

Article II Basic Definitions and Interpretations

Section 15. Definitions of Basic Terms

[a] Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

Accessory Use: (See Section 169).

Administrator: Person with the primary responsibility, as assigned by the Town Manager, for administering and enforcing this ordinance or that person's designee.

Affordable Owner-Occupied Dwelling Unit: An affordable owner-occupied dwelling unit is a dwelling unit, as that term is defined herein, which has been sold or will be offered for sale for a gross price at which the monthly gross principal and interest payment, in a mortgage financing 90% of the purchase price, amortized over a period of thirty years and calculated with interest at the legal rate, is no greater than twenty-five percent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and, if sold, the purchaser of which is a family in need of housing protection.

Affordable Owner-Occupied Housing Development: An affordable owner-occupied housing development is one in which fifty-percent or more of the included dwelling units are, or upon completion of the development, will be, affordable owner-occupied dwelling units, as that phrase is defined herein.

Affordable Rental Dwelling Unit: An affordable rental dwelling unit is a dwelling unit, as that term is defined herein, for which the monthly gross rental payment is not greater than twenty-five percent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and which is occupied by a family in need of housing protection.

Affordable Rental Housing Project: An affordable rental housing project is one in which fifty percent or more of the included dwelling units are, or upon completion of the project, will be, affordable rental dwelling units, as that phrase is defined herein.

Agriculture, Livestock: The use of land for the keeping, grazing, feeding, or breeding of livestock, including cattle, hogs, sheep, goats, and poultry, and also animal specialties such as horses, rabbits, bees, and fish and fur-bearing animals in captivity.

Agriculture, Non-Livestock: The use of land for the production of cash grains, field crops, vegetables, fruit and nuts, and for horticulture and floriculture.

Alley: A publicly dedicated and maintained right-of-way twenty (20) feet or less in width that provides only a secondary means of access to abutting property and is not intended for general traffic circulation.

Alternative ADA Standards: Standards for handicap accessibility that may be met when an historic structure is renovated. These alternative standards can only be implemented if the structure meets the historic structure definition.

Antenna: Any equipment or device designed to transmit or receive telecommunication signals.

Architecturally Compatible: A method or style of building in which two or more structures exist together harmoniously.

Bed and Breakfast: A private residence with one to three guest rooms (enclosed within one structure) where overnight accommodations and a morning meal are provided daily or weekly for compensation.

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.

Bicycle: A pedal-driven, human-powered vehicle with two wheels attached to a frame, one behind the other.

Buffer Within Watershed Area: An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channeled, 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.

Building: A structure designed to be used as a place of occupancy, storage or shelter.

Building, Accessory: A minor building that is located on the same lot as a principal building and that is used incidentally to a principal building or that houses an accessory use.

Building, Principal: The primary building on a lot or a building that houses a principal use.

Built-upon 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 roads, recreation facilities, etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).

Cemetery: Land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including crematories, mausoleums, and mortuaries if operated in connection with and within the boundaries of such cemetery.

Certificate of Occupancy/Compliance: A document issued by the Building Inspector certifying compliance with all applicable state and local laws, including all terms of an approved zoning permit, and authorizing occupancy of a building or structure.

Church: A structure in which persons regularly assemble for religious worship and which is maintained by a religious body organized to sustain public worship.

Circulation Area: That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and other maneuvering areas comprise the circulation area.

Clinic: An establishment used for the medical or dental care, diagnosis, or treatment of sick, ailing, infirm or injured persons on an out-patient basis.

Club: An establishment operated by a corporation or association of persons for social, literary, political, educational, fraternal, or charitable purposes, but which is not operated for profit or to render a service which is customarily conducted as a business.

College/University: A degree granting establishment providing formal academic education and generally requiring for admission at least a high school diploma or equivalent academic training, including colleges, junior colleges, universities, technical institutes, seminaries and professional schools.

Combination Use: A use consisting of a combination on one lot of two or more principal uses separately listed in the Table of Permissible Uses. Under some circumstances, a second principal use may be regarded as accessory to the first, and thus a combination use is not established. In addition, when two or more separately owned or separately operated enterprises occupy the same lot, and all such enterprises fall within the same principal use classification, this shall not constitute a combination use.

