

## ARTICLE 4

### GENERAL PROVISIONS

#### **Section 4.1 Customary Home Occupations**

Customary home occupations may be established in any dwelling unit or accessory structure. The following requirements shall apply in addition to all other applicable requirements of this Ordinance for the district in which such uses are located:

- 4.1.1** The home occupation shall be clearly incidental and subordinate to the residential use of the dwelling and shall not change the residential use of the dwelling.
- 4.1.2** No more than one (1) accessory building or outside storage area shall be used in connection with all home occupation, and shall be located in the rear yard only. The square footage of all home occupations shall not exceed 1000 square feet.
- 4.1.3** Use of the dwelling for all home occupation shall be limited to twenty-five percent (25%) of the area of the principal building. Hours of operation may only be established between the hours of 8:00 A. M. and 9:00 P. M.
- 4.1.4** Only a resident of the dwelling may be the home occupation operator. No more than two (2) people who do not reside on the premises may be employed.
- 4.1.5** No display of products shall be visible from any adjoining streets or properties. Sales of products are limited to those made on the premises and those, which are accessory to the service being provided.
- 4.1.6** No alterations to the exterior appearance of the residence or premises shall be made which change the residential characteristics.
- 4.1.7** Only vehicles used primarily as passenger vehicles (e.g., automobiles, vans, sports utility vehicles and pick-up trucks) shall be permitted in connection with the conduct of the customary home occupation.
- 4.1.8** Chemical, mechanical, electronic or electrical equipment that creates odor, light emission, noises, or interference with radio or television reception detectable outside of the dwelling shall be prohibited.
- 4.1.9** No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood. Any need for parking generated by the conduct of the home occupation shall be provided off the road right-of-way.

**4.1.10** No more than two limousines are allowed in connection with any limousine/chauffer service as a customary home occupation in any residential district.

**4.1.11** Without limiting the generality of the foregoing, automobile repair shops, body shops and garages shall not be regarded as home occupations:

- Automobile repair shops
- Body shops and garages
- Car Sales (see definition in 2.2)

## **Section 4.2 Reserved**

## **Section 4.3 Fences and Walls Permitted**

Unless otherwise noted in this Ordinance, fences or walls are permitted in the various districts subject to the following regulations:

**4.3.1** In Residential Districts:

- a) Within the required rear and side yard areas the maximum height of a fence (except court perimeter fences) or wall shall be eight (8) feet.
- b) Within the required front yard area, the maximum height of a fence or wall shall be five (5) feet.
- c) No portion on any fence or wall shall be located within the established right-of-way of any publicly maintained road unless an encroachment agreement has first been obtained from the governmental body maintaining said road.

**4.3.2** In Business Districts:

- a) Within the required rear and side yard areas the maximum height of a fence or wall shall be eight (8) feet.
- b) Within the required front yard area, the maximum height of a fence shall be five (5) feet.

## **Section 4.4 Lot to Abut a Public Street**

No building or structure shall be erected or located, nor shall any principal use be instituted on a lot, which does not abut a public street with the following exceptions:

**4.4.1** A single-family dwelling or manufactured home may be constructed on a lot which does not abut a street provided such a lot existed prior to the date this Ordinance became effective and provided such lot is provided access to a public street by an easement at least twenty (20) feet in width for occupants of the dwelling established on such lot and further provided that such easement is maintained in a condition passable for service and emergency

vehicles. Said easement may also be used, where needed for the installation and maintenance of utility facilities.

- 4.4.2** A single-family dwelling or manufactured home may be constructed on a lot which does not abut a street provided such a lot has been created in accordance with Section 408 of the Subdivision Ordinance of the Town of Mineral Springs.

#### **Section 4.5 One Principal Building**

- a) Except for multi-family dwellings, which are subject to the issuance of a conditional use permit, in any single-family residential district, one (1) single-family dwelling unit or one (1) modular home or one (1) manufactured home and accessory structure(s) or barn shall be permitted on a single lot which meets at least the minimum requirements of this Ordinance.
- b) In any business district (including the MUD district), a detached building or a group of detached buildings shall be either permitted as a matter of right or may be authorized by a Conditional Use Permit (Article 6), for such uses so depicted on the Table of Uses (e.g., multi-family dwellings, shopping centers), on a single lot which meets at least the minimum requirements of this Ordinance.

#### **Section 4.6 Visibility at Intersections**

No structures, buildings, or other improvements over three and one-half (3 1/2) feet high will be permitted within ten (10) feet of the right-of-way of an intersection, except as provided in Section 4.2.8 of this Ordinance.

#### **Section 4.7 Temporary Structures and Uses**

Temporary structures and uses, when in compliance with all applicable provisions of this Ordinance and all other Ordinances of the Town of Mineral Springs, shall be approved by the Zoning Administrator who shall issue a permit for such approval. The following temporary structures and uses shall be permitted:

- 4.7.1** In the event of a disaster, the result of which would require the rebuilding of a dwelling, the owner and his family may occupy a manufactured home or recreational vehicle on the property. The permit shall be issued for a six (6) month period and may be renewed by the Town Council provided that construction has proceeded in a diligent manner.
- 4.7.2** Manufactured homes, construction trailer and temporary buildings not for residential purposes when used by a contractor for field offices and storage during the building of structures on the same site or subdivision are permitted. The permit shall be issued for a six (6) month period and may be renewed by the Town Council provided that the construction has proceeded in a diligent manner.

