floor space of the dwelling.
- 61.22 **Day Nursery.** An agency, organization, or individual providing daytime care of six or more children not related by blood or marriage to, or not the legal wards of foster children of the attendant adult.

- 61.23 Determination. A written, final, and binding order, requirement, or determination regarding an administrative decision.
- 61.24 Developer. A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.
- 61.25 Development. Unless the context clearly indicates otherwise, the term means any of the following:
- a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
  - b) The excavation, grading, filling, clearing, or alteration of land.
  - c) The subdivision of land as defined in G.S. 160D-802.
  - d) The initiation or substantial change in the use of land or the intensity of use of land.
- 61.26 Development Approval. An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.
- 61.27 Development Regulation. A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to this Chapter, or a local act or charter that regulates land use or development.
- 61.28 Dwelling. Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this Chapter, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.
- 61.29 Dwelling Unit. A building or portion thereof designed, arranged or used for permanent living quarter for one family. The term "dwelling unit" shall not be deemed to include a motel, hotel, tourist home, mobile home or other structure designed for transient residence.
- 61.30 Dwelling, Single-Family. A building designed for and containing one dwelling unit.
- 61.31 Dwelling, Two-Family. A building designed for containing two dwelling units.
- 61.32 Dwelling, Multi-Family. A building designed for and containing three or more dwelling units.

61.33 Electronic Gaming Operations: Any business enterprise, whether as a principal or accessory use, where persons utilize electronic machines. For the purposes of this section "Electronic Machine or Device" means a mechanically, electronically or electronically operated machine or device that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen or other mechanism. This definition is applicable to an electronic machine or device whether or not:

- It is server based.
- It uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries
- It utilizes software such that the simulated games influences or determines the winning or values of the prize
- It selects from a finite pool of entries
- It utilizes a mechanism that reveals the content of a predetermined sweepstakes entry
- It predetermines the prize and result and stores those results for delivery at a time the sweepstakes entry results are revealed
- It utilizes software to create a game result
- It requires the deposit and any money, coin, or token or the use of any credit card, debit card, prepaid card or any other method of payment to activate the electronic game of device
- It requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device
- It requires purchase of a related product
- The related product, if any, has legitimate value
- It reveals the prize incrementally, even though it may not influence if a prize is awarded of the values of any prize is awarded.
- It determines and associated the prize with an entry or entries at the time the sweepstakes is entered
- It is a slot machine or others form or electrical, mechanical, or computer game  
(Amended November 2012)

61.34 Evidentiary Hearing. A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this Chapter.

61.35 Existing Development. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:

- (1) having expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; or
- (2) having an outstanding building permit as authorized by North Carolina General Statutes (NCGS 160D-102); or
- (3) having an approved site specific or phased development plan as authorized by North

Carolina General Statutes (NCGS 160D-102).

- 61.36 Family. One or more blood or marriage related persons or five or fewer unrelated persons occupying a dwelling and living as a single housekeeping unit, as distinguished from persons occupying a boarding house or hotel as herein defined.
- 61.37 Family Care Home. A single family home that, in accordance with NCGS 168-21(1), provides room, board and care for **six or fewer** handicapped persons in a family environment and is licensed by the NC Department of Health and Human Services. Handicapped persons include those with physical, emotional, or mental disabilities, but not those who have been deemed dangerous to others as defined by NCGS 122C-3(11)b. As allowed by NCGS 168-22(a) there shall be a 0.5 mile radius between family care home sites as to not place undue hardship on City and County emergency personnel. The facility shall be properly licensed by the State of North Carolina and notifies the Town upon any changes to the permit.
- 61.38 Grade. An average level of the finished surface of the ground adjacent to the exterior walls of the building or structure'.
- 61.39 Gross Floor Area. The total floor area of all buildings in a project including basements, mezzanines, and upper floors exclusive of stairways and elevator shafts. It excludes separate service facilities outside the main building such as boiler rooms and maintenance shops.
- 61.40 Group Camp. A camp providing camping facilities for ten (10) or more people.
- 61.41 Group Home. Any facility licensed by the North Carolina State Department of Human Resources, by whatever name it is called, other than a "family care home", as defined by this Ordinance, with support and supervisory personnel that provides room and board, personal care or habilitation services in a family environment for not more than nine (9) resident persons. Such group homes shall not be within a one-half mile radius of an existing family care or group home as measured from property line to property line.
- 61.42 Hazardous Material. Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).
- 61.43 Heliports. A landing and takeoff place for a helicopter.
- 61.44 Impervious surface. Any material which prevents, impedes, or slows infiltration or absorption of storm water directly into the ground at the rate of absorption of vegetation-bearing soils, including building, asphalt, concrete, gravel, and other surfaces.
- 61.45 Industrial Development. Any non-residential development that requires a NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product.
- 61.46 Junkyard. The use of more than 600 square feet of the area of any lot for the storage, keeping or abandonment of junk, including scrap metals, or other scrap materials, or for the dismantling, demolition, or abandonment of automobiles or other vehicles or parts thereof.

- 61.47 Kennel. Any location where boarding, caring for or keeping of more than a total of three dogs or cats or other small animals or a combination thereof (except litters of animals of not more than six months of age) is carried on, and also raising, breeding, caring for or boarding dogs, cats, or other small animals for commercial purposes.
- 61.48 Kennel, Noncommercial. Any location where the boarding, caring for and keeping of more than three (3) but not more than ten (10) dogs or cats or other small animals or combination thereof (except litters of animals of not more than six months of age) is carried on, not for commercial purposes, but as a hobby such as the raising of show and hunting dogs.
- 61.49 Landfill. A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the North Carolina General Statutes. For the purpose of this ordinance, this term does not include composting facilities.
- 61.50 Legislative Decision. The adoption, amendment, or repeal of a regulation under this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of this Chapter.
- 61.51 Legislative Hearing. A hearing to solicit public comment on a proposed legislative decision.
- 61.52 Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.
- 61.53 Lot, Corner. A lot which occupies the interior angle at the intersection of two street lines which make an angle of more than 45 degrees and less than 135 degrees with each other. The street line forming the least frontage shall be deemed the front of the lot except where the two street lines are equal, in which case the owner shall be required to specify which the front when requesting a zoning compliance permit is.
- 61.54 Lot Coverage. The percentage of a lot which may be covered with buildings or structures, excluding walks, drives, and other similar uses and recreational facilities which are accessory to a permitted use. **For properties located within the WS-IV Protected Area, lot coverage shall include all built-upon areas as defined in Section 61.14 of this Ordinance.**
- 61.55 Lot Depth. The mean horizontal distance between the front and rear lot lines.
- 61.56 Lot of Record. A lot which is part of a subdivision, a plat or which has been recorded in the office of the Caldwell County Register of Deeds or a lot described by metes and bounds, the description of which has been so recorded at the County Courthouse.
- 61.57 Lot Width. The distance between side lot lines measured at the building setback line.
- 61.58 Major Watershed Variance. A variance from the minimum statewide water supply watershed protection criteria that results in any one or more of the following:
- (1) any variation in the design, maintenance or operation requirements of a wet

detention pond or other approved stormwater system;

- (2) the relaxation, by a factor greater than ten (10) percent, of any management requirement under the low density option;
- (3) the relaxation, by a factor greater than five (5) percent, of any buffer or built-upon requirement under the high density option.

- 61.59 **Manufactured Home.** A structure, transportable in one or more sections, which in the traveling mode is eight (8) feet or more in width and is forty (40) feet or more in length, or when erected on site is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein.
- 61.60 **Manufactured Home Park.** See Cahah's Mountain (Caldwell County) Mobile Home Park Regulations for definition.
- 61.61 **Manufacture Home Stand.** That part of an individual lot which has been reserved for the placement of one manufactured home unit.
- 61.62 **Minor Watershed Variance.** A variance that does not qualify as a major watershed variance.
- 61.63 **Modular Home.** Any building or structure, designed for dwelling purposes, which is premanufactured, all or in part, at some point other than the building site for assembly or installation later at the building site. Further defined, such building may be assembled for premanufactured rooms, wall panels, frame units, or other factory manufactured parts, which may be fabricated of wood, concrete, metal or other materials, and anchored on a permanent foundation at the building site. This definition does not include vehicles or structures that are designed to be mounted on wheels to be moved to a lot such as manufactured homes described above. Modular homes must meet North Carolina State Building Code. (Amended 2/2/99)
- 61.64 **Motel/Hotel or Inn or Bed & Breakfast.** A building containing more than four individual rooms for the purpose of providing overnight lodging facilities to the general public for compensation, with or without meals, and which has common facilities for reservations and cleaning services, combine utilities and on-site management and reception services.
- 61.65 **Non-conforming Lot of Record.** A lot described by a plat or a deed that was recorded prior to the effective date of this Ordinance that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.
- 61.66 **Nonconforming Use.** A building or land lawfully occupied by a use that does not conform with use regulations of the district in which it is located.
- 61.67 **Nursing Home.** A home for aged or ill persons in which three (3) or more persons not of the same immediate family are provided with food, shelter and care for compensation; but not including hospitals, clinics, or similar institutions devoted primarily to diagnosis and

treatment.

- 61.68 Open Space. Any front, side or rear yards, courts, usable open space provided about a building in order to meet the requirements of this Ordinance.
- 61.69 Open Storage. Unroofed storage area, whether fenced or not.
- 61.70 Parking Space. A storage space of not less than 9 feet by 18 feet for one automobile plus the necessary access space.
- 61.71 Parking Lot. Any designated area designed for temporary accommodation of motor vehicles of the motoring public in normal operating condition whether for a fee or as a service.
- 61.72 Planned Unit Development (PUD). A form of development characterized by a unified site design for a number of housing units, clustering of buildings and providing common open space, density increased, and a mix of building types. It permits the planning of a project and a calculation of densities over the entire development rather than on an individual lot- by-lot basis. The site must include two or more principal buildings. Such development shall be based on a plan which allows for flexibility of design most available under normal district requirements.
- 61.73 Protected Area. The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as extending five miles upstream and draining to water supply reservoirs or to the watershed ridge line, whichever comes first; or within ten miles upstream and draining to a water intake located directly in a stream or river, or to the watershed ridge line, whichever comes first.
- 61.74 Rest Home. A health facility where persons are housed and furnished with meals and continuing nursing care for compensation.
- 61.75 Satellite Dish Antenna. An antenna, six feet in diameter or larger, designed to receive television, radio, and other communication signals primarily from orbiting satellites.
- 61.76 Sewerage System, Public. A system serving two or more connections. Plans for public and community sewer systems must be approved by the Division of Environmental Management, North Carolina Department of Natural Resources and Community Development.
- 61.77 Sewerage System, Individual. An individual septic tank system of sewage disposal. Individual sewage disposal systems must be installed and maintained in accordance with the Division of Health Services, North Carolina Department of Human Services "Rules and Regulations Governing the Disposal of Sewage from any Residence, Place of Business, or Place of Public Assembly in North Carolina" and the regulations of the County Board of Health.
- 61.78 Sexually oriented businesses. An establishment consisting of, including, or having the characteristics of any or all of the following:

1. Adult Arcade -An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, computers, or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas. Additionally, any establishment that provides computer access for the purposes stated above.
2. Adult Bookstore or Adult Video Store - An establishment that has a substantial portion of its stock-in-trade and offers for sale, for any form of consideration, any one of the following:
  - a. books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, computer imagery, or other visual representation that are characterized by an emphasis upon the depiction or description of specified anatomical areas
  - b. instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities
3. Adult Cabaret - A nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, slides, or other photographic reproductions in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
4. Adult Entertainment Center - Any business, such as adult book stores, adult movie theaters, mini-motion picture shows (peep shows), which carry erotic materials and advertise themselves as serving the adult sexual interest. Such entertainment centers constitute a separate classification of use and are not included under uses such as book stores and movie theaters.
5. Adult Motion Picture Theater - An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

Specified anatomical areas are defined as a) less than completely and opaquely covered human genitals, pubic region, buttock, female breast, or b) human male genitals in a discernably turgid state, even if completely and opaquely covered.

Specified sexual activities are defined as a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or b) sex acts normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or c) masturbation, actual or simulated; or d) excretory functions as part of or in connection with any of the activities set forth in this definition.



- 61.79 Signs. Any form of publicity, visible from any public highway directing attention to an individual activity, business, service, commodity or product and conveyed by means of words, figures, numerals, lettering, emblems, devices, designs, trademarks, or trade names or other pictorial matter designed to convey such information and displayed by means of bills, panels, posters, paints, or other devices erected on an open framework, or attached or otherwise applied to posts, stakes, poles, buildings, or other structures or supports.
- 61.80 Sign. On-Site. A sign which directs attention to a business, profession, commodity, service or entertainment sold or offered upon the premises where such sign is located or to which it is attached (See Business Sign, 61.11).
- 61.81 Sign, Off-Site. A sign which directs attention to a business, commodity, activity, service or product not necessarily conducted, sold or offered upon the premises where such sign is located. (See Billboard).
- 61.82 Sign Area. Sign area shall be measured by the smallest square, rectangle, triangle, circle or combination thereof, which will encompass the entire advertising copy area, excluding architectural trim and structural members. In computing area, only one side of a double-faced sign shall be considered.
- 61.83 Single Family Development. Any development where: 1) no building contains more than one dwelling unit; 2) every dwelling unit is on a separate lot; and 3) where no lot contains more than one dwelling unit.
- 61.84 Site Specific Development Plan. A plan of land development submitted to the Town of Cahah's Mountain for purposes of obtaining one of the following zoning or land use permits or approvals:
- a. Zoning Permit, as provided by Section 121 of this Ordinance;
  - b. Special Use Permit, as provided by Section 135 of this Ordinance;
  - c. Minor Subdivision Approval;
  - d. Major Subdivision Approval.

Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

- 61.85 Story. That portion of a building comprised between a floor and the floor or roof next above. the first floor of a two or multi-story building shall be deemed the story that has no floor immediately below it that is designed for living quarters or for human occupancy. Those stories above the first floor shall be numbered consecutively.
- 61.86 Street (Road, lane, Way, Terrace, Drive). A dedicated, recorded and accepted public right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

- 61.87 Street, Private. Any right-of-way or area set aside to provide vehicular access within a development that is not dedicated or intended to be dedicated to NCDOT and that is not maintained by the NCDOT.
- 61.88 Structure. Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent location on the ground.
- 61.89 Structural Alterations. Any change on the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any structural change in the roof, or dimensions or the rooms therein.
- 61.90 Subdivision. See Cajah's Mountain Subdivision Regulations.
- 61.91 Tourist Home. See Boarding House.
- 61.92 Variance (Zoning). The term "Variance" shall mean a modification of the literal provisions of the Zoning Ordinance granted when strict enforcement of the Zoning Ordinance would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted.
- 61.93 Water Dependent Structure. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boating supplies, parking lots and commercial boat storage areas are not water dependent structures.
- 61.94 Watershed. The entire land area contributing surface drainage to a specific point.
- 61.95 Watershed Administrator. See "Zoning Enforcement Officer".
- 61.96 Watershed Protection Occupancy Permit. See "Zoning Certificate of Occupancy Permit".
- 61.97 Watershed Protection Permit. See "Zoning Permit".
- 61.98 Watershed Variance. A permission to develop or use property granted by the Board of Adjustment relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this Ordinance.
- 61.99 Water System, Public. Water supply systems serving 10 or more connections are classified as a public water supply by State law. Plans and specifications must be approved by the Sanitary Engineering Section, NC Division of Health Services.
- 61.100 Water System, Semipublic. Water supply systems serving from two (2) to nine (9) connections, inclusive. This system may be regulated by the County Board of Health, and plans should be approved by the Caldwell County Health Department.
- 61.101 Water System. Individual. A drilled or bored well or spring which serves a single

connection. Individual water supply systems should be located, constructed and operated in accordance with the NC Division of Health Services.