Convenience Store: A retail business with primary emphasis placed on providing the public a convenient location to quickly purchase a variety of consumable products including gasoline.

Council: The governing body of the Town of Boone, consisting of a mayor and five [5] council members, as established in the Charter of the Town of Boone.

Critical Area: 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 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) except within the Winkler's Creek Watershed where the limits of the Town of Boone Jurisdiction are the Critical Area; or one 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 areas as needed. Major landmarks such as highways and 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 mile.

Development: The use or occupancy of any land or structure, or the construction, erection, alteration or moving of any structure.

Dimensional Nonconformity: A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

Driveway: That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

Dwelling: Any building or structure that is or is intended to be used for living or sleeping by one or more human occupants.

Dwelling, Single-Unit: A detached dwelling consisting of a single dwelling unit only.

Dwelling, Two-Unit: A dwelling or combination of dwellings on a single lot consisting of two (2) dwelling units.

Dwelling, Multi-Unit: A dwelling or combination of dwellings on a single lot consisting of three (3) or more dwelling units.

Dwelling Unit: A room or group of rooms within a dwelling forming a single independent habitable unit containing independent kitchen, sanitary, and sleeping facilities; and provided such dwelling unit complies with Boone's Minimum Housing Code.

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

- a. 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; or,
- b. having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1); or,
- c. having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1).

Existing Lot (Lot of Record): A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

Extraction of Earth Products: The process of removal of natural deposits of mineral ores, soils, or other solid matter from their original location, not including processing of such material beyond incidental mechanical consolidation or sorting to facilitate transportation from the site.

Extraterritorial Planning Area: The portion of the town's planning jurisdiction that lies outside the corporate limits of the town.

Family: One or more individuals related by blood, marriage, or adoption, occupying a premises and living as a single, non-profit housekeeping unit, including domestic servants, live-in help. The following individuals shall be included in this definition:

- [a] a single person or married couple;
- [b] a single person or married couple's biological, foster or adopted child, a step-child, or other legal ward;
- [c] a single person or married couple's parents, siblings, and persons preceding or succeeding generation denoted by the prefixes of grand, great or great-great;
- [d] spouses of any persons named in the above groups;
- [e] cousins, who are defined to be relatives who are decedents from a common grandparent.

Family Care Home: A home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities. For the purpose of this definition a "person with disabilities" is defined as 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 not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

Family Care Provider: A person who provides care for a person with a degree of relationship as specified in the definition of family herein.

Family in Need of Affordable Housing: A family in need of housing protection is a family, as that term is defined herein, including persons living with each other in a "common law" or spousal relationship without the benefit of marriage, or as "domestic partners" with an aggregate current income and aggregate income for the previous twelve months equal to or less than the Area Median income, as established annually by the United States Department of Housing and Urban Development, and for which the head of the household is not claimed as a dependent on the federal tax return of any other person currently or in the most recently completed federal tax year, and for which any other adult occupant(s) is not and cannot be currently claimed as a dependent(s) for federal tax purposes by any person(s) not residing in the dwelling unit.

Fraternity or Sorority Dwelling: A dwelling or combination of dwellings on a single lot occupied by and maintained exclusively for college, university, or professional school students who are affiliated with a social, honorary, or professional organization recognized by the college, university, or professional school.

Geological Hazard Indicator: A condition or series of conditions which suggest or from which a reasonable inference may be drawn that a particular tract of land may have qualities of instability or danger which require further investigation and possible remediation. Such indicators may include, but are not limited to one or more of the following: fault zone cataclastic (broken) rocks; pre-existing landslide deposits; daylighting fracture sets; daylighting sedimentary layers (bedding), foliations (metamorphic layering), or other planar structures; thick soils (greater than 10 feet thick), zones of likely debris flow deposition.

Geotechnical Engineer: A North Carolina licensed engineer that has documented experience of at least five years in the full-time practice of geotechnical engineering including design and construction overview of site preparation and foundation installation of projects.