- 4.7.3** Turkey shoots, sales of Christmas trees, 4-H shows, and other commercial and charitable uses of a limited nature and for a limited time may be allowed, but shall be specifically permitted. Each such permit shall be for a period of time as determined by the Zoning Administrator, but not to exceed forty-five (45) days without the specific approval of the Town Council.
- 4.7.4** Structures, whether temporary or permanent, located in a subdivision, and used as sales offices for the subdivision development are allowable, but shall be specifically permitted. Such permits shall be issued by the Zoning Administrator for a period of one (1) year, and are renewable for a period of time as determined by the Town Council, provided the development is being actively marketed. At the completion of the sales in a tract, the temporary structure(s) shall be removed, and any permanent structure(s), temporarily used as a sales office shall be used only for a purpose otherwise permitted in that district.
- 4.7.5** Temporary use of a manufactured home or recreational vehicle as a residence shall be permitted in any residential zoning district during the construction of a single family dwelling. All setbacks associated with the principal structure on the lot shall also apply to the temporary use. Any such manufactured home used as a temporary residence must meet the requirements of a Class A, Class B or Class C manufactured home, as herein defined. The recreational vehicle must contain indoor bathroom and cooking [facilities], be attached to a county approved wastewater system and be hooked up to a source of potable water. The manufactured home/recreational vehicle must be used as the principal residence of the owner of the lot which it is being placed. The temporary use permit for the manufactured home/recreational vehicle shall not be issued until the owner of the lot has first secured a building permit for a single family dwelling.

Any temporary use permit issued by the Town for such use shall state that the intended use of the dwelling to be constructed on the lot is for his principal place of residence. If the building permit for construction of the new dwelling becomes invalid, then the temporary use permit for the manufactured home/recreational vehicle shall, at the same time, become invalid and the manufactured home/recreational vehicle shall be immediately removed. The temporary use permit for the manufactured home/recreational vehicle shall initially be granted by the Town for a period of six (6) months. The temporary manufactured home/recreational vehicle permit shall be extended for one twelve (12) month period provided the dwelling being constructed has received an approved foundation permit by the end of the first six (6) month period. In no instance shall a temporary use permit be valid at the same location for a continuous period of greater than eighteen (18) months.

## **Section 4.7A Temporary Structures and Uses Requiring a Temporary Conditional Use Permit**

**4.7A.1** In all residential districts a temporary Conditional Use Permit (CUP) may be granted by the Town Council for not more than one (1) manufactured home to be placed on a residential lot as an accessory use when conditions exist of the need to care for an immediate family member due to medical reasons. The CUP shall be granted only after all of the following findings have been confirmed to the Council through appropriate investigation and certification by the Zoning Administrator:

- 1) That the manufactured home is an accessory use to the principal residential use;
- 2) That the manufactured home will be placed on the lot on a temporary basis;
- 3) That there exists a medically related need for the proximate care of an immediate family member (this finding must be substantiated by a certification of need from a medical doctor and other evidence the Town Council may desire);
- 4) That the person(s) responsible for providing the care will live in either the principal dwelling or the manufactured home and that the person(s) needing the care shall live in the structure not occupied by the person(s) providing the care;
- 5) That there exists sufficient reason(s) justifying separate quarters and such reasons shall be limited to either contagious disease, serious illness, or lack of adequate space within the principal dwelling;
- 6) That the person(s) in need of care is an immediate family member of the person(s) to be responsible for providing care;
- 7) That the manufactured home will have adequate access to a well and septic tank as verified by permits from the Union County Health Department or directly connected to public water and sewer systems;
- 8) That the manufactured home will be placed in the rear yard and will be no closer than twenty (20) feet from any property line or, if it is not feasible to locate the manufactured home in the rear yard, that the manufactured home will be located in the non-required side yard behind the building line of the principal dwelling; and
- 9) That the granting of the CUP will not materially endanger the public health, safety and welfare.

The following additional requirements shall be applicable:

- a) The CUP shall be valid for one (1) year after issuance or for shorter periods as specified by the Town Council, however, no such CUP shall be valid beyond thirty (30) days after any of the reasons justifying the

CUP cease to exist.

- b) The CUP may be renewed prior to the expiration date with proper application to and approval by the Town Council when the hardship warranting the original permit remains and is re-certified.
- c) Such permit is granted to a particular owner on the basis of circumstances peculiar to that owner and it shall not remain in effect in the event of a change of ownership of any land structure, use, or other item covered by the CUP.
- d) When granting the CUP, the Town Council may impose reasonable conditions, restrictions, and safeguards as considered necessary to protect the public health, safety, and general welfare in accordance with the purpose of intent of this Ordinance. Violation of these conditions, restrictions, and safeguards shall be considered a violation of this Ordinance.

**4.7A.2** In the event of overcrowded permanent facilities, a temporary Conditional Use Permit (CUP) may be issued by the Town Council to any school or church using at the time of the application permanent buildings, for one or more manufactured home(s) utilized as a temporary classroom(s) pending construction of additional permanent facilities. The CUP shall be issued for a period of up to one (1) year and may be renewed by the Town Council for subsequent periods of one (1) year. Any manufactured home(s) utilized as a temporary classroom(s) permitted under this subsection shall be constructed pursuant to the NC Building Code.