- 61.102 Yard. An open space on the same lot with a principal building, unoccupied and unobstructed from the ground upward.
- 61.103 Yard, Front. An open space on the same lot with a principal building, between the front line of the building (exclusive of steps) and the front property or street right-of-way line and extending across the full width of the lot.
- 61.104 Yard, Rear. An open, unoccupied space extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.
- 61.105 Yard, Side. An open, unoccupied space situated between the side line of the building and adjacent side line of the lot and extending from the rear of the front yard to the front of the rear yard.
- 61.106 Zoning Certificate of Occupancy. Certificate issued by the Zoning Enforcement Officer certifying that the work authorized by a Zoning Permit has been completed in compliance with the regulations and standards of this Ordinance. This term shall include the term "Watershed Protection Occupancy Permit".
- 61.107 Zoning Enforcement Officer. Town of Cahah's Mountain official charged with the responsibility of enforcing this Ordinance. This term shall include the term "Watershed Administrator".
- 61.108 Zoning Permit. Permit issued by the Zoning Enforcement Officer indicating that a proposed use is in compliance with requirements of this Ordinance. This term shall include the term "Watershed Protection Permit". Zoning Vested Right. A right pursuant to G.S. 160D-102 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan, provided that such development shall begin within two years following issuance of the zoning vested right.

## **ARTICLE VII ESTABLISHMENT OF DISTRICTS**

### Section 70. Use Districts.

For the purposes of this Ordinance, the Town of Cahah's Mountain is hereby divided into five (5) use districts with the designations as listed below:

- |    |       |                                     |
|----|-------|-------------------------------------|
| 1. | R-20  | Residential Low Density District    |
| 2. | RA-20 | Residential Medium Density District |
| 3. | B-1   | General Business District           |
| 4. | O-1   | Office and Institutional District   |
| 5. | M-1   | Manufacturing District              |
| 6. | TCB   | Town Center Business                |

### Section 71. District Boundaries Shown on Map.

The boundaries of the districts are shown on the map accompanying this Ordinance and made a part thereof entitled "Official Zoning Map, Cahah's Mountain, North Carolina". The zoning map and all the notations, references and amendments thereto, and other information shown thereon are hereby made a part of this Ordinance the same as if such information set forth on the map were all fully described as set forth herein. The zoning map properly attested is posted at the Cahah's Mountain Town Hall and is available for inspection by the public.

### Section 72. Due Consideration Given to District Boundaries.

In the creation by this Ordinance of the respective districts, careful consideration is given to the general suitability of each and every district for the particular uses and regulations applied thereto, and the necessary and proper grouping and arrangement of various uses and densities of population in accordance with a well-considered comprehensive plan for the physical development of the Town.

### Section 73. Rules Governing Boundaries.

Where uncertainty exists as to the boundaries of any aforesaid districts as shown on the zoning map, the following rules shall apply: (Such uncertainty shall be resolved by the Board of Adjustment)

- 73.1 Where district boundaries are indicated as approximately following the centerline of streets or highways, railroad right-of-way lines or such lines extended, such centerlines, street lines, or railroad right-of-way lines shall be construed to be such boundaries.
- 73.2 Where District boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.
- 73.3 Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways, or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by use of the scale shown on said zoning map.

73.4 Where a district boundary line divides a lot in single ownership, the district requirements for the least restrictive portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line. The term "least restricted" shall refer to zoning restrictions, not lot or tract size.

## **ARTICLE VIII USE REQUIREMENTS BY DISTRICTS**

Within the districts indicated on the zoning map, no building or land shall be used, and no building shall be erected or altered which is intended or designed to be used in whole or in part, for any use other than those listed as permitted for that district in this Article.

### **Section 80. R-20 Residential Low Density District.**

This district is composed of certain quiet, low density residential sections of the community, plus certain open areas where similar residential development appears likely to occur. The regulations of this district are intended to discourage any use which, because of its character, would substantially interfere with the development of single family residences in the districts and which would be detrimental to the quiet residential nature of the areas included within this district.

1. The following uses are permitted:
  - a. Single Family Dwellings and Modular Homes except manufactured homes.
  - b. Accessory buildings to residential uses, provided that no accessory building shall be rented or occupied for gain, and provided further, that no accessory building to be used for servants quarters shall be constructed upon a lot until the construction of the main building has commenced.
  - c. Any form of agriculture or horticulture
  - d. Churches and other places of worship.
  - e. Off-street parking.
  - f. Group Homes and Family Care Homes.
  
2. Special Uses:
  - a. Accessory buildings in the side yard provided they meet all principal structure setbacks, they conform to any recorded deed restrictions, and they blend into and maintain the architectural environment of the principal structure and surrounding neighborhood.

(Amended 12/2/03)

- b. Cemeteries.
  - c. Fire Stations.
  - d. Colleges and schools.
  - e. Grounds and facilities for recreational and community center buildings, country clubs, lakes, parks, and similar facilities operated on a non-profit basis.
  - f. Public utility distribution lines, transformer stations, transmission lines and towers, water tanks, but not service or storage tanks.
  - g. Nursing Homes.
  - h. Home occupation, as defined in Section 60.30.
  - i. Cluster Development, pursuant to Section 104.
3. Minimum Lot Sizes and Maximum Lot Coverage.

A. Lots located **outside** the WS-4 Protected Area:

w/o water and sewer: 20,000 square feet, with a maximum of two (2) lots per acre;  
(Amended 2/6/01)

water and sewer: 15,000 square feet, with a maximum of five (5) lots per two (2)  
acres; (Amended 2/6/01)

Maximum permissible lot coverage by principal and accessory buildings shall not  
exceed 30% of the total lot area.

B. Lots located **within** the WS-4 Protected Area:

**Lots deeded prior to October 1, 1993, or where the development does not  
require a Sedimentation/Erosion Control Plan under State law:**

w/o water and sewer: 20,000 square feet, with a maximum of two (2) lots per acre;  
(amended 2/6/01)

water and sewer: 15,000 square feet, with a maximum of five (5) lots per two  
(2) acres; (Amended 2/6/01)

Maximum permissible lot coverage by principal and accessory buildings shall not  
exceed 30% of the total lot area.

**Lots deeded on or after October 1, 1993, where the development requires a  
Sedimentation/Erosion Control Permit:**

**OPTION 1:**

w/o water and sewer: 20,000 square feet, with a maximum of two (2) Jot per acre;  
(Amended 2/6/01)

water and sewer: 15,000 square feet, with a maximum of five (5) lots per two  
(2) acres; (Amended ~~21601~~)

Maximum permissible impervious surface coverage as defined in this ordinance shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

**OPTION 2:**

w/o water and sewer: 21,780 square feet (1/2 acre), with a maximum of two lots per acre; (Amended 2/6/01)

water and sewer: 15,000 square feet (1/3 acre), with a maximum of five (5) lots per two (2) acres, **or 21,780 square feet if the lot abuts a curb and gutter street system**, with a maximum of two (2) Jots per acre. (Amended 2/6/01)

Maximum permissible lot coverage by principal and accessory buildings shall not exceed 30% of the total lot area.

4. Dimensional Requirements:

a. Minimum required mean lot width:	100 feet.
b. Minimum lot width at building line:	90 feet.
c. Minimum frontage on a public street:	45 feet.
d. Minimum required front yard:	35 feet.
e. Minimum required side yard:	12 feet.
f. Side yard abutting a street:	15 feet
g. Minimum required rear yard:	35 feet
h. Maximum height of buildings:	35 feet
Off-street parking shall be provided, as required in Article XI, Section 110 of this Ordinance	

5. Location of Accessory Buildings.

No accessory building shall be erected in any required front or side yard or within twenty (20) feet of any street line or within ten (10) feet of a lot line not a street line, and provided that in case of a comer lot with reversed frontage, no accessory building shall extend beyond the front line of the lots in the rear.

6. Comer Visibility,

On a comer lot, within the area formed by the center lines of the intersecting streets and a line joining points of such center lines at a distance of eighty (80) feet from their intersection, there shall be no obstruction to vision between a height of two (2) feet and height of ten (10) feet above the average center line grade of each street.

7. Signs

- (a) WALL MOUNTED SIGNS: Signs mounted flat to the main wall of a building may not exceed six (6) square feet in area and shall not be illuminated.
- (b) REAL ESTATE SIGNS: Such signs may not exceed six (6) square feet in area, three (3) feet in height, and shall not be illuminated. These same provisions apply to signage for home occupations.
- (c) ON-PREMISE FREESTANDING SIGNS: Signs for permitted uses not mentioned above are not to exceed eighteen (18) square feet in area, six (6) feet in height. Internal illumination is permitted. No more than one sign is permitted per lot.

All signs must be located at least ten (10) feet from any street right-of-way and property line.  
(Amended 2/2/99)



## **Section 81 RA-20 Residential Medium Density District.**

The RA-20 Residential Medium Density District is established as district in which the principal use of the land is for single family, two-family, and multi-family residences. Housing types include immobile, manufactured and modular homes, subject to the applicable housing provisions of this Ordinance. The regulations are intended to prohibit any use, which, because of its character would interfere with the residential nature of this district, and to insure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at sufficiently medium densities to insure a healthful environment.

- I. The following uses are permitted:
  - a. Single family dwellings.
  - b. Manufactured Homes (Individual) subject to the provisions of Article IX, Section 95 of this Ordinance.
  - c. Two-family dwellings.
  - d. Multi-family dwellings.
  - e. Condominiums, cooperative dwellings.
  - f. Any form of agriculture or horticulture (greenhouses and nurseries), including the sale of products at a retail stand on the property where produced.
  - g. Cemeteries, public and private.
  - h. deleted
  - i. Kindergartens and day nurseries, provided that not less than two hundred (200) square feet of play area is provided for each child and provided further, said aggregate play space is surrounded by a sturdy fence at least five (5) feet in height.
  - j. Rest and convalescent homes.
  - k. Churches and their customary related uses, including cemeteries provided that all buildings and graves shall be set back at least twenty (20) feet from any property line.
  - l. Public and private elementary and secondary schools having curricula approximately the same as ordinarily given in public schools.
  - m. Industrial trade schools.
  - n. deleted
  - o. Public safety facilities such as fire and police stations and rescue squad headquarters, provided that all vehicles and equipment shall be stored indoors; provided further, that all buildings shall be set back at least twenty (20) feet from all

property lines and shall be designed and landscaped in such a way as to blend with the surrounding area.

- p. Public works and public utility facilities such as transformer stations, water towers and telephone exchanges, provided:
  - (1) Such facilities are essential to the service of the immediate area and no vehicles or material shall be stored on the premises;
  - (2) All buildings and apparatus shall be set back at least twenty (20) feet from all property lines and shall be designed and landscaped in such a way as to blend in with the surrounding area; and
  - (3) Such facilities as water towers, pumping stations, and so forth, shall be surrounded by a chain link fence at least six (6) feet in height.
- q. Customary accessory uses and structures, including private garages, carports, parking decks, swimming pools, and other accessory structures.
- r. Family care and group homes.
- s. Noncommercial kennels.

## 2. Signs.

- (a) **WALL MOUNTED SIGNS:** Signs mounted flat to the main wall of a building may not exceed six (6) square feet in area and shall not be illuminated.
- (b) **REAL ESTATE SIGNS:** Such signs may not exceed six (6) square feet in area, three (3) feet in height, and shall not be illuminated. These same provisions apply to signage for home occupations. Only one sign permitted per lot.
- (c) **ON-PREMISE FREESTANDING SIGNS:** Signs for permitted uses not mentioned above are not to exceed eighteen (18) square feet in area, six (6) feet in height. Internal illumination is permitted. No more than one sign is permitted per lot.
- (d) **TEMPORARY SIGNS OR BANNERS** are permitted when authorized by the Town Council.

All signs must be located at least ten (10) feet from any street right-of-way and property line. (Amended 2/2/99)

## 3. Special Uses.

The following special uses are permitted when authorized by the Cahah's Mountain Board of Adjustment after said board holds a public hearing. (Amended 3/06/01)

- a. Accessory buildings in the side yard provided they meet all principal structure setbacks, they conform to any recorded deed restrictions, and they blend into and maintain the architectural environment of the principal structure and surrounding neighborhood.

(Amended 12/2/03)

- b. Planned unit developments, subject to conditions under Section I05 of this Ordinance.
  - c. Airstrips and heliports.
  - d. Hotels, inns and motels.
  - e. Offices for physicians, dentists, lawyers, accountants, insurance agents and similar professional persons, subject to the provisions of Subsections 80.3.5 and 80.3.6 of this Article.
  - f. Drive-in theaters, subject to the following:
    - (1) No part of the theater screen, projection booth, or other building shall be located closer than five hundred (500) feet to any residential district nor closer than fifty (50) feet of any property line or public right-of-way; and no parking space shall be located closer than one hundred (100) feet to any residential district;
    - (2) The theater screen shall not face a major street or highway; and reservoir parking space off the street shall be provided for patrons awaiting admission in an amount of not less than thirty percent (30%) of the vehicular capacity of the theater.
  - g. Customary home occupations, including dressmaking, cooking and baking, hairdressing, music instruction, the renting of not more than one (1) room; the practice of such professions as insurance and accounting, shall be permitted as accessory uses in a residence; backyard workshops for building tradesmen, small appliance repair shops, but excluding open storage; the Board of Adjustment shall decide whether other home occupations not listed here are within the spirit of this category of accessory uses.
  - h. Public and private parks, playgrounds, community centers, clubs, and lodges, golf courses, swimming pools, fishing lakes, and family campgrounds; the Board of Adjustment shall decide whether other similar recreation uses not listed here are within the spirit of this category.
4. Minimum Lot Sizes and Maximum Lot Coverage.
- A. Lots located **outside** the WS-4 Protected Area:
    - Lots to be developed for single family detached dwellings. (Amended 2/6/01)
    - w/o water and sewer: 20,000 square feet, with a maximum of two (2) lots per acre; (Amended 2/6/01)
    - water and sewer: 15,000 square feet, with a maximum of five (5) lots per two (2) acres; (amended 2/6/01)
    - Lots to be developed for multi-family dwellings. (Amended 2/6/01)

w/o water and sewer: 20,000 square feet for the first unit, and 10,000 square feet for each additional unit.

water and sewer: 15,000 square feet for the first unit, and 5,000 square feet for each additional unit.

Maximum permissible lot coverage by principal and accessory building shall not exceed 20% of the total lot area.

B. Lots located **within** the WS-4 Protected Area:

Lots deeded prior to October 1, 1993 that are to be developed for single family detached dwellings, **or where the development does not require a Sedimentation/Erosion Control Plan under Statelaw:**

w/o water and sewer: 20,000 square feet, with a maximum of two (2) lots per acre.  
(Amended 2/6/01)

water and sewer: 15,000 square feet, with a maximum of five (5) lots per two (2) acres; (Amended 2/6/01)

Maximum permissible lot coverage by principal and accessory building shall not exceed 20% of the total lot area.

Lots deeded on or after October 1, 1993, that are to be developed for single family detached dwellings:

OPTION 1:

w/o water and sewer: 20,000 square feet, with a maximum of two (2) lots per acre;  
(Amended 2/6/01)

water and sewer: 15,000 square feet, with a maximum of five (5) lots per two (2) acres; (Amended 2/6/01)

Maximum permissible impervious surface coverage as defined in this ordinance shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

OPTION 2:

w/o water and sewer: 21,780 square feet (1/2 acre), with a maximum of two (2) lots per acre; (Amended 2/6/01)

water and sewer: 15,000 square feet, with a maximum of five (5) lots per two acres, **or 21,780 square feet (1/2 acre) if the lot abuts a curb and gutter street system,** with a maximum of two

(2) lots per acre. (Amended 2/6/01)

Maximum permissible lot coverage by principal and accessory building shall not exceed 20% of the total lot area.

Lots to be developed for multi-family dwellings, regardless of date of recordation: OPTION 1:

w/o water and sewer: 20,000 square feet for the first unit, and  
10,000 square feet for each additional attached unit; (Amended  
2/6/01)

water and sewer: 15,000 square feet for the first unit, and  
5,000 square feet for each additional attached unit. (Amended  
2/6/01)

Maximum permissible impervious surface coverage as defined in this ordinance shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

OPTION 2:

w/o water and sewer: 21,780 square feet (1/2 acre) for each unit; (Amended 2/6/01)

water and sewer: 15,000 square feet for each unit, or  
**21,780 square feet (1/2 acre) for each unit if the lot abuts a curb and gutter street system.** (Amended 2/6/01)

Maximum permissible lot coverage by principal and accessory building shall not exceed 20% of the total lot area.

5. Dimensional Requirements.

- a. Minimum mean lot width per dwelling unit: 100 feet.
- b. Minimum lot width at building line: 90 feet.
- c. Minimum frontage on a public street: 45 feet.
- d. Minimum required front yard: 35 ft.
- e. Minimum required side yard: 12 feet.
- f. Minimum required rear yard: 35 feet.

