

ARTICLE XV General Legal Provisions; Definitions

15.1 Interpretation, Purpose, Conflict

In interpreting and applying the provisions of the Ordinance, the provision shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. This Ordinance is not intended to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, where this Ordinance imposes a greater restriction or imposes higher standards than those required by other ordinances, rules, regulations, or by easements, covenant or agreements, the provisions of this Ordinance shall govern so that, in all cases, the most restrictive limitation or requirement causing the highest standard of improvement, shall govern.

15.2 Repeal and Reenactment of Existing Zoning Ordinance

The rewriting of this Ordinance in part carries forth by reenactment some of the provisions of the existing Zoning Ordinance of the City of Mount Airy and it is not intended to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have been accrued are preserved and may be enforced. All provisions of the Zoning Ordinance, which are not reenacted herein, are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the Zoning Ordinance in effect, which are now pending in any of the courts of this State or of the United States, shall not be abated or abandoned by reason of the adoption of this Ordinance, but shall be prosecuted to their finality the same as if this Ordinance had not been adopted; and any and all violations of the existing Ordinance, prosecutions for which have not been instituted, may be filled and prosecuted; and nothing in this Ordinance shall be so construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may have been instituted or prosecuted.

15.3 Effects upon Outstanding Building Permits, Special Use Permits, Zoning Permits and Zoning Permits with Vested Rights

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any building, structure, or part thereof for which a

Building Permit has been granted by the Building Inspector prior to the time of passage of this Ordinance or any amendment thereto; provided, however, that where construction is not begun under the outstanding permit within a period of one-hundred eighty (180) days subsequent to the passage of this Ordinance or any amendment thereto, or where it has not been prosecuted to completion within eighteen (18) months subsequent to passage of this Ordinance or any amendment thereto, any further construction or use shall be in conformity with the provisions of this Ordinance or any such amendment.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any Zoning Permit which has been granted prior to the adoption of this Ordinance provided that a Building Permit has been obtained and construction begun within one hundred eighty (180) days of the date of the issuance of such permit and provided that such Building Permit is prosecuted to completion as provided for above.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any special use which has been granted prior to the adoption of this Ordinance and which special use is no longer carried forth on this Ordinance provided that a Building Permit has been obtained and construction begun within one-hundred eighty (180) days of the date of the approval of such permit and provided that such Building Permit is prosecuted to completion as provided for above. Such valid special uses including those already existing for non-continued uses may be constructed, continued, and reconstructed the same as any permitted use subject to such use limitations and other conditions as provided for in the original issuance of the Special Use Permit. Any such special use that is changed to any permitted use for any period of time shall not be permitted to resume the special use.

Nothing herein contained shall require any change in any zoning Vested Right which has been established prior to the adoption of this Ordinance during its Vested Rights period except to the extent permitted at the time of the approval of the site-specific development plan and consistent with NCGS 160D-102; -100(d).

15.4 Definitions

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein when not inconsistent

with the context; words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The words "used for" shall include the meaning "designed for."

A. General Definitions

Abutting. The property directly touches another piece of property.

Accessory Dwelling. A dwelling unit that is accessory, supplementary, and secondary to the principle dwelling that may be constructed as an addition to the principle dwelling or as an accessory to the principle dwelling. An accessory dwelling is detached from the principle dwelling unit.

Accessory Use or Accessory Building (Non-Residential). A subordinate non-residential use or building customarily incidental to and located on the same lot with the main use or building.

Accessory Use or Accessory Building (Residential). A non-residential use or building customarily incidental and subordinate to but located on the same lot with the main residential use or building such as a private garage or carport, family garden, personal storage building, or workshop, all of which are totally for personal use.

Alley. A public or private vehicular way providing service access along rear or side property lines of lots.

Apartment. A room or suite of rooms in a multi-unit residential building, generally rented by the occupant, which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation in each separate unit.

Bed and Breakfast. A dwelling in which lodging is available for rent to the public, with or without meals, is provided for overnight guests for a fee, not to exceed four (4) guest rooms.

Board. Board of Commissioners of the City of Mount Airy.

Board of Adjustment. The Board of Adjustment of the City of Mount Airy.

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Board of Commissioners. The Board of Commissioners of the City of Mount Airy.

Boarding House. A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.

Bona Fide Farm. Bona fide farm purposes include the production of and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

Buffer Strip. A landscaped area intended to separate and partially obstruct the view of two abutting land uses or properties from one another.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Building Height. The vertical distance measured from the average elevation of the finished grade to the topmost section of the roof.

Building Line. The line, parallel to the street line, that passes through the point of the principal building nearest the front building line.

Building, Main. The principal structure in which the primary use of the property is undertaken.

Building Occupancy. See "Use".

Building Setback Line. See "Setback".

