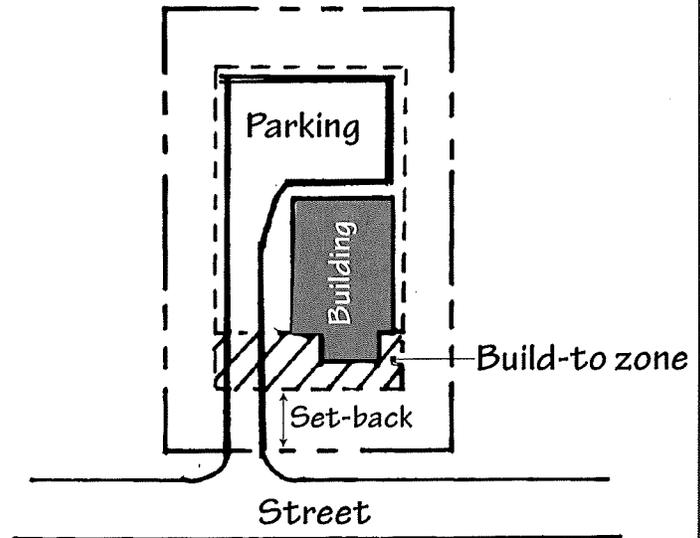


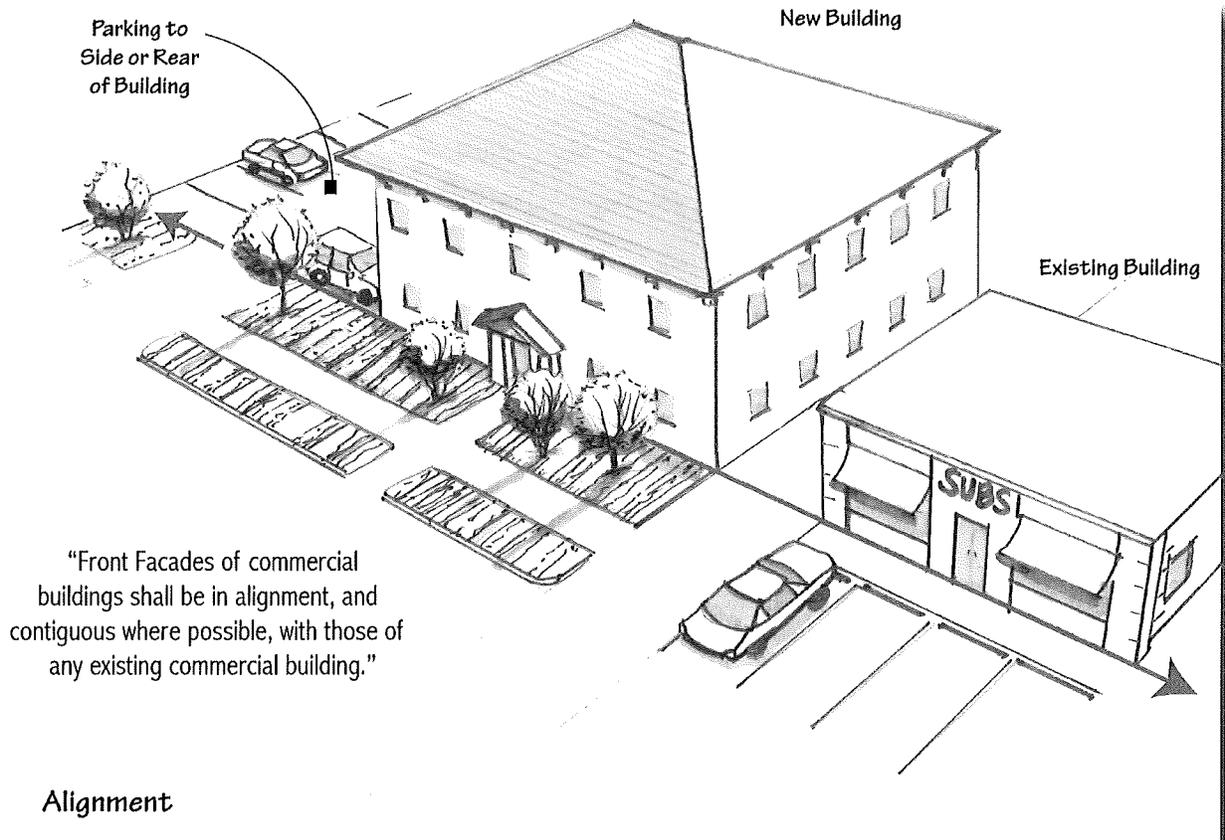
Section 900. Design Standards Design guidelines and the procedures for review and approval are consistent with adopted Town Plans. These plans including the original 1969 Land Development Plan and the joint Yancey County and Town of Burnsville Land Use Plan, as well as the Town’s Small Town Main Street and North Carolina Small Town Economic Prosperity program recommendations, have identified community appearance and quality design standards as being necessary and beneficial to the town’s local economy and the overall quality of life within the community.

Section 901. Building Lines and Arrangement Buildings shall observe the setback or “build-to” line requirements as specified. In the C-1 Central Business District, the front façade of buildings, exclusive of any appurtenances, shall be within a build-to zone that extends a maximum of ten feet from the front setback line. In the C-3 – E/W Corridor, the build-to zone extends a maximum of fifteen feet from the front setback line, or forty feet from the property line. Front facades of commercial buildings shall be in alignment, and contiguous where possible, with those of any existing commercial buildings adjacent to the development (see Building Frontage). If such an alignment would cause a nonconforming situation to occur, or is otherwise not practicable, this requirement may be waived, unless the development is situated on a corner lot. In the C-2 – 19E commercial district, there is no build-to zone requirement.

Build-to & Set Back Zones

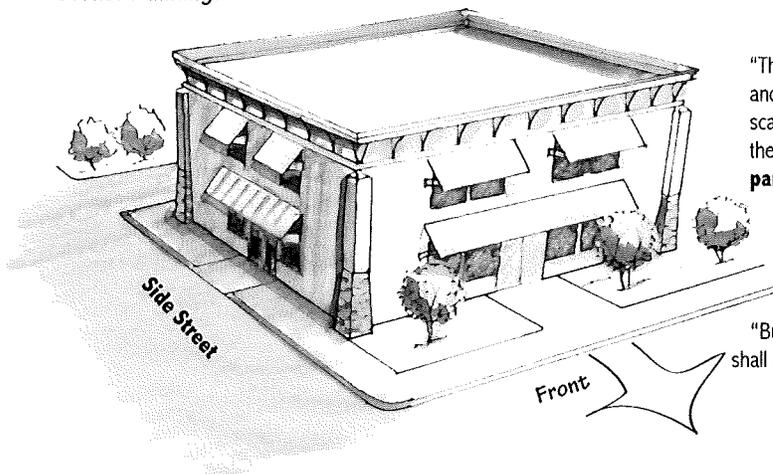
Zoning District	Front	Side	Rear	Build-to Zone
C-1 - CBD	0'	0'	0'	10'
C-2 – 19E	20'	10'	10'	N/A
C-3 - E/W Corridor	15'	10'	10'	40'





Section 902. Building Orientation The primary orientation of new structures shall be toward the adjacent street. Buildings on sites that adjoin two or more streets shall address all adjacent streets using doors, windows, or other architectural elements. On any such site, all new developments shall have similar building orientations as existing development. In no case in the C-2 or C-3 zoning districts shall the rear of new development be oriented toward any street. New construction that is oriented toward the interior of a site, or to the rear of existing development is prohibited. Service areas of any proposed development shall not be oriented toward the primary elevation, or entrance of adjacent developments.

Corner Buildings



"The appearance of a flat roof is prohibited and monolithic expanses of roof on large scale buildings shall be avoided through the use of elements such as gables and **parapets.**"

"Buildings, if fronting two or more streets, shall address all adjacent streets using doors, windows or other elements."