Government Services: The erection, construction, alteration, or maintenance by public utilities or governmental agencies of traffic distribution systems; water, sewage, steam, gas, electrical, or communication transmission or distribution systems; and storm water collection and distribution systems; including streets, sidewalks, street lights, bus passenger shelters, traffic signals, pipes, hydrants, pumping stations, wires, curb and gutter, catch basins, drains, or other similar equipment and accessories reasonably necessary for the provision of adequate service by such public utilities or governmental agencies, but not including buildings or other substantial above ground structures.

Greenway: A corridor of protected open space, usually located adjacent to natural features, that is managed for conservation and/or recreation purposes.

Gross Floor Area: The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

Gross Land Area: All the area within the boundaries of a lot as described in a fee simple deed.

Habitable Floor: Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or any combination thereof. A floor used only for storage is not a habitable floor.

Halfway House: A home for not more than nine (9) persons who have demonstrated a tendency toward alcoholism, drug abuse, mental illness, or antisocial or criminal conduct, together with not more than two (2) persons providing supervision and other services to such persons, eleven (11) of whom live together as a single housekeeping unit.

Hazardous Material: Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

Height (of a structure or part thereof): The vertical distance from the mean natural grade at the foundation to the highest portion of the structure, or part thereof.

Height Limitation, Primary: The maximum height allowed for any structure located at the minimum setback required for such structure, as shown in Section 200, Schedule of Land Use Intensity Ratios.

Height Limitation, Secondary: The absolute maximum height allowed for any structure, as shown in Section 200, Schedule of Land Use Intensity Ratios.

Historic District: An area which is deemed to be of special significance in terms of its history, prehistory, architecture, and/or culture, and which is deemed to possess integrity of design, setting, materials, feeling, and association.

Historic Landmark: A building, structure, site, area, or object deemed to be of special significance in terms of its history, prehistory, architecture, or culture and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

Historic Structures: Buildings or structures which have been

1. listed individually on the National Register of Historic Places,
2. located within a National Register Historic District and are certified as contributing to the district,
3. located in or contributing to a local historic district that has been certified by the National Park Service. (The State Historic Preservation Office and the National Park Service make these designations), or
4. listed individually by the Town of Boone's Historic Preservation Commission and certified by the Commission as meeting the criteria established for a local historic property designation.

Home for Survivors of Domestic Violence: A home that provides room and board, personal care and habilitation services in a family environment for persons and their children who have been aggrieved by acts of domestic violence and/or sexual assault.

Home Occupation: An occupation conducted as an accessory use of a dwelling unit, provided that:

- a. No person other than members of the resident family shall be engaged in such occupation;
- b. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes, and not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- c. No external evidence of the conduct of the home occupation shall be visible, other than a sign as permitted in Article XVIII;
- d. The home occupation shall not generate traffic volumes or parking area needs greater than would normally be expected in a residential neighborhood;
- e. No equipment or process shall be employed that will cause noise, vibration, odor, glare, or electrical or communication interference detectable to the normal senses off the lot; in the case of detached dwelling units, or outside the dwelling unit, in the case of attached dwelling units;
- f. The on premise sale and delivery of goods which are not the products of the home occupation are prohibited.

Hotel or Motel: A building or group of buildings containing ten (10) or more lodging units intended primarily for rental or lease to transients by the day or week, as distinguished from residence halls, in which occupancy is generally by residents rather than transients.

Impervious Surface: The surface area of land covered by buildings, parking and driveways which prevent or impede surface water absorption (i.e. concrete, asphalt, and gravel).

Income-producing Structures: Structures put into service as places of business, such as commercial, retail or rental use.

Industrial Uses, Light: The assembly, fabrication, finishing or packaging of goods and materials within fully enclosed structures utilizing processes which do not create visible emissions, odor, noise, or dust exceeding the limits prescribed by Article XI, Part II. The land area occupied by outdoor storage of goods or materials used in the processing operations or the products of such operations may not exceed twenty-five (25) percent of the floor area of all buildings on the lot.

Industrial Uses, Heavy: All Industrial Uses not classified as “Light Industrial Uses.” Heavy Industrial Uses include the assembly, fabrication, processing or refinement of raw materials outside of fully enclosed structures and/or involve processes which create visible emissions, odor, noise, or dust exceeding the limits prescribed by Article XI, Part II. Heavy Industrial Uses are not permitted within the Town’s zoning jurisdiction.