Common Open Space. The open space land held in common ownership by property or unit owners in a development, normally provided for in the declaration or restrictive covenants and normally in common use.

Condominium. Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

Congregate Care Facility. A facility providing shelter and services for ambulatory individuals at least fifty-five (55) years of age that by reason of age, functional impairment, or infirmity may require meals,

housekeeping, and personal care assistance. Congregate care facilities do not include nursing homes or similar institutions devoted primarily to the care of the chronically ill or the incurable.

Corner Lot. A lot that abuts the right-of-way to two (2) streets at their intersection.

County Health Department. The Surry County Health Department.

Crosswalk. A public pedestrian right-of-way, which cuts across a block to facilitate pedestrian access to adjacent streets and properties.

Day Care Center. A facility providing care for six (6) or more non-handicapped children, more than four (4) hours per day, for payment of a fee, but without transfer or assignment of custody.

Dedication. A gift, by the owner, of his property to another party without any consideration being given for the transfer. The dedication is made by written instrument and is completed with an acceptance.

Development. The subdivision of land into two or more parcels, the construction or reconstruction, conversion, structural alteration, relocation, or enlargement of any structure, any mining excavation, landfill, land disturbance; and any use or extension of the use of land.

Double Frontage Lot. A continuous or through-lot of the same depth as the width of a block and which is accessible from both of the streets upon which it fronts.

Dwelling. A building that contains one (1) or two (2) dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

Dwelling, Single-family (Conventional or Modular). A detached building constructed on-site or in industrialized modules in compliance with the North Carolina State Building Code and designed for or occupied exclusively by one (1) family.

Dwelling, Single-Family Attached. A single-family dwelling that except for corner units is connected.

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Dwelling, Two-Family. A detached residential building arranged or designed to be occupied by two (2) families living independent of each other.

Dwelling, Multi-family. A detached building constructed on-site in compliance with the North Carolina State Building Code and designed for three (3) or more dwelling units.

Dwelling Unit. A single unit providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Easement. A grant of one (1) or more of the property rights by the owner to, or for the use by, the public, a corporation, or another person or entity.

Easements. A grant by the property owner for use by the public, a utility company, or person(s) of a strip of land for specified purposes.

Electronic Gaming Operations. Any business enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. This term includes, but is not limited to internet cafes, internet sweepstakes, beach sweepstakes or cybercafés. This does not include any lottery approved by the State of North Carolina.

Family. Any number of persons related by blood, adoption, or marriage or no more than four (4) persons not related by blood, adoption or marriage, living together as a single housekeeping unit sharing the same domestic facilities. It does not include congregate residential care facilities; family care and group care facilities; foster homes for children; homes for the aged and infirmed; family care homes for the aged and infirmed; day care facilities; day care centers; and family day care homes; shelter homes for children and/or families including foster shelter homes and group shelter homes; adult day care centers; day nurseries; preschool centers; hospitals; nursing homes; sanitariums; and dormitories, fraternal organizations, or other organized social or institutional residential situations.

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Family Day Care Home. A building used as a residence for a family which is also used to provide day care services on a temporary basis without transfer of custody for three (3) to five (5) unrelated children, for a fee. (The keeping of one-to-two (1-2) children does not require a permit.)

Family Care Home. A home with support and supervisory personnel, which provides room and board, personal care and habilitation services in a family environment for not more than six (6) resident handicapped persons.

Family Members, Direct. Direct lineal descendants (children, grandchildren, and great grandchildren) and direct lineal ascendants (father, mother, grandfather, and grandmother); and brothers, sisters, nieces, and nephews.

Fence. Any artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

Flea Market. An open-air market for new and/or second-hand articles and goods sold by one or more merchants, which is conducted on an open non-residential lot. Permanent flea markets can only be located in the M-1 zoning district. A detailed site plan must be presented to the Planning Director or his designee prior to a Zoning Permit being issued. Occasional yard sales conducted by individuals or non-profit organizations shall not be deemed flea markets, provided such yard sales are not conducted on more than six (6) days per year or, in the case of non-profit organizations, not more than fourteen (14) days per year.

Floodplain. Any normally, dry land area that is susceptible to being inundated by waters of the 1% annual chance flood, that is, the 100-year flood.

Floodway. The channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the velocity waters of the regulatory flood.

Flood Fringe Area. That area of the floodplain lying outside the floodway but still lying within the area of special flood hazard, that is, within the 100-year floodplain.

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Frontage. The property abutting on one side of a street measured along the street right-of-way line.

Gross Floor Area. The total area of any buildings in the projects, including the basements, mezzanines, and upper floors, exclusive of stairways and elevator shafts. It excludes separate service facilities outside the store such as boiler rooms and maintenance shops.

Group Care Facility. A facility licensed by the State of North Carolina, (by whatever name it is called, other than "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.