Article IX – Design Standards and Dimensional Requirements

Section 903. Building Frontage For all new development in the Central Business District, the minimum percentage of street frontage that must be occupied by one or more principal buildings shall be seventy-five percent.

Zoning District	Building Frontage Required
C-1 - CBD	75 %
C-2 – 19E	N/A
C-3 – E/W Main	N/A

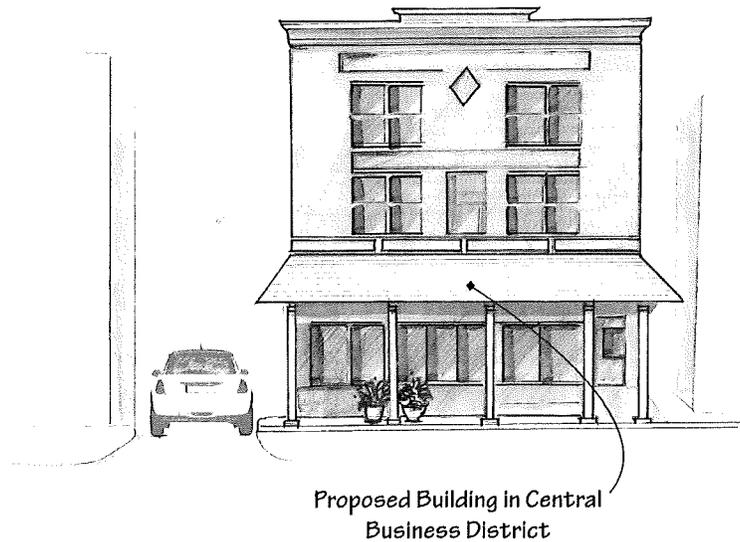
Frontage

“For all new developments in the Central Business District, the minimum percentage of street frontage that must be occupied by one or more principal buildings shall be 75%.”

OVERALL FRONTAGE

25%
Maximum
for alley

75%
Minimum for
Building Frontage

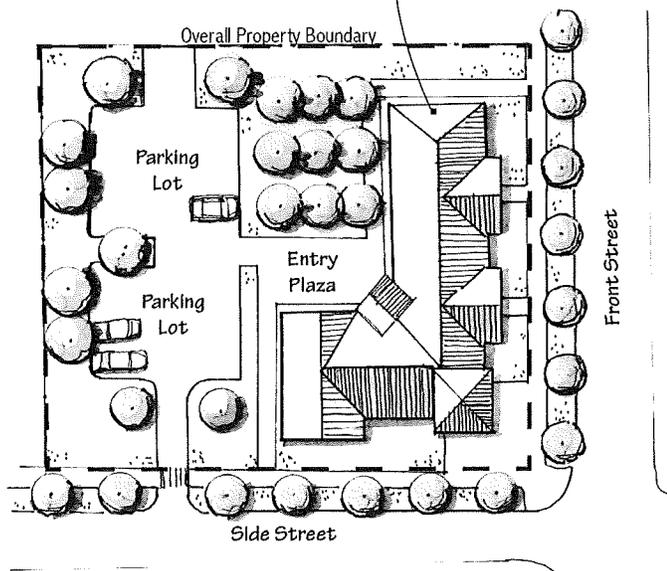


Section 904. Building Coverage The building coverage on any development site shall not exceed 50 percent in the C-2 (19E) zoning district and 75 percent in the C-3 E/W Main Street district. "Building coverage" means the total ground area of a site occupied by any building or structure as measured from the outside of its surrounding external walls or supporting members. Building coverage includes exterior structures such as stairs, arcades, bridges, and permanent structural elements protruding from buildings such as overhanging balconies, stories which overhang a ground level story, garages and covered carports. Excluded from building coverage are roof eaves extending less than thirty inches from the face of any building, awnings, open parking areas, and masonry walls not greater than six feet in height such as planter walls or retaining walls.

Coverage

"Building Coverage" is the total ground area of a site occupied by a building or structure.

Proposed Building
(Footprint occupying less than 50% of total area of property)



"The building coverage on any development site shall not exceed 50% in the C-2 (19E) zoning district and 75% in the C-3 E/W Main Street district"

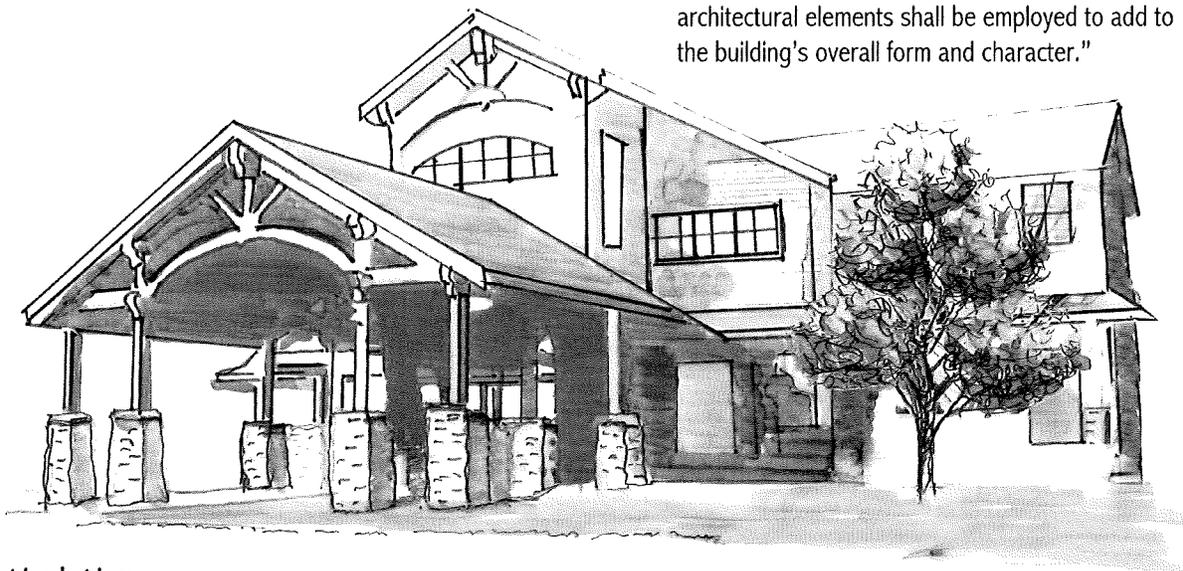
Zoning District	Maximum Building Coverage
C-1 - CBD	N/A
C-2 – 19E	50%
C-3 – E/W Main	75%

Section 905. Building Mass and Height Transitions

Building heights shall be greatest near the center of building sites and gradually transition to lower heights at the edges of the development. Upper stories of new developments shall be stepped back from lower stories and shall use varied heights, facades, and wall surfaces to avoid monotony.

Section 906. Building Articulation New developments shall make use of building articulation to emphasize strategic breaks in large expanses on building surfaces. Assorted architectural elements shall be employed to add to the building's overall form and character.

"New developments shall make use of building articulation to emphasize strategic breaks in large expanses on building surfaces. Assorted architectural elements shall be employed to add to the building's overall form and character."

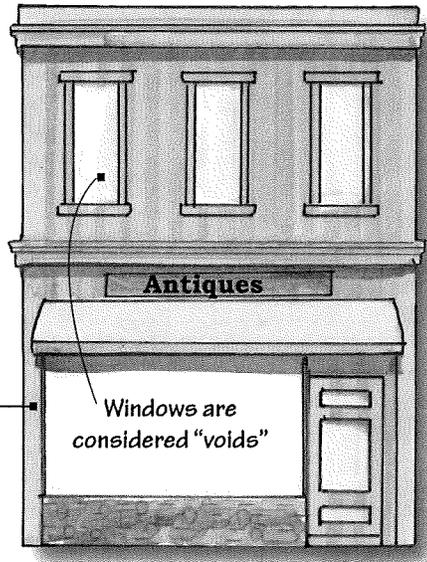


Articulation

Section 907. Building Façades and Openings Continuous flat facades are prohibited. Front facades on buildings in the central business district shall have a front porch, stoop, colonnade, awning, balcony, or bay window for a length of between 50 percent (50%) and 100 percent (100%) of the building frontage. The openings on a front facade shall have a void-to-solid ratio of no less than 50 percent. The void-to-solid ratio of the facade includes clear glass windows/doors, balconies, colonnades, loggias, and the like.