#### **Section 4.8 Height Exemption**

The maximum height as indicated in the various districts may be exceeded, providing Council specific approval is first obtained for proposed uses as provided in the following instances:

**4.8.1** Roof Structures and the like not intended for human occupancy, such as skylights, stairways, water tanks, ventilating fans, elevator and air conditioning equipment or similar equipment housings, steeples, spires, belfries, cupolas, silos or chimneys, may exceed the maximum allowable height limits in any of the zoning districts.

**4.8.2** The height restrictions of Article 13 shall apply to telecommunication towers.

#### **Section 4.9 Accessory Uses and Structures**

Minor uses or structures which are necessary to the operation or enjoyment of a permitted principal use, and are appropriate, incidental and subordinate to any such uses, shall be permitted in all districts with certain exceptions as described herein as an accessory use, subject to the following:

**4.9.1** Accessory uses or structures, well houses and swimming pools shall be

located no closer than fifteen (15) feet to any side or rear lot line. Well houses shall be allowed in any yard. Detached garages may be located in any non-required side or rear yard and must comply with all setback requirements of principal structures for that zoning district.

- 4.9.2** In any residential district or on any lot containing a principal residential use, no accessory use or structure shall be permitted that involves or requires any construction features, which are not residential in nature or character. Accessory uses shall be located on the same lot as the principal use.
- 4.9.3** An accessory building(s) may not exceed the height of the principal building.
- 4.9.4** An accessory building(s) shall not exceed one half of the gross floor area of the principal building.
- 4.9.5** Roofed accessory uses physically attached or connected to the principal building shall be considered a part of the principal building and shall be subject to the setback requirements for the principal building.
- 4.9.6** A swimming pool shall be considered an accessory use. A swimming pool shall only be located in the rear yard of residential properties, or in the side yard of properties where the residence location has a front setback of at least two hundred (200) feet. In all other situations, swimming pool locations shall be subject to specific approval of a Conditional Use Permit as provided for in Article 6.
- 4.9.7** The following activities are specifically regarded as accessory to residential principal uses so long as they satisfy the general criteria set forth above:
- 1) Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities of a commercial nature, so long as such activities do not fall within the definition of a home occupation.
  - 2) Hobbies or recreational activities of a non-commercial nature.
  - 3) The renting out of one or two rooms within a single-family residence (which one or two rooms do not themselves constitute a separate dwelling unit) to not more than two persons who are not part of the family that resides in the single-family dwelling.
  - 4) Yard sales or garage sales, so long as such sales are not conducted on the same lot for more than three days (whether consecutive or not) during any ninety-day period.
  - 5) Satellite dish antenna designed to receive direct broadcast satellite service, including direct-to-home service that are one meter (39.37") or less in diameter shall not require a permit of any type.

- 6) Satellite dish antenna that are less than two meters (78.74 inches) in diameter, and located in a commercial (MUD, B-2, B-4) or industrial (LI) zoning district shall not require a permit of any type.
- 7) Without limiting the generality of the foregoing, the sale of agricultural products (either in a “roadside stand” or on a “pick your own” basis) from property where such products were grown or from land that is all part of the same farm or farming operation as the land where such products were grown shall be regarded as accessory to an agricultural operation.

**4.9.8** The following activities shall **not** be regarded as accessory to a principal use and are prohibited in all zoning districts, unless otherwise specified in this Ordinance.

- 1) Storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed nor operational.

**4.9.9** Accessory uses or structures on properties that have obtained a Conditional Use Permit or a Downtown Development Permit shall be subject to Article 6, Section 6.8 or Article 3, Section 3.1.3 (c) (8), whichever is applicable.

#### **Section 4.10 Outdoor Lighting**

The purpose of this section is to improve nighttime public safety, utility, and security by restricting the nighttime emission of light rays. New lighting technologies have produced lights that are extremely powerful, and these lights may be improperly installed so that they create problems of excessive glare, light trespass, and higher energy use. Excessive glare can be annoying and may cause safety problems. Light trespass reduces everyone’s privacy, may be detrimental to the aesthetic values of the Town, and can restrict persons from the peaceful enjoyment of their property. Higher energy use results in increased costs for everyone. This section is intended to reduce the problems caused by excessive lighting, or by improperly designed and installed outdoor lighting.

##### **4.10.1 Regulations:**

All public and private outdoor lighting installed in the Town of Mineral Springs shall be in conformance with the requirements established by this section. The provisions of this section are intended to supplement other applicable codes and requirements. Compliance with all applicable provisions of building, electrical, and other codes must be observed. In the event of a conflict between the requirements of this code and other requirements, the more stringent requirement shall apply.

##### **4.10.2 Control of glare and light trespass:**

- a) Any luminaire with a lamp or lamps rated at a total of more than 1800 lumens, and all flood or spot luminaires with a lamp or lamps rated at a total of more than 900 lumens, shall not emit any direct light above a

horizontal plane through the lowest direct-light-emitting part of the luminaire.