Handicapped Person. A person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments, but does not include mentally ill persons who are dangerous to others as defined in section 122-58.2(1) b of the General Statutes of North Carolina, or any amendment thereto.

Home Occupation, Customary. An occupation conducted incidental to the use of property as a dwelling unit, which does not adversely impact or change the residential character of the neighborhood. The incidental use of any dwelling by the occupant(s) for the purpose of receiving or transmitting messages by mail, record or bookkeeping, filing, address listing for applicable privilege license or tax identification and other similar activities which do not involve the on-site sale, delivery, distribution, reception, storage or manufacture of goods, products, or services shall not constitute a home occupation for the purpose of regulation under this ordinance.

Hotel or Motel. A building, which provides sleeping accommodations in six (6) or more rooms, commonly available for pay on a daily basis to guests.

Impervious Surface. Surface incapable of being penetrated by moisture.

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Junk Yard. A lot or group of contiguous lots where more than six-hundred (600ft²) square feet of area is used for the dismantling or the storage of wrecked or used automobiles or the storage, sale, or dumping of dismantled or wrecked cars or their parts, or for storage of appliances, machinery and other salvage goods.

Kennel. An establishment wherein any person engages in business or practice, for fee, of boarding, breeding, grooming, letting for hire, or training of more than four (4) domesticated animals at any one (1) time; or an establishment wherein any person engages in the business or practice, for a fee, of selling more than one (1) litter of domesticated animals at any one (1) or the selling of any three (3) individual domesticated animals (not defined as litter herein) at any one (1) time. Domesticated animals, for the purpose of this Ordinance, shall be defined as dogs, cats, and other generally acceptable household pets. Litter, for the purpose of this Ordinance, shall be defined as the progeny resulting from the breeding of two (2) domesticated animals. The following shall not constitute the operation of a kennel as defined above and in no way shall this provision regulate the following:

1. The ownership of domesticated animals as household pets;
2. The ownership of domesticated animals for hunting or tracking purposes;
3. The ownership of domesticated animals for the purpose of exhibiting at shows, obedience or field trials; and
4. The ownership of domesticated animals for the purpose of protection or guarding of residences or commercial establishments.

Kennel, Indoors. Animal kennel that is constructed to entirely enclose all facilities (with the exception of an outdoor exercise area) so as to adequately protect all animals from weather extremes and to protect adjacent residences from noise, odors, and other objectionable characteristics.

Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devise, successors, assigns, and personal representative of such owner. The owner may allow a person holding a valid option to purchase, to act as his agent or representative for purposes

of submitting a proposed site-specific development plan in the manner allowed by this Ordinance.

Local Street. Any street not on a higher order urban system and serves primarily to provide direct access to abutting land.

Lot. A parcel of land, the boundaries of which are established by some legal instrument such as a Deed or a Recorded Plat (but not tax maps) and which is recognized as a separate tract for purposes of transfer of title.

Lot, Corner. A lot adjacent to or abutting on two (2) streets at their intersection.

Lot, Flag. A lot with access provided to the bulk of the lot by means of a narrow corridor.

Lot, Front. On a corner lot, the front is the frontage with the least dimension at the street. Where the dimensions are equal, the front shall be designated by the owner.

Lot, Interior. Any lot other than a corner lot.

Lot Lines. The line forming the perimeter or boundary of the lot.

Lot, Through. An interior lot having frontage on two (2) streets. Also called a double-frontage lot.

Lot Width. The distance from side lot line to side lot line measured at the required minimum front yard setback parallel to the front property line. For lots with a radial side line(s), lot width may be measured at a front yard setback greater than the minimum required front yard setback. In such case, the point where the minimum lot width is measured shall become the front yard setback for that lot.

Lot of Record. A lot which is a part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds, or a lot which is described by metes and bounds, the description of which has been so recorded, prior to the effective date of this Ordinance.

Major Subdivision. Any subdivision that creates more than five (5) lots and involves dedication of new streets.

Minor Subdivision. Any subdivision that creates a maximum of five (5) lots that front on an existing public street.

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Family Subdivision. A subdivision that creates a maximum of five (5) lots conveyed by the property owner(s) to a family member (father, mother, brother, sister, son, daughter, grandfather, grandmother, grandson, granddaughter, nephew, or niece) and has access to a publicly maintained street by way of a private street with a minimum right-of-way width of forty-five (45') feet.

Maintenance Guarantee. Any security that may be accepted by the City for the maintenance of any improvement required by this Ordinance.

Manufacturing. The processing of raw products and materials into items for sale.

Mobile Food Vendor. A vehicle-mounted food service establishment designed to be readily moved.

Mobile Home. A dwelling unit that (i) is not constructed in accordance with the standards set forth in the North Carolina State Building Code, and (ii) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and (iii) exceeds forty (40) feet in length and eight (8) feet in width.

