

Town of Jefferson

Zoning Ordinance

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ARTICLE I

AUTHORITY, PURPOSE AND JURISDICTION

Section 10. AUTHORITY

The provisions of this ordinance are adopted under the authority granted by the General Assembly of the State of North Carolina, particularly Chapter 160A, Article 19 of the General Statutes.

Section 11. PURPOSE

The regulations and provisions set forth in this ordinance have been made after an assessment of existing land uses, and are designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, sewerage, schools, parks, and other public requirements; to conserve the value of buildings and encourage the most appropriate use of land throughout the planning area. The regulations contained herein have been made with reasonable consideration, among other things, as to the character of the various districts and their suitability for particular uses, and with a view to conserving the value of structures and encouraging the most appropriate uses of the land within the Jefferson Planning area.

Section 12. JURISDICTION

The regulations and provisions found in this zoning ordinance shall apply to all the properties within the corporate limits of the Town of Jefferson as now or hereafter fixed.

ARTICLE II
GENERAL REGULATIONS
DEFINITIONS

Section 20. INTERPRETATIONS OF COMMONLY USED TERMS AND WORDS

- 20.1 Words used in the present tense shall include the future tense.
- 20.2 Words used in the singular number shall include the plural, and words used in the plural shall include the singular, unless the natural construction of the wording indicates otherwise.
- 20.3 The word "person" includes a firm, association, corporation, trust company, as well as an individual.
- 20.4 The word "used for" shall include the meaning "designed for".
- 20.5 The word "structure" shall include the word "building".
- 20.6 The word "lot" shall include the words "plot", "parcel", or "tract".
- 20.7 The word "shall" is always mandatory and not merely directory.

Section 21. DEFINITIONS OF SPECIFIC TERMS AND WORDS

- 21.1 ACCESSORY USE. A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.
- 21.2 ALLEY. A public or private thoroughfare which affords only a secondary means of access to abutting property and not intended for general traffic circulation.
- 21.3 ALTERATION. The word "alteration" shall include the following:
 - a. Any addition to the height or depth of a building or structure;
 - b. Any change in the location of any of the exterior walls of a building or structure;
 - c. Any increase in the interior accommodations of a building or structure.
- 21.4 APARTMENT. A part of a building consisting of a room or rooms intended, designed, or used as a residence by an individual or a single family.
- 21.5 APARTMENT HOUSE. A building or portion thereof used or designed as a residence for three (3) or more families living independently of each other, including apartment hotels, apartment houses, and group housing projects.
- 21.6 APPRAISED VALUE. The market value which has been last determined by the county in which the property is for ad valorem tax purposes.

- 21.7 BILLBOARD. Outdoor structure or display, pictorial or otherwise, either freestanding or attached to a building, which advertises or attract attention to a business, commodity, service or other activity, conducted, sold or offered elsewhere than on the premises on which said structure or display is located.
- 21.8 BONA FIDE FARM. All land of ten (10) acres or more under the same ownership and forming a continuous plot on which agricultural operations are conducted-includes woodland and timberland, cultivation of crops, and the husbandry of livestock.
- 21.9 BUFFER STRIP. An unused strip of land at least six (6) feet in width composed of deciduous and/or evergreen trees spaced not more than four (4) feet apart and not less than one (1) row of dense evergreen shrubs spaced not less than five (5) feet apart and five (5) feet or more in height after one (1) growing season and maintained in a healthy, growing condition by the property owner. No building or part of a building, no driveway or parking area shall occupy any part of the buffer strip.
- 21.10 BUILDING. Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery, or materials. The connection of two (2) or more buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall be deemed to make them one building. This term does not apply to camping trailers, motorized homes, pick-up coaches, travel trailers, or to self-contained travel trailers.
- 21.11 BUILDING, ACCESSORY. A use or structure customarily incidental and subordinate to the main or principal building and located on the same lot therewith.
- 21.12 BUILDING HEIGHT. The vertical distance from the mean elevation of the finished grade along the front of a building to the highest point of a flat roof, or to the deck line of a mansard roof, or the mean height level between eaves and ridge for gable, hip, gambrel and pitch roofs.
- 21.13 BUILDING, PRINCIPAL. A building in which is conducted the principal use of the lot on which said building is situated.
- 21.14 BUILDING SETBACK LINE. A line establishing the minimum allowable distance between the main or front wall of any building, excluding the outermost three (3) feet of any uncovered porches, steps, eaves, gutters, and similar fixtures, and the street right-of-way line (or the assumed right-of-way line) when measured perpendicularly thereto.
- 21.15 CERTIFICATES OF ZONING COMPLIANCE. A statement, signed by the Ordinance Administrator, stating that the plans for a building, structure or use of land complies with the zoning ordinance of Jefferson, the Ashe County Health Department, and the North Carolina Department of Human Resources, Division of Health Services.
- 21.16 CONDOMINIUM. A dwelling unit owned as a single-family home within a multiple-unit property together with an undivided portion of ownership in areas and facilities held in common with other property owners in the development. Condominiums may take a number of forms such as attached townhouses, apartments, or other form of residential structures. The common

areas and structures may include underlying land, parking areas, recreation facilities, swimming pools, and in the case of an apartment house, hallways, basements, heating units and elevators.

- 21.17 DAY CARE FACILITY. Any day care center or child care arrangement that provides day care for more than five (5) children unrelated to the operator and for which a payment fee, or grant, is received, excluding foster homes, public or private schools which provide a course of grad school instruction to children of public school age, summer day or residence camps, or Bible schools.
- 21.18 DWELLING UNIT. An enclosure containing sleeping, kitchen and bathroom facility designed for and used or held ready for use as a permanent residence by one (1) family. The term "dwelling" shall not be deemed to include a motel, hotel, tourist home, or other structure designed for transient residence.
- 21.19 DWELLING, SINGLE FAMILY. A detached building designed for or occupied exclusively by one (1) family. The term shall include manufactured homes when placed on a permanent foundation, converted to real property and taxed as a site-built dwelling as provided by law.
- 21.20 DWELLING, TWO-FAMILY. A building arranged or designed to be occupied by two (2) families living independently of each other.
- 21.21 DWELLING, MULTI-FAMILY. A building or portion thereof used or designed as a residence for three (3) or more families living independently of each other, including apartment houses, apartment hotels, and group housing projects.
- 21.22 EASEMENT. A grant by a property owner of a strip of land for specified purpose and use by the public, a corporation or individuals.
- 21.23 FAMILY. Any number of persons related by blood, adoption, or marriage, and living together in one dwelling unit as a single housekeeping entity; term includes domestic servants.
- 21.24 HOME OCCUPATION, INCIDENTAL. Any profession or occupation carried on by a member of a family or member of a recognized profession residing on the premises, provided that no merchandise or commodity is sold or offered for sale on the premises and that no mechanical equipment is installed or used except such that is normally used for domestic or professional purposes, and provided further that not over twenty-five (25) percent of the total actual floor area of any structure is used for home occupation or professional purposes and that all parking generated by the conduct of such home occupation be off the street and other than in a required front yard.
- 21.25 HOTEL/MOTEL. A building containing more than four individual rooms, which provide lodging to the public for transient overnight accommodations of 90 days or less, and which has common facilities for cleaning services, on-site management, reception services, and combined utilities. Such facilities may also include dining rooms, restaurants, or cafes, provided that these operations are conducted in the same building(s) as lodging accommodations.
- 21.26 JUNK YARD. The use of more than three hundred-fifty (350) square feet of any lot or tract for the outdoor storage and/or sale of waste paper, rags, scrap metal or other junk, including the storage of automobiles or other vehicles or dismantling of such vehicles or machinery or parts thereof.

- 21.27 LOT. A parcel of land in single ownership occupied or intended for occupancy by a principal building together with its accessory buildings including the open space required under this ordinance. For the purpose of this ordinance, the word "lot" shall mean any number of contiguous lots or portions thereof upon which one (1) principal building and its accessory buildings are located or are intended to be located.
- 21.28 LOT, CORNER. A lot which occupies the interior angle at the intersection of two (2) street lines which make an angle of more than forty-five degrees (45°) and less than one hundred and thirty-five degrees (135°) with each other. The street line forming the least frontage shall be deemed the front of the lot except where the two street lines are equal, in which case the owner shall be required to specify which is the front when requesting a zoning permit.
- 21.29 LOT, DEPTH. The depth of a lot, for the purpose of this ordinance, is the distance measured in the mean direction of the side lines of the lot from the mid-point of the front lot line to the mid-point of the opposite main rear line of the lot.
- 21.30 LOT, INTERIOR. A lot other than a corner lot.
- 21.31 LOT, THROUGH. An interior lot having frontage on two streets.
- 21.32 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 of Ashe County 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.
- 21.33 LOT WIDTH. The distance between side lot lines measured at the building setback line.
- 21.34 MANUFACTURED HOME. A dwelling unit that (1) is not constructed in accordance with the standards set forth in the North Carolina State Building Code, and (2) 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 (3) exceeds forty (40) feet in length and eight (8) feet in width. Recreational vehicles and modular homes shall not be considered manufactured homes.
- 21.34A MANUFACTURED HOME CLASS A (DOUBLE WIDES). A manufactured 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 that satisfies the following additional criteria:
- (a) The manufactured home has a length not exceeding four times its width;
 - (b) The manufactured home has a minimum of twelve hundred (1200) square feet of enclosed living area;
 - (c) The pitch of the roof of the manufactured home has a minimum vertical rise of 3 feet for each twelve feet of horizontal run (3' and 12') and the roof is finished with a type of shingle that is commonly used in standard residential construction; roof to have a 1-foot overhang.