“Front facades on buildings in the central business district shall have a front porch, stoop, colonnade, **awning**, balcony, or bay window for a length of between 50 percent (50%) and 100 percent (100%) of the building frontage. The openings on a front facade shall have a void-to-solid ratio of no less than 50 percent. The void-to-solid ratio of the facade includes **clear glass windows/doors**, balconies, colonnades, loggias, and the like.”

Void-to-Solid Ratio



Section 908. Building Rooflines In order to create visual continuity within commercial districts, roofs shall be compatible with neighboring buildings’ architectural styles. Roof planes shall be varied and contain dormers or other architectural elements to provide buildings with visual interest. The appearance of a flat roof is prohibited and monolithic expanses of roof on large scale buildings shall be avoided through the use of elements such as gables and parapets. Rooftop mechanical and electrical equipment shall be screened from public view. See graphic, Section 902

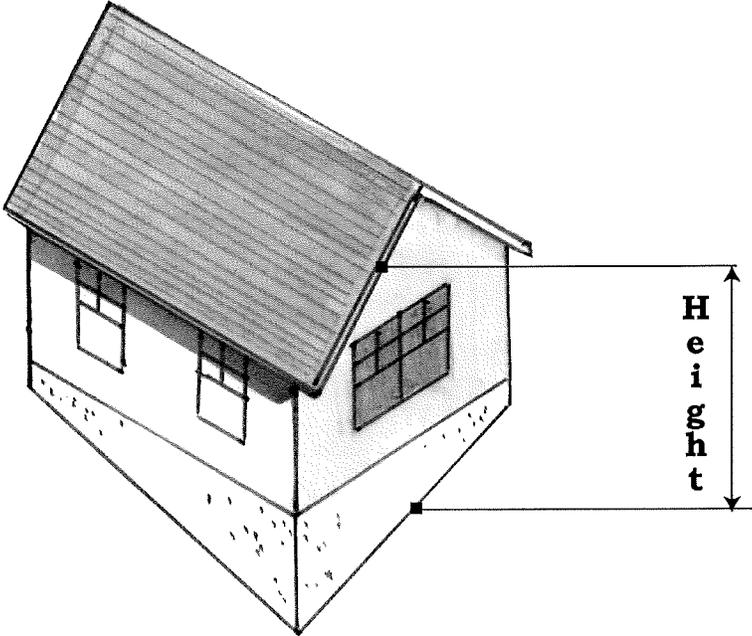
Section 909. Building Height The vertical distance from the average grade elevation taken at the fronting street side of a structure to the top of any parapet structure or roofline of a flat roof, the midpoint from the eaves to the ridgeline of a pitched roof, or the top of a mansard roof. Towers, spires, steeples, and enclosed rooftop mechanical equipment are not counted in height measurements.

The height of buildings shall meet the following specifications:

Zoning District	Maximum Height	Minimum Height
C-1 - CBD	50 feet (4 stories)	24 feet (2 stories)
C-2 – 19E	50 feet (4 stories)	12 feet (1 story)
C-3 – E/W Main	50 feet (4 stories)	12 feet (1 story)

Building Height

“Building height is defined as the vertical distance from the average grade elevation taken at the fronting street side of a structure to the midpoint from the eaves to the ridgeline of a pitched roof.”



Section 909. Building Materials, Finishes, and Colors

- 1) All sides of a building have an impact on its surroundings and should be considered for treatment with an architectural finish of primary materials (i.e., brick, wood and stone), unless other materials demonstrating equal or greater quality are used. As a general rule, front facades should be at least 80 percent brick and stone. Side facades should be at least 50 percent brick and stone. Rear facades do not have a minimum requirement for primary materials and where appropriate may consist entirely of secondary materials (e.g., stucco). Tertiary materials (i.e., wood and metal) should be used for decorative elements and trim only.
- 2) Exterior building materials on the primary structure shall not include smooth-faced concrete block, tilt-up concrete panels, or prefabricated steel panels.
- 3) The following types of building materials shall not be used: highly reflective, shiny, or mirror-like materials; mill-finish (non-colored) aluminum metal windows or door frames; exposed, unfinished foundation walls; exposed plywood or particle board; and unplastered, exposed concrete masonry blocks.
- 4) Material or color changes generally should occur at a change of plane. Piecemeal embellishment and frequent changes in material should be avoided.
- 5) A horizontal accent stripe (e.g., a foot wide stripe of different color) may be used to help reduce the appearance of monotonous colors and break up the appearance of large building walls.
- 6) Facade colors shall be low reflectance, and subtle, neutral, or earth-tone colors. High-intensity colors, metallic colors, black, or fluorescent colors shall not be used. Building trim and accent areas may feature brighter colors, provided that the width of the trim shall not exceed four feet.
- 7) Building colors shall be carefully chosen so that each building color complements that of its neighbors. Colors are classified as the “base” color (used on the majority of the building surface), “trim” color (used on the window trim, fascia, balustrades, and posts), and “accent” color (used on signs, awnings, and doors). The base color should consist of more subdued earth tones or brick shades. Trim colors should have contrasting lighter or darker shade than the base color. If natural brick is used, it should not be painted.

Section 910. Awnings

- 1) The use of awnings on buildings is recommended to provide protection from sun, wind, and rain, and to improve the aesthetics of building exteriors.
- 2) It is recommended that awnings be constructed with a durable frame, covered by a canvas material. Awnings that are backlit through translucent materials may be acceptable but are not particularly encouraged. Aluminum and other metal canopies are acceptable in most instances, particularly when integrated into shopping center designs. Flameproof vinyl, canvas or metal awnings and canopies may be permitted.
- 3) Solid colors are preferred over striped awnings, but striping may be permitted if colors complement the character of the structure or group of buildings.
- 4) Awnings are encouraged for first floor retail uses to provide architectural interest and to encourage pedestrian activity. Where awnings are used, they should be designed to coordinate with the design of the building and any other awnings along the same block.

Section 911. Exterior Lighting

- 1) Exterior lighting should be architecturally compatible with the building style, material, and colors. Galleria style and shoebox styles (cutoff fixtures) shall be used rather than cobra type light fixtures and directional floodlights.
- 2) Exterior lighting of the building and site should be designed so that light is not directed off the site, and the light source is shielded from direct offsite viewing. All outdoor light fixtures should be fully shielded or be designed or provided with light angle cut-offs, so as to eliminate up-lighting, spill light, and glare.
- 3) Excessive illumination of signage, building, or site shall be prohibited. Roof lighting, down-lighting washing the building walls, and illuminated awnings are all prohibited.
- 4) Fixture mounting height should be appropriate for the project and the setting. The mounting height of fixtures in parking lots or service areas shall not exceed 20 feet, and lower mounting heights are encouraged, particularly where adjacent to residential areas or other sensitive land uses. Uses of low, bollard-type fixtures three to four feet in height, are encouraged as pedestrian area lighting.

Section 912. Parking

- 1) Parking Plan Required Before any building permit is issued; the proposed parking lot layout and area must be found to be in compliance with all requirements of this Ordinance. A parking plan, for all but detached single-family uses, shall be submitted for approval by the Administrator. Occupancy of the land or use of a building shall not occur until the Administrator determines that parking facilities are available in accordance with the approved plan.