Mobile Home, Class A. A multi-sectional mobile home, that meets or exceeds the construction standards promulgated by the US Department of Housing and Urban Development that were in effect at the time of construction. Often referred to as a double-wide.

Mobile Home, Class B. A mobile home that meets or exceeds the construction standards promulgated by the US Department of Housing and Urban Development that were in effect at the time of construction. Often referred to as a single-wide.

Mobile Home, Class C. A mobile home, which does not meet the Class A or Class B definitions.

Mobile Home Park. A lot(s) or tract(s) of land used or intended to be used, leased, or rented for occupancy by mobile homes in conformity with the mobile home park provision of this Ordinance.

Mobile Home Park, Non-Conforming. A lot(s) or tract(s) of one (1) and for three (3) or more mobile homes sharing common ownership and/or

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facilities and which do not qualify as individual mobile homes on individual lots and which park is not in conformance with all the requirements for the initial establishment for a mobile home park as defined above.

Modular Home, Building. Any building or structure which was pre-manufactured, all or in part, at some point other than the building site for assembly or installation later at the building site and which complies with the State of North Carolina Building Code. Further defined, such building may be assembled from pre-manufactured 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 or foundation material at the building site. This definition does not include mobile homes as defined in this Ordinance.

Net Residential Area (Net Land). That portion of a development or project site designated for residential lots and related common open space areas excluding dedicated public rights-of-way.

Non-Conforming Use. Any use which legally existed on the effective date of this Ordinance, and which does not conform with each regulation of the zoning district in which it is located, including any nonconforming use legally recognized under a prior Zoning Ordinance.

Official Maps or Plans. Any maps or plans officially adopted by the City Board of Commissioners as a guide for the development of the City.

Open Space. Any land area not occupied by buildings, structures, storage areas, open or enclosed balconies, patios, porches or decks, excluding, however, any land encroaching or located within a right-of-way or easement. Open area in any required setback or land used for sidewalks, landscaping and grassing shall be considered open space.

Parcel. A continuous quantity of land in the possession of or owned by, or recorded as property of the same person or persons.

Park. An area open to the public and reserved for recreational, education or scenic purposes.

Parking Lot. An area or tract or partial tract of land used for the storage or parking of vehicles.

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Planned Unit Development. A tract(s) of land under a single corporation, firm, partnership, or association ownership, or otherwise under unified ownership or control, planned, and developed as integral unit in a single development scheme or a well-defined series of development operations in accordance with an approved site plan.

Planning Area. The land located within the corporate limits of the City of Mount Airy and the land located within the territorial jurisdiction established by the Board of Commissioners.

Planning Board. The Planning Board of the City of Mount Airy.

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

Property. All property subject to zoning regulations and restrictions and zone boundaries within the zoning jurisdiction of the City.

Public Sewage Disposal System. An approved sewage disposal system serving ten (10) or more connections, including municipal and sanitary district sewerage systems as well as "package" plants constructed in a location and to specifications approved by the County Sanitarian in consultation with the NC Division of Health Services.

Public Water Supply System. An approved water supply system serving ten (10) or more connections, including municipal and sanitary district water systems as well as water systems designed to serve particular subdivisions at full development and constructed to specifications approved by the County Sanitarian in consultation with the NC Division of Health Services.

Recreation or Travel Trailer. A vehicular, portable, structure built on a chassis designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified as a travel trailer by the manufacturer of the unit. Includes motor home, recreational vehicle, etc.

Reservation. Reservation of land does not involve any transfer of property rights. It constitutes an obligation to keep property free from development for a stated period of time.

Residential or Travel Trailer Park. A defined parking area of at least five (5) acres for travel trailers, including a bathhouse. (See standards of SR 22).

Residential Care Facility. A building or facility used primarily to provide residential, social, and personal care for children, the aged or others who suffer some limit on the ability for self-care, but where medical care is not a major service. It includes such uses as adult day care facilities, home for the aged and other like uses, which are not otherwise specifically defined.

Residential Collector Street. A local street, which serves as a connector street between local residential streets and the thoroughfare system. Residential collector streets typically collect traffic from one-hundred (100) to four-hundred (400) dwelling units.

Right-of-Way. An area or strip of land either public or private, on which an irrevocable right-of-passage has been recorded for the use of vehicles or pedestrians or both.

Rooming House (Transient). Any building or portion thereof containing not more than five (5) guest rooms, occupied by not more than five (5) guests, where rent is paid and guests are transient. Transient is defined as less than thirty (30) days.

Rooming House (Not Transient). Any building or portion thereof containing guest rooms where rent is paid and guests are not transient.

Rooming Unit. A room or rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking purposes.

Screen. A device such as a fence or planting area used to visually separate property.