(d) The exterior siding consists of vinyl horizontal lap siding (that does not exceed the reflectivity of gloss white paint), wood or hardboard, comparable in composition, appearance, and durability to the exterior siding commonly used in standard construction;

(e) The home is set up in accordance with the standards set by the NC Department of Insurance and a continuous, permanent masonry foundation or curtain wall, unpierced except for required ventilation and access, is installed under the manufactured home. This requirement virtually ensures that the home will remain fixed to its original site. Under North Carolina law, a multi-section home meeting these standards and placed on land owned by the owners of the home will be appraised and taxed as real property.

(f) The moving hitch, wheels and axles and transporting lights have been removed.

21.35 MANUFACTURED HOME PARK. Land used, leased or rented for occupancy by manufactured homes to be used for living or commercial quarters of any kind designed and operated in accordance with applicable provision of this ordinance. This definition shall not include manufactured home sale lots or which unoccupied manufactured homes are parked for purposes of inspection and sale.

21.36 MANUFACTURED HOME SPACE. Any parcel of ground within a manufactured home park, designated for the exclusive use of one (1) manufactured home.

21.37 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 or more sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the NC State Building Code), or a series of panels or room sections transported on a truck and erected or joined together to the site.

21.38 NON-CONFORMING USE OR STRUCTURE. Any use of a building or land which does not conform to the use regulations of this ordinance for the district in which it is located, either at the effective date of this ordinance or as a result of subsequent amendments which may be incorporated into this ordinance.

21.39 OBSTRUCTION. Any structure, fence, shrub, bush, tree, flower, plant, motor vehicle or any other object that obscures, impairs, or prevents view or sight through, over or across the horizontal or vertical distance area as herein defined.

21.40 OPEN STORAGE. Unroofed storage area, whether fenced or not.

21.41 OPERATING PERMIT. A permit issued by the Zoning Administrator to a mobile home park owner or operator upon the completion of a mobile home park which conforms to the requirements of this ordinance.

- 21.42 PARKING SPACE. A storage space of not less than ten (10) feet by twenty (20) feet for one (1) automobile, plus the necessary access space. It shall be always located outside the dedicated street right-of-way.
- 21.43 PLANNED UNIT DEVELOPMENT (PUD). A land development project planned as an entity by means of a unitary site plan which permits flexibility on building site, mixtures in building types and land uses, usable open space, and the preservation of significant natural features.
- 21.44 PLANNING BOARD. The planning board of the Town of Jefferson.
- 21.45 PUBLIC WATER SUPPLY. Any water supply furnishing potable water to ten (10) or more residences or businesses or combination of businesses or residences. Approval by the Division of Health Services, Department of Human Resources is required.
- 21.46 PUBLIC SEWAGE DISPOSAL SYSTEM. A system serving two (2) or more dwelling units and approved by the Ashe County Division of the District Health Department and the North Carolina Department of Water and Air Resources.
- 21.47 RETAIL BUSINESS. Establishments selling commodities in small quantities to the consumer.
- 21.48 RETAIL SERVICES. Establishments providing tangible needs for immediate use.
- 21.49 SELF-SERVICE STORAGE FACILITIES Facilities providing separate storage areas for personal or business use designed to allow private access by the tenant for storing and removing personal property.
- 21.50 SERVICE STATION. A building or lot dedicated to the rendering of services such as the sale of gasoline, oil, grease, and accessories and minor repair of automobiles, excluding body working, overhauling and painting.
- 21.51 SETBACK LINES. The lines on the front, rear, and sides of a lot which delineate the area within which a structure may be built and maintained according to the district regulations.
- 21.52 SIGN. Any words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is made known and which are used to advertise or promote an individual, firm, association, corporation, profession, business, commodity or product.
- 21.53 SIGN AREA. The entire face of a sign and all wall work including illuminating tubing incidental to its decoration shall be included for measurement of sign areas excluding architectural trim and structural embellishments. In the case of an open sign made up of individual letters, figures, or designs, the spaces between such letters, figures, or designs, shall be included as part of the sign area. In computing sign areas, only one (1) side of a double face sign structure shall be considered.
- 21.54 SIGN, FREE-STANDING. Any sign which is attached to or mounted upon the ground by means of one or more upright posts, pillars, or braces placed upon the ground, and

which is not attached to any building (excludes billboards, poster panels, and outdoor advertising signs).

- 21.55 SIGN, LOCAL INTEREST. A sign of a temporary nature used to advertise or announce a particular event of normally local concern.
- 21.56 SIGN, OFF-SITE. One advertising device used to disseminate information concerning a person, place, or thing, not pertaining to the use of the land upon which it is located.
- 21.57 SIGN, ON-SITE. Signs relating in subject matter to the premises on which they are located, or to products, accommodations, services or activities on the premises.
- 21.58 SIGN, PERMANENT. Signs erected, located, or affixed in a manner enabling continued use of the sign for a relatively long, unspecified period of time.
- 21.59 SIGN, PROJECTING. A sign projecting from the exterior wall of a building or suspended from and supported by the underside of a horizontal surface, such as a canopy.
- 21.60 SPECIAL EXCEPTION. A major development that would not be generally appropriate without restriction throughout the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the health, safety, morals, general welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood. Such uses may be permitted in such zoning district by the town council as special exceptions if specific provision for such is made in this zoning ordinance.
- 21.61 SPECIAL USE. A development that would be generally appropriate without restriction throughout the zoning district, but which if controlled as to number, area, location, or relation to the neighborhood would promote the health, safety, morals, general welfare, order, comfort, convenience, appearance, or prosperity. Such uses may be permitted in a zoning ordinance by the Board of Adjustment as a conditional use if specific provision for such is made in the zoning ordinance.
- 21.62 STREET. A dedicated and accepted public right-of-way for vehicular traffic, which affords the principal means of access to abutting properties.
- 21.63 STRUCTURE. Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent location on the ground.
- 21.64 TRAVEL TRAILER. A structure that is (1) intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and (2) is designated for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a manufactured home.
- 21.65 VARIANCE. A modification of the existing zoning ordinance by the Town of Jefferson Board of Adjustment when strict enforcement of this ordinance should cause undue hardship owing to circumstances unique to the individual property on which the variance is granted.

- 21.66 YARD. An open space on the same lot with a principal building, unoccupied and unobstructed from the ground upwards, except where encroachments and accessory buildings are expressly permitted.
- 21.67 YARD, FRONT. An open, unoccupied space extending the full width of the lot, and situated between the right-of-way of the street and the front line of the building projected to the side lines of the lot.
- 21.68 YARD, REAR. An open, unoccupied space extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.
- 21.69 YARD, SIDE. An open, unoccupied space situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard.

ARTICLE III

DISTRICT BOUNDARIES AND MAP

Section 30. USE DISTRICTS

In order to regulate and limit the height and size of buildings; to regulate and limit the intensity of the use of lot areas; to regulate and determine the areas of open spaces surrounding buildings; to classify, regulate, and contain the location of trades and industries; to maintain the predominantly agricultural characteristic of the extra-territorial area; and to control the location of buildings designed for specified industrial, business, residential and other uses, the Town of Jefferson is hereby divided into the following use zones of which there shall be six (6) known as:

- 1. RA-15 Low Density Residential District
- 2. RA-8 Medium Density Residential District
- 3. D-B Downtown Business District
- 4. H-B Highway Business District
- 5. M-1 Industrial District
- 6. RA-10 Residential Agriculture District

Section 31. INTERPRETATION OF BOUNDARIES

Where uncertainty exists with respect to the boundaries or districts as shown on the official Zoning Map, the following rules shall apply:

- 31.1 DELINEATION. District boundary lines are generally intended to be along or parallel to property lines, lot lines, the center line of streets, alleys, railroads, easements, other rights-of-way, and creeks, streams, or other water channels.
- 31.2 OFFICIAL ZONING MAP. A zoning map entitled the "Official Zoning Map of the Town of Jefferson, Ashe County, North Carolina", clearly setting forth all approved use districts and their respective boundaries is hereby made a part of this ordinance and shall be maintained in the office of the Zoning Enforcement Officer of the Town of Jefferson. This map shall be available for inspection by interested persons during normal business hours of the Zoning Enforcement Officer of the Town of Jefferson to maintain the said map and post any changes thereto as they may be made.

Section 32. GENERAL USES

Within each district, certain general rules shall prevail:

- 32.1 INTENT OF ZONING DISTRICTS. Each district is hereby established as an exclusive zoning district and only those uses listed as permitted, conditional uses or special exception are allowed. If a particular use of the land is not listed in a certain district, that use shall be prohibited for that district, unless added by amendment.

- 32.2 OPEN SPACE REQUIREMENTS. No part of a yard, court or other open space provided around any building or structure for the purpose of complying with the provisions of this ordinance shall be included, as part of a yard or other open space required under this ordinance for another building or structure.
- 32.3 REDUCTION OF LOT AND YARD AREAS PROHIBITED. No yard or lot existing at the time of passage of this ordinance shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.
- 32.4 ONLY ONE PRINCIPAL BUILDING PERMITTED ON ONE LOT. No lot shall be occupied by more than one principal building or use.
- 32.5 LEGAL LIMITATIONS.
- 32.51 Conflict with Other Laws. Wherever the regulations made under authority of this ordinance require a greater width or size of yards or courts, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than that required in any other statute or local ordinance or regulation, the provisions of the regulation made under authority of this ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yard or courts or require a lower height of building or a less number of stories or height of building or a less number of stories or unoccupied, or impose other standards than are required by the regulations made under authority of this ordinance, the provisions of such statute or local ordinance or regulation shall govern.
- 32.6 FUTURE CONSTRUCTION. Except as herein provided, no building shall be erected, reconstructed, or structurally altered, nor shall any building or land be used which does not comply with all the zone regulations established by this ordinance for the zone in which the building or land is located.
- 32.7 STREET ACCESS. Every lot to be built upon shall abut a public street or other public way. Every lot, upon which a mobile home is located, except when within a mobile home park, shall abut a public street or other public way.
- 32.8 OBSTRUCTION. It shall be unlawful for any person, firm, or corporation to allow an obstruction in the horizontal or vertical sight distance area. The owner or tenant of any land on which an obstruction exists in violation of this ordinance shall remove same within thirty (30) days after notification by the Zoning Enforcement Officer. This provision shall apply in all residential zones and to all residential corner lots located in any zone at which the traffic is not controlled by a traffic control light.
- 32.9 DIVISION OF LOT OR TRACT. Where a district boundary line divides a lot or tract in single ownership, the district requirements for the least restricted portion of such lot or tract shall be deemed to apply to the whole thereof, provided such extensions shall not include any part of a lot or tract more than thirty-five (35) feet beyond the district boundary line. The term "least restricted" shall refer to zoning restrictions, not lot or tract sizes.