Industrial Uses, Warehouses: Storage of goods and materials within fully enclosed structures intended for wholesale distribution.

Junkyard: An establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk (which may include scrap metals, scrap materials, or other useless stuff), or the maintenance or operation of an automobile graveyard.

Kenel: Any lot on which four [4] or more domesticated animals more than four [4] months of age are housed, groomed, bred, boarded, trained, or sold.

Landfill: Any lot or premises on which is deposited solid waste material, including trash, construction debris, stumps, branches and limbs, garbage, and industrial waste.

Landscaped Greenspace: Landscaped Greenspace is a pedestrian oriented urban open space which includes manicured landscaping and other pedestrian oriented amenities (such as benches) which is at or near the same grade as the sidewalk or the street and is easily accessible to pedestrians.

Large Scale Retail: A retail business having a gross floor area of 25,000 square feet or more in which goods or merchandise is offered for sale to the general public or to members and in which services incidental to the sale of those goods may be provided.

Licensed Engineer: A person who is licensed as an engineer under the provisions of the North Carolina Engineering and Land Surveying Act.

Licensed Geologist: A person who is licensed as a geologist under the provisions of the Geologist Licensing Act of the State of North Carolina.

Livability Space: That part of total open space appropriately improved and, if necessary, located as outdoor living space and for aesthetic appeal, including natural areas, lawns and other landscaped areas, walkways, paved terraces and sitting areas, outdoor recreational areas, and landscaped portions of street right-of-way, but not including open space used for motorized vehicles, except for incidental service, maintenance, or emergency actions.

Loading, Off-Street: Space located outside of any street right-of-way or easement and designed to accommodate the temporary parking of vehicles used for bulk pickups and deliveries.

Lodging Units: A room or group of rooms forming a separate habitable unit used or intended to be used for living and sleeping purposes by one family only, without independent kitchen facilities; or a separate habitable unit, with or without independent kitchen facilities, occupied or intended to be occupied by transients on a rental or lease basis for periods of less than one week.

Lot: A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

- a. If a public body or any authority with the power of eminent domain condemns, purchases, or otherwise obtains fee simple title to or a lesser interest in a strip of land cutting across a parcel of land otherwise characterized as a lot by this definition, and the interest thus obtained or the road so created is such as effectively to prevent the use of this parcel as one lot, then the land on either side of this strip shall constitute a separate lot.
- b. Subject to Section 140 (nonconforming lots) the permit issuing authority and the owner of two or more contiguous lots may agree to regard the lot as one lot if necessary or convenient to comply with any of the requirements of this ordinance.

Lot Area: The total area circumscribed by the boundaries of a lot, except that: [i] when the legal instrument creating a lot shows the boundary of the lot extending into a public street right-of-way, then the lot boundary for purposes of computing the lot area shall be the street right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and 30 feet from the traveled portion of the street, and [ii] in a residential district, when a private road that serves more than three (3) dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be the inside boundary of the traveled portion of that road.

Lot Line: A line that marks the boundary of a lot.

Lot Front: The lot line and yard area where the primary access is located. In the case of additional equally significant access points located on other lot lines, the lot line and yard area for that access shall also be deemed a front.

Lot Line, Interior: Any lot line that is not a street lot line; a lot line separating a lot from another lot.

Lot, Width: The horizontal distance between the side lot lines at the front building line measured parallel with the front lot line; or in the case of a lot fronting on a curved street, the straight line distance between the side lot lines measured from the building line.

Major Traffic Corridor: U.S. Routes 221, 321, 421 and North Carolina Routes 105, including 105 Extension and 105 By-Pass, and 194.

Major Variance From Statewide Watershed Protection Rules: A variance that results in any one or more of the following:

- a. the complete waiver of a watershed management requirement; and , or,
- b. the relaxation, by a factor of ten percent 10% or more, of any watershed management requirement that takes the form of a numerical standard.

The state watershed protection rules provide local governments with latitude in defining what is to be considered a major variance in the locality. The Environmental Management Commission (EMC) will monitor the definitions adopted by localities, and will review all annual reports to determine how localities are utilizing the variance procedure. The EMC will consider amending the rules to include specific conditions applicable to a major variance in the future.