Service Station. A lot or building where gasoline, oil, grease, and automobile accessories are supplied and dispensed to the motor vehicle trade, or where battery, tire, and other similar repair services are rendered.

Setback. The horizontal distance from the property line or street right-of-way line based on building orientation to the nearest part of the

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applicable building, structure, sign, or use, measured perpendicularly to the line.

“Shall”. The word “shall” will be construed as mandatory and not merely directory.

Sidewalk Vending Unit (Push Cart). A mobile food vendor business in which food that is prepared elsewhere and is ready for consumption at the point of sale is sold from or out of a non-motorized mobile piece of equipment or vehicle that is removed each day from the location where the food is sold.

Sign. Any device or visual communicator that is used for the purpose of bringing the subject thereof to the attention of the public.

Site-Specific Development Plan. A plan which has been submitted to the Planning Department by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

Sludge. Any solid, semisolid, or liquid waste generated from a residential wastewater treatment plant.

Special Use. A use of land permitted in a Conditional District upon approval by the Board of Commissioners as part of the Conditional District rezoning process, or a use of land permitted by a Special Use Permit authorized by the Board of Adjustment pursuant to Article XII.

Stacking Space. A space to store an automobile off-street while waiting in line for a drive-through service such as an automatic teller service, drive-through restaurant, etc.

Street, Private. A vehicular travel way not dedicated as a public street or a dedicated but unaccepted vehicular travel way.

Street, Public. A public right-of-way for vehicular travel which has been constructed and then dedicated to and accepted by a municipality or the North Carolina Department of Transportation for public use or which has been otherwise obtained by such agencies for such use or which is proposed to be constructed and then dedicated to and accepted by such agencies as a public right-of-way for vehicular traffic for public use.

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Street Vending Unit (Food Truck). A mobile food vendor business in which food that is prepared and made ready for consumption at the point of sale is sold from or out of a motor vehicle that does not exceed eight (8') feet in width or twenty-five (25') feet in length and that is removed each day from the location where the food is sold.

Structure. Anything constructed or erected which requires location on the ground or attached to something having location on the ground.

Structural Alterations. Any change, except for the repair or replacement, in the supporting members of a building such as load bearing walls, columns, beams, or girders.

Subdivider. Any person, firm, or corporation who subdivides or develops any land deemed a subdivision as defined in this Ordinance.

Swine Farm. A tract of land devoted to raising animals of the porcine species served by or requiring animal waste systems having a design capacity of six-hundred thousand (600,000lbs) pounds steady live weight or greater.

Technical Review Committee. Those City Officials involved in the review of new development plats and site plans, including the Planning Director, Public Services Director, the Police Chief, and the Fire Chief.

Thoroughfare Plan. The Thoroughfare Plan adopted by the City of Mount Airy and the N.C. State Highway Commission, as the basis for the development of the street and highway system in the City of Mount Airy.

Townhouse. A single-family dwelling unit constructed in a series or group of attached units with property lines separating each such unit.

Transmission Tower. A structure, either freestanding, supported by guywires, or attached to a building, and accessory equipment related to broadcast services, private radio services, including AM, FM, two-way radio, television, and cable antenna television transmission, microwave transmission and facilities such as satellite dish receiving centers. This definition does not include electrical transmission distribution poles, towers, and line, personal satellite dishes, or structures not more than thirty-five (35') feet in height.

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Unattended Donation Container. Any box, bin, dumpster, trailer or other receptacle that is intended for use as a collection point for donated clothing or other household materials at times when no employee or representative of the sponsoring company or organization is present to accept donations.

Use. The primary purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

Vested Right or Zoning Vested Right. The right to undertake and complete the development and use of the property under the terms and conditions of an approved site-specific development plan. Vested Rights last for two (2) years.

Wireless Telecommunication Tower. A tower supporting licensed or unlicensed wireless telecommunication facilities including cellular, digital cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), commercial or private paging services, or similar services marketed or provided to the public. This definition does not include services by non-commercial entities in the Amateur Radio Service, Public Safety Radio Service, or licenses assigned to non-profit organizations, such as the Red Cross, Civil Air Patrol, and Military Affiliated Radio Service (MARS) that are licensed by the Federal Communications Commission.

Yard. An open space located on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees, shrubbery or as otherwise provided herein. A yard is the area created by a setback.

Yard, Front. A yard extending across the full width of the lot and extending from the closest front wall of the building to the nearest property line or established edge of a right-of-way, whichever is closer.

Yard, Rear. A yard extending across the full width of the lot and extending from the closest rear wall of the building to the nearest property line.

Yard, Side. A yard, which extends from the closest sidewall of a building to the nearest property line or the established edge of the street right-of-way, whichever is closer, if the lot is a corner lot.

Zoned Area. The territory of the City, exclusive of streets, and other public ways, within which certain uses of land, premises, and buildings are not permitted and within which certain yards and open spaces are required and certain height limits are established for buildings.