ARTICLE IV
GENERAL PROVISIONS

Section 40. NON-CONFORMING USES.

- 40.1 NEW USES OR CONSTRUCTION. After the effective date of this ordinance, all new construction shall conform to the use, area, and bulk regulations for the district in which it is to be located.
- 40.2 CONFORMING USES. After the effective date of this ordinance, land or structures, or the uses of land or structures which conform to the regulations for the district in which it is located may be continued, provided that any structural alteration or change in use shall conform with the regulations herein specified for the district in which it is located. Furthermore, after the passage of this ordinance, no subdivision of property in a single ownership shall be made which results in leaving the remaining lot with a width or area below the minimum requirements of this ordinance. Nor shall the newly made lot be less than the width or area requirements unless it is to be combined with a pre-existing lot which will result in the two meeting the width and area requirements of this ordinance.
- 40.3 CONTINUATION OF NON-CONFORMING USES. After the effective date of this ordinance, land, lots, or structures, or the use of land, lots, or structures which would be prohibited under the regulations for the district in which it is located shall be considered as non-conforming. It is the intent of this ordinance to permit these non-conformities to continue until they are removed, but not to encourage their continued use. Non-conforming structures or uses may be continued provided they conform to the provisions below:

40.31 Non-Conforming Lots.

40.311 Minimum Single Lot Requirements. Where the owner of a lot at the time of the adoption of this ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the dimensional requirements of this ordinance, such lot may be used as a building site for a single-family residence with related accessory buildings in a district in which residences are permitted. There shall be no alternation of the setback requirements on such lot except where the Jefferson Board of Adjustments finds, after a public hearing, that the values of the neighboring properties would not be unduly depreciated nor would the public safety or welfare be impaired by such action.

40.312 Minimum Multi-Lot Requirements. If two (2) or more adjoining and vacant lots of record are in a single ownership at any time after the adoption of this ordinance, such lots which meet the minimum requirements of this ordinance for the district in which such lots are located. No portion of said parcel shall be used or sold which does not meet the area and width requirements established by this ordinance nor shall any division of the parcel be made which leaves any lot remaining with width or area below the requirements of this ordinance.

40.32 Non-Conforming Uses of Land and/or Buildings

40.321 Non-Conforming use of land or structures shall not hereafter be enlarged or extended in any way.

40.322 Any non-conforming uses of land or structures may be changed to any conforming use or with the approval of the Board of Adjustment, to any use or structure more in character with the uses permitted in the district. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

40.323 Should any non-conforming structure or use of land be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is relocated.

40.324 Normal maintenance, repair, and incidental alteration in a building occupied by a non-conforming use is permitted provided it does not extend the non-conforming use.

40.325 If a building occupied by a non-conforming use or non-conforming building is destroyed by any means to an extent of more than eighty (80) percent of its appraised value for tax purposes at the time of destruction, such building may not be restored for any non-conforming use.

40.4 EXTENSION OF NON-CONFORMING USES. A non-conforming use shall not be extended or enlarged nor shall a non-conforming structure be altered except as follows:

40.41 Structural alterations as required by law or the ordinance or as ordered by the Zoning Enforcement Officer to secure the safety of the structure.

40.42 Maintenance and repair necessary to keep a non-conforming structure in sound condition.

40.5 RE-ESTABLISHMENT OF NON-CONFORMING USES. A non-conforming use may not be re-established after discontinuance for a period of one hundred eighty (180) days - if there is a clear indication that the property owner intended that discontinuance.

40.6 NON-CONFORMING SIGNS AND BILLBOARDS. Non-conforming signs and billboards will be allowed to remain in good repair for a period of three (3) years after the effective date of this ordinance, at which time all signs and billboards must conform to the regulations of this ordinance.

40.7 JUNK YARDS AS NON-CONFORMING USES. The existence of a junk yard in any zoning district, except the M-1 Industrial District, shall be deemed non-conforming and shall be eliminated not later than three (3) years after the effective date of this ordinance.

Section 41. ADVERTISING SIGNS AND STRUCTURES

With the exception of those signs specifically excluded, no sign shall be erected without a permit from the Zoning Enforcement Officer.

- 41.1 PERMIT APPLICATION. Application for permits shall be submitted on forms obtained from the Zoning Enforcement Officer. Each application shall be accompanied by plans which shall:
- a. Indicate the proposed site by identifying the property by ownership, location and use;
 - b. Show the location of the sign on the lot in relation to property lines and building, zoning district boundaries, right-of-way lines, and existing signs, and
 - c. Show size, character, complete structural specifications and methods of anchoring and support.

If conditions warrant, the Zoning Enforcement Officer may require such additional information as will enable him to determine if such sign is to be erected in conformance with this ordinance.

- 41.2 LOCATION. No sign, structure, shrub, tree, etc., shall be erected or grown so as to interfere with visual clearance at corner lots. Such visual clearance means that no visual obstruction exceeding three (3) feet in height shall occur on corner lots within fifteen (15) feet of the cessation of the road surface-this setback shall apply for one hundred (100) feet along the interior segments of the road. No advertising sign or structure that constitutes an obstruction (as defined above) shall be located in the street right-of-way nor within fifteen (15) feet of the cessation of the road or highway surface unless the bottom portion of said sign is at least seven and a half (7.5) feet above ground level. Local signs advertising civic clubs are allowed in all districts.
- 41.3 ILLUMINATION. No flashing or intermittent illumination shall be used on any advertising sign or structure. All illuminated signs or structures shall be placed so as to prevent the light rays or illumination from being cast directly upon residential dwellings. This does not include time or temperature units.
- 41.4 STRUCTURAL REQUIREMENTS. Structural requirements for signs shall be those required in the North Carolina State Building Code.
- 41.5 SIGN AREA COMPUTATION. Sign area shall be computed by the smallest square, triangle, rectangle, circle or combination thereof which will encompass the entire sign, including lattice work, wall work, frame or supports incidental to its decoration. In computing the area, only one (1) side of a double face sign structure shall be considered.
- 41.6 FEES. No permit shall be issued until the exact dimensions and area of the sign have been filed with the Zoning Enforcement Officer and a \$20.00 fee paid.
- 41.7 MAINTENANCE. All signs, together with all their supports and braces, shall be kept in good repair and in a neat and clean condition. No sign shall be continued which becomes, in the opinion of the Enforcement Officer, structurally unsafe and endangers the safety of the public or property. The Enforcement Officer may order the removal of any sign that is not maintained in accordance with the provisions of this section. Such removal shall be at the expense of the owner or lessee and shall occur within then (10) days after written notification has been issued. If such order is not complied within thirty (30) days, the Enforcement Officer shall remove the sign at the expense of the owner or lessee.

- 41.8 TRAFFIC SAFETY. No sign shall be erected or continued that:
- Obstructs the sight distance along a public right-of-way;
 - Would tend by its location, color, or nature to be confused with or obstruct the view of traffic signs or signals, or would tend to be confused with a flashing light of an emergency vehicle; or
 - Uses admonitions such as 'stop', 'go', 'slow', 'danger', etc., which might be confused with traffic directional signals.
- 41.9 NON-CONFORMING SIGNS. No non-conforming sign erected before the adoption of this ordinance shall be moved or replaced, without complying with the provisions of this ordinance. In addition, under the following conditions, non-conforming permanent signs shall comply with the regulations of this ordinance.
- 41.91 Any alteration of a non-conforming sign shall make that sign conform to the regulations of this ordinance;
- 41.92 Any non-conforming sign on a building which is vacant for a period of ninety (90) days shall be altered to conform to the regulations of this ordinance;
- 41.93 Any non-conforming sign damaged over sixty (60) percent by any means, either shall be removed or repaired in a manner to conform with the regulations of this ordinance; this does not include signs that have deteriorated over an extended period of time. Although the cost of repairing these signs may exceed sixty (60) percent of their original value, they may be repaired without conforming to the requirements of this ordinance;
- 41.94 Non-conforming signs, when removed for other than normal maintenance, may not be erected again, nor may such signs be replaced with another non-conforming sign.
- 41.10 PERMITTED SIGNS. The following on-site signs defined in Article IV, Section 41, are permitted:
- 41.101 Residential Districts
- One (1) professional or announcement sign per lot for such uses as customary home occupations, and professional offices where permitted. Such signs shall not exceed one (1) square foot in area. No such sign shall be illuminated and must be hung from a mailbox or lamp post.
- One (1) sign per lot pertaining only to the lease, rent or sale of the property upon which displayed. Such sign shall not exceed four (4) square feet in area. No such sign shall be illuminated.
- Church bulletin boards, rest homes, and signs announcing clubs and other recreation facilities and schools. Such signs shall be limited to one (1) per lot and forty (40) square feet in area.
- In connection with entrances to subdivisions and neighborhoods illuminated identification signs not exceeding sixty (60) square feet in area may be erected at each entrance.
- No offsite signs are permitted.