6. Location of Accessory Buildings.

No accessory building shall be erected in any required front or side yard or within twenty (20) feet of any street line or within ten (10) feet of any property line, and provided that in case of a corner lot with reversed frontage, no accessory building shall extend beyond the front line of the lots in the rear. (Amended 2/2/99)

7.

**Corner Visibility.**

On a corner lot, within the area formed by the center lines of the intersecting streets and a line joining points of such center lines at a distance of eighty (80) feet from their intersection, there shall be no obstruction to vision between a height of two (2) feet and a height of ten (10) feet above the average center line grade of each street.

(Amended 2/2/99)

## **Section 82. Office and Institutional District.**

The Office and Institutional District is designed to provide a wide range of professional and economic office space, as well as space for public and quasi-public uses.

1. The following uses are permitted:
  - a. Public or privately owned medical and dental clinics, and offices where medical or dental services are rendered.
  - b. Funeral homes.
  - c. Banks (except drive-in banks) and loan offices and agencies.
  - d. Business, professional, government, religious, charitable or fraternal offices or agencies and private clubs not engaged in retail sales to the general public or the maintenance of a stock of goods, merchandise or supplies on the premises.
  - e. Libraries, art galleries, museums, music or dancing institutions or schools.
  - f. Auditoriums, armories, and publicly owned and operated recreational facilities.
  - g. Publicly owned institutions, except jails, correctional institutions, and hospitals or institutions operated principally for the treatment of mental, alcoholic or narcotic patients.
  - h. Customary accessory uses and structures when located on the same zoning lot as the principal structure, excluding however, open storage.

### 2. Special Uses:

The following uses are permitted when authorized by the Cahah's Mountain Board of Adjustment after said Board holds a public hearing

- a. Drive-in banks.
- b. Public utility and service uses.
- c. Hospitals or other facilities operated principally for the treatment of alcoholic, narcotic or other substance abuse patients (Amended April 2010).

### 3. Minimum Lot Sizes and Maximum Lot Coverage.

- A. Within the O-I Office and Institutional District as shown on the zoning map, there is no minimum lot size and development activities can cover 100% of the lot area within the required setbacks.
- B. For development activities located within the WS-4 Protected Area that require a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage,

as defined in this ordinance, shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

4. Dimensional Requirements.

- a. Minimum required front yard: 15 feet.
- b. Minimum required side yard: none required, except when abutting a residential district, then and eight (8) feet side yard shall be required, as shall be a buffer strip as defined by Article VI of this Ordinance.
- c. Minimum required rear yard: 15 feet.
- d. Minimum frontage on a public street: 45 feet.
- d. Maximum building height: 35 feet.

5. Signs.

- a. ON PREMISES WALL SIGNS placed against the exterior walls of the buildings shall not exceed more than six (6) inches outside of a building's wall surface, shall not exceed fifteen (15) square feet in area for any one premise, and shall not exceed ten (10) feet in height above the natural ground line.
- b. ON PREMISES GROUND SIGNS not exceeding one per lot shall not exceed ten (10) feet in height above the natural ground line, shall meet all yard requirements for the district in which they are located, shall not exceed fifteen (15) square feet in surface area.
- c. ROOF SIGNS. PORTABLE OUTDOOR ADVERTISING SIGNS, and INTERMITTENT ILLUMINATION signs shall not be permitted.
- d. WINDOW SIGNS shall be placed only on the inside of professional buildings and shall not exceed twenty-five percent (25%) of the glass area of the pane upon which the sign is displayed.
- e. OFF PREMISES SIGNS (BILLBOARDS) provided the use advertised is located within 1000 feet of the billboard, and the total sign area does not exceed sixteen (16) square feet per side. Height is limited to ten (10) feet above the natural ground line.

6. Off-street parking and loading requirements.

Off street parking facilities shall be provided in accordance with Article XI, Section 1 10 of this Ordinance.

7. Location of Accessory Buildings.

No accessory building shall be erected in any required front or side yard or within twenty (20) feet of any street line or within ten (10) feet of any property line, and provided that in case of a corner lot with reversed frontage, no accessory building shall extend beyond the front line of the lots in the rear. (Amended 2/2/99)



8. Corner Visibility.

On a corner lot, within the area formed by the center lines of the intersecting streets and a linejoining points of such center lines at a distance of eighty (80) feet from their intersection, there shall be no obstruction to vision between a height of two (2) feet and a height of ten (10) feet above the average center line grade of each street. (Amended 2/2/99)

9. Facade Requirements

(1) All exterior building materials, except for the rear side not visible to the public, shall consist of, but not limited to, brick, sandstone, stucco, and other native stone and tinted/textured concrete masonry units. Synthetic materials offering similar appearances may also be utilized. Smooth faced concrete block and corrugated metal panels are prohibited.

(2) Building trim and accent areas may feature brighter colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accent areas.

(3) All trash containers must be screened from view of public streets and contained within an enclosure.

(4) Applicants seeking deviation from ordinance must apply for variance.

### **Section 83. General Business District.**

The B-1 General Business Districts are located on major thoroughfares and collector streets in Cahah's Mountain. They are intended to provide for offices, personal services, the retailing of durable and convenience goods to the community and surrounding areas, as well as concentrate permitted activities with utilities and streets.

I. The following uses are permitted:

- a. Any retail business or service establishment not otherwise referred to in this section, whose principal activity is conducted within an enclosed building and is devoted to retail sales and services. If any doubt arises as to any retail or service use not listed herein, the Board of Adjustment shall make that determination.
  - b. Audio and video retail, rental, and repair shops.
  - c. Auditoriums, armories, and publicly owned and operated recreational facilities.
  - d. Automobile parking lots and structures, excluding junkyards and open storage.
  - e. Automobile parts and supplies.
  - f. Automobile sales, new and used.
  - g. Bakeries, retail.
  - h. Banks (except drive-in banks) and other financial institutions, including loan and finance companies.
  - i. Barber and beauty shops.
- J. Electronic gaming operations as defined by 61.26.1 provided that:
1. Each Gaming Operation shall have a business license from the Town and shall pay all applicable fees set forth by the Town Council.
  2. Minimum of one hundred (100 feet of separation from any residential zoning district, measured as a straight line distance from the nearest limit of the residential zoning district to the nearest exterior wall of the business.
  3. Minimum of one thousand (1,000') feet of separation between electronic gaming/internet sweepstakes establishments, measured as a straight line distance between the nearest exterior walls of the businesses.
  4. Minimum of five hundred (500) feet of separation from religious institutions, schools, child care centers, recreation centers or parks, measured as a straight line distance to the nearest exterior wall of the business. Hours of operation limited to 8am-12am Monday through Saturday, shall be closed on Sunday.
  5. Machines must be compliant with State and Federal Law.
  6. No one under 18 years of age permitted to use the machines. Age must be verified for all customers who use the machines.

7. No one under 18 years of age permitted to supervise or operate an electronic gaming operation. Age of all employees must be verified.
  8. There shall be one (1) parking space for every two (2) electronic gaming machines.
  9. Electronic gaming/internet sweepstakes machines may be allowed as accessory uses to otherwise lawful businesses but the primary businesses shall meet all the above requirements as it pertains to electronic gaming operations. No more than two (2) machines shall be allowed as an accessory use. (Amended November 2012)
- k. Building materials storage, contractors offices, and supply yards, provided that they are fenced by a solid fence not less than six (6) feet in height.
  - l. Bus terminals.
  - m. Business, professional, government, religious, charitable or fraternal offices or agencies and private clubs not engaged in retail sales to the general public or the maintenance of a stock of goods, merchandise or supplies on the premises.
  - n. Dairy bars and ice cream manufacturing for retail sales on the premises only.
  - o. Drug stores, with or without fountains.
  - p. Dry cleaning and laundry pick-up stations and dry cleaning plants.
  - q. Electric repair shops.
  - r. Fire and police stations.
  - s. Floral and gift shops.
  - t. Funeral homes.
  - u. Hotels, motels, and inns.
  - v. Food stores and meat markets, retail only, but excluding the killing of flesh or fowl.
  - w. Jewelry repair shops and opticians.
  - x. Kennels, commercial.
  - y. Laundromats.
  - z. Libraries, art galleries, museums, music or dancing institutions or schools. aa.  
Locksmiths and gunsmiths
  - bb. Newspaper offices and printing plants incidental to such offices. cc.

- Office supplies and equipment, sales and service.
- dd. Photographic studios.
  - ee. Printing, publishing and reproduction establishments.
  - ff. Public or privately owned medical and dental clinics, and offices where medical or dental services are rendered.
  - gg. Publicly owned institutions, except jails, correctional institutions, and hospitals or institutions operated principally for the treatment of mental, alcoholic or narcotic patients.
  - hh. Public works and utility facilities, but excluding service and storage yards.
  - ii. Restaurants, including drive-in restaurants, provided such drive-in restaurants are fenced on all sides which abut residential districts. Fences shall be solid from the ground to a height of six (6) feet.
  - jj. Retail establishments such as department, clothing, fabric, shoe, variety, notion, drug, hardware, furniture, appliance, floor covering, paint, antique, art goods, jewelry, gift, music, toy, sporting goods, book and stationary, magazine, candy, tobacco, pet and hobby and craft stores, but not excluding other similar retail outlets.
  - kk. Service stations and convenience stores, provided that all gasoline pumps and other stationary equipment shall be located at least twelve (12) feet behind the property or right-of-way line, provided further, that on all sides where such stations and convenience stores abut residential districts, a six (6) feet high fence and suitable landscaping shall be provided.
  - ll. Manufactured home (new) sales lots.
  - mm. Sexually oriented businesses as defined in Section 60.1, provided however:
    - a. No more than one (1) sexually oriented business can be located within a two thousand (2,000) foot radius (determined by a straight line from the front entrance of the sexually oriented business and not street distance) from any other sexually oriented business.
    - b. No sexually oriented business can be located within a five hundred (500) radius (determined by a straight line and not street distance) of the closest boundary line of any residential district within the Town's zoning jurisdiction, and any church, school, day care, public park, or playground within or without the town's zoning jurisdiction.
  - nn. Tailor and dressmaking shops.
  - oo. Taxicab stands.

- pp. Telephone and telegraph offices.
- qq. Theaters, indoor
- rr. Customary accessory uses and structures when located on the same lot as the principal structure, including open storage provided the area devoted to open storage is enclosed by a solid fence not less than six (6) feet in height.

2. Special Uses.

The following uses are permitted when authorized by the Cahah's Mountain Board of Adjustment after said Board holds a public hearing.

- a. Cabinet, woodworking and upholstery shops.
- b. Mixed uses, that is, buildings erected for both dwelling and business purposes.
- c. Bowling alleys and skating rinks, miniature golf courses, and other commercial recreational facilities.
- d. Planned Unit Developments in accordance with Section 105.10 of this Ordinance. (Amended 10/5/99)
- e. Hospitals or other facilities operated principally for the treatment of alcoholic, narcotic or other substance abuse patients (Amended April 2010).

3. Minimum Lot Sizes and Maximum Lot Coverage.

- A Within the G-B General Business District, as shown on the zoning map, the minimum lot size is 8,000 square feet per unit, and development activities can cover 100% of the total lot area within the required setbacks.
- B. For development activities located within the WS-4 Protected Area that require a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this ordinance, shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

4. Dimensional Requirements.

- a. The minimum lot width shall be 100 feet.
- b. Fifty (50) feet minimum front yard setback required; off-street parking as required by this Ordinance may be permitted in required yards but shall not be closer than ten (10) feet from the front property line or any right-of-way line.
- c. The minimum side yard setbacks shall be at least fifteen (15) feet. A side yard of twenty (20) feet is required on a side street of a corner lot.
- d. Minimum required rear yard shall be thirty (30) feet.
- e. Height regulations for buildings and structures hereafter erected or structurally

altered to exceed fifty (50) feet in height shall be set back from the lot line on the ratio of one foot for each two feet rise above said fifty (50) feet.

f. Minimum required lot area per unit shall be eight thousand (8,000) square feet.

g. Minimum frontage on a public street: 45 feet.

5. Signs.

a. ON PREMISES WALL SIGNS placed against the exterior walls of buildings shall not exceed more than six (6) inches outside of a building's wall surface, shall not exceed two hundred (200) square feet in area for any one premises, and shall not exceed twenty (20) feet in height above the natural ground line.

b. ON PREMISES GROUND SIGNS not exceeding one per lot, shall not exceed thirty (30) feet in height above the natural ground line, shall meet all yard requirements for the district in which they are located, shall not exceed one hundred fifty (150) square feet on one side, nor three hundred (300) square feet on all sides for any one premises. Group signs are permitted, provided that the collective sign area meets the requirements of this paragraph and such signs are secured to a central support structure.

c. ROOF SIGNS, PORTABLE OUTDOOR ADVERTISING SIGNS, and INTERMITTENT ILLUMINATION signs shall not be permitted.

d. OFF PREMISES SIGNS <BILLBOARDS) provided the use advertised is located within 1000 feet of the billboard, and the total sign area does not exceed sixteen (16) square feet per side.

6. Off-street parking and loading requirements.

Off-street parking facilities shall be provided in accordance with Article XI, Section 110 of this Ordinance.

7. Screening Requirements

Whenever any B-1 district rear and/or side property line abuts upon a residential district or site of an institutional use with no intervening natural buffer, any buildings or parking area used for commercial purposes shall maintain a ten (10) foot buffer strip and within a portion of the buffer strip there shall be planted a continuous screen of evergreen plants with an initial height of at least six (6) feet by natural growth within no later than a two (2) year period. (Amended 11/2/99)

8. Facade Requirements

(I) All exterior building materials, except for the rear side not visible to the public, shall consist of, but not limited to, brick, sandstone, stucco, and other native stone and tinted/textured concrete masonry units. Synthetic materials offering similar appearances may also be utilized. Smooth faced

concrete block and corrugated metal panels are prohibited.

(2) Building trim and accent areas may feature brighter colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accent areas.

(3) All trash containers must be screened from view of public streets and contained within an enclosure.

(4) Applicants seeking deviation from ordinance must apply for variance.

#### **Section 84. TCB Town Center Business District.**

The intent of the Town Center Business (TCB) district is to encourage pedestrian use by being centrally located in concentrated residential areas. Businesses permitted in this district shall cater to the everyday needs of residents but may not include automobile-dependent uses. Areas to be developed in the Town Center Business district uses shall have adequate infrastructure provided, including but not limited to water, sewer and roads.

1. The following uses are permitted:
  - a. Bakeries, retail.
  - b. Banks (except drive-in banks) and other financial institutions, including loan and finance companies.
  - c. Barber and beauty shops.
  - d. Business, professional, government, religious, charitable or fraternal offices or agencies and private clubs not engaged in retail sales to the general public or the maintenance of a stock of goods, merchandise or supplies on the premises.
  - e. Community recreation centers.
  - f. Day care centers.
  - f. Drug stores, with or without fountains.
  - g. Dry cleaning and laundry pick-up stations and dry cleaning plants.
  - h. Fire and police stations.
  - i. Floral and gift shops.
  - j. Food stores and meat markets, retail only, but excluding the killing of flesh or fowl.
  - k. Jewelry repair shops.
  - l. Laundromats.
  - m. Libraries, art galleries, museums.
  - n. Office supplies and equipment, sales and service.
  - o. Public or privately owned medical and dental clinics, and offices where medical or dental services are rendered.
  - p. Restaurants, excluding drive-in restaurants.



- q. Retail establishments such as department, clothing, fabric, shoe, variety, notion, drug, hardware, furniture, appliance, floor covering, paint, antique, art goods, jewelry, gift, music, toy, sporting goods, book and stationary, magazine, candy, tobacco, pet and hobby and craft stores, but not excluding other similar retail outlets.
- r. Tailor and dressmaking shops.
- s. Theaters, indoor
- t. Customary accessory uses and structures when located on the same lot as the principal structure, excluding open storage.
- u. Mixed use structures, not exceeding 21,000 square feet in gross floor area.

2. Special Uses.

The following uses are permitted when authorized by the Cahah's Mountain Board of Adjustment after said Board holds a public hearing.