Zoning Administrator. An employee or agent of the City who is assigned primary responsibility for the administration and enforcement of the Zoning Ordinance.

Zoning Permit. A permit issued by the City conferring the right to undertake and complete the development of and use of property.

Zoning Permit with Vested Rights. A permit authorized by the Planning Board concerning the right to undertake and complete the development of and use of property under the terms and conditions of an approved site-specific development plan.

B. Definitions Related to Adult Oriented Businesses

Adult-Oriented Business. An adult arcade, adult bookstore, or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center (including adult massage parlor and adult health club), sexually oriented device business or any combination of the foregoing or any similar business.

As used in this Ordinance the following definitions shall apply:

Adult Arcade. Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe specified sexual activities or specified anatomical areas.

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Adult Bookstore or Adult Video Store. A commercial establishment which as one (1) of its principal business purposes offers for sale or rental for any form of consideration any one (1) or more of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or
2. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

Adult Cabaret. A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits, or displays as one of its principal business purposes:

1. Persons who appear nude or semi-nude; or
2. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
3. Films, motion pictures, video cassettes, slides, or other photographic reproductions, which depict or describe specified sexual activities or specified anatomical areas.

Adult Motel. A hotel, motel, or similar commercial establishment that:

1. Offers accommodations to the public for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe specified sexual activities or specified anatomical areas as one of its principal business purposes;
2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours;
3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult Motion Picture Theater. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as one (1) of its principal business purposes that depict or describe specified sexual activities or specified anatomical areas.

Adult Theater. A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one (1) of its principal business purposes, persons who appear in a state of nudity or semi-nudity, or live performances that expose or depict specified anatomical areas or specified sexual activities.

Escort. A person who, for any tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort Agency. A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or other consideration.

Nude Model Studio. Any place where a person who appears nude or semi-nude, or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the State of North Carolina or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

1. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
2. Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
3. Where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.

C. Definitions Related to Signs

Awning. A protective cover over a door, entrance, or window, which is attached to or cantilevered from a building.

Awning Sign. A sign that attached to, applied to, or constructed as part

of an awning.

Animation. The movement or the optical illusion of movement of any part of the sign structure, design or pictorial segment including the movement of any illumination or the flashing, scintillating, or varying of light intensity. The automatic changing of all or any part of the facing of a sign shall be considered to be animation. Also included in this definition are signs having “chasing action” which is the action of a row of lights commonly used to create the appearance of motion.

Animated Signs. Signs using animation or mechanical movement.

Balloon. A non-porous bag of material filled with heated or non-heated air or gas so as to rise or float in the atmosphere.

Canopy. A protective cover over a door, entrance, window, or outdoor service area, which is attached to or cantilevered from a building. Permanent marquees and porticoes, which are designed as a continuous or integral part of the structure, shall not be considered canopies.

Canopy Sign. A sign that is attached to, applied to, or constructed as part of a canopy.

Combined Development. Two (2) or more establishments or businesses occupying a common building or adjoining buildings, which are designed and developed in a coordinated manner, and which share parking, driveways and other common facilities.

Electronic Message Board. A sign, which displays messages such as time and temperature, in alternating light cycles.

Façade. The entire building wall, including wall faces, parapets, fascia, windows, doors, canopy, and visible roof structures of one (1) complete elevation.

Facsimile Sign. An oversized, three-dimensional object, such as a chicken bucket, automobile (or automobile part), or human figure, which may or may not contain advertising matter, and may or may not contain information about products sold on the premises, and is located in such a manner as to attract attention.

Fence Sign. A sign mounted on, attached to, or constructed as part of a

fence or similar structure.

Festoon Lighting. A string of outdoor lights suspended between two (2) or more points.

Flag. Any fabric, banner or bunting containing distinctive colors, patterns, or symbols, used as a symbol of government, political subdivision, or other entity.

Freestanding Ground Sign. A freestanding sign with its base or its supports mounted directly to the ground.

Gasoline Pump Signs. Signs attached to gasoline and motor vehicle fuel pumps, which display material incidental to the operation of the pumps, such as price, fuel type, and self-service instructions.

Glaring Signs. Signs with light sources or reflectivity of such brightness that result in glare, blinding or any other such adverse effect on motorist vision or into or upon any residential building not related to the signs; or which interfere with the effectiveness of, or obscures an official traffic sign, device or signal.

Illumination, External. Illumination, which reflects light from an artificial light source intentionally directed upon a surface. This shall also include silhouettes of letters or symbols placed before a background of reflected light.

Illumination, Internal. Illumination provided from a source located inside or within the face of the sign.

Individual Establishment or Business. A single establishment or business occupying one (1) or more buildings designed to function as a single enterprise, which does not share off-street parking, driveways, or other common facilities with an adjacent establishment or development.