41.102 Highway Business District

a. Shopping Center Identification Signs

Any shopping center or multiple proprietorships in one (1) building or connected buildings occupied by two (2) or more tenants shall be permitted a fifty (50) percent increase in ground size maximum from the standard one hundred fifty (150) square feet normally allowed. If the lot frontage is greater than one hundred fifty (150) feet, two (2) ground signs may be used with a minimum of seventy-five (75) feet between them and the fifty (50) percent addition applies to both signs.

Businesses within the one (1) building or connected buildings are permitted their own signs mounted flush to their front walls. Each business shall be allowed one (1) such sign and each sign shall be proportionate with its frontage and/or the size of the largest sign.

Businesses which later move into the shopping center are not permitted to have a free-standing sign but shall be bound by the restrictions above.

b. Individually Sited Businesses

Within thirty (30) days after passage of this ordinance, the property owner of any vacant or unused building that has an advertising sign located on the property and/or on the building shall be responsible for removing that sign.

Business vacating buildings after passage of this ordinance shall have no more than thirty (30) days after cessation of business to remove all off-site and on-site signs.

Advertisements (or political ads) which are clearly of a seasonal and/or local interest shall be removed at the owner's or lessor's expense within thirty (30) days after the season or event.

It shall be the owner's or lessor's responsibility to maintain the sign in a visibly acceptable manner.

Signs painted or erected upon the side of buildings shall be limited to sixty (60) square feet.

Signs may not project more than sixty (60) inches from any building wall.

If a sign is suspended from a canopy or brace, the bottom of the sign must be at least seven and a half (7.5) feet above sidewalk level.

Freestanding signs shall not exceed one hundred fifty (150) square feet nor shall their height exceed thirty-five (35) feet in height.

No off-site signs are permitted.

41.103 Downtown Business District

Within thirty (30) days after passage of this ordinance, the property owner of any vacant or unused building that has an advertising sign located on the property and/or on the building shall be responsible for removing that sign.

Businesses vacating buildings after passage of this ordinance shall have not more than thirty (30) days after cessation of business to remove all off-site and on-site signs.

Signs may not project more than sixty (60) inches from any building wall.

If a sign is suspended from a canopy or brace, the bottom of the sign must be at least seven and a half (7.5) feet above sidewalk level.

Signs under awnings shall be limited to four and a half (4.5) square feet.

Signs not exceeding sixty (60) square feet may be mounted flush to building fronts.

Signs painted upon the side of buildings shall be limited to sixty (60) square feet.

No off-site signs are permitted.

41.104 Industrial District

Advertising Signs and Business

- a. The face of an advertising sign shall not be greater than twelve (12) feet in vertical dimension, nor greater than thirty-six (36) feet in horizontal dimensions, and shall not contain more than two (2) faces per structure. Such signs shall have an open space of not more than two (2) feet between the lower edge of the sign and the ground level, which space may be filled in with platform and decorative lattice work.
- b. No advertising sign structure oriented toward a public right-of-way other than limited access highway may be within two hundred (200) feet of any other advertising sign structure, unless there is an intersecting public street between such signs with a right-of-way not less than forty (40) feet in width. A painted advertising sign on a wall, roof, or fence shall be considered an advertising sign structure and shall be governed accordingly.

41.11 EXCLUDED SIGNS. The signs listed below do not require a permit from the Zoning Enforcement Officer.

41.111 **Occupant and House Number.** Signs not exceeding one (1) square foot in area and bearing only property numbers, post office box numbers, names of occupants, or other identification not having commercial connotations;

41.112 **Directional and Information.** Signs erected and maintained by public agencies and government.

41.113 **Professional and Home Occupation.** One (1) professional or home occupation sign per dwelling not to exceed four (4) square feet.

41.114 **Church or Public Bulletin Boards.** These signs shall not exceed forty (40) square feet in area. Such signs may be indirectly illuminated.

41.115 **Temporary Lease, Rent or Sale.** One (1) temporary real estate sign not exceeding four (4) feet in area may be placed on a property that is for sale, lease, rent or barter. When the property fronts on more than one (1) street one sign shall be allowed on each street frontage.

41.116 **Construction.** During the construction, repair or alteration of a structure, temporary signs which denote builder, or other participants in the project, or its occupants to be, may be placed within the required yard setbacks as ground, wall or roof sign. The total area of such signs shall not exceed forty (40) square feet.

41.117 **Temporary Sales Signs.** Temporary sale signs may be permitted in any business or industrial district. They may be illuminated with indirect lighting. These temporary signs shall remain only for the duration of the sale.

41.11 **LOCAL INTEREST SIGNS.** Local interest signs may only be placed after obtaining a permit (but no fee required) from the Zoning Enforcement Officer. The person obtaining the permit shall be responsible for ensuring the sign(s) is (are) taken down within three (3) working days after the scheduled event.

Section 42. OFF-STREET PARKING AND STORAGE

There shall be provided at the time of erection of any building, or at the time any principal building is enlarged or increased in capacity by adding dwelling units, guest rooms, seats or floor area, or before conversion from one type of use or occupancy to another, permanent off-street parking space in the amount specified in this section, provided such building is not in the Highway Commercial District. Such parking space may be provided in a parking garage or properly graded open space and shall be included in all site plans submitted to the planning board. No public street right-of-way shall be used in determining or providing required off-street parking.

42.1 **CERTIFICATE OF MINIMUM PARKING REQUIREMENTS.** Each application for a zoning permit or certificate of occupancy submitted to the Zoning Enforcement Officer shall include information as to the location and dimensions of off-street parking and loading spaces, and means of ingress and egress to such space. This information shall be of sufficient detail to enable the Zoning Enforcement Officer to determine whether the requirements of this section are met.

42.2 **COMBINATION OF REQUIRED PARKING SPACE.** The required parking spaces for any number of spaces may be combined in one (1) lot or premise, but the required parking space for any other use shall not be used or counted as the required space for any other use except that one half (1/2) of the parking space required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night and on Sundays.

42.3 **REMOTE PARKING SPACE.** If adequate parking facilities cannot be provided on the same lot where the principal use is located, it may be provided on another lot not more than five hundred (500) feet from the principal use, provided that such space is rented and/or leased on a long-term basis or is in the same ownership as the principal use.

42.4 **REQUIREMENTS FOR PARKING LOTS IN RESIDENTIAL DISTRICTS.** Where parking lots for more than five (5) automobiles are permitted or required in residential districts, the following stipulations shall be met:

42.41 The lot may be used only for parking in relation to the principal use of the lot and not for any type of loading sales, repair work, dismantling or servicing;

42.42 All entrances, exits, barricades at sidewalks, and drainage works shall be approved by the Zoning Enforcement Officer prior to construction;

42.43 Only one (1) entrance and one (1) exit sign not exceeding four (4) square feet prescribing parking regulations may be erected at each entrance or exit. No other signs shall be permitted.

42.5 **MINIMUM PARKING REQUIREMENTS.** The required number of off-street parking spaces specified below for each use shall be provided.

<u>Land Use</u>	<u>Required Parking Space</u>
Automobile sales and repair garages	One (1) space for each two (2) employees at maximum employment on a single shift, plus two (2) spaces each 300 square feet of repair or maintenance space.
Bowling Alleys	Two (2) spaces for each lane, plus one (1) additional space for each two (2) employees
Churches and funeral homes	One (1) space for each four (4) seats in the main chapel.
Elementary and Jr. High Schools (Public and Private)	One (1) space for each classroom and administrative office
Hospitals	One (1) space for each four (4) patient beds plus one (1) space for each staff or visiting doctor plus one (1) space for each four (4) employees
Hotels	One (1) space for each two (2) rooms plus one (1) additional space for each five (5) employees.
Libraries	One (1) space for each four (4) seats provided for patron use.
Motels, tourist homes and tourist courts	One (1) space for each accommodation plus two (2) additional spaces for employees.
Offices, business, professional or public,	One (1) space for each two hundred (200)

including banks	square feet of gross floor area.
Places of public assembly including private clubs and lodges, auditoriums, dance halls, pool rooms, theaters, stadiums, gymnasiums, amusement parks, community centers, and all similar places of public	One (1) space for each four (4) fixed seats provided for patron use, plus one (1) space for each one hundred (100) square feet of floor or ground area used for amusement or assembly but not including fixed seats.
Rescue squads and armories	Parking space equivalent to three (3) times the gross floor space in the main building.
Residential dwellings, single-family, two-family and multi-family	Two (2) spaces for each dwelling unit.
Restaurants, drive-ins	Parking space equivalent to five (5) times the gross floor space in the main building.
Retail business and consumer service outlets	One (1) space for each two hundred (200) square feet of gross floor area.
Retirement homes	Three (3) parking spaces for four (4) units plus $\frac{1}{4}$ of total available space shall be reserved for staff and visitors.
Rooming & Boarding houses	One (1) space for each accommodation, plus one (1) additional space for the owners or managers.
Sanitariums, rest and convalescent homes, homes for the aged, and similar institutions	One (1) space for each six (6) patient beds, plus one (1) space for each staff or visiting doctor, plus one (1) space for each four (4) employees.
Sr. High Schools and Colleges, both public and private	One (1) space for each ten (10) students for whom the school was designed, plus one (1) space for each classroom & administrative office.
Service Stations	Two (2) spaces for each gas pump plus three (3) spaces for each grease rack or similar facility.
Shopping Centers	One (1) parking space for every seventy (70) square feet of gross floor area.

Wholesaling and Industrial Uses

One (1) space for each two (2) employees at maximum employment on a single shift.