- b) Any luminaire with a lamp or lamps rated at a total of more than 1800 lumens, and all flood or spot luminaires with a lamp or lamps rated at a total of more than 900 lumens, shall be mounted at a height equal to or less than the value  $3 + (D/3)$ , where D is the distance in feet to the nearest property boundary. The maximum height of the luminaire may not exceed 25 feet.
- c) Unless specified otherwise in this Ordinance, seventy-five (75) percent of all outdoor light fixtures used for commercial, advertising, or industrial use, whether installed before, on, or after the effective date of this Ordinance, shall be turned off between 11:00 PM and sunrise except when used for:
  - 1) Commercial and industrial use (such as sales, assembly, and repair areas) where business is conducted after 11:00 PM, but only while the business is open to the public.
  - 2) Illuminated advertising signs on the premises of a business while it is open to the public.

#### **4.10.3 Exceptions**

- a) Any luminaire with a lamp or lamps rated at a total of 1800 lumens or less, and all flood or spot luminaires with a lamp or lamps rated at 900 lumens or less, may be used without restriction to light distribution or mounting height, except that if any spot or flood luminaire rated 900 lumens or less is aimed, directed, or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, the luminaire shall be redirected or its light output controlled as necessary to eliminate such conditions.
- b) Luminaires used for public-roadway illumination may be installed at a maximum height of 25 feet and may be positioned at that height up to the edge of any bordering property.
- c) All temporary emergency lighting needed by the Police or Fire Departments or other emergency services, as well as all vehicular luminaires, shall be exempt from the requirements of this article.
- d) All hazard warning luminaires required by Federal regulatory agencies are exempt from the requirements of this article, except that all luminaires must be shown to be as close as possible to the Federally required minimum lumen output requirement for the specific task.
- e) Motion detector security lights which are normally "off" and which are activated for less than 5 minutes occasionally when motion is detected are exempt from this article.

- f) In the case of flags, statues or other top-of-pole mounted objects, including neighborhood entrances, which cannot be illuminated with down-lighting, upward lighting may be used only in the form of two narrow-cone spotlight which confines the illumination to the object of interest.
- g) This Ordinance does not regulate outdoor signs. Such regulations can be found in Article 8 of this Zoning Ordinance.

#### **4.10.4 Prohibitions**

- a) The operation of searchlights, lasers, or other high-intensity beams is prohibited.
- b) The use of flashing, rotating, or pulsating devices is prohibited.

#### **4.10.5 Recreational Facilities**

- a) Any light source permitted by this Ordinance may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball and softball fields, tennis courts, or show areas, provided all the following conditions are met:
  - 1) All fixtures used for event lighting shall comply with the requirements of Section 4.10.2 (A & B), or be provided with sharp cut-off capability, so as to minimize up-light, spill light, and glare.

#### **4.10.6 Temporary Outdoor Lighting**

- a) Any temporary outdoor lighting that conforms to the requirements of this Ordinance shall be allowed. Nonconforming temporary outdoor lighting may be permitted by the Town Council after considering: (1) the public and/or private benefits that will result from the temporary lighting; (2) any annoyance or safety problems that may result from the use of the temporary lighting; and (3) the duration of the temporary nonconforming lighting. The applicant shall submit a detailed description of the proposed temporary nonconforming lighting to the Town Council, who shall consider the request at the next regularly scheduled meeting. Prior notice of the meeting shall be provided to the applicant. The Town Council shall render its decision on the temporary lighting request and notify the applicant in writing with two weeks. A failure of the Town Council to act on a request shall constitute a denial of the request.

#### **4.10.7 Application to Pre-Existing Luminaires**

- a) All luminaires, in non-commercial areas, lawfully in place prior to the date of this Ordinance, are deemed "pre-existing luminaires". However, any luminaire that replaces a pre-existing luminaire, or any pre-existing luminaire that is moved, must meet the standards of this Ordinance subject to the above sentence. All pre-existing luminaires that are in B2, B4 or LI zoned areas may remain for a period of 5 years after the date of

adoption of this Zoning Ordinance, and must thereafter comply with provisions of Section 4.10 above.

#### **4.10.8 Authorization for Installation of Public Area and Roadway Lighting**

- a) Installation of any new public area and roadway lighting fixtures other than for traffic control shall be specifically approved at a Mineral Springs Town Council Meeting.

#### **Section 4.11 Vibration**

No equipment in any district shall operate in such a fashion that any inherent or recurring ground vibrations can be felt or detected at the property line without the use of instruments.

#### **Section 4.12 Noise**

Every use of land must be conducted in such a manner that regularly recurring noises are not disturbing or loud and do not cause injury, detriment, or nuisance to any person of ordinary sensitivities, as measured at the property line.

#### **Section 4.13 Restoring Unsafe Buildings**

Nothing in these regulations shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by lawful order.