- a. Mixed use structures exceeding 21,000 square feet. Applicant must submit detailed site plans with the application for a special use permit.
- b. Customary Home Occupations
- c. Planned Unit Developments in accordance with Section 105.10 of this Ordinance
- d. Multi-family housing, other than that permitted as a mixed use.
- e. Single-family housing
- f. Bed & Breakfast Inns

3. Minimum Lot Sizes and Maximum Lot Coverage.

- A. Within the Town Center Business District, the minimum lot size is 8,000 square feet per unit, and development activities can cover 100% of the total lot area within the required setbacks.
- B. For development activities located within the WS-4 Protected Area that require a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this ordinance, shall not exceed 36% of the total lot area, or 24% of the total lot area if the lot abuts a curb and gutter street system.

4. Dimensional Requirements.

- a. The minimum lot width shall be 80 feet.

- b. Ten (10) feet minimum front yard setback required.
  - c. The minimum side yard setbacks (including corner lots) shall be at least ten (10) feet.
  - d. Minimum required rear yard shall be twenty (20) feet
  - e. Maximum building height is forty (40) feet
  - f. Minimum frontage on a public street: 45 feet
5. Signs
- a. ON PREMISES WALL SIGNS placed against the exterior walls of buildings shall not exceed more than six (6) inches outside of a building's wall surface, shall not exceed forty (40) square feet in area for any one storefront
  - b. ON PREMISES GROUND SIGNS not exceeding one per lot, shall not exceed fifteen (15) feet in height above the natural ground line, shall not exceed fifty (75) square feet on one side, nor one hundred (150) square feet on all sides for any one premises. Group signs are permitted, provided that the collective sign area meets the requirements of this paragraph and such signs are secured to a central support structure. Signs must be built with similar building materials as the principal building(s) on the lot (i.e. brick, wood, etc.)
  - c. OFF PREMISE SIGNS, PORTABLE OUTDOOR ADVERTISING SIGNS, and INTERMITTENT ILLUMINATION signs shall not be permitted.

6. Parking and loading requirements.

On-street (parallel or pull-in) parking shall be provided on all streets. Off-street parking facilities shall be provided in accordance with Article XI, Section 110 of this Ordinance. Off-street parking shall be located in the side and rear yards, or adequately screened from public rights-of-way of state roads. In no case shall parking be located within ten (10) feet of a public right-of-way. For loading and access purposes, a continuous network of alleys is recommended for all lots in the Town Center Business district. Where feasible, adjacent parking lots should be interconnected.

7. Other requirements.

Site plans that are submitted to the Town of Cahah's Mountain will also be reviewed for the following requirements:

- a. All utilities shall be placed underground.
- b. All streets and driveways (excluding alleys) shall have a sidewalk on at least one side, which is at least five (5) feet wide. Where feasible, sidewalks adjacent to storefronts shall be ten (10) feet wide.
- c. Street widths and rights-of-ways may be reduced from standards stated in the Cahah's Mountain Subdivision Regulations if the Town Council determine it necessary, only after recommendation of the Planning Board and Town Engineer to do so.
- d. For every acre included in the development (or area zoned TCB), a minimum of 2,100 square feet (approximately 5%) will be dedicated to the Town of Cahah's Mountain, maintained as public open space, and will remain undeveloped. The area dedicated must be approved by the Town and shall be useable for the purposes of park space or greenways; it should not simply be the least desirable or

buildable portion of the development. The Town will consider the topography of the land, existing vegetation and waterways, as well connectivity to existing open space when approving the dedicated area.

- e. Trees shall be planted along all streets (excluding alleys) within the rights-of-way parallel to the street.
- f. All subdivisions must be approved through the Major Subdivision provisions of the *Cajah's Mountain Subdivision Regulations*.

8. Site Plan Review

All development located within the boundaries of any Town Center Business district shall undergo a three (3) step review process. This process shall consist of the following steps:

- a. The first step of the process will consist of an administrative review which will be conducted by the Town Planner. The completed review will subsequently be presented to the Cajah's Mountain Planning Board for review and recommendation.
- b. The second step of the review process will consist of a review and public hearing which will be conducted by the Cajah's Mountain Planning Board. The Planning Board will review the development plans to ensure all applicable requirements have been met. The Planning Board will then make recommendations to the Cajah's Mountain Town Council. Development plans that are to be reviewed by the Cajah's Mountain Planning Board must be submitted to the Town at least twenty (20) days prior to the next scheduled meeting of the Planning Board.
- c. The third and final step of the process consists of a review and public hearing which will be conducted by the Cajah's Mountain Town Council. The Town Council will review the development plans to ensure all applicable requirements have been met. The Town Council will ultimately either approve, approve with conditions or disapprove the development plans. Development plans that are to be reviewed by the Cajah's Mountain Town Council must be submitted to the Town at least twenty (20) days prior to the next scheduled meeting of the Town Council.

9. Rezoning requirements.

The applicant/developer must submit an application for rezoning to the Town Planner; included with this application must be a site plan depicting the boundaries of the area to be rezoned and its relation to surrounding neighborhoods. The Town Council will consider the following for each rezoning application:

- a. The area to be rezoned is centrally located among neighborhoods in the community; the core of the development is easily accessible via a 5-minute walk from nearby neighborhoods.
- b. If not adjacent to an existing TCB zone, the area to be rezoned shall be a minimum of five (5) acres in size and be located within 1000 feet of a TCB district. If the property is adjacent to an existing TCB zone, then the site plan must depict the proposed connectivity to the adjacent TCB district. Due to the reduced lot sizes and setbacks, public water and sewer must be available to the area to be rezoned.

10. Screening Requirements

Whenever any TCB District's rear and/or side property line abuts upon a residential

district or site of an institutional use with no intervening natural buffer, any buildings or parking area used for commercial purposes shall maintain a "buffer strip" as defined in Section 61.7 of this Ordinance, or a ten (10) foot buffer strip. Within a portion of this buffer strip there shall be planted a continuous screen of evergreen plants with an initial height of at least six (6) feet by natural growth within no later than a two (2) year period.  
(Amended 5/7/02)

## **Section 85 Light Manufacturing District.**

The M-1 Light Manufacturing District provides a place for the location of industrial and other uses which would be inimical or incompatible with general business or residential areas. It is intended to permit in this district any use which is not inherently obnoxious to urban areas because of noise, odor, smoke, light, dust or the use of dangerous materials.

The following uses are permitted:

- a. Any lawful retail, repair, or wholesaling use, not specifically referred to in this section.
- b. Gasoline, oil or fuel above ground, provided permit is obtained from the Bureau of Fire Prevention required by the Fire Prevention Code.
- c. Mixing plants for concrete or paving materials.
- d. Stone crushing, cutting and polishing.
- e. Storage of materials and equipment outdoors.
- f. Hatcheries.
- g. Wholesale and warehouse establishments.
- h. Manufacture, processing or fabrication of the following products:
  1. Animal feeds
  2. Bedding, carpets, and pillows
  3. Clothing, including hosiery
  4. Electrical and electronic products
  5. Foods and food products
  6. Glass
  7. Household appliances
  8. Ice
  9. Leather goods, not to include processing or storage of raw hides
  10. Machine tools
  11. Metals and metal products
  12. Paper products, not including the manufacturing or processing of paper.
  13. Plastics
  14. Pottery, porcelain and vitreous china
  15. Rubber, products, not to include the processing or manufacture of rubber
  16. Textiles
  17. Wholesale storage of gasoline and oil products, including bottled gas and oxygen, provided the permit is obtained from the Bureau of Fire Prevention as required by the Fire Prevention Code.
  18. Furniture industries

2. Special Uses.

The following special uses are permitted when authorized by the Cahah's Mountain Board of Adjustment after said board holds a public hearing:

- a. Manufacturing uses not otherwise named herein which come within the spirit and intent of this Section.
- b. Planned Unit Developments in accordance with Section 105.10 of this Ordinance. (Amended 10/5/99)

3. Signs.

Types of signs permitted are: (a) on premises ground sign, (b) on premises wall sign, (c) projection sign, and (d) window sign. The size of individual business signs shall not exceed two hundred (200) square feet.

Structures allowed for signs are restricted to single structure, back-to-back structure and V- structure.

The maximum height of any ground sign shall not exceed ten (10) feet above the grade level immediately below such sign.

Roof Signs, Portable Outdoor Advertising Signs, and Intermittent Illumination signs are specifically prohibited.

If a single board structure is used, the reverse side of the sign must be painted, otherwise treated so that its color will blend rather than contrast with its background.

There must be a minimum of two hundred (200) feet between business signs.

The location of any ground sign shall be at least twenty (20) feet from any public right-of- way.

There shall be no more than one individual business sign oriented to each abutting road identifying the activity.

Off Premises Signs (Billboards) provided the use advertised is located within 1000 feet of the billboard, and the total sign area does not exceed sixteen (16) square feet per side.

4. Minimum Lot Sizes and Maximum Lot Coverage.

- a. Within the M-1 Light Manufacturing District, as shown on the zoning map, the minimum lot size shall be one (1) acre, and development activities can cover 40% of the total lot area within the required setbacks.
- b. For development activities located within the WS-4 Protected Area that require a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface

coverage, as defined in this ordinance, shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

5. Dimensional Requirements: Within the M-1 manufacturing district as shown on the zoning map, the following dimensional requirements shall be complied with:

- a. The minimum mean lot width: 200 feet.
- b. Minimum frontage on a public street: 45 feet.
- c. Minimum front yard setback: . 50 feet.
- d. Minimum rear yard setback: 20 feet.
- e. Minimum side yard setback: 15 feet.
- f. No building shall exceed sixty-five (65) feet in height unless the depth of the front and total width of the side yards herein specified shall be increased by one foot for each two feet or fraction thereof of building height in excess of sixty-five (65) feet.
- g. Off-street parking and loading shall be provided as required in Article XI, Section 110 of this Ordinance.
- h. Off-street parking as required by this Ordinance may be permitted in required yards but shall be no closer than ten (10) feet from the front property line or any dedicated street or railroad right-of-way line.

6. Screening Requirements.

Whenever any M-1 district rear and/or side property line abuts upon a residential district or site of institutional use with no intervening natural buffer, any buildings or parking area used for industrial purposes shall maintain a fifteen (15) feet buffer strip and within a portion of the buffer strip there shall be planted a continuous screen of evergreen plants with an initial height of at least six (6) feet by natural growth within no later than a two (2) year period.

**ARTICLE IX  
GENERAL PROVISIONS**

Section 90. Application.

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located. (Amended 2/2/99)

Section 91. Reduction of Lot and Yard Areas Prohibited.

No yard or lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth herein, except for street widening. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance. (Amended 2/2/99)

Section 92. Relationship of Building to Lot.

Every building hereafter erected, moved or structurally altered shall be located on a lot of record and in no case shall there be more than one principal building and its customary accessory buildings on any lot except in the case of multifamily residential areas, group housing developments, and planned unit developments in an appropriate zoning district. (Amended 2/2/99)

Section 93. Nonconforming Uses.

After the effective date of this ordinance, existing structures, or the uses of land or structures which would be prohibited under the regulations for the district in which it is located (if they existed on the adoption date of this Ordinance), shall be considered as nonconforming. - Nonconforming structures or uses (as defined in Section 60.64 of this Ordinance) may be continued provided they conform to the following provisions:

93.1 Continuing Nonconforming Uses of Land.

93.11 Extensions of Use. The enlargement or extension of nonconforming uses of land are discouraged; however, a nonconforming use of land may be enlarged or extended once with the following provisions:

- a. An application for a special use permit must be filed with the Board of Adjustment and a public hearing held. The application shall include a site plan with sufficient detail of the expansions and any alterations to be made. Enlargement or alterations may not exceed twenty-five (25%) percent of the original floor area existing at the time of enactment of this Ordinance.
- b. No nonconforming use may be enlarged or altered if the intensity of the current use will be increased substantially, as determined by the Board of Adjustment. In determining whether the degree of intensity is increased, the Board of Adjustment shall consider:
  1. Probable traffic increase of each use



2. Parking requirements of each use
  3. Probable number of persons on the premises at a time of peak demand
  4. Off-site impacts of each use, such as noise, glare, dust, vibration or smoke and other impacts on surrounding properties or public health and safety.
- c. No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied at the time of enactment of this Ordinance.
  - d. Changing from one nonconforming use to another shall not permit expansion more than once.
  - e. All dimensional requirements of the district in which the nonconforming use is located must be met. (Amended 2/2/99)

93.12 Change of Use. Any nonconforming uses of land may be changed to a conforming use, or with the approval of the Board of Adjustment, to any use more in character with the uses permitted in this district.

93.13 Cessation of Use. All nonconforming uses of land involving minor structures such as junkyards, auto sales yards, signs, or any nonconforming uses similar to those enumerated, shall be eliminated within two years from the date of adoption of this Ordinance.

93.2 Continuing the Use of Nonconforming Buildings.

93.21 Extensions of Use. Nonconforming buildings and nonconforming uses may be enlarged provided the provisions of Section 93.11 are met. Additionally, no nonconforming structure may be enlarged or altered in anyway which increases its dimensional deficiencies.

93.22 Change of Use. The lawful use of a building existing at the time of the adoption of this Ordinance may be continued although such use does not conform with the provisions of this Ordinance, and such building may be reconstructed or structurally altered and nonconforming use therein changed subject to the following regulations:

- (a) The order of classification of uses from highest to lowest for the purpose of this section shall be as follows: residential district uses, business district uses, as permitted by this Ordinance.
- (b) A nonconforming use may be changed to a use of higher classification but not to a use of lower classification, nor shall a nonconforming use be changed to another use of the same classification unless the new use shall be deemed by the Board of Adjustment, after public notice and hearing, to be less harmful to the surrounding neighborhood, from the standpoint of the purposes of this Ordinance, than the existing nonconforming use.
- (c) The extension of a use to any portion of an existing building shall not be deemed an extension of such nonconforming use, if at the time of the adoption of this Ordinance such portion was primarily designed for such nonconforming

use

- (d) A nonconforming building damaged by fire, explosion, tornado, earthquake, or similar uncontrollable cause to the extent of not more than sixty percent (60%) of its assessed tax value at the time of the damage may be repaired or rebuilt within one year of the date of such damage, but not thereafter. Nonconforming single-family dwellings and modular homes, excluding manufactured homes, that are damaged by fire, explosion, tornado, earthquake, or similar uncontrollable cause may be repaired or rebuilt within one year of the date of such damage, but not thereafter, provided it meets the requirements of Sections 80.3 – 7 of this ordinance, unless prohibited by physical limitations. (Amended 5-4-04)
- (e) Existing single-family residential structures in business or industrial districts may be enlarged, extended or structurally altered, provided that no additional dwelling units result there from. However, any enlargements, extensions or alterations shall comply with the dimensional requirements determined by the Board of Adjustment.
- (f) If a nonconforming use is discontinued, any future use of the buildings and premises shall be in conformity with the provisions of this Ordinance. A reasonable interim, however between tenants or occupant shall not be construed to mean discontinuance.

93.23 Cessation of Use. If active operations are discontinued for a continuous period of 180 days with respect to a nonconforming use of a building, such nonconforming use shall thereafter be occupied and used for a conforming use. Continuing the Non-Conforming Use of Manufactured Homes and Manufactured Homes Parks.

93.31 Extension of Use. Nonconforming Manufactured Homes and Manufactured Home Parks existing at the time of the adoption of this Ordinance shall be allowed to continue to their present existence, but shall not be allowed to expand, increase or bring in another Manufactured Home to replace an existing or damaged Manufactured Home unless this nonconforming use or area has been rezoned to allow individual Manufactured Homes or Manufactured Home Parks or unless the replacement unit is in full compliance with Section 96 of this Ordinance.

#### Section 94. Announcement Signs and Structures.

All announcement signs and structures, which include business signs as defined by this Ordinance, shall be approved by the zoning enforcement officer and shall comply with the following regulations:

94.1 Location. No advertising sign or structure shall be erected, constructed or maintained so as to interfere with vision clearance along any street, road or highway or at any intersection or junction of two or more traffic arteries. Nor shall any advertising sign or structure be located within the street, road or highway right-of-way.

94.2 Illumination. No flashing or intermittent lights are permitted. All illuminated signs or

structures shall be placed so as to prevent the light rays or illumination therefrom being cast upon residential dwellings. However, any sign performing a public service function indicating time, temperature, stock market quotations or similar services shall be permitted.