42.6 ESTABLISHMENTS LOCATED (OR LOCATING) IN THE DOWNTOWN BUSINESS DISTRICT ARE EXEMPT FROM THESE PROVISIONS

Section 43. OFF-STREET LOADING AND UNLOADING SPACE

The number of off-street loading berths required by this section shall be considered as the absolute minimum and the developer shall evaluate his own needs to determine if they are greater than the following minimum. Every building or structure used for business, trade, or industry hereafter erected shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Each space shall have access to an alley, or, if there is no alley, to a street. For the purpose of this section, an off-street loading space shall have a minimum dimension of twelve (12) feet by forty (40) feet and an overhead clearance of fourteen (14) feet in height above the alley or street grade. A loading space requirement may be modified or waived by the Board of Adjustment on application in the case of a bank, theater, assembly hall, or other building of similar loading space requirements.

43.1	<u>Square Feet of Gross Floor Area</u>	<u>Required Number of Berths</u>
	0 – 25,000	1
	25,000 – 40,000	2
	40,000 – 100,000	3
	100,000 – 160,000	4
	160,000 – 240,000	5
	240,000 – 320,000	6
	320,000 – 400,000	7
	Each 90,000 above 400,000	1

Exceptions: New businesses or services moving into existing vacant buildings within the D-B District are exempt from these requirements; if moving into a new structure, however, these provisions do apply.

ARTICLE V

DISTRICT PROVISIONS

Section 50. RA-15 (RESIDENTIAL AGRICULTURE LOW DENSITY) DISTRICT

This district is intended to be a quiet, medium density residential neighborhood including limited home occupations and limited private and public community uses. It is expected that municipal water facilities will be available to each lot, providing a healthful environment although the residential development may be dependent upon septic tanks for sewage disposal.

50.1 The following uses shall be permitted by right:

Single family dwellings

Customary accessory uses and structures including private garages, swimming pools and other accessory structures provided the front and side yard requirements are met and that furthermore such uses and/or structures shall cover no more than thirty (30) percent of said side or rear yard.

Miniparks *added 6/1981*

Modular homes

Public educational institutions and private schools having a curriculum the same as ordinarily given in public schools.

Public or private hospitals and clinics, except animal hospitals.

Any agricultural or horticultural use except commercial houses, a yard or hatchery, a dairy, a livestock pen or yard, a horse or mule stable, a pig pen or hog pen, or any other use of land for keeping and raising animals or fowls for commercial purposes.

Non-commercial buildings or structures used for the keeping of livestock, fowls, or other non-commercial buildings or structures be located in the rear yard and shall not be located closer than fifty (50) feet from any property line.

Signs in accordance with Section 41.

50.2 SPECIAL USES. The following list of special uses shall only be permitted upon the approval of the Jefferson Board of Adjustment after the board finds that all the requirements of this ordinance are met. All special uses considered by the Jefferson Board of Adjustment shall not adversely affect the surrounding land uses in terms of appearance, safety, property values, and other effects which would normally be realized if such a use were located in a particular area.

The Board of adjustment may also attach additional conditions when permitting such uses within this zoning district.

50.21 Public utility substations, utility towers, pumping stations, storage tanks, provided that each of the above uses or buildings

- a. is essential to the service of the community and
- b. shall be set back at least twenty (20) feet from all property lines and designed and landscaped in such a way as to blend in with the surrounding area

50.22 Day care facilities and kindergarten

50.23 Rest homes, convalescent homes, homes for the aged

50.24 Apartment and/or duplexes, bed and breakfast

50.25 **Effect upon special uses.** Those uses which existed prior to the effective date of this ordinance, and permitted only as special uses in the district in which they are located shall be considered to be legally established conditional uses after the effective date of this ordinance. Any expansion, addition or other change for which a zoning permit is required, shall be heard, considered, and approved or disapproved by the Board of Adjustment in the same manner as an original application for special use approval.

50.3 **DIMENSIONAL REQUIREMENTS.** Within the RA-15 Residential Agriculture Low Density District as shown on the zoning map, the following dimensional requirements shall be met:

50.31 **Minimum Lot Size** - Minimum required area for each use if fifteen thousand (15,000) square feet.

50.32 **Minimum Lot Width** - Minimum lot width shall be one hundred (100) feet.

50.33 **Minimum Front Yard** - Minimum front yard setback shall be thirty (30) feet.

50.34 **Minimum Side Yard** - Minimum side yard shall be ten (10) feet on each side of the main building (accessory structures and/or uses are not permitted within this area); provided, however, on corner lots the side lot adjacent to the street shall not be less than 50% of the front yard required on lots in rear of such corner lots.

50.35 **Building Height** - Height of buildings shall not exceed thirty-five (35) feet unless the depth of the front and total width of the side yards required herein shall be increased by one (1) foot for each two (2) feet, or fraction thereof, of building height in excess of thirty-five (35) feet.

50.36 **Minimum Rear Yard** - Minimum required rear yard shall be twenty (20) percent of the mean lot depth, provided that such rear yard need not exceed thirty (30) feet.

50.37 **Maximum Permissible Lot Coverage** - Maximum permissible lot coverage by the principal building, and all accessory buildings shall not exceed twenty (20) percent of the total lot area.

50.38 **Accessory Uses/Structures** - Accessory uses/structures shall not be erected within twenty (20) feet of any street or highway line or within ten (10) feet of any lot line not a street or highway line.

50.39 **Off-Street Parking** - Off-street parking shall be provided as required by Section 42 of this ordinance.

Section 50A. RA-10 RESIDENTIAL AGRICULTURE (INTERMEDIATE DENSITY) DISTRICT

This district is established as one in which the principal use of land is for single-family and two-family residences. The regulations of this district are intended to provide areas in the community for those persons desiring smaller residences on moderately sized lots in moderate density neighborhoods. The regulations are intended to prohibit any use which, because of its character, would interfere with the residential nature of this district. It is expected that municipal water and sewerage facilities will be available to each lot in such districts.

50A.1 The following uses shall be permitted by right:

Single family dwellings

Any form of agriculture or horticulture, including the sale of products at retail stand on the property where produced; commercial chicken houses, a yard or hatchery, a dairy, a livestock pen or yard, a horse or mule stable, a pig pen or hog pen, or any other use of land for keeping and raising animals or fowls for commercial purposes are not permitted.

Incidental home occupations

Customary accessory uses and structures including private garages, swimming pools and other accessory structures provided the front and side yard requirements are met and that furthermore such uses and/or structures shall cover no more than thirty percent (30%) of said site or rear yard.

Backyard workshops for building tradesmen and small appliances repair shops, but excluding open storage.

Signs in accordance with Section 41.

Two family dwellings

50A.2 **SPECIAL USES.** The following list of special uses shall only be permitted upon the approval of the Jefferson Board of Adjustment after the Board finds that all of the requirements of this ordinance are met.

50A.21 Public utility substations, utility towers, pumping stations, storage tanks, provided that each of the above uses or buildings.

- a. is essential to the service of the community, and
- b. shall be set back at least twenty (20) feet from all property lines and designed and landscaped in such a way as to blend in with the surrounding area

50A.22 Day care facilities and kindergartens

50A.23 Cluster Developments

50A.24 Effect upon Special Uses. Those uses which existed prior to the effective date of this ordinance, and permitted only as special uses in the district in which they are located shall be considered to be legally established special uses after the effective date of this ordinance. Any expansion, addition or other change for which a zoning permit is required shall be heard, considered, and approved or disapproved by the Board of Adjustment in the same manner as an original application for special use approval.

50A.3 **DIMENSIONAL REQUIREMENTS.** Within the RA-10 Residential Agriculture District, as shown on the zoning map, the following dimensional requirements shall be complied with:

50A.31 For two-family dwelling, ten thousand (10,000) square feet of minimum required lot area for the first dwelling unit and seven thousand (7,000) square feet additional lot area required for the second dwelling unit.

When a lot or parcel of land has an area of less than the above required minimum and was on record at the time of passage of this ordinance, said lot may be occupied by one family, provided, however, that the minimum side and front yard requirements herein are set out are met.

50A.32 One hundred (100) feet minimum required mean lot width for the first dwelling unit with ten (10) feet of additional mean lot width for the second dwelling is required. However, any lot of record at the time of passage of this ordinance having less than one hundred (100) feet is permitted.

50A.33 Minimum required front yard for the principal building or the accessory building shall be at least twenty-five (25) feet.

50A.34 Minimum required side yards for the principal building or accessory building shall be at least ten (10) feet.

50A.35 Minimum required rear yard shall be twenty (20) percent of the mean lot depth, provided that such rear yard need not exceed twenty-eight (28) feet.

50A.36 Maximum permissible lot coverage by principal building and all accessory buildings shall not exceed forty percent (40%) of the total lot area.

50A.37 Height of buildings shall not exceed thirty-five (35) feet unless the depth of the front and total width of the side yards required herein, shall be increased by one (1) foot for each two (2) feet, or fraction thereof, of building height in excess of thirty-five (35) feet.

50A.38 Accessory buildings shall not be erected in any required front or side yard or within twenty (20) feet of any street or highway line or within five (5) feet of any line not a street or highway line. An accessory building or use may be located in a rear yard provided it is located no less than ten (10) feet from the principal building and five (5) feet from the rear yard line.

50A.39 Off-street parking shall be provided as required in Section 42 of this ordinance.

50A.4 CLUSTER DEVELOPMENT

50A.41 **Definition.** Cluster development is a variation or exception to the lot size requirement specified in the town ordinance. If approved, the subdivider can cluster or group dwelling units on part of the tract and allow the remaining part of the lot to remain in open space. This is strictly a method of transferring density. It does not allow any uses that are not specifically listed in the zoning ordinance.

50A.42 Plat and Site Plan Approval Required

50A.42.1 **Plat.** Any proposed cluster project, whether it is a single-family detached dwelling unit, duplex, townhouse, or condominium project, shall have a preliminary and final plat approved by the Planning Board and the Board of Adjustment.