All new or newly expanded developments subject to design review shall comply with the minimum parking requirements of this Ordinance. Additionally, developments not in the C-1 Zoning District having the following uses shall provide at least the following number of off-street parking spaces:

Shopping Center	3/1000 sq. ft.
Retail Sales	1/333 sq. ft.
Restaurant	1/3 seats or 1/100 sq. ft.
Take-out Rest.	1/2 seats or 1/80 sq. ft.
Medical/Dental office	3.5/1000 sq. ft.
Veterinary	1.5/1000 sq. ft. or 1/4 employees
Hotel/Motel/Inn	1/room and 1/2 employee
Multi-family	1.5/unit

- 2) Location of Off-Street Parking Areas All parking spaces required by this ordinance shall be provided on the same lot with the main building or use that it serves, and to the sides and rear of the primary building wherever practical, with the following exceptions:
 - a) Upon demonstration that the parking spaces required are not available and cannot reasonably be provided on the same lot as the building, structure or use it serves, the required parking spaces may be provided on a lot of which a substantial portion is within 400 feet of such building, structure, or use. This provision shall require submittal of evidence of ownership or valid agreement to lease the off-site parking area that is intended to be used to comply with this article.
 - b) A property owner may provide a portion of the required off-street parking spaces on a parcel directly adjacent to the subject parcel provided the peak usage times for such parking do not

Article IX – Design Standards and Dimensional Requirements

coincide, and provided a legally-binding agreement for such shared parking exists between the adjacent property owners.

c) Off-street parking is not required in the C-1 Zoning district.

- 3) Parking Spaces The standard parking space (stall) size for 90-degree parking lots is 9'x18', with 24' wide driving aisles. Four percent (4%) of all spaces provided shall meet Federal ADA standards for disabled parking. Up to fifteen percent (15%) of all parking spaces may be sized for compact car parking, with a minimum stall dimension of 8'x 16'.

All parking spaces shall be marked or designated by painted lines or the equivalent in paved parking lots, and by permanent, fixed markers in unpaved lots.

Section 913. Utilities, Trash Containment, Buffering and Fencing It is the intent of this section to provide for visual screens and/or buffers between trash container and dumpster locations and all street rights-of-way and adjoining properties.

- 1) Fencing facing street corridors shall consist of natural materials such as wood and/or stone and complemented by appropriate landscaping to break up the length and mass of the fencing. Metal fencing of any type is not permissible except where chain link is deemed necessary for security purposes and/or dumpster screening. Such metal fencing must be completely concealed by evergreen plant material.
- 2) Trash containers and dumpsters shall not be located in the front yard of any property and shall be screened from view on all sides. Chain link fencing with plastic insets of natural earth tone color is acceptable for the screening of dumpsters.
- 3) On double frontage or through lots, a vegetative buffer and/or berm must be used to provide the required screening.

Section 914. Landscaping Landscaping for any new development requiring six (6) or more parking spaces shall be designed to meet the requirements of this section utilizing the criteria set forth in Section 917 of this article. Single family residential uses are exempt from the landscaping requirements.

A detailed landscaping plan (see graphic next page) shall be submitted with an application for any use subject to the provisions of this Section. The landscaping plan shall be reviewed and approved by the Town of Burnsville during the design review process.

The landscaping plan, shall be submitted separately and in addition to all other site plan requirements, shall include the following:

- 1) Existing and proposed landscaping, including but not limited to,
 - (a) The location, species, and height of new trees and shrubbery;
 - (b) The location and dimensions of planting areas;
 - (c) The dimensions of the entire parking or paved area;
 - (d) The location and height of fences or walls
 - (e) Scale bar or representative fraction

- 2) The number, location, species and size of existing trees between the principal building and the public street right-of-way which are to be maintained and preserved; the size is to be measured by taking the circumference of the tree at approximately four and one-half (4 ½) feet above the grade.

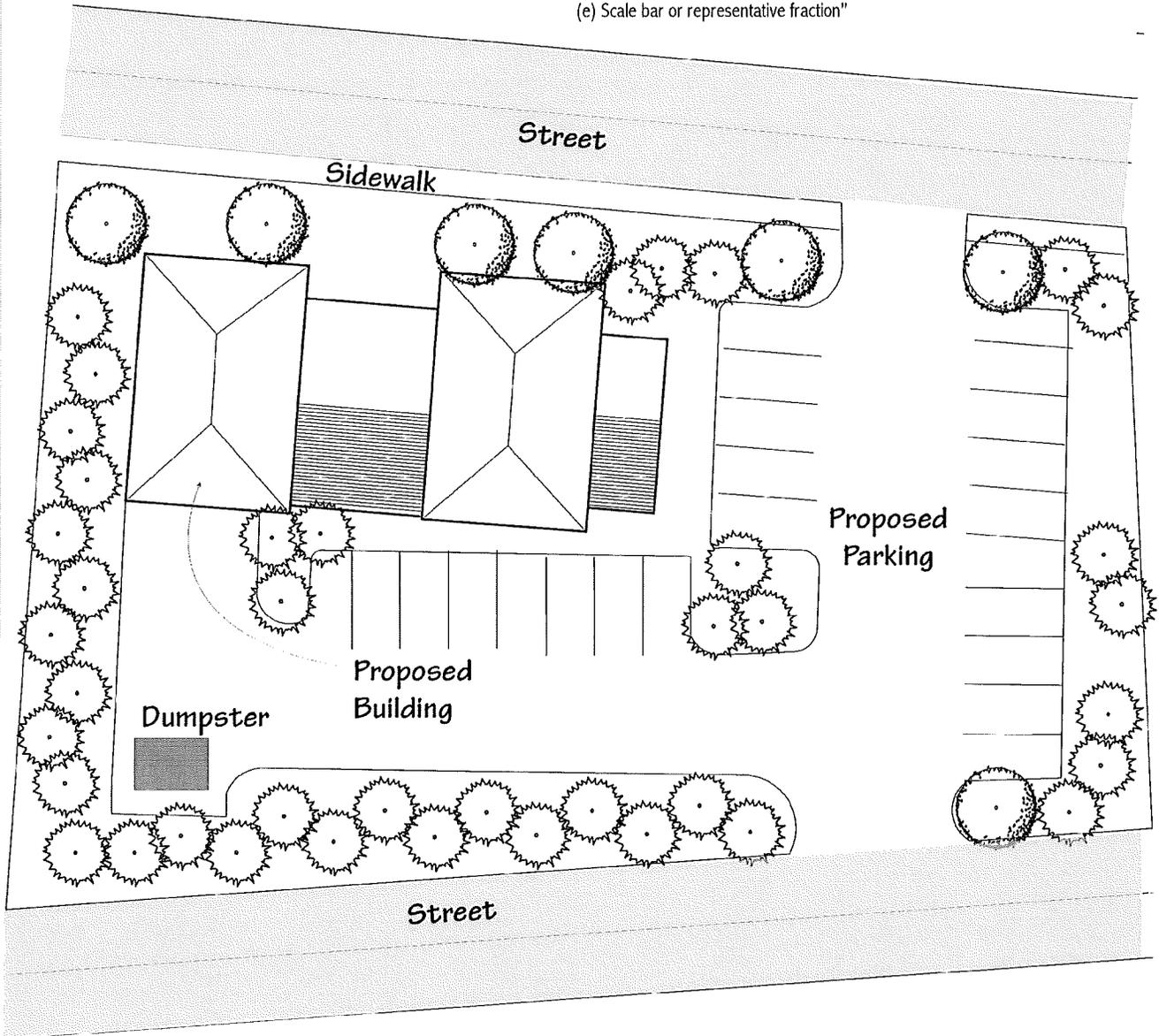
- 3) The location and description of any barriers intended to be used to protect vegetation from damage both during and after construction. Every reasonable effort shall be made to preserve existing vegetation.