- 94.3 Maintenance. All advertising structures, together with any supports, braces, guys and anchors shall be kept in good repair and in a safe state of preservation. All signs, including political signs, erected to serve temporary purposes shall be removed within 60 days, unless removal is required within 15 days as provided in subsection 94.6.
- 94.4 Administration. The zoning enforcement officer shall refuse a permit for the erection or construction of any advertising sign or structure which does not meet the requirements of this section. The zoning enforcement officer shall order the removal of any signs that are not constructed or maintained in accordance with the provisions of this section.
- 94.5 Nonconforming Signs. Within eighteen (18) months of the enactment of this ordinance, the following nonconforming signs within the town limits of Cahah's Mountain shall be eliminated: a) nonconforming signs located within the sight triangle of intersecting streets or driveways; b) portable signs; c) any nonconforming sign which causes a traffic or safety hazard, as determined by the zoning enforcement officer. An inventory of the above signs shall be completed by the zoning enforcement officer and property owners notified within three (3) months of the enactment of this ordinance. (Amended 2/2/99, 4/6/99)
- 94.6 Portable Signs. Portable signs are expressly prohibited from use within the Town of Cahah's Mountain except when permitted as a temporary use for non-profit organizations provided that a Zoning Permit is secured for such use, and further provided that the use of such signs shall not be permitted for more than 15 consecutive days. A minimum 120-day period shall elapse between uses of temporary portable signs on any lot or for any event for which the sign is permitted.

#### Section 95. Provisions for Individual Manufactured Homes.

The purpose of these regulations is to promote sound neighborhood development and appearance, protect community property values, and to preserve the integrity and character of neighborhoods. Manufactured Homes or Modular Homes are permitted on individual lots in the RA-20 district subject to the following conditions:

- 95.1 The lot must be recorded as an individual lot.
- 95.2 If municipal utilities are not available, the well and/or septic tank must be approved by the Caldwell County Health Department.
- 95.3 All yard dimensional requirements for the respective district must be met.
- 95.4 The lot must front a public street and said street frontage will be considered the front of the lot.
- 95.5 Manufactured Homes may be placed on undeveloped land for temporary purposes incidental to construction or development of property within the Town of Cahah's Mountain for a period not to exceed 180 days. Extensions may be granted for a period as may be determined by

the Town Council, but no longer than construction shall continue. Furthermore, no Manufactured Home shall be placed on land until construction commences nor when there is any existing structure of facility on the property which may be suitable or designed for the purpose for which the Manufactured Home is sought to be used. Manufactured Homes may also be used as temporary living quarters in the event of a natural disaster such as fire, flooding, etc, which would render the former residence uninhabitable.

- 95.6 Exterior finishes shall be in good repair and in no case shall the degree of reflectivity of the exterior siding, foundation skirting and roofing exceed that of gloss white.
- 95.7 A continuous enclosure, unpierced except for required ventilation and access shall be installed. The enclosure may consist of brick or concrete block, or wood, vinyl or metal fabricated for this purpose. Any wood framing for foundation skirting shall be constructed with treated lumber.
- 95.8 Permanent steps shall be constructed at all exterior doors as necessary and a permanent porch or patio measuring at least three feet in width and five feet in length shall be constructed at the front or main entrance to the manufactured or modular home.
- 95.9 The running lights shall be removed and the hitch shall either be removed or screened with shrubbery.
- 95.10 All standards listed in this subsection must be met prior to issuance of a Certificate of Occupancy.

**Section 96. Provisions for Replacement of Existing Manufactured Housing in the Residential Low Density (R-20) Zoning District.**

Nonconforming manufactured homes in the R-20 district may be replaced, provided that the replacement structure meets all of the provisions below:

- 96.1 The replacement must be no more than three years old;
- 96.2 The replacement must be placed on a permanent masonry foundation that meets the North Carolina State Building Code for site-built homes;
- 96.3 Foundation exteriors must be bricked, rocked, or stuccoed to completely screen concrete blocks from view from any street;
- 96.4 The foundation shall be unpierced except for required ventilation and access. Access doors shall be constructed of treated lumber or other insect and rot resistant materials, and painted or stained to closely match the exterior finish of the manufactured home;
- 96.5 All exposed soil in the crawl space shall be covered with a 6 mil or thicker plastic vapor barrier;

- 96.6 All roofs must be shingled and have a minimum pitch of 3.5 feet for every 12 feet of linear distance. Such roof shall be the original roof of the structure as installed by the manufacturer;
- 96.7 The exterior of the manufactured home must be vinyl, wood, or similar lap siding or simulated cut stone;
- 96.8 A patio, deck, or porch of at least 75 square feet must be located at the main front or rear entrance and shall be constructed of treated lumber or masonry. All other entrances shall have a landing of a minimum of 10 square feet. Permanent stairs shall be required at all entrances and be constructed of treated lumber or masonry. Porches and decks must be skirted with treated lumber or masonry so as to screen the area under decks and porches from view from adjacent property. It is preferred that masonry porches be an integral part of the foundation required in Section 2 above;
- 96.9 The length of the manufactured home shall not exceed four times its width;
- 96.10 All replacement manufactured homes shall have a minimum width of 24 feet or a minimum of 1,200 square feet of livable space;
- 96.11 All manufactured homes must be placed on a separately deeded and recorded lot that meets the minimum standards of the Cajah's Mountain Zoning Ordinance;
- 96.12 Each manufactured home site must provide a minimum of two parking spaces, and all driveways and parking areas must be surfaced with a minimum of four (4) inches of gravel if asphalt or concrete are not used;
- 96.13 The front of the manufactured home must be faced toward the street frontage of the lot.
- 96.14 The replacement shall occur within 90 days following the removal from the site of the manufactured home to be replaced.

Section 97. Vested Rights.

The purpose of this Section is to implement the provisions of NCGS 160D-102 pursuant to which a statutory zoning vested right is established upon approval of a site specific development plan.

97.1 Definitions.

- a. Approval Authority. The Town Council, Planning Board, Board of Adjustment, Town Manager, Town Planner, or other board or official designated by this Ordinance as being authorized to grant the specific zoning or land use permit approval that constitutes a site specific development plan.
- b. Site Specific Development Plan. A plan of land development submitted to the Town of Cajah's Mountain for purposes of obtaining one of the following zoning or land use permits or approvals:

1. Zoning Permit, as provided by Section 121 of this Ordinance;
2. Special Use Permit, as provided by Section 135 of this Ordinance;
3. Variance, as provided by Section 135 of this Ordinance;
4. Minor Subdivision Approval;
5. Major Subdivision Approval.

Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

- c. Zoning Vested Right. A right pursuant to G.S. 160D-102 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan, provided that such development shall begin within two years following issuance of the zoning vested right. Under the terms of this Ordinance, a two-year zoning vested right shall be established upon issuance of a Zoning Permit.

#### Section 98. Watershed Protection.

98.1 Authority and Enactment. The Legislature of the State of North Carolina has, in Chapter 160D, Article 19, Planning and Regulation of Development; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Town of Cahah's Mountain, North Carolina ("the Town"), does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Cahah's Mountain, North Carolina.

98.2 Jurisdiction. The provisions of this Ordinance shall apply within the overlay zones designated as a Public Water Supply Watershed as defined and established on the "Official Zoning Map of Cahah's Mountain, North Carolina" ("the Zoning Map", "the Watershed Map"), such overlay zones being adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance.

98.3 Exceptions to Applicability.

- (A) Development activities that do not require a Sedimentation/Erosion Control Plan are exempt from the requirements of this Section.
- (B) Existing development, as defined in this Ordinance, is not subject to the requirements of this Section. Existing development is defined as those projects that are built or those projects that at a minimum have established a vested right under North

Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:

- (1) having expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
  - (2) having an outstanding valid building permit as authorized by NCGS 160D-102 ;or
  - (3) Having an approved site specific or phased development plan as authorized by NCGS 160D-102.
- (C) Expansions to structures classified as existing development must meet the requirements of this Ordinance; however, the built-upon area of the existing development is not required to be included in the density calculations.
- (D) Reconstruction of Buildings or Built-Upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential redevelopment, provided:
- (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
  - (2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.
- (E) If a non-conforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this ordinance if it is developed for single family residential purposes.

98.4 Cluster or Planned Unit Development. Cluster or Planned Unit Development is allowed in all Watershed Areas under the following conditions:

- (A) Development activities shall comply with the requirements of Sections 105 and 106 of this Ordinance. Built-upon area for the project shall not exceed that allowed under the low density option for the WS-IV protected area.
- (B) All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- (C) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement.

98.5 Buffer Areas Required.

- (A) A minimum one hundred (100) foot vegetative buffer is required for all new

development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated in the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial streambank or shoreline stabilization is permitted.

- (B) No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways and their appurtenances where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices, defined as a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs receiving waters in order to achieve water quality goals.

98.6 Reserved.

98.7 Watershed Administrator and Duties thereof. The Cajah's Mountain Town Council shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this Ordinance as follows:

- (A) The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.
- (B) The Watershed Administrator shall serve as staff to the Planning Board, Board of Adjustment, and Town Council.
- (C) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Environmental Management.
- (D) The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full zoning and police power of the Town of Cajah's Mountain. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.
- (E) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1st of the following calendar year and shall provide a description of each project receiving a variance and the reasons for granting the variance.



98.8 Appeal from the Watershed Administrator.

- (A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Board of Adjustment.
- (B) An appeal from a decision of the Watershed Administrator must be submitted to the Board of Adjustment within thirty (30) days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.
- (C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.
- (D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

98.9 Establishment of a Watershed Review Board. There shall be and hereby is created the Watershed Review Board consisting of the same membership as the Cahah's Mountain Town Council. Terms for members of the Watershed Review Board shall coincide with the membership terms for the Town Council.

98.10 Powers and Duties of the Town Council and Board of Adjustment.

- (A) The Board of Adjustment shall be responsible for reviewing and hearing all minor watershed variance cases, and shall proceed as provided in Article XIII of the Zoning Ordinance for zoning variances.
- (B) If the application calls for the granting of a **major watershed variance**, and if the Board of Adjustment decides in favor of granting the major watershed variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:
  - (1) The variance applications;
  - (2) The hearing notices, including written notification of each local government having jurisdiction and each entity using the water supply for consumption where the variance is being considered. Such notices shall be in accordance with NCGS 160A-364;

- (3) The evidence presented;
  - (4) Motions, offers of proof, objections to evidence, and rulings on them;
  - (5) Proposed findings and exceptions;
  - (6) The proposed decision, including all conditions proposed to be added to the permit.
- (C) The preliminary record shall be sent to the Environmental Management Commission for its review as follows:
- (1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
  - (2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.
- (D) Approval of all development greater than the low density option shall be the authority of the Town Council.

98.11 Appeals from the Town Council or Board of Adjustment. Appeals from the Town Council must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.

98.12 High Density Development Standards.

The Town Council may approve high density development proposals in the Residential Low Density, Residential Medium Density, Office and Institutional, Town Center Business, General Business and Light Manufacturing districts, as shown on the zoning map, consistent with the following standards (Amended 11/05/02):

WS-IV-PA Watershed Areas

Where new development requires a Sedimentation/Erosion Control Plan and exceeds either 2 dwelling units per acre, 24% built-upon area (or 3 dwelling units per acre or 36% built-upon area for projects without curb and gutter street system), engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area.

98.13 High Density Development Permit Application.

- (A) A High Density Development Permit shall be required for new development exceeding the requirements of the low density option.
- (B) Application for a High Density Development Permit shall be addressed and submitted to the Town Council through the Watershed Administrator. Application for a High Density Development Permit shall be made on the proper form and shall include the following information:
  - (1) A completed High Density Development Permit Application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;
  - (2) Ten (10) reproducible copies of the development plan including detailed information concerning built-upon area;
  - (3) Ten (10) reproducible copies of the plans and specifications of the stormwater control structure consistent with Section 98.14;
  - (4) When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate State or local agency;
  - (5) Permit Application Fees consistent with Section 98.17;
- (C) Prior to taking final action on any application, the Board or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit.
- (D) Public Hearing. Upon receipt of a completed application, the Town Council shall hold a public hearing. Notice of the hearing shall be published in a newspaper of general circulation at least seven days prior to the date of the hearing. The notice shall state the location of the building, lot or tract in question, the intended use of the property, the need for engineered stormwater controls and the time and place of the hearing. At the hearing, the applicant or designated representative thereof shall appear for the purposes of offering testimony and recommendations concerning the application. The Board shall also allot reasonable time for the expression of views by any member of the public

attending the meeting in person or represented by an attorney provided the testimony bears on the findings the Board must make.

- (E) The Town Council shall issue a High Density Development Permit within sixty-five (65) days of its first consideration upon finding that the proposal is consistent with the applicable standards set forth in the Watershed Protection Ordinance and the following conditions are met:
  - (1) The use will not endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
  - (2) The use minimizes impacts to water quality through the use of Best Management Practices, cluster development, and/or maximum setbacks from perennial waters;
  - (3) The use is vital to the continued growth and economic development of the Town of Cahaj's Mountain; and
  - (4) The use is consistent with the officially adopted land development plans for the Town of Cahaj's Mountain.

If the Town Council finds that any one of the above conditions is not met, the Board shall deny the application.

- (F) In addition to any other requirements provided by this Ordinance, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this Ordinance. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.
- (G) The Board shall issue a written ruling and make copies available at the office of the Watershed Administrator and the Town Clerk. If the Board approves the application based on its findings, such approval shall be indicated on the permit and all copies of the site plan and all copies of the plans and specifications of the stormwater control structure(s). A High Density Development Permit shall be issued after the applicant posts a performance bond or other acceptable security as required in Section 98.15(B)(1) and executes an Operation and Maintenance Agreement as required in Section 98.15(C). A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

#### 98.14 Stormwater Control Structures.

- (A) All stormwater control structures shall be designed by a North Carolina registered professional engineer.

- (B) All stormwater controls shall use wet detention ponds as a primary treatment system unless alternative stormwater management measures, as outlined in Section 98.14(C) are used. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Environmental Management. Specific requirements for these systems shall be in accordance with the following design criteria:
- (1) Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage run-off from a one-inch rainfall from the site above the permanent pool;
  - (2) The designed run-off storage volume shall be above the permanent pool;
  - (3) The discharge rate from these systems following the one-inch rainfall design storm shall be such that the run-off does not draw down to the permanent pool level in less than two (2) days and that the pond is drawn down to the permanent pool level within at least five (5) days;
  - (4) The mean permanent pool depth shall be a minimum of three (3) feet;
  - (5) The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;
  - (6) Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least thirty feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow through the filter for a ten-year, 24-hour storm with a ten-year, one-hour intensity with a slope of 5% or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics; and
  - (7) All stormwater control structures shall be enclosed by a fence with a minimum height of six (6) feet.
- (C) Stormwater management techniques other than stormwater control ponds described in Section 98.14(B) above shall be subject to review and approval of the North Carolina Environmental Management Commission.
- (D) In addition to the vegetative filters required in Section 98.14(B)(6), all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within thirty (30) days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in Section 98.15(C).
- (E) A description of the area containing the stormwater control structure shall be prepared and filed consistent with Section 98.15(A and B), as a separate deed with the Caldwell County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the detention pond,

vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.

- (F) Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute the built-upon area for any other site or area.

#### 98.15 Posting of Financial Security Required

- (A) All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, reconstruction, or repairs necessary for adequate performance of the stormwater control structures. Interest generated from such financial security shall be the property of the Town.
- (B) Financial assurance shall be in the form of the following:
  - (1) Security Performance Bond or other security. The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the Town of Cahah's Mountain or placed in escrow with a financial institution designated as an official depository of the Town of Cahah's Mountain. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the Town. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and, grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.
  - (2) Cash or Equivalent Security Deposited After the Release of the Performance Bond. Consistent with Section 98.15(C)(1), the permit applicant shall deposit with the Town of Cahah's Mountain either cash or other instrument approved by the Town Attorney that is readily convertible into cash at face value. The cash or security shall be in an amount equal to fifteen percent (15%) of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a ten (10) year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under Section 98.16(A). The amount shall be computed by estimating the maintenance cost for twenty-five (25) years and multiplying this amount by two fifths or 0.4.
- (C) Consistent with Section 98.13(G), the permit applicant shall enter into a binding Operation and Maintenance Agreement between the Town of Cahah's Mountain and all interests in the development. Said Agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with

the operation and management plan or manual provided by the developer. The Operation and Maintenance Agreement shall be filed with the Caldwell County Register of Deeds by the Watershed Administrator.