Maintenance and/or Storage Facility: Land, building, or structure devoted primarily to the maintenance and/or storage of equipment and materials.

Managing Agent: An adult individual designated by the owner of a rental property for service of process and receiving notices and demands and to perform the obligation of the owner under this ordinance.

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 mobile home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and satisfies each of the following additional criteria:

- a. The home has a length not exceeding four (4) times its width;
- b. The pitch of the home's roof shall have a minimum vertical rise of one (1) foot for each five (5) feet of horizontal run, and the roof is finished with a type of shingle that is commonly used in standard residential construction.
- c. The exterior siding consists of wood, hardboard, or aluminum (vinyl covered or painted, but in no case exceeding the reflectivity of gloss white paint) comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;
- d. A continuous permanent masonry foundation, not pierced except for required ventilation and access, is installed under the home; and,
- e. The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.

Mobile Home, Class B: A mobile home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. department of housing and Urban Development that were in effect at the time of construction but that does not satisfy the criteria necessary to qualify the house as a Class A mobile home.

Mobile Home, Class C: Any mobile home that does not meet the definition criteria of a Class A or Class B mobile home.

Mobile (Manufactured) Home Park: A residential use in which more than one (1) mobile home is located on a single lot.

Modular Home: A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two (2) sections transported to the site in a manner similar to a mobile home (except that the modular home meets the North Carolina State Building Code applicable to site built homes), or a series of panels or room sections transported on a truck and erected or joined together on the site.

Motorcycle: A motor vehicle with two wheels and a strong frame including mopeds, scooters, and powered pedal cycles.

Multi-Family Residences for the Elderly: Housing as defined pursuant to Section 151 (f) and other relevant sections of this ordinance for which the United States Department of Housing and Urban Development had determined that the housing is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or it is occupied solely by persons who are 62 or older or it houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.

Nightclub: An establishment, including discotheques, having a minimum entertainment floor area of fifteen hundred (1500) square feet and providing live entertainment and/or a permanent area for dancing which may serve food and/or alcoholic beverages. The entertainment floor area shall be composed of the wet-bar, dance floor and/or live entertainment stage area, and table area.

Nonconforming Lot: A lot existing at the effective date of this ordinance (and not created for the purposes of evading the restrictions of this ordinance) that does not meet the minimum area requirements of the district in which the lot is located.

Nonconforming Project: Any structure, development, or undertaking that is incomplete at the effective date of this ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

Nonconforming Situation: A situation which occurs when, on the effective date of this ordinance, any existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this ordinance, or because land or buildings are used for purposes made unlawful by this ordinance.

Nonconforming Use: A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with operating a retail clothing store in a residentially zoned area constitutes a nonconforming use).

Non-income Producing Structures: Structures, such as private homes, which do not generate income.

Nursing Care Home: A facility maintained for the purpose of providing intermediate nursing care and medical supervision at a lower level than that available in a hospital to not more than nine (9) persons.

Nursing Care Institution: An institutional facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to more than (9) nine persons.

Occupancy: The status of an “occupant” as defined herein, to the dwelling unit which he or she “occupies,” as defined herein.

Occupant: Any person who, on a regular and recurrent basis, is present at a dwelling unit a substantial period of time. A person shall be presumed to be an occupant of a dwelling unit if his or her clothes or other daily living supplies such as items of personal hygiene are maintained at the dwelling unit. The absence of such items shall not prevent a finding that a person is an occupant. That a person regularly and recurrently lives in, sleeps at, or possesses another dwelling unit shall not prevent a finding that a person is an occupant.

Occupy, occupies, occupied: The relationship of a person classified as an “occupant,” as defined herein, to a dwelling unit, whether or not the person is in present possession of the dwelling unit.

Open Air Market: Any permanent or temporary display of goods in an open or partially open setting. Open air markets may include flea markets, outdoor craft shows, fruit and vegetable stands and itinerant merchant displays.

Open space: The total gross land area not covered by buildings, plus open exterior balconies and roof areas improved as livability space. Covered open space is usable open space closed to the sky but having at least two (2) clear unobstructed open or partially opened sides. Partially open space is construed as open fifty percent (50%) or more.