50A.42.2 **Site Plan.** Any proposed project shall have a site plan that shows the following information:

- (a) The location of the buildings, streets, alleys, walks, parking areas, recreation areas, tree covers, and planting.
- (b) Number and show the dimensions of all building sites, streets, and utility easements to be dedicated to the public.
- (c) All areas on the site plan other than public streets, easements or private building sites shall be shown and designed as common areas.

50A.42.3 **Landscape Plan.** A landscape plan for all projects shall show all existing and proposed plant materials. The plan shall indicate the size and type of plants to be planted.

50A.43 **Maximum Number of Lots.** The maximum number of lots that may be created in a cluster development shall be computed as follows:

- (a) From the gross area of land to be developed, subtract twenty (20) percent which represents the approximate area needed for roadways.
- (b) Divide the remainder by the minimum lot area requirement for single-family dwellings of the zoning district where the development is located.

The result is the maximum number of lots that may be created in the development. The twenty (20) percent factor shall be constant regardless of the actual amount of land used for the street system.

50A.44 **Minimum Standard for Lots.** A cluster development with approved utility systems, including wells and septic tank systems, shall be exempt from the minimum lot sizes specified in

the zoning ordinance except as required in Section SOA.45 below; however, in no case shall the lot size be less than sixty (60) percent of the minimum zoning lot size. All other dimensional requirements such as front, side, and rear yards shall apply.

50A.45 Peripheral Lots. The minimum size or the minimum standards of those peripheral lots which will be adjacent to undeveloped property in a single-family zone or developed as single-family houses shall be the same as the minimum size or the minimum standards required in the zoning district where the cluster development is located.

50A.46 Open Space Standards. At the discretion of the sub developers, a cluster development may utilize a range of lot sizes not in conflict with the minimum specified above in Section SOA.44 - Minimum Standards for Lots, and provided further, that all land saved shall be designated as parks or open space. Such parks or open space shall be deeded to the Town of Jefferson or held in nonprofit corporate ownership by the owners of lots within the development.

In consideration of the purposes served by a cluster development, the title to such areas as provided shall be preserved to the perpetual benefit of the public generally or the private properties in the development and shall be restricted against private ownership for any other purposes. Improvements clearly incidental to the purpose of these provisions may be made within the open space provided that the maximum coverage of such improvements shall not exceed twenty-five (25) percent of the open space.

50A.47 Access to Open Space. All lots created within the development shall have direct access to all parks or open space as provided by means of public streets, dedicated walkways, fact of physical contiguity, other public lands, or lands in common ownership by all residents.

50A.48 Open Space Provisions. Where the open space is to be deeded to a homeowners' association or other such nonprofit ownership, the developer shall file a declaration of covenants and restrictions that will govern the open space and the association of nonprofit organizations. This declaration shall be submitted with preliminary plat approval and shall include but not be limited to the following:

- (a) The homeowners' association or the nonprofit organization shall be established before any lots are sold.
- (b) Membership shall be mandatory for each lot buyer and any successive buyer.
- (c) The association shall provide for liability insurance, any taxes, and maintenance of all grounds and facilities.
- (d) Any sums levied by the association that remain unpaid shall become a lien upon the lot owner's property.
- (e) If all or any portion of the property held by the association is to be disposed of or if the association is dissolved, all such property shall be deeded in fee simple absolute title to the Town at no cost to the Town.

50A.49 **Expiration.** In any case where a cluster development has been approved and construction not begun within 180 days will be automatically terminated and be of no further effect provided, however, the Board of Adjustment may, upon good and sufficient cause shown, extend this period for one (1) year upon written request of the applicant.

50A.50 **Phase Developments.** A cluster development may be developed in phases provided that:

- (a) The entire project receives approval before any phase development begins.
- (b) All open space or common areas of the entire project be recorded and/or provided for in the homeowners' association with the development of the first phase. However, cluster developments which do not involve a required homeowners' association and which contain open spaces deeded to the Town of Jefferson may be recorded provided that the open space of park land is deeded to and accepted by the Town prior to development of the first phase, or contract to give the Town the land is executed, or any combination.
- (c) If a corporation or association is established for the open space, it will provide for total project membership.

Section 51. RA-8 RESIDENTIAL AGRICULTURE (MEDIUM DENSITY) DISTRICT

This district is established as one in which the principle use of land is for single-family, two-family and multi-family residences. The regulations of this district are intended to provide areas in the

community for those persons desiring small residences and multi-family structures in relatively high density which, because of its character, would interfere with the residential nature of this district. It is expected that municipal water and sewerage facilities will be available to each lot in such districts.

51.1 The following uses shall be permitted by right:

Single family dwellings

Manufactured Homes, Class A

Any form of agriculture or horticulture, including the sale of products at a retail stand on the property where produced; commercial chicken houses, a yard or hatchery, a dairy, a livestock pen or yard, a horse or mule stable, a pig pen or hog pen, or any other use of land for keeping and raising animals or fowls for commercial purposes are not permitted.

Incidental home occupations

Customary accessory uses and structures including private garages, swimming pools and other accessory structures provided the front and side yard requirements are met and that furthermore such uses and/or structures shall cover no more than thirty percent (30%) of said site or rear yard.

Backyard workshops for building tradesmen and small appliances repair shops, but excluding open storage.

Signs in accordance with Section 41.

Two-family dwellings

Modular homes

Public schools

Motel/hotels

51.2 **SPECIAL USES.** The following list of special uses shall only be permitted upon the approval of the Jefferson Board of Adjustment after the Board finds that all the requirements of this ordinance are met.

51.21 Public utility substations, utility towers, pumping stations, storage tanks, provided that each of the above uses or buildings.

(a) is essential to the service of the community, and

(b) shall be set back at least twenty (20) feet from all property lines and designed and landscaped in such a way as to blend in with the surrounding area

51.22 Day care facilities and kindergartens

51.23 Rest homes, convalescent homes, and homes for the aged

51.24 Multi-family dwellings

51.25 Effect upon Special Uses. Those uses which existed prior to the effective date of this ordinance, and permitted only as special uses in the district in which they are located shall be considered to be legally established special uses after the effective date of this ordinance. Any expansion, addition or other change for which a zoning permit is required shall be heard, considered, and approved or disapproved by Board of Adjustment in the same manner as an original application for special use approval.

51.3 DIMENSIONAL REQUIREMENTS. Within the RA-8 Residential Agriculture District, as shown on the zoning map, the following dimensional requirements shall be complied with:

51.31 Eight thousand (8,000) square feet minimum. required lot area for the first dwelling unit, five thousand (5,000) square feet additional lot area required for the second dwelling units, and three thousand (3,000) square feet additional lot area per dwelling unit in excess of two (2) up to a maximum of ten (10) dwelling units per acre. When the proposed structure dwelling unit density exceeds ten (10) per acre, this standard may be applied so that the overall density does not exceed the standard.

51.32 One hundred (100) minimum required mean lot width for the first dwelling unit with ten (10) feet of additional mean lot width for the second dwelling. However, any lot of record at the time of passage of this ordinance having less than one hundred (100) feet is permitted.

51.33 Minimum required front yard for the principal building or the accessory building shall be at least twenty-five (25) feet.

51.34 Minimum required side yards for the principal building or accessory building shall be at least ten (10) feet.

51.35 Minimum required rear yard shall be twenty (20) percent of the mean lot depth, provided that such rear yard need not exceed twenty-eight (28) feet.

51.36 Maximum permissible lot coverage by principal building and all accessory buildings shall not exceed forty percent (40%) of the total lot area.

51.37 Height of buildings shall not exceed thirty-five (35) feet unless the depth of the front and total width of the side yards required herein, shall be increased by one (1) foot for each two (2) feet, or fraction thereof, of building height in excess of thirty-five (35) feet.

51.38 Accessory buildings shall not be erected in any required front or side yard or within twenty (20) feet of any street or highway line or within five (5) feet of any lot line not a street or highway line. An accessory building or use may be located in a rear yard provided it is located not less than (10) feet from the principal building and five (5) feet from the rear yard line.

51.39 Off-street parking shall be provided as required in Section 40 of this ordinance.

Section 52. D-B (DOWNTOWN BUSINESS) DISTRICT

The D-B (Downtown Business) District is established as the district to which centrally located retail trade and consumer service uses will expand as the communities and the regions' population increases.

52.1 The following uses shall be permitted by right:

Automobile/diesel repair garages Attorney offices

Antiques sales

Accountant offices

Beauty salons

Barber shops

Ceramics shops

Craft shops

Car washes

Churches

Clothing sales

Club offices

Drug stores

Electrical supplies

Florist shops

Farmers Home Administration offices

Fraternal lodges

Federal Land Bank

Health Care Facilities

Financial Institutions

Factory outlets

Grocery stores

Hair styling offices

House moving companies

Insurance sales

Jewelry stores/sales

Laundromats/laundrettes

Land surveying offices

Motorcycle sales/repair

Mixed uses (buildings erected/converted for both dwelling and business purposes)

Nursery sales/greenhouses/distribution centers

Public offices and other public uses

Professional offices (doctors, dentists, engineers, attorneys)

Public and private parking lots

Plumbing supplies

Printing offices

Realty offices

Restaurants

Service stations

Stereo/radio/TV sales and services

Shoe sales

Stove (wood, electric) sales

Tax offices

Taxidermy offices

Welding services

52.2 DIMENSIONAL REQUIREMENTS. Within the D-B (Downtown Business) District as shown on the zoning map, the following dimensional requirements shall be complied with:

52.21 Required Yards. No building shall be less than six (6) feet from the curb.

No other yards are required except that where the rear of a lot abuts a residential district there shall be a fifteen (15) foot rear yard and where a lot abuts the side yard not less than fifteen (15) feet in width. In all cases where a side yard, not required, is provided, it shall be at least eight (8) feet in width.