- (D) Default under the performance bond or other security. Upon default of the permit applicant to complete and/or maintain the stormwater control structure as specifically provided in the performance bond or other security, the Town of Cahah's Mountain may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The Town of Cahah's Mountain shall return any funds not spent in completing the improvements to the owning entity.
- (E) Default under the cash security. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the Operation and Maintenance Agreement, the Town of Cahah's Mountain shall obtain and use all or any portion of the cash security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operation and Maintenance Agreement. The Town of Cahah's Mountain shall not return any of the deposited cash funds.

#### 98.16 Maintenance and Upkeep.

- (A) An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the Operation and Maintenance Agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.
- (B) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement to the stormwater control structure.
- (C) Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Town Engineer shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete said improvements.
- (D) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Town Council. Proposed changes shall be prepared by a North Carolina registered professional engineer and submitted to and reviewed by the Watershed Administrator prior to consideration by the Town Council.

- (1) If the Town Council approve the proposed changes, the owning entity of the stormwater control structure shall file copies of the revisions with the Office of the Watershed Administrator bearing the seal of the professional engineer that prepared the plans.
  - (2) If the Town Council disapprove the changes, the proposal may be revised and resubmitted to the Town Council as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
- (E) If the Town Council finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Caldwell County Register of Deeds, the Office of the Watershed Administrator and the owning entity.

98.17 Application and Inspection Fees.

- (A) Processing and inspection fees shall be submitted in the form of a check or money order made payable to the Town of Cahah's Mountain. Applications shall be returned if not accompanied by the required fee.
- (B) A permit, inspection, and filing fee schedule, as approved by the Town of Cahah's Mountain, shall be posted in the Office of the Watershed Administrator.
- (C) Inspection fees shall be valid for sixty (60) days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with Section 98.16(C), except in the case when a similar fee has been paid within the last sixty (60) days.

98.18 Inspections and Release of the Performance Bond.

- (A) The stormwater control structure shall be inspected by the Town, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide:
  - (1) The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the Register of Deeds;
  - (2) A certification sealed by a professional engineer stating that the stormwater control structure is complete and consistent with the approved plans and specifications.
- (B) The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Cahah's Mountain Town Council at its next regularly scheduled meeting.
  - (1) If the Town Council approve the inspection report and accepts the certification,



deed and easements, the Town shall file the deed and easements with the Caldwell County Register of Deeds, release up to seventy-five percent (75%) of the value of the performance bond or other security and issue and Certificate of Occupancy for the stormwater control structure.

- (2) If deficiencies are found, the Town shall direct that improvements and inspections be made and documents corrected and submitted to the Town.
- (C) No sooner than one year after the filing date of the deed, easements, and maintenance agreement, the developer may petition the Town to release the remaining value of the performance bond or other security. Upon receipt of said petition, the Town shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition and findings to the Town Council.
  - (1) If the Town Council approve the report and accepts the petition, the developer shall deposit with the Town of Cahah's Mountain a cash amount equal to that described in Section 98.15(B)(2), after which the Town Council shall release the performance bond or other security.
  - (2) If the Town Council does not accept the report and rejects the petition, the Town shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.
- (D) A Certificate of Occupancy shall not be issued for any building within the permitted development until the Town Council has approved the stormwater control structure, as provided in Section 98.1S(B).
- (E) All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental Management. Annual inspections shall begin within one year of filing date of the deed for the stormwater control structure.
- (F) In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Town shall inspect and approve the completed improvements.

#### 98.19 Remedies.

- (A) If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Town may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$50, institute actions or proceedings to restrain, correct, or abate the violations; to prevent occupancy of the building, structure,

or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143 - 215.6(a). Each day the violation continues shall constitute a separate offense.

- (B) If the Watershed Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. If ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

98.20 Sanctions. In addition to the remedies described in Section 98.18 of this Ordinance and consistent with G.S. 160A-175, the Cahah's Mountain Town Council may seek enforcement of this Ordinance by assessing a civil penalty to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the Ordinance. Such violation may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The court may issue an injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of Civil Procedure in general and Rule 65 in particular. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien on the property generating the violation. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith. Enforcement of this Ordinance may be by any one, all or a combination of the remedies authorized in this Ordinance. Each day's continuing violation shall be a separate and distinct offense.

98.21 Effective Date. This Section shall take effect and be in force on October 1, 1993.

Section 99. Fences.

Unless otherwise stated below, a zoning permit shall be required for all fences erected in the Town of Cahah's Mountain.

99.1 Fences in the R-20 and RA-20 districts

- a. Fences may be permitted within required setback areas provided that no fence may exceed a height of four feet (4') in any required front yard or six feet (6') in any required side or rear yard.
- b. Fences exceeding a height of 6 feet (6') must meet the required setbacks for accessory structures, and in no case shall such a fence exceed a height of ten feet (10').
- c. Fences within 35 feet of a public right of way shall not exceed a height of four feet (4');
- d. Electric and barbed wire fences shall be used only for agricultural purposes in the R- 20 and RA-20 districts, and no permit shall be required for such use;
- e. No fence within the triangular area formed by intersecting street or road right-of-way lines and a straight line connecting points on said street or road right-of-way lines each of which is a distance of thirty-five (35) feet from the point of intersection shall exceed a height of three (3) feet.
- f. Fences along Connelly Springs Road (SR 1001) shall be setback a minimum distance of ten feet from the right of way of said road, or forty feet from the center line of said road, whichever is greater. (Amended 2/2/99)

99.2 Fences in the O-1,G-B, and M-1 districts

- a. Electric fencing or barbed wire in O-1,B-1, & M-1 districts shall be located atop a fence with a minimum height of eight feet (8') so as not to cause injury from casual contact.
- b. Fences along Connelly Springs Road (SR 1001) shall be setback a minimum distance of ten feet from the right of way of said road, or forty feet from the center line of said road, whichever is greater. (Amended 2/2/99)
- c. No fence shall be permitted within the triangular area formed by intersecting street or road right-of-way lines and a straight line connecting points on said street or road right-of-way lines each of which is a distance of thirty-five (35) feet from the point of intersection.
- d. Fences shall be permitted within the required setback areas provided that no fence may exceed a height of twelve (12) feet.

**ARTICLE X  
EXCEPTIONS AND MODIFICATIONS**

Section 100. Lot of Record.

Where the owner of a lot of official record in any residential district at the time of the adoption of this Ordinance or his successor in title does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this Ordinance, such a lot may be used as a residential building site provided, however, that the requirements of the district are complied with or a variance is obtained from the Board of Adjustment.

Notwithstanding the foregoing, whenever two or more adjoining vacant lots of record are in single ownership at any time after the adoption of this Ordinance and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as a single lot or several lots which meet the minimum requirements of this Ordinance for district in which such lots are located.

100.0 Every lot to be built upon shall abut by at least forty-five (45) feet a public street or other public way, and no dwelling shall be placed or built upon a lot which does not abut upon a public street or other public way by the same distance.

Section 101. Front Yard for Dwellings.

The front yard requirements of this Ordinance for dwellings shall not apply to any lot where the average setback of existing buildings located wholly or in part within 100 feet on either side of the proposed dwelling and on the same side of the street in the same block and use district as such lot is less than the minimum required front yard depth. In such case, the setback on such lots may be less than the required setback but not less than the average of the existing setbacks on the aforementioned lots, or a distance of 10 feet from the street right-of-way, whichever is greater.

Section 102. Height Limitation.

The height limitations of this Ordinance shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy; monuments, water towers, observation towers, chimneys, smokestacks, conveyors, flagpoles, masts, serials and similar structures, except as otherwise noted in the vicinity of airports. (Amended 2/2/99)

Section 102.1 Telecommunication Towers

1. **Definitions.** As used in this Ordinance, the following terms shall have the meanings indicated:
  - a. Alternative tower structure shall mean clock towers, sculptures, bell steeples, light poles and similar alternative-design mounting structures that conceal the presence of antennas or towers and are architecturally compatible with the area.
  - b. Pre-existing towers and antennas shall mean any tower or antenna on which a permit has been properly issued prior to the effective date of this Ordinance.

- c. Telecommunications tower shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, personal communications service towers (PCS), microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. This definition does not include any structure erected solely for a residential, non-commercial individual use, such as television antennas, satellite dishes or amateur radio antennas.

2. **General Guidelines and Requirements.**

- a. Purpose and Goals. The purpose of this Ordinance is to establish general guidelines for the siting of towers and antennas. The goals of this Ordinance are to: (i) encourage the location of towers in non-residential areas and minimize the total number of towers throughout the community, (ii) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently; (iii) encourage strongly the joint use of new and existing tower sites, (iv) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal, and (v) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.

- b. Principal Use. Telecommunication towers shall be considered principal uses.  
  
Alternative tower structures may be considered principal or accessory uses. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including, but not limited to, setback requirements, lot size and coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots.

3. **Administrative Approved Uses.** The following uses may be approved by the Zoning Administrator after administrative review:

- a. Installing an antenna in any zoning district on an existing structure other than a tower (such as a building, sign, light pole, water tower, utility pole or other free-standing, non-residential structure) that is more than fifty (50) feet in height, so long as such addition does not add more than twenty (20) feet to the height of the existing structure;
- b. Installing an antenna in any commercial or industrial zoning district on an existing non-residential structure other than a tower (such as a building, sign, light pole, water tower, utility pole or other free-standing, non-residential structure) that is less than fifty (50) feet in height so long as such addition does not add more than twenty (20) feet to the height of the existing structure;.
- c. Co-locating on an existing tower of any height, including a pre-existing tower and further including the placement of additional storage buildings or other supporting

equipment used in connection with said antenna, so long as the addition of said antenna adds no more than twenty (20) feet to the height of said existing tower. Twenty (20) feet is the maximum that can be added to tower even if multiple uses locate on the existing tower;

- d. Locating any alternative tower structure in any zoning district if in the judgment of the Zoning Administrator, it is in conformity with the goals set forth in Section 2.a. of this Ordinance;
- e. Replacing an existing tower which adds no more than 20 feet to the overall height of the existing structure.

**4. Telecommunications Towers Special Use Criteria.**

Communication companies are encouraged to locate telecommunication antennae on or in structures other than a tower. Such structures may include church steeples, transmission line towers, utility/light poles, water towers, etc. Where such facilities are not available, co-location of facilities is encouraged.

When a new tower is proposed to be sited, a determination of whether the location will provide a minimal level of coverage vs. optimal coverage shall be taken into consideration. The following standards shall be used in the approval of the siting of new towers:

- 1. Evidence that the applicant has investigated the possibilities for locating the proposed facilities on an existing tower where a minimal level of coverage can be provided. Such evidence shall consist of:
  - (a) A summary explanation of why the applicant believes the proposed facility cannot be located on an existing tower.
  - (b) A summary explanation of why the applicant believes that the use of an alternative tower structure is not possible.
  - (c) Provision of sound engineering evidence demonstrating that location in the proposed district is necessary in the interest of public safety or is a practical necessity.
- 2. Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna may be allowed in the B-1 General Business District and the M-1 Light Manufacturing District provided that the following requirements are also met:
  - (a) Evidence must be provided which establishes that the communications tower is structurally designed to support at least one additional user and the application includes a statement that the owner of the tower is willing to permit other user(s) to attach communication facilities, on a commercially reasonable basis, which do not interfere with the primary purpose of the tower. The tower owner may require that such other users agree to negotiate regarding

reasonable compensation for any liability which may result from such attachment. The site plan shall show a location for at least one equipment building in addition to that proposed for use by the applicant. Priority for co-location on the proposed tower shall be given to antennas that will serve a public safety need for the community.

- (b) In order to provide spatial separation and create a visual block from adjacent properties and streets, a buffer shall be installed around the outside of all improvements on the site, including the tower and guy anchors, any ground buildings or equipment, and security fencing. The tower's guy anchors may be screened or fenced separately in order to comply with the requirements of this subsection. Buffering shall be required as follows:
  - (i) A ten (10) foot buffer shall be provided between the fenced area of the tower and the property boundaries.
  - (ii) The planting shall consist of evergreen trees and evergreen shrubs. Trees shall be planted along the full length of the buffer strip in a triangular pattern with maximum spacing of twenty-five (25) feet on centers. The minimum height at planting for trees shall be six (6) feet and they shall have an expected minimum maturity height of thirty-five (35) feet under normal growing conditions. There shall also be at least one row of dense shrubs, spaced not more than eight (8) feet on centers. Shrubs shall be a minimum of two (2) feet high at planting and shall be a minimum expected maturity height of eight (8) feet under normal growing conditions. It is the intent of this section to encourage the use of existing vegetation in whole or in part to substantially meet this requirement.
  - (iii) Buffer requirements may be waived upon a finding that the existing topography or existing screening materials on site screen the property as effectively as the buffering required in (ii); or that the installation of new screening materials would be impractical or would serve no useful purpose (such waiver may also include situations when the type of non-residential adjoining use would not warrant screening); provided; however, that the spirit and intent of this section are preserved. This paragraph shall not be construed to relieve the requirement of establishing screening for towers to be located adjacent to vacant properties or along any public street.
- (c) The base of the tower and each guy anchor shall be surrounded by a security fence or wall at least eight (8) feet in height unless the tower and all guy anchors are mounted entirely on a building over eight feet in height. The tower's guy anchors may be screened or fenced separately in order to comply with the requirements of this subsection.
- (d) No outside storage shall be allowed on any telecommunication facility site.
- (e) Associated buildings shall not be used as a place of employment for any

worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.

- (f) The telecommunications tower shall meet all applicable Federal Aviation Administration (FAA) standards and shall not restrict or interfere with air traffic or air travel from or to any existing or proposed airport. Any lighting shall not project onto surrounding residential property.
- (g) The minimum lot size requirement shall be in accordance with the zoning district where the tower is proposed to be located or the setback requirements of subsection (11), whichever is greater.
- (h) The color of the tower shall be neutral, except to the extent required by Federal law, so as to minimize its visual impact.
- (i) In order to protect the public from unnecessary exposure to electromagnetic radiation, the tower owner shall provide documentation, such as a signed affidavit, indicating that the power density levels do not exceed levels certified by the FCC.
- G) No commercial advertising shall be allowed on the facility's site.
- (k) The setbacks from the base of the structure to any property line, right-of-way or occupied building shall be at minimum forty (40) feet. In the instance that the tower's fall zone, as certified by a North Carolina registered professional engineer (PE), is greater than the required setbacks, the Town may require increased setbacks up to the height of the structure. A letter from a North Carolina certified professional engineer, which states the fall zone of the tower structure, must be included with the application.
- (l) The maximum height of all towers is one hundred (100) feet.
- (m) Notice shall be provided to the Zoning Administrator when the tower is placed out of service. Towers which are not used for a period of six (6) months or more shall be removed by the owner within 120 days of receipt of notification to that effect. (Section amended 2/2/99)

### Section 103. Visibility of Intersections.

On a corner lot in any residential district, no planting, structure, sign, fence, wall or obstruction to vision more than three feet in height measured from the center line of the street or road shall be placed or maintained within the triangular area formed by the intersecting street or road right-of-way lines and a straight line connecting points on said street or road right-of-way line each of which is 35 feet distance from the point of intersection.



## Section 104. Cluster Development.

The cluster development allows for buildings to be concentrated together in specific areas to minimize infrastructure and development costs while achieving the allowable density. It allows for the preservation of natural open space for recreation, common open space, and preservation of environmentally sensitive features.

104.1 Public water and sewer facilities shall be available to serve cluster subdivisions.

104.2 The tract of land devoted to a cluster subdivision shall be a minimum four (4) contiguous acres.

104.3 The total number of lots and dwelling units shall not exceed the number that would be permitted in conformance with the normal minimum lot size requirements for the R-20 District.

104.5 Fifty percent (50%) of the balance of the original lot size must be preserved as common open space, accessible by all reduced building sites. Up to fifty percent 50% of the common open space may be steep slopes, streams, ponds, watercourse and floodplain or may be reserved for public use.

104.6 Access arrangements to open spaces or common area shall be carefully designed and located to enable perpetual maintenance and accessibility.