Outdoor Display: The display and sale of products outside of a fully enclosed structure including, but not limited to, garden supplies, clothing, toys, furniture, equipment, agricultural products, building and landscape materials, food and beverages.

Outdoor Storage: The storage of products outside of a fully enclosed structure which are not intended for sale directly from that location including, but not limited to, equipment, materials, containers, crates and palettes.

Owner: One or more persons in whom is vested all or part of the legal title to the property, or all or part of the beneficial ownership and a right to present use and enjoyment of the property.

Parking Garage: A structure used for automobile parking which is partially or wholly enclosed and includes any above-grade decks.

Parking, Off-Street: Space located outside of any street right-of-way or easement that is designed to accommodate the parking of motor vehicles.

Parking Space: A portion of the vehicle accommodation area set aside for the parking of one vehicle.

Perennial Stream: A well defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Ground water is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continual conveyance of water.

Place of Assembly: A place designed to accommodate the assembly of persons attending athletic events, musical performances, dramatic or terpsichorean performances, speeches or ceremonies, motion picture presentations and other entertainment events, including stadiums, coliseums, athletic centers, theaters, concert halls, amphitheaters, and arenas.

Planned Residential Development: A development constructed on a tract of at least five (5) acres under single ownership, planned and developed as an integral unit, and consisting of single-family detached residences combined with either two family residences or multi-family residences, or both, all developed in accordance with Section 178.

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

Prime Designer: An architect or engineer who oversees the entire development project from start to completion. This person is responsible for coordination of the work of all other professionals and must be able to certify that all requirements of the development plan approved by the Town of Boone are followed.

Public Cultural Facility: The use of land, buildings, or structures by a municipal or other governmental agency to provide cultural services directly to the general public, including public libraries and museums.

Public Water Supply System: Any water supply system furnishing potable water to ten (10) or more dwelling units or businesses or any combination thereof.

Recreation Facility: A facility providing indoor and outdoor recreational activities, including swimming pools, athletic fields, tennis courts, country clubs, health clubs, golf courses, riding stables, gymnasiums, amusement arcades, bowling alleys, indoor skating rinks, and pool halls.

Recyclable Materials: The term recyclable materials includes, but is not limited to, clear, green and brown container glass, aluminum cans, steel food cans, No. 1 and No. 2 plastic containers, newsprint with inserts, magazines, catalogs, phone books, junk mail, office ledger, and pasteboard.

Recycling Container: A receptacle which is equipped with a close-fitting lid used for the temporary storage of recyclable materials between scheduled pickups and approved by the Department of Public Works.

Recycling Container Area: An area designed pursuant to Section 91 of the Town Code to accommodate recycling containers.

Repeat Violator: Any owner, tenant or occupant of any land or structure, or part thereof, or other person who possesses a cognizable interest in the real or personal property in question, who participates in, assists, directs, causes, allows, maintains, or is otherwise responsible for any situation that is contrary to the requirements of this ordinance and who has been cited for having violated a provision of this ordinance within the previous thirty-six (36) months.

Residence Hall: A building or group of buildings containing in combination ten (10) or more lodging units intended primarily for rental or lease for periods of thirty (30) days or longer, provided, however, that temporary lodging units for guests of regular tenants may be provided, with the number of such units limited to not more than ten percent (10%) of the total number of lodging units.

Ridgeline: The crest or series of crests at the top or uppermost point of intersection between two opposite slopes or sides of a mountain.

Riparian Zone: A margin on each side of a perennial stream which extends from the edge of the stream in a direction generally perpendicular to the flow of the stream.

Road: All public or private ways used to provide motor vehicle access to three (3) or more lots.

Rooming House: A building or group of buildings containing in combination three (3) to nine (9) lodging units intended primarily for rental or lease for periods of longer than a week, with or without board.

Secretary of the Interior's Standards for Historic Preservation: Ten basic principles or standards that define how an historic property or structure shall be preserved that can be applied to most exteriors and interiors of historic properties.

Setback: The land area located between a property line or the established edge of a right-of-way, whichever is closer, and the closest wall of a building located on the property.