#### **Section 4.14 Uses Not Expressly Permitted or Conditional**

No building, sign, or land shall be used, erected or occupied and no building or structure shall be erected, expanded or moved after the Effective Date of this Ordinance except in conformity to this Ordinance. This Ordinance specifies uses which are allowed in each zone. Uses designated as "permitted uses" are allowed in a zone as a matter of right. Uses designated as "conditional uses" and/or "non-conforming uses" are allowed only after individual, specific approval by the Town Council pursuant to Article 6 of the Ordinance. Certain uses pre-existing the adoption of this Ordinance are allowed to remain as nonconforming uses pursuant to Article 7 of this Ordinance. Unless a use is allowed as a "permitted", "conditional" or "nonconforming" use, then such use is expressly prohibited in that zone by this Ordinance, and such use shall constitute a violation of this Ordinance. Certain definitions set out in Section 2.2 of this Ordinance regarding unallowable uses are not mentioned in any other sections of the Ordinance. The purpose of these definitions is to make clear that any such defined use is not permitted under this Ordinance.

#### **Section 4.15 Construction Begun Prior to Adoption of Ordinance**

Nothing in this Ordinance shall be deemed to require any change in the plans, construction or designed use of any building for which a permit has been issued or upon which actual construction was lawfully begun prior to the Effective Date of this

Ordinance, and upon which building actual construction has been diligently carried on, and provided further, that such building shall be completed within one (1) year from the date of passage of this Ordinance.

**Section 4.16 Reserved**

**Section 4.17 Reserved**

**Section 4.18 Reserved**

**Section 4.19 Barns**

a) The following setbacks shall apply

<b>Size of barn (square feet)</b>	<b>Minimum side setback</b>	<b>Minimum rear setback</b>	<b>Minimum front yard setback</b>	<b>Minimum distance to dwelling on adjoining lot</b>
31*-149	15 feet	40 feet	65 feet	60 feet
150-499	30 feet	40 feet	100 feet	80 feet
500-999	50 feet	60 feet	100 feet	100 feet
1,000-1,499	75 feet	75 feet	100 feet	150 feet
1,500-2,499	100 feet	100 feet	100 feet	200 feet
2,500+	Conditional use permit required, minimum setbacks for 1,500-2,499 sq. ft. apply			
<b>Waste removed from any structure shall be located no closer than 150 feet from any property line, except that waste removed may be used as a natural fertilizer for on-premise vegetation.</b>				

\*For animal pens, see Section 10.7 (4)

- b) The tract must contain at least one acre for every horse housed in such barn, provided that if this density figure is exceeded as a result of a mare giving birth, the colt or filly may remain for weaning purposes for a period not to exceed six month.
- c) Barns shall not exceed 35' in height.
- d) Setbacks shall apply only to the barn structure and not to any associated fencing for pastures.
- e) Structures housing the commercial production of poultry or livestock and waste removed from any structure shall be located no closer than 150' feet from any property line.

**Section 4.20 Stormwater Drainage/Stormwater Detention**

The Town of Mineral Springs hereby adopts and incorporates herein the provisions contained in the Charlotte-Mecklenburg Stormwater Manual, as amended (hereinafter referenced as the "Stormwater Manual"), with the following exceptions:

- 1) Necessary deviations from the Stormwater Manual as may be necessary to accommodate soil types found in Union County, and Town of Mineral Springs Subdivision and Zoning Regulations. When discrepancies are found between the Stormwater Manual and the Town of Mineral Springs Zoning Ordinance or Subdivision Ordinance, the stricter regulation shall apply.
- 2) In order to prevent flooding and damage to properties, all developments shall provide stormwater detention to control the peak runoff from the 2, 10, 25, 50 and 100 year, 24-hour storm events to pre-development levels.
- 3) A design professional shall certify documents demonstrating that construction of the project or subdivision will not increase the rate of runoff from the site nor cause any adverse impacts on downstream facilities or property.
- 4) Where ponds are proposed to be constructed, the owners, heirs, assigns or successors of the land shall agree to perpetual maintenance of the pond and shall release and hold harmless the Town of Mineral Springs from any liability, claims, demands, attorney's fees, and costs or judgments arising from said pond. At a minimum, ponds shall be inspected on a yearly basis.
- 5) No certificate of compliance or release of performance bond funds shall be issued for any development until a registered land surveyor has surveyed the as-built detention facilities and the revised calculations have been submitted and approved by the Town. The revised calculations must be sealed by a design professional. In addition, the Town shall not grant final plat approval unless the Town has approved the as-built detention plans and/or a performance bond has been secured.
- 6) When a detention facility serves more than one property, a "permanent detention easement" which encompasses the detention facility shall be shown on a recorded plat. This easement shall be described by metes and bounds description.
- 7) There shall be a note placed on the recorded plat that clearly describes who is responsible for maintenance of the detention facilities, pipes and/or channels located within the permanent detention facility.
- 8) The Town Engineer, on a case-by-case basis, may approve other deviations from the Stormwater Manual.

## **Section 4.21 Stream Buffers**

### **4.21.1 Purpose**

The purposes of a stream buffer are to ensure that streams and the adjacent lands fulfill their natural functions to protect the physical integrity of the stream ecosystem, to prevent encroachment upon the stream ecosystems, and to filter runoff before detrimental material reaches the streams. The provisions contained in this Section shall only be applicable to lots created after the effective date of the Ordinance amendment creating this Section (February 26, 2007), as well as to the combination or recombination of lots that existed at such date of adoption.