104.7 Minimum lot size: 10,000 square feet with water and sewer.

104.8 Minimum mean lot width: 80 feet.

104.9 Minimum front yard: 30 feet.

104.10 Minimum side yard: 10 feet. Minimum rear yard: 20 feet.

104.11

- a. Open space or common area within a cluster development may be offered for dedication to the public at the time of application. The Town Council may accept such dedication upon a finding that the size, location, or maintenance of such open space or common area or the availability of public open space would make public use desirable or necessary.
- b. Open space not dedicated to public use shall be protected by legal arrangements sufficient to assure its maintenance and preservation for whatever purpose it is intended such as a homeowner's association. The provisions for a homeowner's association are meant to ensure that a viable association is established with authority to obtain sufficient resources to maintain the open space and any of its recreational facilities. The homeowner's association is required to incorporate in order to ensure its future existence.

104.12 The cluster development is subject to architectural review by the Board of Adjustment as a condition of the special use permit.

104.13 Cluster subdivisions shall comply with the applicable provisions of the Town's subdivision regulations. Where there is a conflict the cluster development requirements in the zoning ordinance takes precedence.

104.14 Street construction shall meet all requirements set forth in the Town's subdivision

regulations.

- 104.15 The cluster development will not have an undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, utility facilities and other areas related to public health, safety and general welfare.

#### Section 105. Planned Unit Development.

The planned unit development concept offers developers the possibility of more efficient and flexible methods for developing property, and provides residents of the project with larger open spaces for recreation and other activities properly related to residential uses. The Board of Adjustment may approve this form of development in the districts that allow it as a permitted or special use, provided:

- 105.1 Such project is an integrated plan designed for the primary purpose of residential use.
- 105.2 The site for the total project is at least 4 acres and at least 2 principal buildings are included in the plans.
- 105.3 That the total parcel of land is under single ownership or control, and there is reasonable assurance that the project can be successfully completed and maintained, including care and maintenance of all common open space, recreation space, and other common land area.
- 105.4 The preliminary plan for the proposed planned unit development shall first be submitted to the Cahah's Mountain Planning Board of its review and recommendation to the Board of Adjustment. Such recommendations may include, but shall not be limited to, provisions for additional utilities, drainage, landscaping, lighting, and streets and access ways.
- 105.5 The applicant must resubmit the plan to the Board of Adjustment if changes were recommended by the Planning Board. If the plan is rejected by the Board of Adjustment, the applicant will not receive consideration of the same plan for a period of 12 months. The applicant can, however, appeal to Superior Court.
- 105.6 The development shall be in full compliance with all dimensional, density, and built-upon limitations and requirements of the zoning district in which the development is located.
- 105.7 Off-street parking shall be provided at a ratio of two spaces per dwelling.
- 105.8 All streets and parking areas shall be constructed and paved according to the standards of the Town of Cahah's Mountain.
- 105.9 The procedure for approval of a planned unit development shall consist of the submission of a design plan to the Cahah's Mountain Planning Board showing how the requirements of Subsections 105.01 through 105.08 above will be met. Following study and recommendations by the Planning Board, the plan must be submitted to the Board of Adjustment for final approval. Failure of the Planning Board to act on the plan within 60 days shall constitute a favorable recommendation to the Board of Adjustment. An approved project must be started within 12 months after final approval and must be completed within a reasonable time.

105.10 Provisions for Planned Unit Developments in Business and Industrial districts

In the case of two (2) or more buildings to be constructed on a plot of ground greater than two (2) acres not subdivided into the customary streets and lots and which will not be subdivided, the application of the terms of this Ordinance may be varied by the Board of Adjustment in a manner that will be in harmony with the character of the neighborhood, provided:

- a. Such uses are limited to those permitted within the zoning district in which the project is located. In no case shall the Board of Adjustment authorize a use prohibited in the district in which the project is to be located.
- b. The overall intensity of land use is no higher and the standard of open space is no lower than that permitted in the district in which the project is located.
- c. The distance of every building from the nearest property line shall meet the front, rear and side yard requirements of the district in which the project is located.
- d. The site plan shall conform to all applicable requirements of the Town's subdivision regulations for street design, drainage, and plat design.
- e. The building heights shall not exceed the height limits permitted in the district in which the project is located.
- f. If the property lies within or abuts upon a residential district, there shall be a buffer along the rear and/or side lines abutting the residential lots in conformance with Article VI, Section 61.7 of this Ordinance
- g. All parking, loading and sign requirements are subject to the applicable provisions of the respective zoning districts and other sections of this Ordinance.
- h. All streets and parking areas shall be constructed and paved according to the standards of the Town of Cahah's Mountain. (Amended 10/5/99)

Section 106. Group Housing Developments.

Group Housing Developments are permitted subject to the following requirements:

- 106.1 Minimum plot or overall project area: 1 acre.
- 106.2 Minimum lot area per dwelling: 3,000 square feet.
- 106.3 Minimum front yard depth for each building: 35 feet.
- 106.4 Minimum rear yard depth for each building: 30 feet.
- 106.5 Minimum side yard depth for each building when adjacent to street: 30 feet.  
When adjacent to a private street or a side lot line: 15 feet.  
When adjacent to another building in the project area: 20 feet.

- 106.6 Minimum between buildings: 40 feet.
- 106.7 Maximum area of project covered by all buildings: 30%.
- 106.8 Height of buildings shall not exceed thirty-five (35) feet unless the depth of the front and total width of the side yards required herein shall be increased by one (1) foot for each two (2) feet or fraction thereof building height in excess of thirty-five (35) feet
- 106.9 Off-street parking shall be provided at a ratio of two spaces per dwelling.
- 106.10 A preliminary design layout must be submitted to the Planning Board with eight (8) copies for review before the submission of the final design.
- 106.11 A final corrected design shall be approved by the Planning Board before a building permit may be issued. Special conditions may be recommended for the project plan by the Planning Board and planted buffer strips or suitable substitutes may be required when needed to maintain the integrity of the neighborhood. These shall be completed before occupancy will be allowed.
- 106.12 Design standards for dedicated and private streets shall conform to the general requirements and minimum standards of design of the Town of Cahah's Mountain.

Section 107. Provisions for Satellite Dish Antennas.

Satellite Dish Antennas shall be considered an accessory structure and shall require a zoning permit. They may be located in any district subject to the following conditions:

- 107.1 No designs or advertising shall be painted on the Satellite Dish Antenna except the manufacturer's name, logo, or trademark provided it is a reasonable size that has been applied by the manufacturer.
- 107.2 Satellite Dish Antennas shall not locate or encroach upon existing rights-of-way or required setbacks.
- 107.3 On corner lots, Satellite Dish Antennas shall not be located within the "Sight Distance."
- 107.4 For residential use, Satellite Dish Antennas shall be permitted in the side and rear yards of the lot provided the location of the Satellite Dish Antenna is in compliance with Sections 107.2 and 107.3 of this Ordinance.
- 107.5 For residential use, Satellite Dish Antennas may be located in the front yard or on the roof of the main structure if the following conditions are met:
  - a) The property owner petitions the Board of Adjustment for a variance;

- b) The petitioner must prove that he cannot get clear reception by locating the Satellite Dish Antenna in the rear or side yards of his lot:
- c) That the location of the Satellite Dish Antenna will be in compliance with Sections 107.2 and 107.3 of this Ordinance.

Section 108. Provisions for Flag Lots.

Flag lots may be created in the R-20 and R-20A zoning district in accordance with this Ordinance and the Town's Subdivision Regulations provided that:

- 1. An access corridor with a minimum continuous width of 45 feet is established as an integral part of the flag lot, and not separate from it. However, the square footage of the access corridor shall not be included when calculating the minimum required square footage of the flag lot.
- 2. An access corridor with a minimum continuous width of less than 45 feet may be permitted only in situations where an access corridor with a minimum continuous width of 45 feet would create non-conformities with respect to this Ordinance. In such cases, the access corridor shall be the maximum width possible without creating a non-conformity. However, no such access corridor shall have a minimum continuous width of less than 25 feet.

A one-time exemption will be allowed for a single flag lot with an access corridor with a minimum continuous width of only 25 feet for one lot, regardless of the size of the original tract; further subdivision will still require a publicly dedicated street constructed to State standards and must meet all requirements of the Town's Subdivision Regulations.

- 3. In cases where the original tract to be subdivided meets the State exemption for subdivisions as specified in NCGS 160D-804, Part 4, an access corridor with a minimum continuous width of 25 feet may be permitted.

Section 109. Provisions for Landlocked Lots.

Landlocked parcels within the R-20 and R-20A zoning districts may be developed for a single dwelling unit provided that:

- 1. A private easement with a minimum continuous width of 45 feet is acquired from intervening property owners.
- 2. An easement with a minimum continuous width of less than 45 feet may be permitted only in situations where an easement with a minimum continuous width of 45 feet would create non-conformities with respect to this Ordinance. In such cases, the easement shall be the maximum width possible without creating a non-conformity. However, no such easement shall have a minimum continuous width of less than 25 feet.
- 3. The recorded documents creating the easement shall specify that public service,

utility, and emergency personnel and vehicles shall have freedom of ingress and egress from the landlocked property.

4. Such documents shall also specify that public utilities (water, sewer, electricity, telephone, cable, etc.) may be installed within the easement.
5. Such documents shall include a maintenance agreement specifying the party responsible for maintaining the easement and its traveled surface.
6. The easement must have an all-weather surface of gravel, concrete, or asphalt with a minimum continuous width of ten feet to ensure access of public service, utility, and emergency personnel and vehicles.
7. Subdivision of landlocked parcels will require a publicly dedicated street constructed to State standards and must meet all requirements of the Town's Subdivision Regulations.

## **ARTICLE XI**

### **OFF-STREET PARKING AND LOADING**

#### Section 110. Off-Street Parking Requirements.

There shall be provided at the time of the erection of any building, or at the time any principal building is enlarged or increased in capacity by adding dwelling units, guest rooms, seats, or floor area; or before conversion from one type of use or occupancy to another, permanent off-street parking space in the amount specified by this section. Such parking space may be provided in a parking garage or properly graded open space.

##### 110.1 Certification of Minimum Parking Requirements.

Each application for a zoning permit submitted to the zoning enforcement officer as provided for in this Ordinance shall include information as to the means of entrance and exit to such space. This information shall be in sufficient detail to enable the zoning enforcement officer to determine whether or not the requirements of this section are met.

##### 110.2 Minimum Off-Street Parking Requirements.

The following off-street parking spaces shall be required.

RESIDENTIAL AND RELATED USES	REQUIRED OFF-STREET PARKING
Any residential use consisting of one or more dwelling units.	Two parking spaces for each dwelling unit.
Manufactured and Modular Homes	Two spaces for each modular or manufactured home
Rooming and boarding houses	One space for each two guest homes, plus two additional spaces for the owner or manager
Customary home occupations as defined in Section 60.30.	In addition to residential requirements, one parking space per 100 square feet devoted to the home occupation.

INSTITUTIONAL, PUBLIC AND SEMIPUBLIC REQUIRED OFF-STREET PARKING USES	
Churches and funeral homes	One space for every four seats in the main chapel
Elementary schools, private and daycare	One space for each employee, plus one additional space for visitors
Hospitals	One space for each four patient beds plus one space for every four staff and one space for each hospital vehicle
Libraries	One space for every four seats provided for patron use
Medical offices and clinics	Four spaces for each doctor practicing at the clinic, plus one space for each employee
Places of public assembly, including private clubs and lodges, auditoriums, dance halls, pool halls, theaters, stadiums, gymnasiums, amusement parks, community centers and all similar places of public assembly	One space for each four fixed seats provided for patron use, plus one space for each 100 square feet of floor or ground area used for amusement or assembly not including fixed seats
Sanitariums, rest and convalescent homes, homes for the aged, and similar institutions	One space for each six patient beds, plus one space for each staff or visiting doctor plus one space for each four employees
Apartment complexes for the apartment unit	One space for each elderly

BUSINESS USES	REQUIRED OFF-STREET PARKING
Hotels	One space for each two rooms plus one additional space for each five employees
Motels, tourist homes, inns, and tourist courts	One space for each accommodation plus four additional spaces for employees
Offices, business, professional, public, including banks	One space for each 200 square feet of gross floor area
Restaurants	One space for each three seating accommodations, plus one space for
Restaurants, Drive-in	Parking space equal to five times the floor space in the main building
Retail business and consumer service outlets	One space for each 200 square feet of gross floor area
Service stations and car washes	Two spaces for each gas pump plus three spaces for each grease rack or similar
Shopping centers	One space for each 200 square feet of Floor area
WHOLESALE AND INDUSTRIAL USES	REQUIRED OFF-STREET PARKING
Wholesale and industrial operations	One space for each two employees at maximum employment on a single shift

### 110.3 Off-Street Loading and Unloading Space.

Every building or structure used for business, trade or industry hereafter erected shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley, or if there is no alley available, then to a street. For the purposes of this section, an off-street loading space shall have a minimum dimension of 12 feet by 40 feet and overhead clearance of 14 feet in height above the alley or street grade.

*Retail Operations:*

One loading space for each 5,000 square feet of gross floor area or fraction thereof.

*Wholesale and industrial operations:*

One loading space for each 10,000 square feet of gross floor area or fraction thereof.



## ARTICLE XII

### ADMINISTRATION AND ENFORCEMENT

#### Section 120. Zoning Enforcement Officer.

It shall be the duty of the Zoning Enforcement Officer to enforce and administer the provisions of this Ordinance and to issue a zoning compliance permit when these regulations have been followed, or to refuse to issue the same in the event of noncompliance. Written notice of such determination refusal and reason therefore shall be given to the applicant and property owner (G.S. 160D-403(b)), the administrative officer may provide their determination in print or electronic form; if electronic form is used then it must be protected from further editing (G.S. 160D-403(a)).

The administrative officer or other staff member shall not make a final decision on an administrative decision required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship (G.S. 160D-109).

If the Zoning Enforcement Officer finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

The administrative officer may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the city local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials, provided the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured (G.S. 160D-403(e)).

If a ruling of the Zoning Enforcement Officer is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

#### Section 121. Zoning Permit Required.

No building, sign or other structure shall be erected, moved, extended or enlarged, or structurally altered, nor shall any excavation or filling of any lot for the construction of any building be commenced until the Zoning Enforcement Officer has issued a zoning permit for such work. Every person obtaining a zoning permit hereunder shall pay a fee as provided in a schedule of zoning permit fees to be adopted by the governing body.

Section 122. Application for Zoning Permit.

Each application to the Zoning Enforcement Officer for a zoning permit shall be accompanied by plot plans in duplicate showing:

- (a) The actual dimensions of the lot to be built upon,
- (b) The size of the building to be erected,
- (c) The location of the building on the lot,
- (d) The location of existing structures on the lot, if any,
- (e) The number of dwelling units the building is designed to accommodate,
- (f) The approximate setback lines of buildings on adjoining lots,
- (g) The intended use of the property,
- (h) Such other information as may be essential for determining whether the provisions of this Ordinance are being observed.

Vesting. Zoning permits expire one year after issuance unless work has substantially commenced. Expiration of a local development approval does not affect the duration of a vested right established as a site specific vesting plan, a multiphase development plan, a development agreement, or vested rights established under common law. A site specific plan or planned unit development shall remain vested for a period exceeding two years, but not exceeding five years. A multi-phase development shall remain vested for a period of seven years from the time a site plan is approved. For the purposes of this chapter, a multi-phase development must contain 100 acres or more and is submitted for site plan approval for construction to occur in more than one phase and is a master plan that includes a requirement to offer land for public use (G.S. 160D-108(d)).

Revocation of development approvals. Development approvals may be revoked by the local government issuing the development approval by notifying the permit holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the permit approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed to the board of adjustment pursuant to G.S. 160D-4-5. If an appeal is filed regarding a development regulation adopted by a local government pursuant to this Chapter, the provisions of G.S. 160D-4-5(e) regarding stays shall be applicable (G.S. 160D-403(f)).

### Section 123. Zoning Certificate of Occupancy for New and Altered Structures.

It shall be unlawful to use or permit the use, except for agriculture purposes, of any land, building or structure of part thereof, hereafter created erected, changed, converted, altered or enlarged, wholly or partly, in its use or structure, until a Zoning Certificate of Occupancy shall have been issued by the Zoning Enforcement Officer stating that the building or structure and the proposed use complies with the provisions of this Ordinance. A Zoning Certificate of Occupancy shall be applied for coincident with the application for a zoning permit and shall be issued within five (5) days after the erection or alteration of such building or structure or part thereof has been completed in conformity with the provisions of this Ordinance and the North Carolina Building Code.