Shelter for Homeless: A short or long term shelter for persons who lack a fixed, regular and adequate nighttime residence with a minimum of two (2) non-occupant managers. Such shelter must be established and managed by a non-profit organization.

Single Family Residence: A single dwelling unit used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that is occupied for living purposes by a single family, as the term is defined.

Site Specific Development Plan: A plan which has been submitted to the town by a landowner that describes with certainty the type and intensity of a use for a specific parcel or parcels of property.

Solid Waste Container: A water-tight receptacles which is equipped with a close-fitting lid used for the temporary storage of solid wastes between scheduled pick-ups and approved by the Department of Public Works.

Solid Waste Container Area: An area designed pursuant to Section 91 of the Town Code to accommodate solid waste containers.

Special Use: A use of land, buildings, or structures that is identified in this ordinance as a use that because of its inherent nature, extent and external effects, requires special care in the control of its location, design, and methods of operating in order to ensure protection of the public health, safety, and welfare.

Special Use Permit: A permit issued by the Board of Adjustment that authorizes the recipient to make use of property in accordance with the requirements of this ordinance as well as any additional requirements imposed by the Board of Adjustment.

Start of Construction: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (including a modular home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a modular home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Steep Slope: A slope of 30% or greater.

Street: A public street or a street with respect to which an offer of dedication has been made.

Street, Arterial: A major street in the town's street system that serves as an avenue for the circulation of traffic onto, out, or around the town and carries high volumes of traffic.

Street, Collector: A street whose principal function is to carry traffic between minor, local, and subcollector streets and arterial streets but that may also provide direct access to abutting properties. It serves or is designated to serve, directly or indirectly, more than one hundred (100) dwelling units and is designed to be used or is used to carry more than eight hundred (800) trips per day.

Street, Cul-de-sac: A street that terminates in a vehicular turnaround.

Street, Local: A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least ten (10) but not more than twenty five (25) dwelling units and is expected to or does handle between seventy five (75) and two hundred (200) trips per day.

Street, Marginal Access: A street that is parallel to and adjacent to an arterial street and that is designed to provide access to abutting properties so that these properties are somewhat sheltered from the effects of the through traffic on the arterial street and so that the flow of traffic on the arterial street is not impeded by direct driveway access from a large number of abutting properties.

Street, Minor: A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than nine (9) dwelling units and is expected to or does handle up to seventy five (75) trips per day.

Street, Private: A street consisting of a private easement and a privately maintained roadway. The minimum right-of-way width of any private street shall be thirty (30) feet.

Street, Subcollector: A street whose principal function is to provide access to abutting properties but is also designed to be used to connect minor and local streets with collector or arterial streets. Including residences indirectly served through connecting streets, it serves or is designed to serve at least twenty six (26) but not more than one hundred (100) dwelling units and is expected to or does handle between two hundred (200) and eight hundred (800) trips per day.

Streetline: The line where the edge of the right-of-way of a street meets the abutting property.

Structural Alteration: Any change, except for repair or replacement, in the supporting members of a building such as, but not limited to, bearing walls, columns, beams, or girders.

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

Subdivision: The division of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition:

- a. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this ordinance.
- b. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.
- c. The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.
- d. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards set forth in this ordinance.

Subdivision, Architecturally Integrated: A subdivision in which approval is obtained not only for the division of land into lots but also for a configuration of principal buildings to be located on such lots. The plans for an architecturally integrated subdivision shall show the dimensions, height, and location of all such buildings to the extent necessary to comply with the purpose and intent of architecturally integrated subdivisions as set forth in Section 210.

Subdivision, Major: Any subdivision other than a minor subdivision.

Subdivision, Minor: A subdivision that does not involve any of the following: (i) the creation of more than a total of ten (10) lots; (ii) the creation of any new public streets; (iii) the extension of a public water or sewer system, or (iv) the installation of drainage improvements through one (1) or more lots to serve one (1) or more other lots.

Surface Parking Area: Off-street automobile parking area which is not enclosed within a building.

Supply Yard: A commercial establishment storing and offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods.

Temporary Care Provider Dwelling: A temporary dwelling for a family care provider or aged, infirmed or disabled family member cared for.