- 4) The location and description of distinct and resilient edging that shall be provided between landscaped areas and pedestrian/vehicle areas.

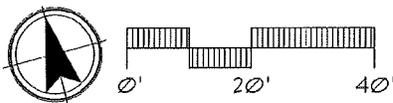
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"A detailed landscaping plan shall be submitted with an application for any use subject to the provisions of this Section.

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 (a) The location, species, and height of new trees and shrubs;
 (b) The location and dimensions of planting areas;
 (c) The dimensions of the entire parking or paved area;
 (d) The location and height of fences or walls
 (e) Scale bar or representative fraction"



"To avoid long monotonous rows of parking, bays shall be interspersed with landscaped islands or medians and no more than ten (10) contiguous spaces shall be located in one row."

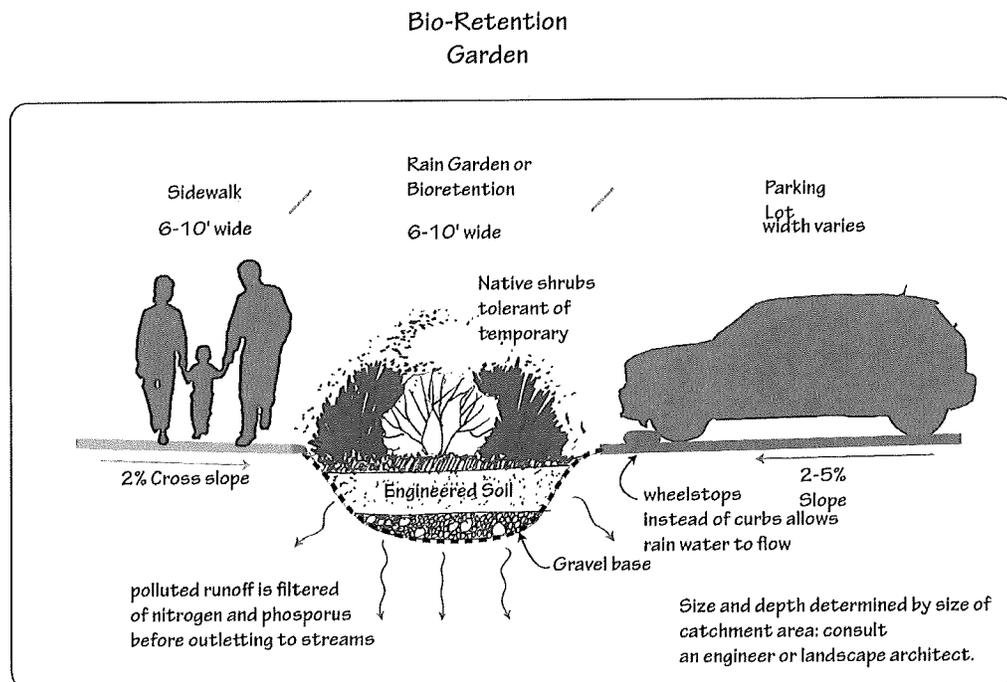


Section 915. Pedestrian and Bicycle Amenities All developments subject to the provisions of this section shall provide sidewalks meeting the construction standards of the Town of Burnsville and be ADA compliant. All developments with building coverage of 40,000 square feet or more shall provide bicycle racks adequate to serve the proposal, as determined during the review process.

Section 916. Stormwater Drainage Plan Drainage systems shall be designed utilizing low impact design to limit disruption of natural water flows by decreasing stormwater runoff, increasing onsite infiltration and reducing contaminants.

1) System design shall be rendered in a stormwater drainage plan, which may be a written or graphic concept plan of the proposed post development stormwater management system. The drainage plan shall, at a minimum, include the following:

- a) Preliminary selection and location of proposed structural stormwater controls;
- b) Low impact design elements;
- c) Location of existing and proposed conveyance systems such as grass channels, swales, and storm drains;
- d) Flow paths;
- e) Location of flood plain/floodway limits;
- f) Relationship of site to upstream and downstream properties and drainages; and
- g) Preliminary location of any proposed stream channel modifications, such as for bridge or culvert crossings.



"The drainage plan must include Low Impact Development Elements."

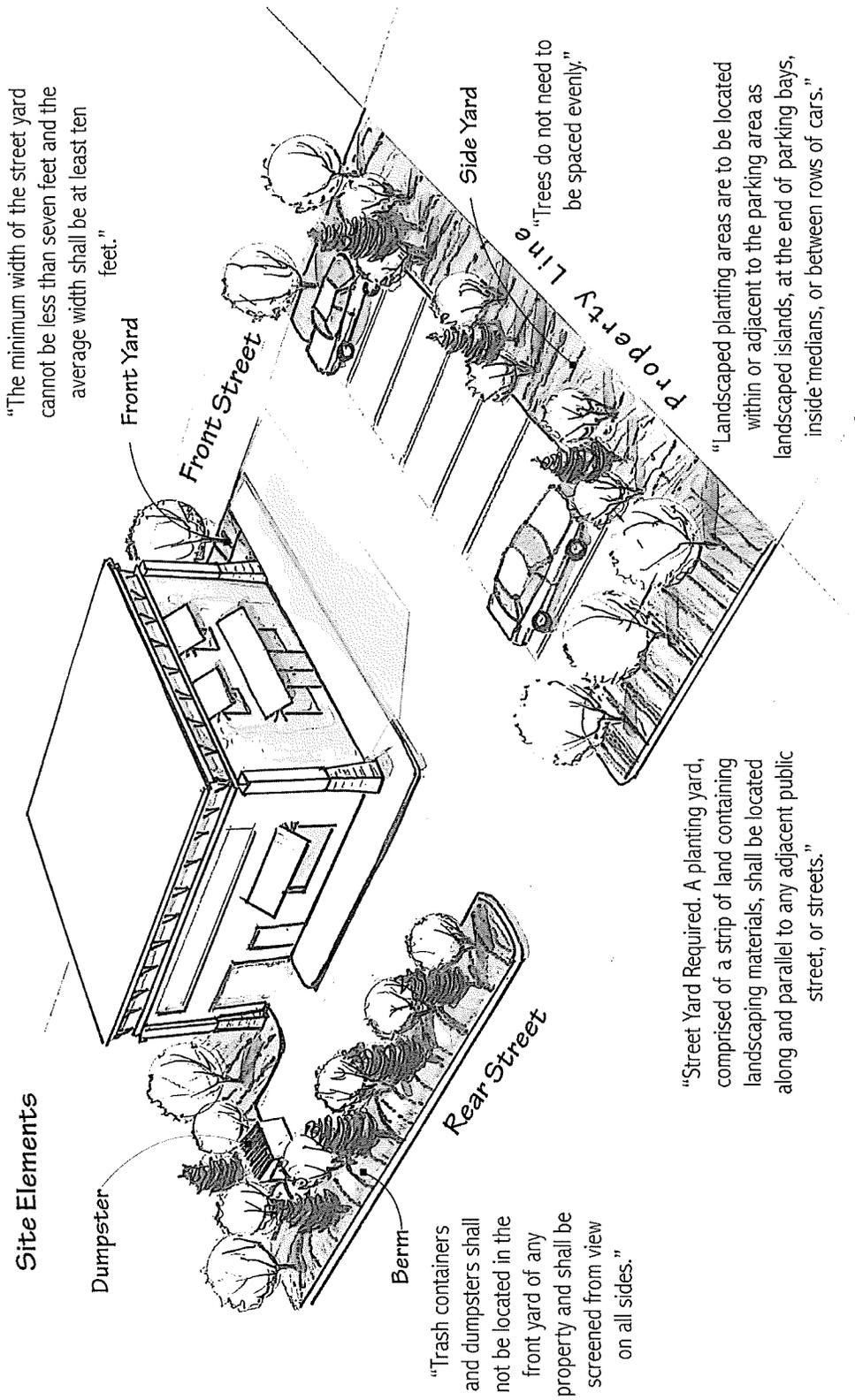
Section 917 Street Yard, Parking Lot Yard, and Buffer Yard Design