#### 4.21.2 Stream Buffer and Stream Buffer Management Zones

Stream buffers are required for all stream segments where the upstream drainage basin is greater than or equal to fifty (50) acres. On each side of the stream, a stream buffer will begin at the edge of the stream channel and extend perpendicular to the stream a distance equal to the lesser of one hundred (100) feet or to a ridge line that changes the runoff flow to be away from the stream.

A stream buffer shall be divided into three stream buffer management zones, each of which has different permitted land uses. Each zone shall be identified on any final subdivision plat.

- 1) Streamside Zone. The streamside zone is the thirty (30) feet of stream buffer nearest the stream channel, measured from the bank. If the stream buffer is at most thirty (30) feet wide, then the entire stream buffer falls within the streamside zone. With the exceptions noted below, land uses within the streamside zone are limited to flood control and stream bank stabilization; otherwise, land disturbances and vegetation clearing are prohibited. No buildings are permitted within the streamside zone.
- 2) Managed Use Zone. The managed use zone immediately follows the streamside zone to a maximum width of forty-five (45) feet. If the stream buffer is greater than thirty (30) feet but is at most seventy-five (75) feet wide, then the stream buffer consists of the thirty (30) feet of streamside zone followed by the residual as the managed use zone. With the exceptions noted in subsection 4 below, land uses within the managed use zone are limited to stormwater best management practices (BMPs) passive recreation uses such as greenway trails and bicycle paths and other land uses consistent with maintaining the natural topography and vegetation. No buildings are permitted within the managed use zone.
- 3) Upland Zone. The upland zone immediately follows the managed use zone to a maximum width of twenty-five (25) feet. If the stream buffer is greater than seventy-five (75) feet but is at most one-hundred (100) feet wide, then the stream buffer shall consist of thirty (30) feet of streamside zone, followed by forty-five (45) feet of managed use zone, followed by the residual as upland zone. With the exceptions noted in subsection 4 below, land uses within the upland zone are limited to stormwater best management practices (BMPs) passive recreation uses such as greenway trails and bicycle paths, which may be built with impervious materials, and other land uses consistent with maintaining the natural topography and managing the natural vegetation, residential grass cover, or agricultural grasses. Only small storage buildings (under twelve feet in every direction) are permitted within the upland zone.

- 4) Exceptions to Regulations: The following land uses are permitted within the stream buffers subject to the requirement that the lands adjacent to these uses that are disturbed as a result of these uses are stabilized and replanted with native vegetation:
- a) Near perpendicular (75 degrees or greater) utility stream crossings approved otherwise allowed by this Ordinance.
  - b) Parallel utility installation otherwise allowed by this Ordinance.
  - c) Near perpendicular (75 degrees or greater) stream crossings by streets or by greenway trails, bicycle paths, sidewalks, and other pedestrian path allowed by this Ordinance.
  - d) Near perpendicular (75 degrees or greater) crossings for farm animals with fencing to minimize the animals' impacts upon the stream buffers. (NOTE: This does not require specific plat or site plan approval.)
  - e) Narrow footpaths constructed with minimal vegetation disturbance that permit the landowner to walk to the stream. (NOTE: This does not require specific plat or site plan approval.)
  - f) Incidental drainage improvements or repairs for maintenance. (NOTE: This does not require specific plat or site plan approval.)
  - g) Newly created ponds or lakes. New ponds shall have the same buffers as the original creek, except that tree planting will not be required. Buffer requirements will not apply to dams.
  - h) Mitigation approved by a State or Federal agency acting under Sections 401 or 404 of the Clean Water Act.
  - i) Other land uses within the stream buffers may be approved as part of a development plan that is subject to the requirement that the landowner demonstrate that the net result of the land use and strategy to mitigate the impact of the land use provide at least the same protection to the stream's water quality and ecological integrity.
  - j) The continuation of existing agricultural uses.

## **Section 4.22 Conservation Subdivisions**

### **4.22.1 Permitted Uses of Open Space**

No use or development shall be allowed on the required open space except as follows:

- 1) Conservation of open land in its natural state (for example, forestlands, fields, or meadows).
- 2) Pastureland for horses.
- 3) Forestry, in keeping with established best management practices for selective harvesting and sustained - yield forestry.

#### **4.22.2 Permanent Protection of Open Space**

The required open space shall be subject to a conservation easement that will be held by the homeowners association, the Town of Mineral Springs or a conservation organization approved by the Town Council. Any homeowners association that is a holder of a conservation easement as provided in Section 4.22.4(g), shall be subject to and comply with all applicable requirements for homeowners' associations as set forth in North Carolina General Statutes. In addition, the following criteria shall be met:

- 1) The applicant for subdivision approval shall provide the Town a description of the organization of the proposed association, including its by-laws, and all documents governing ownership, maintenance, and use restrictions for common facilities;
- 2) The proposed homeowners' association shall be established by the subdivision applicant and shall be operating (with financial underwriting by the applicant, if necessary) before the sale of any dwelling units in the development;
- 3) Membership in the homeowners' association shall be mandatory for all purchasers of lots within the subdivision and their successors in title;
- 4) The homeowners' association by-laws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his dues. Such dues shall be paid with the accrued interest before the lien may be lifted;
- 5) The homeowners' association shall annually provide to the Town a listing of the names, addresses, and telephone numbers of all their officers and board members.
- 6) Any proposed changes to the conservation easement that substantively affect the usage, location, or maintenance of conservation land within the conservation subdivision must first be consented to and approved by 100% of the Mineral Springs Town Council and 100% of all homeowners.