A temporary Zoning Certificate of Occupancy may be issued by the Zoning Enforcement Officer for a period not to exceed six (6) months during alterations or partial occupancy of a building pending completion, provided that such temporary permit may require such conditions and safeguards as will protect the safety of the occupants and the general public.

The Zoning Enforcement Officer shall maintain a record of all Zoning Certificates of Occupancy and a copy shall be furnished upon request to any person. Failure to obtain a Zoning Certificate of Occupancy shall be a violation of this Ordinance, and punishable under Section 123.3 of this Ordinance.

123.1 Complaints Regarding Violations. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Town Clerk. The Zoning Enforcement Officer shall record properly such complaint, immediately investigate, and take action thereon as provided by this Ordinance.

123.2 Remedies. In any case in which a building or structure is proposed to be or is erected, constructed, reconstructed, altered, maintained or used; or any land is proposed to be or is used in violation of this Ordinance; the Town Chairman, Town Council, Town Attorney, or any other person aggrieved may, in addition to other remedies provided by law, institute injunction mandamus, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

123.3 Penalties for Violation. Any person, firm, or corporation who violated the provisions of this Ordinance, shall upon conviction, be guilty of a misdemeanor and shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty (30) days. Each day that a violation of this Ordinance be not corrected within thirty (30) days after the notice of said violation has been given.

123.4 Notices of violation. When staff determines work or activity has been undertaken in violation of these development regulations a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided and

the certificate shall be deemed conclusive in the absence of fraud (160D-404(a)).

**ARTICLE XIII**  
**BOARD OF ADJUSTMENT**

Section 130. Establishment of Board of Adjustment.

A Board of Adjustment is hereby created as provided in Section 160A-388 of the General Statutes of North Carolina. Said Board shall consist of five (5) members to be appointed by the Town Council for the overlapping terms of three (3) years. Initial appointment shall be as follows: One (1) member for a term of three (3) years, two (2) members for a term of (2) years, and two (2) members for a term of (1) year. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. If the Town Council acts as the Board of Adjustment, the terms for Board of Adjustment will coincide with the terms for Town Council. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment. The Board of Adjustment shall be separate from the Planning Board, and not more than one (1) person shall serve simultaneously on both Boards.

In accordance with NCGS 160D-1-9(d), the Town Council of the Town of Cahah's Mountain may, in its discretion, appoint not more than two alternate members to serve on the Board of Adjustment in the absence, for any cause, of any regular member. Such alternate member or members shall be appointed in the same manner as regular members and at the regular times for appointment. Such alternate member, while attending any regular or special meeting of the Board and serving in the absence or disqualification of any regular member, shall have and exercise all the powers and duties of such regular member so absent or disqualified (NCGS 160D-1-9(d)).

Section 131. Decisions of the Board of Adjustment.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision or determination of the Zoning Enforcement Officer pertaining to Cahah's Mountain or to decide in favor of the applicant any matter upon which it is required to pass under the Zoning Ordinance or to effect any variation of such Ordinance in the Town.

On all appeals, applications and other matters brought before the Board of Adjustment, said Board shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and shall decide the same within a reasonable time. The Board shall inform all parties involved of its decision in writing, stating the reasons there for.

Section 132. Proceedings of the Board of Adjustment.

The Board of Adjustment shall elect a chairman and vice-chairman from its members, each of whom shall serve for one year or until re-elected or until their successors are elected and qualify. The Board shall adopt rules and bylaws in accordance with the provisions of this Ordinance and of Article 19, Chapter 160D of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public. The secretary shall not have a vote unless he is also a regular or alternate member of the Board. In accordance with NCGS 160D-1-9(d), a member of the Board shall not participate or vote in any matter that would violate affected persons' constitutional rights to an impartial decision maker. If an objection is raised to a member's participation and that

member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. Vacant positions on the Board and members who are disqualified from voting shall not be considered in the calculation of the requisite supermajority if there are not qualified alternates available to take the place of such members.

Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision (G.S. 160D-406).

Members of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.12 (G.S. 160D-109(d), (e), (f)).

#### Section 133. Appeals. Hearings and Notice.

An appeal from the decision of the zoning enforcement officer may be taken by any person aggrieved or affected by such decision to the Board of Adjustment. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice pursuant to G.S. 160D-4-3(b) given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service (G.S. 160D-405(d)).

#### Section 134. Stay of Proceedings.

An appeal stays all legal proceedings in furtherance of the action appealed from unless the zoning enforcement officer certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record an application, on notice to the zoning enforcement officer and on due cause shown.

#### Section 135. Powers and Duties of the Board of Adjustment.

135.1 **Administrative Review.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning enforcement officer in the enforcement of this Ordinance.

135.2 **Special Uses: Conditions Governing Application.** to grant in particular cases and subject to appropriate conditions and safeguards, permits for special uses as authorized by this Ordinance and set forth as special uses under the various use districts, the Board shall not grant a special use permit unless and until:

- 135.21 A written application for a special use permit is submitted indicating the section of this Ordinance under which the special use permit is sought. Each application shall be accompanied by a fee set forth in the Town's Fee Schedule to help defray the costs of advertising the public hearing required by Article 19, Chapter 160D-601 of the North Carolina General Statutes. (Amended 2/2/99) (Amended 9/2/2003)
- 135.22 A public hearing is held. Notice of such public hearing shall be posted on the property for which the special use permit is sought and in a local newspaper a reasonable amount of time prior to the public hearing. This legal notice shall describe the request and appear at least once weekly for two consecutive weeks.
- 135.23 The Board of Adjustment finds that in the particular case in question the use for which the special use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will conform to the requirements and spirit of this Ordinance.
- 135.24 Compliance with other Codes. Granting a special use permit does not exempt the applicant from complying with all of the requirements of building codes or other ordinances.
- 135.25 Revocation. If at any time after a special use permit has been issued, the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated and the operation of such use discontinued. If a special use permit is terminated for any reason it may be reinstated only after a public hearing is held.
- 135.26 Expiration. In any case where a special use permit has not been exercised within the time limit set by the Board of Adjustment, or within two year".§ if no specific time limit has been set, then without further action, the permit shall be null and void. "Exercised" as set forth in this subsection shall mean that binding contracts for the construction of the main building shall have been let; or in the absence of contracts, that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, etc.). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.
- 135.27 Careful record. A careful record of such application and plat, together with a record of the action taken thereon, shall be kept in the office of the zoning enforcement officer.
- 135.28 Minor modifications to a special use permit may be administratively approved by the zoning administrator if issues arise after the special use permit has been approved by the Board of Adjustment that keep the applicant from carrying out the strict interpretation of the ruling.

The Zoning Administrator is authorized to review and approve administratively a minor modification to an approved special use permit. Minor modifications include: reconfiguring parking design, changing landscaping or buffering arrangements, or slightly altering road and lot

configurations for a development that has already gone through the full approval process. Minor modifications are subject to the following limitations.

General Limitations. The minor modification:

Does not involve a change in uses permitted or the density of overall development permitted;

Does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval; and

Meets all other ordinance requirements.

An adjustment to landscape standards up to 10% percent of required landscaping.

135.3 Variances. Any application for a variance shall be filed with the Town Manager at least twenty (20) days prior to the date on which it is to be introduced to the Board of Adjustment the Town Manager or the designated staff member shall be responsible for presenting the application to the Board of Adjustment. Each variance application shall be accompanied by a fee set forth in the Town's Fee Schedule to help defray the costs of advertising the public hearing required by Article 19, Chapter 160D-601 of the North Carolina General Statutes.

A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

135.31 A written application for a variance is submitted demonstrating:

- (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same district.
- (b) That a literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
- (c) That said circumstances do not result from the action of the applicant.
- (d) That granting the variance requested will not confer upon the applicant any special privileges that are denied by this Ordinance to other lands, structures, or buildings in the same district.
- (e) That no nonconforming use of neighboring land, structures or buildings in the same district and no permitted use of lands, structures or buildings in other districts will be considered grounds for the issuance of a variance.

135.32 Notice of a public hearing shall be given as set forth in Subsection 135.22. At the public hearing, any party may appear in person or by agent or attorney.

135.33 The Board of Adjustment shall make findings that the requirements of Subsection 135.31 shall have been met for a variance.

135.34 The Board of Adjustment shall make a finding that the reasons set forth in the



application justify the granting of the variance in the minimum one that will make possible the reasonable use of the land, building or structure.

135.35 The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

135.36 In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 154 of this Ordinance.

135.37 Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

#### Section 136. Decision of the Board of Adjustment.

In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify any order, requirements, decision or determination and to that end shall have the powers of the administrative official from whom the appeal is taken.

#### Section 137. Duties of the Zoning Enforcement Officer, Board of Adjustment, Courts and Town Council on Matters of Appeal.

It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented to the zoning enforcement officer and that such question shall be presented to the Board of Adjustment only on appeal from the zoning enforcement officer and that from the decision of the Board of Adjustment recourse shall be had to courts as prescribed by law. It is further the intention of this Ordinance that the duties of the Cahah's Mountain Town Council in connection with the Ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof. The duties of the Town Council in connection with this Ordinance shall be only the duty of considering and passing upon any proposed amendments or repeal of this Ordinance.

**ARTICLE XIV  
AMENDMENTS AND CHANGES**

Section 140. Procedure for Amendments.

A petition for an amendment to this Ordinance and to the Official Zoning Map may be initiated by the Town of Cahah's Mountain, the Planning Board, any department or agency of the Town of Cahah's Mountain, the owner of any property within the Town, or any interested citizen who can show just cause for an amendment. Applications submitted by individual property owners or interested citizens who are not acting in an official capacity for the Town of Cahah's Mountain shall comply with the following procedural requirements. Under no circumstances shall the Town Council adopt such amendments that would cause this Ordinance to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission. Amendments affecting the watershed protection portions of this Ordinance shall be filed with the North Carolina Division of Environmental Management, the North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

140.I Application Submission. Any person for an amendment to the Zoning Ordinance shall be filed with the Town Planner or Town Manager at least twenty (20) days prior to the date on which it is to be introduced to the Planning Board. Each petition for an amendment shall be accompanied by a fee set forth in the Town's fee schedule.

Each application involving a change to the Official Zoning Map shall be signed, be in duplicate, and shall contain at least the following information;

- a. The applicant's name in full, applicant's address, address or description of the property to be rezoned, including the tax map number;
- b. The applicant's interest in the property and the type of rezoning requested.
- c. If the proposed change would require a change in the Zoning Map, and accurate diagram of the property proposed for rezoning, showing:
  1. All property lines with dimensions, including north arrow;
  2. Adjoining streets with rights-of-way and paving widths;
  3. The location of all structures, existing and proposed, and the use of the land;
  4. Zoning classification of all abutting property owners;
  5. Names and addresses of all adjoining property owners.
- d. A statement regarding the changing conditions, if any, in the area of in the Town generally that make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare.

140.2 Planning Board Consideration. All proposed amendments to the Zoning Ordinance shall be

submitted to the Cahah's Mountain Planning Board for review and recommendation. At the discretion of the Planning Board, a public hearing may be conducted to consider the proposed amendment. The Planning Board shall have thirty (30) days from the time the proposed amendment was first considered by the Planning Board to submit its written report. If no written report is received from the Planning Board within thirty (30) days of referral to that board, the Town Council may proceed without the Planning Board report. The Town Council are not bound by the recommendations, if any, of the Planning Board. Members of the Planning Board shall not vote on recommendations regarding any zoning map or text amendment where the outcome has a direct, substantial and readily identifiable financial impact on the member.

Plan consistency. When adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Town Council, that at the time of action on the amendment, the Town Council was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-6-2(b), the Town Council statement describing plan consistency may address the overall rezoning and describe how the analysis and polices in the relevant adopted plans were considered in the action taken.

#### 140.21 Required Notifications

- a. **Legal Notice of Public Hearing:** No amendment shall be adopted by the Town until after a public notice and hearing. In accordance with NCGS 160D-601, notice of the public hearing shall be given once a week for two consecutive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) days nor more than twenty-five days before the date fixed for this hearing.
- b. **Mail Notice Requirements** Whenever an amendment involves a change in the zoning classification of a parcel of land, the owner of affected parcels of land, and the owners of all parcels of land abutting that parcel of land, shall be mailed a notice of the hearing on a proposed zoning map amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. Additionally, the town shall prominently post a notice of the public hearing on the site proposed for rezoning the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within twenty-five days prior to the hearing until 10 days prior to the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the town shall post sufficient notices to provide reasonable notice to interested persons (G.S. 160D-602).
- c.
- d. **Substitute Notice** In accordance with NCGS 160D-602(b) individual mailed notices may be waved in lieu of a substitute notice if the amendment meet at least one of the following criteria:

- i) if the zoning reclassification involved more than fifty (50) properties, owned by a total of at least fifty (50) different owners;
- ii) if the proposal involves an amendment to the text of the Zoning Ordinance such that it changes the permitted, special or accessory uses in of a zoning district;
- iii) if the Town is adopting a water supply watershed protection program as required by NCGS 143-214.5

Notice requirements for amendments meeting any of the aforementioned criteria are as follow:

- i. Notice of the public hearing shall be published in a newspaper of general circulation at least twice during the two consecutive weeks prior to the hearing. The notice must include a map no less than one-half the size of the newspaper page. The map must show the boundaries of the area affected by the proposed amendment;
- ii. The Town must notify by first class mail any property owner who resides outside of the Town's Zoning jurisdiction or outside the circulation of the newspaper in which the notice is published. The notice must be mailed to the last address listed for such owners on the most recent county tax listing.

e. When a zoning map amendment is proposed, the Town shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public right-of-way. If there are multiple parcels being considered, the Town shall post sufficient notices to provide reasonable notice to interested persons.

Any petition for an amendment to this Ordinance may be withdrawn at any time by written notice to the Town Manager.

140.3 A Town Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the member (NCGS (G.S. 160D-109(d), (e), (f))). Prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with an adopted land development plan or any other official plan that is applicable. This statement shall also explain why the Board considers the action taken to be reasonable and in the public interest (NCGS 160A-383).

140.4 Small-scale rezoning. A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special of conditional use district, or a conditional district, or other small-scale rezoning.

#### Section 141. Protest Petition.

141. I General. A protest petition may be presented against any proposed map amendment signed by either (i) the owners of twenty percent (20%) or more of the area of the property included in the proposed changed, or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned, A street right- of-way shall not be considered in computing the 100-foot buffer as long as that street right- of-way is 100 feet wide or less, When less than an entire parcel of land is subject to the proposed map amendment, the 100-foot buffer shall be measured form the property line of that parcel, In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine the owners of potential qualifying area. In the case of a valid protest petition, the amendment

shall not become effective except by favorable vote of three-fourths of all members of the Cahah's Mountain Town Council. For the purposes of this subsection, vacant positions on the Town Council and members who are excused from voting shall not be counted in the calculation of three-fourths of the membership. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed map amendment. Only those protest petitions that meet the aforementioned qualifying standards at the time of the vote shall trigger the supermajority voting requirement,

- 141.2 Petition Requirements. No protest against any change in or amendment to the Zoning Ordinance or Zoning Map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, unless it shall have been received by the Town Manager or Town Planner in sufficient time to allow the Town at least two normal working days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition (G.S. 160D-604).

**ARTICLE XV  
LEGAL PROVISIONS**

Section 150. Interpretation, Purpose and Conflict.

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other Ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this Ordinance shall govern, provided that nothing in the Ordinance shall be construed to amend or repeal any other existing Ordinance of the Town.

Section 151. Town Attorney May Prevent Violation.

If any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any structure or land is used in violation of this Ordinance, the Zoning Enforcement Officer shall inform the Town Attorney. In addition to other remedies, the Town Attorney may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance of use, or restrain, correct or abate such violation, to prevent the occupancy of such structure or land or to prevent any illegal act, conduct, business or use in about the premises.

Section 152. Validity.

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

Section 153. Penalties.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this Ordinance, shall upon conviction be subject to a fine of fifty dollars (\$50.00) or imprisonment for thirty (30) days. Each day that a violation continues to exist shall constitute a separate offense.

Section 154. Adoption Date.

Adopted this 7th day of June 2021.

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Mayor, Ronnie Setzer  
Cajah's Mountain, NC

ATTEST:

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Town Clerk