- 1) Street Yard Required A planting yard, comprised of a strip of land containing landscaping materials, shall be located along and parallel to any adjacent public street, or streets. The street yard shall be located on private property and not within the street right-of-way. Street yards may have a varying minimum width as specified in this section; however, no tree planted more than 35 feet from the edge of the right-of-way will count as a street tree.
 - a) The minimum width of the street yard cannot be less than seven feet and the average width shall be at least ten feet.
 - b) For street yards, one (1) large shade tree (expected height of 20-35 feet at maturity) is required for every fifty (50) feet of linear street frontage of the lot minus the width of driveways and access points.
 - c) Ornamental trees (expected height of 15-25 feet upon maturity) may be used in place of shade trees at the rate of one (1) for every thirty (30) feet. The use of ornamental trees in place of large shade trees may be required where overhead utilities may become an obstruction to growth or otherwise pose a hazard.
 - d) Trees do not need to be spaced evenly.
 - e) Trees may be clustered with a minimum spacing of 15 feet and a maximum spacing of 75 feet.
 - f) Inclusion of existing trees in the landscape design is encouraged. Shrubbery, ground cover, and other planting materials shall be used to complement the tree plantings.
 - g) No area of the street yard may be exposed soil, and shall be covered with vegetation. Vegetation shall consist of grass, shrubbery, or a mulched planting bed.
 - h) The only area that may remain not vegetated is a six-foot radius surrounding the trunk of any tree, provided however, that this non-vegetated area is mulched.

- 2) Parking Lot Yard Required This section applies to parking lots with six (6) or more parking spaces. The purpose of parking lot yards is to provide for attractive views from roadways and adjacent properties; to provide shade and reduce glare from parking lots; and to help improve ambient air quality.
 - a) Parking areas shall be interspersed with landscaping and screened by hedges, trees, planted berms, shrubs, or walls.

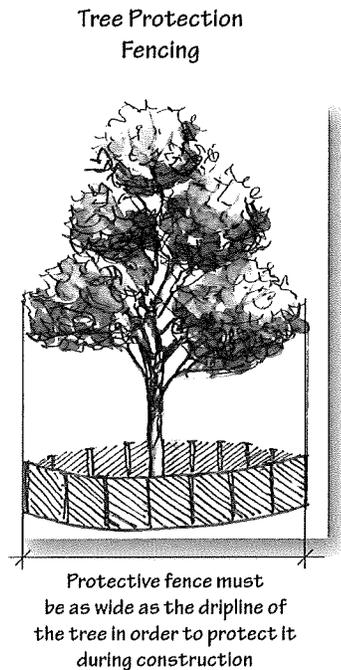
Article IX – Design Standards and Dimensional Requirements

- b) Parking lots shall accommodate a minimum 10% net area of landscaping/green space on the interior of parking lots.
 - c) All parking shall provide and maintain landscaped planting areas within the interior of or adjacent to the parking area or both.
 - d) Landscaped planting areas are to be located within or adjacent to the parking area as landscaped islands, at the end of parking bays, inside medians, or between rows of cars.
 - e) There shall be one large shade tree within 60 feet of every parking space.
 - f) For every three-hundred (300) square feet of total parking area there shall be one shrub, reaching a minimum height of thirty (30) inches.
 - g) Evergreen trees for screening shall be a minimum of 5 feet in height at planting.
 - h) Large deciduous trees shall be a minimum caliper of 2.5 inches or greater when planted. Medium deciduous trees shall be a minimum caliper of 1 inch.
 - i) All trees and shrubs are to be planted within a landscaped planting area not less than 200 square feet in area.
 - j) To avoid long monotonous rows of parking, bays shall be interspersed with landscaped islands or medians and no more than ten (10) contiguous spaces shall be located in one row.
- 3) Buffer Yard Required The purpose of the buffer yard is to provide a transitional area between different uses, development intensities, and densities. No buildings or parking areas may encroach within the buffer yard.
- a) The buffer yard between nonresidential and residential uses shall be at least 8 feet in width.
 - b) Where a proposed nonresidential use abuts an existing residential use or residential zoning district, the developer is required to provide a buffer yard between the residential and proposed use.
 - c) The buffer shall be established through the use of densely planted landscaping that will provide complete visual separation of the uses. At the developer's choice, a combination of shrubs and a six foot fence constructed of masonry or pressure-treated lumber may be substituted for this requirement.
 - d) No such buffer shall extend nearer to a street right-of-way line than the established building line of the adjoining residential lot.



Article IX – Design Standards and Dimensional Requirements

- 4) Existing Vegetation If it is properly protected during development and helps to further the purpose of this section, existing vegetation in good health and physical condition (other than exotic, non-native species) may count toward meeting the requirements of this section. Existing vegetation that is used to meet the standards of this section shall be replaced if it dies.



“Existing Vegetation If it is properly protected during development may count toward meeting the requirements of this section.”

- 5) New Plant Material All new plant material shall be chosen from either the Approved Plant Species List (Appendix A) or the Preferred Plant Species List (Appendix B). Regionally grown and native species of plants are strongly encouraged. New plant material shall complement existing site vegetation and be integrated with all other natural site features. Plantings should be grouped together or clustered as opposed to placed in unnatural linear patterns. Vegetation that is used to meet the standards of this section shall be replaced if it dies.

See Appendices A and B for Approved and Preferred Plant Species.

Article IX – Design Standards and Dimensional Requirements

District	Minimum Lot Area in Square Feet ¹	Lot Area Per Dwelling Unit in Square Feet	Minimum Lot Width at Building Line in Feet	Minimum yard Requirements in Feet				Maximum Height in Feet	Minimum Height in Feet
				Front	Side ⁵	Rear	Build-to		
R-10 Residential	10,000	10,000 for first unit, 4,000 for each additional unit	80	25	10 ²	20	N/A	35	12
C-1 Central Business	None	Not Applicable	20	0	0 ³	0 ⁴	10	50	24 (two stories)
C-2 General Business	10,000	10,000 for first unit, 4,000 for each additional unit	80	20	10	10	N/A	50	12
C-3 E/W Main Street	10,000	10,000 for first unit, 4,000 for each additional unit	80	15	10	10	40	50	12
I-1 Industrial	40,000	Not Applicable	100	30	15	20	N/A	50	12

¹The minimum lot area for lots not served by either public water or sewer shall be subject to approval by the Yancey County Health Dept. to ensure proper operation of septic systems and/or wells. In no case however, shall minimum lot sizes be less than those specified.

²Side yard requirements for corner lots shall be increased to twenty feet along the side street.

³Side yards are not required in the C-1 district. If such a yard is provided, it must be a minimum of four (4) feet to allow for cleaning and access. Common wall construction is permitted in the C-1 district. On all corner lots in this district, a ten (10) foot setback from the side street line shall be required. Where a lot in the C-1 district abuts a lot zoned R-10, a side yard of at least ten (10) feet shall be required.

⁴Rear yards are not required in the C-1 district except in those cases where the C-1 district abuts an established residential district. In such cases, the rear yard requirement shall be a minimum of ten (10) feet.

⁵Subject to the provisions of Section 1104 of this ordinance.

Section 510. SUMMARY OF ZONING ORDINANCE ADMINISTRATION REVIEW ROLES, and AUTHORITY

510.01. Ordinance Administration and Review Bodies

The following entities shall have roles in administering the provisions of the Zoning Ordinance:

- (1) Town Council;
- (2) Design Review Committee;
- (3) Board of Adjustment; and
- (4) Zoning Administrator.

510.02. Summary Table of Administration and Review Roles

The following table summarizes the review and decision-making responsibilities of the entities having specific roles in administering the provisions set forth in this ordinance.