#### **4.22.3 Maintenance Plans and Maintenance Agreement**

- 1) The cost and responsibility of maintaining required open space shall be borne by the fee simple owner of the required conservation lands, or by another party as specified in an executed, binding, and enforceable Maintenance Agreement, who is a holder of the conservation easement.
- 2) The applicant must submit, with an application for preliminary plat approval, a Maintenance Agreement that obligates either the property owner of the open space, or other specified party as provided above, to implement the Maintenance Plan.

- 3) The Maintenance Plan shall be submitted with an application for preliminary plat approval of the subdivision, and shall be in accordance with the following requirements:
  - a) The Maintenance Plan shall specify ownership of required open space;
  - b) The Maintenance Plan shall establish a regular operation and maintenance program appropriate to the uses to be undertaken on the subject open space, pursuant to Section 4.22.4(f)(2) of this Ordinance;
  - c) The Maintenance Plan shall specify required insurance and all maintenance and operating costs, and shall define the means for funding the Maintenance Plan on an on-going basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs;
  - d) The property owner or other specified party as provided above shall be required to escrow or bond sufficient funds for the maintenance and operation costs of the open space for two years. The amount of such escrow or bond shall be equal to one and one-half (1.5) of the bi-annual estimated maintenance and operational costs, and shall be in a form as provided in Section 309.2 of the Mineral Springs Subdivision Ordinance; and,
  - e) Any changes to the Maintenance Plan shall be approved by the Town Council.
  - f) In the event that open space and associated common facilities are not maintained in accordance with the approved Maintenance Plan, the Town may recover the escrow or bond funds to be used for such maintenance and any development permits and approvals may be revoked or suspended.
  - g) The property owner of the open space and, if utilized, any other maintaining party by agreement, shall execute a release and indemnity of the Town, in a form satisfactory to the Town, for any claims or damages arising from the Maintenance Agreement and Maintenance Plan or performance thereof.

#### **4.22.4 Standards for Developments Located in Conservation Subdivisions**

- a) Ownership: When land of a conservation subdivision is held in multiple ownership, it shall be planned and developed as a single entity for purposes of this Ordinance.
- b) Conservation Lands Disturbance: The proposed design of the conservation subdivision shall minimize disturbance of primary conservation and required secondary conservation lands.
- c) Density Standards: The actual number of lots suitable for the placement of a principal residential structure may be limited by onsite features as

determined by submission and analysis of a “yield plan” as contained in 314.1(a) of the Mineral Springs Subdivision Ordinance.

- d) Minimum Required Conservation Land: No lot suitable for the placement of a principal residential structure shall be platted to include within its dimensions any conservation lands as herein required, except as provided in Section 4.22.4 (g). Conservation land on the tract containing the conservation subdivision shall be calculated as follows:

- 1) TRACTS CONTAINING PRIMARY CONSERVATION LANDS. All primary conservation lands within the tract shall be retained as conservation land. One-half of all remaining secondary conservation lands, where they exist, shall be retained as conservation land in the order of priority as described below.

TIER A (high priority)

Forestlands

TIER B (medium priority)

Farmlands

Historic Site

TIER C (lowest priority)

Steep Slopes

Rock Formations

Lands Adjacent to Parks

In the AR District, a minimum of fifty percent (50%) of the gross acreage of the tract will be required to be retained as conservation land. Conservation land in excess of the fifty percent (50%) minimum, while not required by the ordinance, may be set aside at the property owner’s discretion. In the RR District, a minimum of thirty-three percent (33%) of the gross acreage of the tract will be required to be retained as conservation land.

An example of this in the AR District is as follows:

*The tract upon which a conservation subdivision is to be located has a gross area of 100 acres. Forty (40) acres of the tract consists of primary conservation lands. The remaining sixty (60) acres consists of forty (40) acres of farmland and twenty (20) acres of forestland.*

*In order to meet the minimum regulations for retaining conservation lands, all forty (40) primary conservation land acres would be retained. Ten (10) additional acres of secondary conservation lands would also be retained, this consisting entirely of forestlands (i.e., the secondary conservation land use category having the highest priority.) Thus, development would be allowed on the remaining fifty acres.*

- 2) TRACTS NOT CONTAINING PRIMARY CONSERVATION LANDS. In the AR District, a minimum of fifty percent (50%) of the gross area of the tract shall be retained as secondary conservation land if there are no primary conservation lands on the tract. In the RR District, a minimum of thirty-three (33%) of the gross area of the tract shall be retained as secondary conservation land if there are no primary conservation lands on the tract. The priority order for retaining secondary conservation lands shall be as described in Subsection (1) above.

An example of this in the AR District is as follows:

*The tract upon which a conservation subdivision is to be located has a gross area of 100 acres. The entire tract consists of sixty (60) acres of farmland and forty (40) acres of forestland.*

*In order to meet the minimum regulations for retaining conservation lands, forty(40) acres of forestland would need to be preserved as secondary conservation lands (with the highest priority) along with ten (10) acres of farmland. The remaining fifty (50) acres could be developed.*

e) Design Standards

Lot lines shall not encroach upon the designated conservation lands. A minimum of 95% of building lots within the subdivision must share at least one lot line with another lot in the subdivision.

f) Conservation Land Uses

Except as provided herein, most types of structural development are not allowed on primary conservation lands and required secondary conservation lands.