52.22 Height Regulations. In the D-B (Downtown Business) District, every building hereafter erected or structurally altered to exceed fifty (50) feet in height shall be set back from the front lot line on the ratio of one (1) foot for each two (2) foot rise above said fifty (50) feet, but in no case shall the required set back exceed ten (10) feet.

52.23 Off-street Loading and Unloading. Buildings constructed or converted to commercial use after the effective date of this ordinance which have access to a public alley shall provide off-street loading and unloading berths as required in Section 43 of this ordinance.

52.24 Off-Street Parking Requirements. Off-street parking space shall be provided as required by Section 42 of this ordinance.

Section 53. HB (HIGHWAY BUSINESS) DISTRICT

The HB Highway Business District is established as a district in which the principal use of land is for the retailing of durable goods, the provision of commercial services to industrial areas, and the provision of services to tourist.

53.1 The following uses are permitted by right:

Clothing outlets

Florist

Garage

Grocery store

Insurance

Motels

Produce stand

Professional offices (engineers, orthodontists, lawyers, etc)

Retail department store

Service stations

Shoes

TV and Radio service

Customary accessory uses and structures including open storage provided the area devoted to open storage is enclosed by a solid fence not less than six (6) feet in height.

Single family detached housing meeting the dimensional requirements of the RA-8 district.

53.2 **SPECIAL USES.** The following uses shall be permitted subject to a finding by the Board of Adjustment that the additional conditions listed below will be met:

53.21 Any other retail use not allowed in the Downtown Business District.

53.22 Multi-family dwellings meeting the dimensional and lot requirements of the RA-8 District.

53.23 Mixed Uses (buildings erected/converted for both dwelling and business purposes).

- 53.3 **REQUIRED YARDS.** No building shall be less than thirty (30) feet from the curb or from where the curb would normally be. No other yards are required except that where the rear of a lot abuts a residential district, there shall be a twenty (20) foot rear yard and where a lot abuts the side of a lot zoned residential, there shall be a side yard no less than twenty (20) feet in width. In all other cases where a side yard, not required, is provided, it shall be at least eight (8) feet in width.
- 53.4 **HEIGHT REGULATIONS.** In the H-B Highway Business District, every building hereafter erected or structurally altered to exceed fifty (50) feet in height shall be set back from the front lot line on the ratio of one (1) foot for each two (2) foot raise above said fifty (50) feet, but in no case shall the required setback exceed ten (10) feet.

Section 54. M-1 INDUSTRIAL DISTRICT

The M-1 Industrial District is established for those areas of the community where the principal use of land is for industrial and warehousing uses. These uses, by their nature, may create some nuisance and are not properly associated with residential, commercial and/or service establishments. These uses normally seek outlying locations on large tracts of land where the operations involved do not detract from the development potential of nearby undeveloped properties.

54.1 The following uses are permitted by right:

Automobiles parking lots and structures

Amusement, recreations, and sporting goods manufacturing

Apparel and clothing manufacturing, including hosiery

Bakeries and other establishments manufacturing prepared food products for wholesale distribution

Bedding and carpet manufacturing

Boat and trailer works and sales

Bottling works

Building materials and specialties manufacturing

Building materials storage and sales yards, provided all open storage is fenced by a solid fence not less than six (6) feet in height.

Business machines manufacturing

Cabinet, woodworking and upholstery shops

Contractors' offices and storage yards, provided all open storage is fenced by a solid fence not less than six (6) feet in height.

Dairy products processing and distributing facilities

Drugs, medicines and cosmetics manufacturing

Dry cleaning and laundry plants

Electrical appliances and electronic equipment manufacturing

Feed and seed stores, hatcheries and fertilizer sales

Food stores, fruit stands and produce markets

Flour and feed mills

Furniture manufacturing

Greenhouses and horticultural nurseries

Hardware and houseware manufacturing

Ice and cold storage plants and freezer lockers

Industrial supplies and equipment, sales and service, provided all open storage is fenced by a solid fence not less than six (6) feet in height

Leather products, including luggage and shoe manufacturing

Machine and welding shops

Metal fabricating plants

Monument works and sales

Musical instruments manufacturing

Offices pertaining to any permitted use

Outdoor recreational uses, such as miniature and par 3 golf courses, go-cart tracks and riding stables

Paper products manufacturing

Rubber and lass products manufacturing

Plumbing and heating supply houses, provided all open storage is fenced by a solid fence not less than six (6) feet in height

Precision instruments and jewelry manufacturing

Printing, engraving and publishing establishments

Propane gas storage facilities

Public safety facilities such as fire and police stations and rescue squads.

Public works and public utility facilities, including service and storage yards, provided they are fenced by a solid fence not less than six (6) feet in height

Self-service storage facilities

Service stations, including major repair work, provided that all gasoline pumps shall be located at least twelve (12) feet behind property line

Sheet metal, roofing, plumbing, heating and refrigeration shops

Sign painting and fabricating shops

Textile and cordage manufacturing

Trucking terminals

Wholesale and warehousing establishments, except for the storage of dangerous or offensive items such as uncured hides and explosives

Customary accessory uses and structures, including open storage, provided the area devoted to open storage is enclosed by a fence at least six (6) feet in height

Uses in any of the residential, downtown business, or highway commercial districts.

54.2 **SPECIAL USES.** The following uses shall be permitted subject to a finding by the Board of Adjustment that the additional conditions listed below will be met:

Manufacturing uses not otherwise named herein which come within the spirit or intent of this zoning district. Such determination will be made by the Board of Adjustment.

Sexually Oriented Businesses

54.3 **DIMENSIONAL REQUIREMENTS.** Within the M-1 Industrial District as shown on the zoning map, the following dimensional requirements shall be complied with:

54.31 Minimum yard requirements shall be:

(a) Fifty (50) feet minimum building setback line;

(b) Twenty (20) feet minimum side yard on each side of every principal and accessory building;

(d) Twenty (20) feet minimum required rear yard

54.32 No building shall exceed fifty (50) feet in height unless the depth of the front and total width of the side yards required herein shall be increased by one (1) foot for each two (2) feet, or fraction thereof, of building height in excess of fifty (50) feet.

54.33 Buildings constructed or converted to uses permitted in this district shall provide off-street loading and unloading space as required in Section 43 of this ordinance.

54.34 Off-street parking space shall be provided as required in Section 42 of this ordinance.

54.4 **FENCING.** Future expansion of the manufacturing district which abuts a residential district shall incorporate a visual buffer between the districts. The requirements of such a buffet shall be established by the Planning Board.

Section 55. Polluting Industries

"It is the intent that permitted and conditional uses within any zoning district, or un-zoned area, of the Town of Jefferson or any area regulated by the Town of Jefferson be conducted so that noise, odor and dust of each operation is completely confined within an enclosed building. Uses such as concrete/asphalt plants and similar air polluting industries that require air quality permitting are not suitable industrial activities permitted by this Ordinance in any location regulated by the Town of Jefferson." Also building materials and specialties manufacturing such as lumber, molding and fixtures are included under this Ordinance. (Effective January 28, 2008)

ARTICLE VI

SEXUALLY ORIENTED BUSINESSES

Section 60. PURPOSE

The Town Board is committed to protecting the general welfare of the Town through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses. It seeks to reduce and eliminate the deleterious effects of sexually oriented businesses while preserving constitutionally protected forms of expression. The Board finds that sexually oriented businesses in certain locations contribute to neighborhood deterioration and blight through an increase in crime and diminution of property values, among other adverse consequences, and finds that such effects are contrary to the general welfare of the Town. The Board recognizes that important and substantial government interests provide a constitutional basis for reasonable regulation of the time, place and manner under which sexually oriented businesses operate, and that, therefore, the Board has determined that persons seeking to operate sexually oriented businesses shall be required to observe specific locational requirements before they commence business, as provided for in this article. The Board finds that the licensing of sexually oriented businesses is necessary to ensure compliance with the locational and zoning requirements of such businesses. The Board finds that sexually oriented businesses as in other communities have been used for unlawful sexual activities, including prostitution, and sexual encounters of a casual nature. The concern over sexually transmitted diseases is a legitimate health concern of the Town. The provisions of this article shall not be construed as permitting any use, activity or structure that is otherwise prohibited, illegal or made punishable by law, nor shall it be construed so as to prohibit conduct or expression that is subject to constitutional protection.

60.1 DEFINITIONS

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

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

Adult bookstore and adult video store mean a commercial establishment:

- (1) Which receives a majority of its gross income during any calendar month from the sale of or rental of any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or

b. Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities"; or

(2) Having as a preponderance of its books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas."

Adult cabaret means a nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits or displays as one of its principal business purposes:

(1) Persons who appear nude or semi-nude; or

(2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe "specified sexual activities" or "specified anatomical areas."

Adult motel means a hotel, motel or similar commercial establishment that:

(1) Offers accommodations to the public for any form of consideration, provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours; or

(4) Offers a refund or rebate for less than ten hours' use.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe "specified sexual activities" or "specified anatomical areas."

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

Applicant means the person who will operate the sexually oriented business, and shall include each of the following persons associated with that business:

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association, or limited liability company;
- (3) Each general partner in a general or limited partnership;
- (4) Each officer and director of a corporation;
- (5) The proposed manager(s) of any sexually oriented business;
- (6) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

Town Clerk means the Jefferson Town Clerk.

Zoning Enforcement Officer means the Jefferson Zoning Enforcement Officer or his/her designee.

Employ, employee and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

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

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

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business; or
- (2) The conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

Licensee means person(s) in whose name a license to operate a sexually oriented business has been issued.