Burnsville Zoning Ordinance Decision Making and Review Roles				
Review = Responsible for Review and/or Recommendation Decision = Responsible for Final Decision				
Appeal = Authority to Hear and Decide Appeals				
Procedure	Zoning Administrator	Design Review Committee	Board of Adjustment¹	Town Council
Zoning Permit	Decision	Review		
Zoning Permit (Multi-family and commercial developments with less than 3,500 square feet total floor area)	Decision	Review		
Conditional Use Permit (3,500 square feet or more)	Review	Review		Decision ¹
Variance	Review		Decision	
Administrative Appeal	Review		Appeal	
<p><i>Note: This table summarizes the general review and decision making responsibilities for land development procedures in accordance with the Town of Burnsville Zoning Ordinance.</i></p> <p>¹ The Burnsville Town Council serves as the Board of Adjustment. Appeals from decisions of the Board of Adjustment shall be taken to the Superior Court of Yancey County within 30 days from the date the respective order or decision is issued.</p>				

510.03 REVIEW AND APPROVAL PROCEDURES

(1) Zoning and Conditional Use Permits

(a) Permits Required

-1) The use made of property may not be substantially changed, substantial clearing, grading or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:

(i) A Zoning permit issued by the Administrator, and with oversight provided by the Design Review Committee when applicable;

(ii) A conditional use permit issued by the Town Council;

For purposes of this Section, buildings or other substantial structures within any Business District shall be deemed "substantially altered", thereby requiring the issuance of either a zoning or conditional use permit, if the applicant proposes to change in any significant manner the exterior appearance of said building or other substantial structure or makes structural repairs or modifications of fifty percent (50%) or more of the structure's tax value.

-2) Zoning permits and conditional use permits are issued under this ordinance only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued in reliance thereon, all development shall occur strictly in accordance with such approved plans and applications.

-3) A zoning permit or conditional use permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit issuing authority. All such permits issued with respect to variances or conditional uses shall be recorded in the Yancey County Register of Deeds office, as appropriate after execution by the record owner.

(2) No Occupancy or Use until Requirements Fulfilled

Issuance of a conditional use or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or (subject to obtaining a building permit) to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures. However, the intended use may not be commenced and no building may be occupied until all of the requirements of this ordinance and all additional requirements imposed pursuant to the issuance of a zoning or conditional use permit have been complied with.

(3) Who May Submit Permit Applications

(a) Applications for zoning or conditional use permits will be accepted only from persons having the legal authority to take action in accordance with the permit. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this ordinance, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees).

(b) The Administrator may require an applicant to submit evidence of his authority to submit the application in accordance with subsection (-a) whenever there appears to be a reasonable basis for questioning this authority.

(4) Applications to be Complete

(a) All applications for zoning or conditional use permits must be complete before the permit issuing authority is required to consider the application.

(b) Subject to subsection (c), an application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this ordinance.

(c) Detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more illustrations contained in this ordinance. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these illustrations, so long as the plans provide sufficient information to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in the text of this ordinance. However, whenever this ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these illustrations, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the Administrator. Failure to observe this requirement may result in permit revocation or other penalty as provided in this ordinance.

(d) The presumption established is that all of the information set forth in this ordinance is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Town Council or Design Review Committee, the applicant may rely in the first instance on the recommendations of the Zoning Administrator as to whether more or less information should be submitted.

(e) The Zoning Administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In cases where a minimal amount of information is necessary to enable the Zoning Administrator

to determine compliance with this ordinance the Zoning Administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

5) Staff Consultation before Formal Application

(a) To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this ordinance, pre-application consultation between the developer and the Zoning Administrator is encouraged and required as provided in this section.

(b) Before submitting an application for any permit, developers are strongly encouraged to consult with the Zoning Administrator concerning the application of this ordinance to the proposed development.

6) Staff Consultation after Application Submitted

(a) Upon receipt of a formal application for a zoning or conditional use permit the Zoning Administrator shall review the application and confer with the applicant to ensure that he understands the Zoning Administrator's interpretation of the applicable requirements of this ordinance, that he has submitted all of the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.

(b) If the application is for a conditional use permit, the Zoning Administrator shall place the application on the agenda of the appropriate board when the applicant indicates that the application is as complete as he intends to make it. However, if the Zoning Administrator believes that the application is incomplete, he shall recommend to the appropriate board that the application be denied on that basis.

7) Zoning Permits

(a) A completed application for a zoning permit shall be submitted by filing a copy of the application with the Zoning Administrator.

(b) With respect to zoning permit applications for proposed multi-family developments or redevelopments and proposed commercial developments or redevelopments with less than 3,500 square feet total floor area within Business/Commercial zoning districts, the Zoning Administrator shall refer such applications to the Design Review Committee for its recommendation regarding the proposal's compliance with Article IX: Design Standards and Dimensional Requirements. The Zoning Administrator may not issue a permit so referred until the Design Review Committee has been afforded a reasonable time to review the application and make its recommendations to the applicant. All such proposals must meet or exceed the provisions of Article IX: Design Standards and Dimensional Requirements.

(c) The Zoning Administrator shall issue the zoning permit unless he finds, after reviewing the application and consulting with the applicant, and when required, the Design Review Committee, that:

- 1) The requested permit is not within his jurisdiction; or

- 2) The application is incomplete; or
- 3) If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance.

8) Conditional Use Permits

(a) An application for a conditional use permit shall be submitted to the Town Council by filing a copy of the application with the Zoning Administrator.

(b) Prior to submittal to Town Council for its decision, the Design Review Committee shall have the opportunity to consider the application and make an advisory recommendation as to how the proposal meets specific design elements as required by this ordinance.

(c) Subject to subsection (d), the Town Council, shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that the permit should be denied because:

- 1) The requested permit is not within its jurisdiction; or
- 2) The application is incomplete; or
- 3) If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance; or

(d) Even if the permit issuing board finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- 1) Will materially endanger the public health or safety; or
- 2) Will substantially injure the value of adjoining or abutting property and such loss in property values is not outweighed by the benefit to the community from the proposed development; or
- 3) Will not be in harmony with the area in which it is to be located; or
- 4) Will not be in general conformity with the Town of Burnsville Land Development Plan, or with any other plan officially adopted by the Town.

9) Burden of Presenting Evidence; Burden of Persuasion

(a) The burden of presenting a complete application to the permit issuing authority shall be upon the applicant. However, unless the permit issuing authority informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing), the application shall be presumed to be complete.

(b) Once a completed application has been submitted, the burden of presenting evidence to the permit issuing authority sufficient to lead it to conclude that the application should be denied for the reasons stated in Subsections (8)(c)(-1), (8) (c)(-3), (8)(d)(-1 thru -4) shall be upon the party or parties urging this position, unless the information presented by the applicant in his

application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.

(c) The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this ordinance remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in Subsection (8)(d)(-1 thru -4) rests on the party or parties urging that the requested permit should be denied.

10) Recommendations on Conditional Use Permits

(a) Before being presented to the Town Council, an application for a conditional use permit shall be referred to the Design Review Committee for action in accordance with this section. The Town Council may not hold a public hearing on a conditional use permit application until the Design Review Committee has had an opportunity to consider the application pursuant to standard agenda procedures. In addition, at the request of the Design Review Committee, the Town Council may continue the public hearing to allow the Design Review Committee more time to consider or reconsider the application.

(b) When presented to the Design Review Committee, the application shall be accompanied by a report setting forth the staff's proposed findings concerning the application's compliance with the requirements of this ordinance, as well as any staff recommendations for additional requirements to be imposed by the Town Council. If the staff report proposes a finding or conclusion that the application fails to comply with any requirement of this ordinance, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(c) The Design Review Committee shall consider the application and the attached staff report in a timely fashion, and may, in its discretion, hear from the applicant or members of the public.