Inflatable Signs. A three-dimensional object, filled with air or gas, and located in such a manner as to attract attention.

Light-Emitting Diode (LED) Display. A flat panel display that uses an array of light-emitting diodes as pixels for a video display.

Mansard. A steeply pitched roof, pitched at such an angle as to resemble a building wall.

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Manual / Analog Changeable Copy Sign. A sign on which message copy is changed manually in the field through attachment of letters, numbers, symbols and other similar characters of changeable pictorial panels. Also known as a reader-board sign.

NIT. A unit of illuminative brightness described as a candela per square meter (cd/M²).

Non-Conforming Sign. A sign that met all legal requirements when constructed, but is not in compliance with this Ordinance. An illegal sign is not a non-conforming sign.

On-Premise Sign. A sign or display that identifies or communicates a message related to the activity conducted, the service offered, or the commodity sold on the premises where the sign is located.

Outdoor Advertising (Billboard) Sign. A permanently installed sign identifying/advertising and/or directing the public to a business, or merchandise, or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured and/or furnished at a place other than the real property on which said sign is located.

Panel. The primary surface of a sign that carries the identifying and/or advertising message.

Parapet. That portion of any building wall that rises above the level of the roofline and is made of the same material and thickness as the building wall.

Pennant. Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

Portable Sign. Any sign designed or intended to be readily relocated whether or not it is permanently attached to a building, structure or on the ground. Portable signs also include signs on wheels or on portable structures such as trailers, tent signs, A-frame signs, and normal advertising placed on motor vehicles, which are not used regularly and are placed in such a manner as to attract attention.

Projecting Sign. A sign which projects from a structure into a vehicular

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or pedestrian access way, more than twelve (12") inches from the surface on which it is mounted, and is mounted usually, but not always, at right angles to the building.

Pylon (or Pole) Sign. A ground-mounted sign attached to one (1) or more posts, whose base is greater than twenty-four (24") inches above the adjacent grade.

Roof Sign. Any sign erected, constructed, and/or painted wholly or partially on or above the roof of a building.

Running Signs. Any sign consisting of a series of two (2) or more separate signs placed in a line parallel to a street and carrying a single message, copy or announcement part of which is contained on each sign.

Sign. Any display of letters, words, numbers, symbols, emblems, objects, pictures, or any combination thereof made visible for the purpose of attracting attention or of making something known, whether such display be made on, attached to, or constructed as part of a building, structure, vehicle, or object.

Spinner. A wind-activated, propeller-type device, which may or may not be attached to advertising copy.

Streamer. A string or strip of miniature or full size pennants or flags, which may or may not be suspended between two (2) points.

Temporary Sign. A sign advertising a special event and not intended to be displayed on a permanent basis.

Valance. A short apron which is designed and installed as part of a canopy/awning and is usually, but not necessarily vertical.

Vehicle Sign. See Portable Sign.

Wall Sign. A sign affixed on and parallel to the exterior wall of any building and projecting not more than twelve (12") inches from the wall. Signs mounted on porticoes shall be considered as wall signs.

Windblown Signs. Any banner, balloon, disc, pennant, propeller spinner, string of flags or streamer, or other wind-activated devices and including any inflatable objects such as a moored blimp or gas balloon.

Window Sign. A sign which is applied to the building glass area located

such that the identifying/advertising message, symbol, insignia, visual representation, logotype or any other form which communicates information can be read from off-premise.

D. Definitions Related to Flood Damage Prevention

Area of Shallow Flooding. A designated AO or VO zone on the Flood Insurance Rate Map (FIRM) with base flood depths from one to three (1'-3') feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of Special Flood Hazard. The land in the floodplain within a community subject to a one (1%) percent or greater chance of a base flood being equaled or exceeded in any given year.

Base Flood. The peak discharge of a 100-year flood. The base flood has a one (1%) percent probability of being equaled or exceeded in any given year. The base flood shall be determined from an analysis of floods on a particular watercourse and other watercourses in the same general region in accordance with the criteria established by FEMA pursuant to 44 CFR, parts 59, 60, 65 and 70, and shall be consistent with the data set forth in the Flood Insurance Study, which criteria is hereby incorporated by reference and made a part of this Ordinance.

Base Flood Elevation. The calculated water-surface elevation of the base flood.

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

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

Flood Fringe District. The area within a 100-year floodplain where the floodwaters are relatively shallow, and move at velocities from one (1') to four (4') feet per second.

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Flood Insurance Rate Map (Firm). The official map on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazards and the risk premium zones.

Flood Insurance Study. The official report provided by the Federal Emergency Management Agency (FEMA) that include profiles, the Flood Boundary-Floodway Map, and the base floodwater surface elevation. The current Flood Insurance Study (FIS) is set forth in two (2) volumes entitled “Flood Insurance Study, Surry County, North Carolina and Incorporated Areas,” which document is hereby incorporated by reference as if set forth in its entirety herein.