1) Principal Uses Permitted Outside of Primary and Required Secondary Conservation Lands

a. Single-family Dwellings

2) Principal Uses Permitted On Primary and Required Secondary Conservation Lands

No use or development shall be allowed on primary and required secondary conservation lands except as follows:

a) Conservation of open land in its natural state (for example, forestlands, fields, or meadows).

b) Agricultural uses (see definition), including raising crops or livestock, nurseries, and associated buildings, excluding residences, provided that such buildings are specifically needed to support an active, viable agricultural or horticultural operation, and are architecturally compatible with the neighborhood setting.

Specifically excluded, but not limited to, are commercial livestock operations involving swine, poultry, and mink.

- c) Pastureland for horses.
  - d) Horse farms or academies.
  - e) Forestry, in keeping with established best management practices for selective harvesting and sustained-yield forestry.
  - f) Neighborhood uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses
  - g) Non-commercial recreation areas, such as playingfields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required conservation land or five acres, whichever is less. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, unlighted, properly drained, provide safe ingress and egress, and contain no more than ten parking spaces. Notwithstanding the above, golf courses, their parking areas, and associated structures, shall not be allowed on any required conservation lands.
  - h) Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conservation area.
  - i) Easements for drainage, access, sewer or water lines, or other public purposes;
  - j) Underground utility rights-of-way. Aboveground utility and street rights-of-way may traverse conservation lands but street rights-of-way shall not count toward the minimum required conservation land. Fifty percent (50%) of the utility rights-of-way may be counted toward the minimum required conservation land.
  - k) Caretaker Quarters – requires a conditional use permit.
- g) Tracts Containing Equestrian Trails on the Primary or Secondary Conservation Lands

Up to 20% of the required conservation land acreage may consist of conservation easements on land which is not designated as “conservation land”, as long as all such land is:

- a) Specifically designated for “Equestrian Trail” Use in the Conservation Easement and on the final plat;
- b) Subject to all access and maintenance provision that would otherwise apply to Conservation Land; and

- c) Not considered to be part of any building lot upon which such conservation easements exist for the purpose of calculating setbacks or minimum lot area.

h) Permanent Conservation Land Protection Through Conservation Easements

- 1) Subject to the provisions of Subsections 2 and 3 below, conservation lands required pursuant to Section 4.22.4(d) may be retained by the applicant or may be conveyed to another party, but must be and remain subject to a conservation easement. Nothing herein shall restrict the legislative zoning authority of the Town Council.
- 2) Required conservation land shall be subject to a conservation easement that specifies the range of uses allowable pursuant to Section 4.22.4(f)(2) of this Ordinance, and which are enforceable in accordance with all applicable laws of the State of North Carolina. There shall be at least two holders of every easement, except as provided in Subsection 3 below. The holders of the conservation easement shall be the State of North Carolina or appropriate department or agency thereof, or one or more conservation organizations, in any combination of two or more, except as provided in Subsection 3 below. Enforcement of the terms of the conservation easement shall be in accordance with applicable North Carolina law. The proposed preliminary plat shall indicate that required conservation lands are subject to a conservation easement being conveyed to specific entities pursuant to this section.
- 3) Upon demonstration by the applicant that efforts to comply with Subsection 2 above have been exhausted and pursued in good faith, but have failed to result in the execution of a valid conservation easement by two qualified holders, the applicant shall enter into either:
  - a) a conservation easement to be held by the State of North Carolina, or appropriate department or agency thereof; or,
  - b) held by a conservation organization approved by the Town Council, if the State will not agree to be the conservation easement holder; or,
  - c) held by a homeowners association, subject to Subsection 4 below; or,
  - d) other appropriate easement holder approved within the discretion of the Town Council.

To the extent possible, any combination of two or more of the above listed easement holder is preferable.

- 4) Any homeowners association that is a holder of a conservation easement as provided in Subsection 3 above, shall be subject to and comply with all applicable requirements for homeowners' associations

as set forth in North Carolina General Statutes. In addition, the following criteria shall be met:

- a) The applicant for conservation subdivision approval shall provide the Town a description of the organization of the proposed association, including its by-laws, and all documents governing ownership, maintenance, and use restrictions for common facilities;
- b) The proposed homeowners' association shall be established by the conservation subdivision applicant and shall be operating (with financial underwriting by the applicant, if necessary) before the sale of any dwelling units in the development;
- c) Membership in the homeowners' association shall be mandatory for all purchasers of lots within the conservation subdivision and their successors in title;
- d) The homeowners' association by-laws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his dues. Such dues shall be paid with the accrued interest before the lien may be lifted;
- e) The homeowners' association shall annually provide to the Town a listing of the names, addresses, and telephone numbers of all their officers and board members.
- f) Any proposed changes to the conservation easement that substantively affect the usage, location, or maintenance of conservation land within the conservation subdivision must first be consented to and approved by the Mineral Springs Town Council.