(d) After reviewing the application, the Design Review Committee shall report to the Town Council whether it concurs in whole or in part with the staff's proposed findings and conditions, and to the extent there are differences the Design Review Committee shall propose its own recommendations and the reasons therefore.

(e) In response to the Design Review Committee's recommendations, the applicant may modify his application prior to submission to the Town Council, and the staff may likewise revise its recommendations.

11) Town Council Action on Conditional Use Permits

(a) In considering whether to approve an application for a conditional use permit, the Town Council shall proceed according to the following format:

-1) The Council shall consider whether the application is complete. If no member moves that the application be found incomplete (specifying either the particular type of

information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the Council that the application is complete.

-2) The Council shall consider whether the application complies with all of the applicable requirements of this ordinance. If a motion to this effect passes, the Council need not make further findings concerning such requirements. If such a motion fails or is not made, then a motion shall be made that the application be found not in compliance with one or more of the requirements of this ordinance. Such a motion shall specify the particular requirements the application fails to meet. Separate votes may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the Council to be unsatisfied through this process.

-3) If the Council concludes that the application fails to comply with one or more requirements of this ordinance, the application shall be denied. If the Council concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection (8)(d). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

12) Additional Requirements on Conditional Use Permits

(a) Subject to subsection (b), in granting a conditional use permit, the Town Council, may attach to the permit such reasonable requirements in addition to those specified in this ordinance as will ensure that the development in its proposed location:

- 1) Will not endanger the public health or safety;
- 2) Will minimize any injury to the value of adjoining or abutting property;
- 3) Will be in harmony with the area in which it is located; and
- 4) Will be in conformity with the Town of Burnsville Land Development Plan, or any other plan officially adopted by the Town.

(b) The Council may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

(c) Without limiting the foregoing, The Council may attach to a permit a condition limiting the permit to a specified duration.

(d) All additional conditions or requirements shall be entered on the permit.

(e) All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this ordinance.

(f) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in this Section.

13) Expiration of Permits

(a) Zoning and conditional use permits shall expire automatically if, within one year after the issuance of such permits:

-1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or

-2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site.

(b) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire.

(c) The Town Council may extend for a period up to six months the date when a permit would otherwise expire pursuant to subsections (a) or (b) if it concludes that:

-1) the permit has not yet expired;

-2) the permit recipient has proceeded with due diligence and in good faith; and

-3) conditions have not changed so substantially as to warrant a new application.

Successive extensions may be granted for periods of up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

(d) For purposes of this section, the permit within the jurisdiction of the Town Council is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the Zoning Administrator is issued when the earlier of the following takes place:

-1) A copy of the fully executed permit is delivered to the permit recipient; (delivery is accomplished when the permit is hand delivered or mailed to the permit applicant); or

-2) The Zoning Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded with the Register of Deeds, when required.

14) Effect of Permit on Successors and Assigns

(a) Zoning and conditional use permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

-1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and

-2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice [as provided in subsection (b)] of the existence of the permit at the time they acquired their interest.

(b) Whenever a conditional use permit is issued to authorize development on a tract of land, nothing authorized by the permit may be done until the record owner of the property signs a written acknowledgment that the permit has been issued so that the permit may be recorded in the Yancey County Register of Deeds office, as applicable, and indexed under the record owner's name.

15) Amendments to and Modifications of Permits

(a) Insignificant deviations from the permit (including approved plans) issued by the Town Council or the Zoning Administrator are permissible and the Zoning Administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

(b) Minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit issuing authority. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

(c) All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Town Council, new conditions may be imposed, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

(d) The Zoning Administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (a), (b), and (c).

16) Reconsideration of Board Action

Whenever (i) the Town Council disapproves a conditional use permit application, or (ii) the Board of Adjustment disapproves an application for a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board at a later time unless the applicant clearly demonstrates that:

- (a) Circumstances affecting the property that is the subject of the application have substantially changed; or
- (b) The application is changed in some substantial way; or
- (c) New information is available that could not with reasonable diligence have been presented at a previous hearing.

17) Applications to be Processed Expeditiously

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the Town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this ordinance.

18) Maintenance of Common Areas, Improvements, and Facilities

The recipient of any zoning or conditional use permit or his successor, shall be responsible for maintaining all common areas, improvements or facilities required by this ordinance or any permit issued in accordance with its provisions, except those areas, improvements or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority.

Proposed Amendments to the Zoning Ordinance of the Town of Burnsville

Section 510. Summary of Zoning Ordinance Administration, Review Roles, and Authority

[Insert new Section that specifies review and approval process for proposed Design Standards, including Town Council, Design Review Committee, and Zoning Administrator procedures for issuing zoning permits and Conditional Use Permits.]

Article IX: Design Standards and Dimensional Requirements

[Insert new Article that contains Design Standards, accompanying illustrations and updated dimensional chart.]

Section 401. Definitions

401.06 Buffer Strip *[amend width to 8 feet to match proposed design standard, or conversely make the width 10 feet in new standards]*

401.10 Building Height The vertical distance from the average grade elevation taken at the fronting street side of a structure to the top of any parapet structure or roofline of a flat roof, the midpoint from the eaves to the ridgeline of a pitched roof, or the top of a mansard roof. Towers, spires, steeples, and enclosed rooftop mechanical equipment are not counted in height measurements. *[Change definition to match new standard.]*

401.13 Conditional Use. *[Amend this definition to replace Board of Adjustment with Town Council to match new procedures.]*

401.52 Parking Space *[Amend this definition to replace minimum 200 square feet requirement with 162 square feet to match new standard.]*

Section 502. Certificate of Zoning Compliance Required.

Upon Approval of a conditional use permit issued by Town Council, or a variance by the Board of Adjustment...

[Amend this Section referencing conditional use permits to be issued by Board of Adjustment and include reference to Town Council to match new procedures.]

Section 602.03 Conditional Uses

[Delete this Section as the responsibility for granting or denying Conditional Use Permits would be transferred to the Town Council.]

Section 700. Use Districts

C-3 E-W Main Street Corridor

[Add a new commercial district representing the East-West Main Street Corridor. The new design standards can be applied to properties in this area as rezonings occur.]

Section 800. R-10 Residential District

(2) The following uses shall be permitted by the ~~Board of Adjustment~~ Town Council as conditional uses...

[Amend this Section referencing conditional use permits to be issued by Board of Adjustment and include reference to Town Council to match new procedures.]

Section 801. C-1 Central Business District

(1) The following uses may be permitted by the Zoning Administrator in structures with less than 3500 square feet of total floor area and subsequent to review by the Design Review Committee, provided that all proposals meet or exceed the provisions in Article IX:Design Standards and Dimensional Requirements.

(2) All the uses listed in subsection (1)(a-ff) with a proposed total floor area greater than 3500 square feet, as well as the following uses shall be permitted by the Town Council as conditional uses subject to the provisions of Article IX:Design Standards and Dimensional Requirements and the procedures set forth in Section 510 of this ordinance.

Section 802. C-2 General Business District

1) The following uses may be permitted by the Zoning Administrator in structures with less than 3500 square feet of total floor area and subsequent to review by the Design Review Committee, provided that all proposals meet or exceed the provisions in Article IX:Design Standards and Dimensional Requirements.

(2) All the uses listed in subsection (1)(a-hh) with a proposed total floor area greater than 3500 square feet, as well as the following uses, shall be permitted by the Town Council as conditional uses subject to the provisions of Article IX:Design Standards and Dimensional Requirements and the procedures set forth in Section 510 of this ordinance.

Section 804. C-3 East/West Main Street Business District

[This new zone will require a general description of the district and a list of permitted and conditional uses (most likely identical to those in the C-2 district) to be added to the ordinance concurrently with any zoning map amendments.]

Section 1013. Off-Street Parking.

It is recommended that the use classification and required parking standards be amended to match those in Article IX:Design Standards and Dimensional Requirements.