Floodplain. An area adjacent to a watercourse which may be subject to flooding as a result of an increase in water flow beyond a normal high water mark.

Flood Plain Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

Flood Profile. Hydrological conclusions based upon historical facts and engineering principles represented graphically showing the relationship of the base floodwater surface elevation to the channel and adjacent topography.

Flood-Prone Area. An area near a watercourse which is subject to flooding during a 100-year flood based on historical information, topography, vegetation and other indicators, but where the precise dimensions of a 100-year floodplain have not been delineated by Federal Emergency Management Agency (FEMA) studies.

Flood-Proofing. Any combination of structural or non-structural additions, changes or adjustments to structures and movable objects, or to surrounding areas, including utility and sanitary facilities, which would preclude the entry of water.

Flood Regulatory Area. That portion of the floodplain, which is subject to inundation by a 100-year flood. This area may be divided into the floodway district and the flood fringe district.

Floodway. That portion of the channel and floodplain of a stream designated to provide passage for the 100-year flood, without increasing the elevation of that flood at any point by more than one (1') foot. (Source: NCGS 143-215.52)

Floodway Fringe. The area within the Area of Special Flood Hazard that has been identified on the Flood Insurance Rate Map which area is: (1) adjacent to, but not within, the floodway, (2) is within the 100 year floodplain, and (3) is inundated by the base flood.

E. Definitions Related to Water Supply Watersheds

Balance of Watershed (BW). The remainder of a watershed outside the critical area.

Best Management Practices (BMP). A structural or non-structural management-based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

Buffer. 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 structures and from the bank of each side of streams or rivers.

Built-Up Area. Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas, (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

Cluster Development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater run-off impacts. This term includes non-residential development as well as single-family residential and multi-family developments. For the purpose of these rules, planned unit

developments and mixed-use development are considered as cluster developments.

Critical Area (CA). The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half (1/2) mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half (1/2) mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half (1/2) mile.

Development. Any land-disturbing activity, which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise, decreases the infiltration of precipitation into the soil.

Discharging Landfill. A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on-site and discharged to a receiving stream.

Existing Development. 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 these provisions based on at least one (1) of the following criteria:

1. Substantial expenditures of 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 the General Statutes; or
3. Having an approved site-specific or phased development plan as authorized by the General Statutes.

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Industrial Development. Any non-residential development that requires an 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 development any product or commodity.

Landfill. A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the NC General Statutes. For the purpose of these provisions, this term does not include composting facilities.

Major Variance. A Variance from the minimum statewide watershed protection rules that results in the relaxation, by a factor greater than five (5%) percent of any buffer, density or built-upon area requirement under high-density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than ten (10%) percent of any management requirement under the low-density option. Where this Ordinance is more stringent than the State's minimum water supply protection rules a Variance to this Ordinance is not a Major Variance as long as the result of the Variance is not less stringent than the State's minimum requirement.

Minor Variance. A Variance from the minimum statewide watershed protection rules that result in a relaxation, by a factor of up to five (5%) percent of any buffer, density or built-upon area requirement under the high-density option; or that results in a relaxation by a factor up to ten (10%) percent, of any management requirement under the low-density option.

Non-Residential Development. All development other than residential development, agriculture and silviculture.

Residential Development. Buildings for residences such as attached and detached single-family dwelling, apartment complexes, condominiums, townhouses, cottages, mobile homes, etc., and their associated outbuildings such as garages, swimming pools, storage buildings, gazebos, etc.

Sedimentation Control Permit. A permission granted by the State of North Carolina for a person to conduct a land disturbing activity pursuant to the Sedimentation Pollution Control Act of 1973, as amended.

Stormwater Collection System. Means any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of 15A NCAC 2H.1003(c) (1).

Variance. A permission to develop or use property granted by the Board of Adjustment relaxing or waiving a water supply watershed management requirement that is incorporated into this Ordinance.

Water-Dependent Structure. Any structure for which the use requires access to or proximity to or sitting within surface waters to fulfill its basic purpose, such as boat ramps, boathouses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Watershed. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).

15.5 Validity

If any Section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Commissioners hereby declares that it would have passed this Ordinance and each Section, subsection, clause, and phrase thereof, irrespective of the fact that any one (1) or more Sections, subsections, sentences, clauses or phrases be declared invalid.

15.6 Effective Date

This Ordinance shall become effective upon its adoption by the Board of Commissioners of the City of Mount Airy, North Carolina.”

CITY OF MOUNT AIRY ZONING ORDINANCE

ADOPTED this the fifth (5th) day of September, 2002, by the Board of Commissioners of the City of Mount Airy, North Carolina.

City Clerk

Mayor