Temporary Construction or Repair Dwelling: A temporary dwelling exclusively used for a place of living and sleeping during construction or repair.

Temporary Construction Trailer: A temporary structure for office usage, storage of materials and tools, or security purposes incident to construction or development of the premises upon which the temporary construction trailer is located.

Temporary Mobile Medical Unit: An apparatus capable of moving or being moved readily from place to place for the purposes of performing specific medical care functions related to the diagnosis or treatment of illness through laboratory or testing services.

Tenant: A person, whether or not the legal owner of record, legally occupying or entitled to legally occupy a dwelling unit or portion thereof.

Total Land Disturbance: The total of land surface areas of the development site disturbed by any means (tree and vegetation cutting or removal, grading or any other soil disturbance including stream modification or septic field installation). Where trees are removed or cut in an area not contiguous to the main construction site by grading or other land disturbance, or by a connected cutting or removal of trees, the area disturbed will be considered the outermost drip line of the trees prior to their removal or cutting. The actual amount of land which must be disturbed in order to install an appropriate septic system, when a septic system must be installed, shall not be included in the calculation of the total land disturbance, to the extent the area disturbed is actually used for the installation and location of a septic system.

Tourist Home: A building or group of buildings containing one (1) to nine (9) lodging units intended for rental or lease primarily to transients for daily, weekly or monthly periods, with or without board, as distinguished from rooming houses, in which occupancy is generally by residents rather than transients.

Town: The Town of Boone.

Transmitting and Receiving Tower: A tower structure and antenna under fifty (50) feet in height, owned and operated by a federally licensed individual, partnership, or corporation, which serves only the needs of a single building or its occupants.

Travel Trailer: A structure that [i] is intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle) and [ii] is designed for temporary use as sleeping quarters but that does not satisfy one or more of the definition criteria of a mobile home.

Toxic Substance: Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

Use: The activity or function that actually takes place or is intended to take place on a lot.

Use, Accessory: A use or structure that does not exceed sixteen hundred (1,600) square feet that exists on the same lot and constitutes only an incidental or insubstantial part of the principal use.

Use, Principal: The primary use and chief purpose of a lot or structure.

Utility Facilities: Any above-ground structures or facilities (other than buildings, unless such buildings are used as storage incidental to the operation of such structures or facilities) owned by a governmental entity, a nonprofit organization, a corporation, or any entity defined as a public utility for any purpose by North Carolina Statute and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas oil, or electronic signals. Excepted from this definition are utility lines and supporting structures such as electric power, telephone, telegraph, cable television, gas, water and sewer lines, and wires or pipes located within public right-of-way.

Utility Facilities, Community or Regional: All utility facilities other than neighborhood facilities.

Utility Facilities, Neighborhood: Utility facilities that are designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facilities are proposed to be located.

Variance: A grant of permission by the Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of this ordinance, he could not otherwise legally do.

Vehicle Accommodation Area: That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas, and parking areas.

Very Steep Slope: A slope of 50% or greater.

Vested Right or Zoning Vested Right: The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.

Veterinary Hospital or Clinic: An establishment used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those animals in need of medical or surgical attention.

Viewshed: Land areas which are more than 100 feet above the nearest major traffic corridor, measured at right angles to the average contour from the center line of the traffic corridor, and upon which development as proposed can be seen during any season of the year from one of the major traffic corridors, as that term is defined, either during construction or at the time construction is completed. In making the determination whether the development as proposed can be seen and is therefore in the viewshed, planned landscape buffering shall not be considered. Land which is equidistant at its nearest borders from two major traffic corridors shall be considered in the viewshed if it is more than 100 feet above either major traffic corridor.

Water Dependent Structure: Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for 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.)

Wholesale Sales: A business in which goods or merchandise is offered for sale in quantity usually for resale.

Wireless Telecommunication Tower: Any tower or structure erected for the purpose of supporting, including but not limited to, one or more antennas designed to transmit or receive television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electronic communication.

Zoning Permit: A permit issued by the land use administrator that authorizes the recipient to make use of property in accordance with the requirements of this ordinance.

Section 16. Reserved

Section 17. Reserved

Section 18. Reserved

Section 19. Reserved

Section 20. Reserved