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

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

Nudity or a state of nudity means:

- (1) The appearance of a human anus, male genitals, or female genitals; or
- (2) A state of dress which fails to opaquely cover a human anus, male genitals, or female genitals.

Operates or causes to be operated means to cause to function or put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

Person means an individual, proprietorship, partnership, corporation, association, limited liability company, or other legal entity.

Semi-nude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing.

Specified anatomical areas means and includes any of the following:

- (1) Less than completely and opaquely covered: (a) human genitals, pubic region, (b) buttock, or (c) female breast below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
- (3) Masturbation, actual or emulated; or
- (4) Excretory functions as a part of or in connection with any of the activities set forth in subsections(1)through(3)above.

Transfer of ownership or control of a sexually oriented business means and includes any of the following:

- (1) The sale, lease, or sublease of the business.
- (2) Persons other than those named as applicants for a license becoming associated with the business, as provided in the definition of applicant; except that a mere substitution of a person as manager of an establishment shall only require filing with the Zoning Administrator.
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

60.2 CLASSIFICATION

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;

- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Escort agencies;
- (8) Nude model studios;
- (9) Sexual encounter centers.

60.3 LICENSE REQUIRED

(a) It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Zoning Administrator pursuant to this article.

(b) An application for a license must be made on a form prescribed by the Zoning Administrator and such application shall be made under oath and contain the following information:

- (1) If an applicant is an individual, the name and residence address of the individual. If the applicant is a partnership (limited or general), the name and residence address of each general partner. If the applicant is a firm, association, or limited liability company, the name and residence address of each member. If the applicant is a corporation, the name and residence address of each officer and director. The names of the manager(s) of the establishment along with their residence address.
- (2) The address of the premises where the establishment shall be located.
- (3) A complete statement of all convictions of any persons whose name is required to be given in subsection (b)(1) for any felony.
- (4) A complete statement of any revocation by any governmental unit of any license to operate a sexually oriented business.
- (5) A complete statement of any conviction of any person whose name is required to be given in subsection (b)(1) above for violation of any statute, law, ordinance, or regulation of any government concerning sexually oriented businesses.
- (6) The name and address of any sexually oriented business owned or operated by any person whose name is required to be given in subsection (b)(1) above.

(7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

(8) An application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale with marked dimensions of the interior of the premises.

(c) The application may request and the applicant shall provide such information as to enable the Zoning Administrator to determine whether each applicant meets the qualification established in this article.

(d) Each applicant must be qualified under subsection (b)(7) of this section and each applicant shall be considered a licensee if a license is granted.

(e) The Zoning Administrator shall transmit a copy of the application to the police department for an investigative report, and to the fire marshal to determine compliance with any law relating to fire protection. The police department, and the fire marshal, shall report the results of their investigations to the Zoning Administrator.

(f) No license shall be issued for any sexually oriented business to operate at any building, premises, structure, or other facility that contains any other kind of sexually oriented business.

60.4 ISSUANCE OF LICENSE

Upon receipt of a complete application, the Zoning Administrator will review such application in accordance with the following conditions and restrictions.

(a) **Conditions.** The following conditions must be met prior to the issuance of a sexually oriented business license.

(1) The sexually oriented business shall be conducted entirely within an enclosed building so that viewing, display, or sound from inside the building cannot be experienced outside the walls of the building.

(2) There shall not be more than one sexually oriented business establishment on the same property or in the same building, structure, or portion thereof.

(3) Except for an adult motel, no use permitted as a sexually oriented business may have sleeping quarters.

(4) No part of a structure within which a sexually oriented business is conducted shall be located within a 60-foot radius (determined by a straight line and not street distance) of the closest boundary line of any residential district, church, public or private

school, childcare center, public park or playground within or without the Town's zoning jurisdiction.

(5) No sexually oriented business shall be issued a certificate of occupancy until

(i) all licensing requirements have been met; and

(ii) a special use permit allowing such business has been issued by the Jefferson Board of Adjustment; and

(iii) the business complies with all requirements of G.S. 14-202.11.

(6) The maximum gross floor area (GFA) of a principal building or structure which is occupied by a sexually oriented business shall be 5,000 square feet.

(7) A sexually oriented business shall be permitted one wall mounted sign not to exceed 50 square feet. Further, such signs shall not contain materials, words, objects, images or displays that suggest or relate to specified anatomical areas and/or specified sexual activities as defined by G.S. 14- 190.13. No freestanding or portable signs shall be permitted. No internally illuminated signs shall be permitted. No other advertising, displays or other promotional materials shall be visible to the public from pedestrian sidewalks, walkways, or vehicular areas.

(8) Sexually oriented businesses shall comply with all off-street parking, buffer and screening regulations.

(9) Patrons of adult establishments shall be separated from entertainers, performers or entertainment employees by a minimum of six feet.

(10) All performers or entertainment employees of adult establishments shall perform on an elevated stage or platform, elevated from the main floor by at least three feet.

(11) No printed material, slide, video, photograph, written text, live show, or other visual presentation shall be visible to the public or an adjacent property or use, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.

(12) All windows, doors, entries and the like for all adult uses shall be so located, covered, screened or otherwise treated so that any view of the interior of the establishment is not possible from any public or semipublic area, street or way.

(13) Side and rear yards shall be buffered with an opaque vegetative screen at least six feet in height and with a minimum buffer width of twenty (20) feet regardless of the adjoining use or adjoining zoning district.

(14) The sexually oriented business must be located within the corporate limits of the Town of Jefferson.

(b) Restrictions. The Zoning Administrator will deny the issuance of a license to an applicant if the Zoning Administrator finds any of the following to be true:

(1) An applicant is under 18 years of age.

(2) The license fee required by this section has not been paid.

(3) An applicant is overdue in payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon the applicant by the Town.

(4) An applicant has failed to provide information required in order to determine the qualifications of the applicant under this article for issuance of the license, or has falsely answered a question or request for information on the application form.

(5) An applicant or the proposed establishment is in violation of or is not in compliance with this article or other provisions of the Town's Code of Ordinances.

(6) An applicant has been convicted of a violation of a provision of this section, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(7) An applicant has been convicted of a crime involving:

a. Any offense described in G.S. ch. 14, art. 7A, 26, 26A, 27, 37, or 39 (G.S. 14- 27.1 et seq., G.S. 14-177 et seq., G.S. 14-202.10 et seq., G.S. 14-203 et seq., G.S. 14-289 et seq., or G.S. 14-313 et seq.); or any similar offenses to those described above under the criminal or penal code of North Carolina, other 213 states, Jefferson, other cities, or other countries; or facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses, for which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
3. Less than five years have elapsed since the date of the last conviction or the date of the release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

b. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

c. An applicant who has been convicted of an offense listed above may qualify for a sexually oriented business license only when the time period required by this section has lapsed.

d. The license, if granted, shall state on its face the legal name of the person or persons to whom it is granted, the classification of sexually oriented business for which it is granted, the expiration date, and the address of the sexually oriented business. Licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(8) The applicant has failed to make application using a legal name or has failed to produce a valid North Carolina Identification Card.

60.5 APPEAL

An applicant whose application is denied, suspended, or revoked by the Zoning Administrator may appeal such action in writing within 30 days to the Jefferson Board of Adjustment.

60.6 LICENSE FEES

(a) Every sexually oriented business that applies for a new license shall pay to the Town a fee of \$1,000.00, which shall be nonrefundable. An application for renewal must be accompanied by a nonrefundable fee of \$250.00. The fee required by this section is imposed for regulatory purposes and not intended to be a tax.

(b) A substitution of a manager of the business which occurs during the license year shall be filed with the Zoning Administrator within 30 days of its occurrence, and a \$100.00 investigation fee paid.

60.7 INSPECTIONS

(a) A sexually oriented business license applicant or licensee shall permit representatives of the police department or any other Town, county, state, or federal department, division, or agency that enforces codes, regulations or statutes relating to human health, safety or welfare or structural safety to make reasonable inspections of the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or his agent or employee commits a violation if such person refuses to permit a lawful inspection of the premises by persons designated above.

(c) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

60.8 EXPIRATION OF LICENSE

All licenses shall expire one year from the date of issuance and may be renewed only by making application as provided herein and paying the renewal fee. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be stayed.

60.9 SUSPENSION OF LICENSE

The Zoning Administrator is authorized to suspend a sexually oriented business license for a period not to exceed 60 days if the police department and/or inspection department determines that a business licensee has:

- (1) Violated or is not in compliance with this article or with any other requirements of this Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or
- (3) Permitted illegal gambling by any person on the sexually oriented business premises; or
- (4) Demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

60.10 REVOCATION OF LICENSE

- (a) The Zoning Administrator is authorized to revoke a license if a cause for suspension occurs and the license has been suspended within the preceding 12 months.

(b) The Zoning Administrator is authorized to revoke a sexually oriented business license if the Zoning Administrator determines that a business licensee:

- (1) Gave false or misleading information in the material submitted to the Town during the application process, including, but not limited to, the use of a name other than a legal name to procure a license; or
- (2) Has allowed the possession, use, or sale of controlled substances on the premises; or
- (3) Has allowed prostitution on the premises; or
- (4) Has operated or worked in the sexually oriented business during a period of time when the licensee's license was suspended; or
- (5) Has been convicted of an offense named in section 115(a)(6) or (7) for which the time period required in section 115(a)(G) or (7) has not lapsed; or
- (6) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime named in section 115(a) (7) for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed; or
- (7) Has allowed any act of sexual intercourse, masturbation, oral copulation, or sodomy to occur in or on the licensed premises; or
- (8) Is delinquent in payment to the Town of ad valorem taxes, sales taxes, or the annual license fee, or any other fee or tax.

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) Subsection (b)(7) of this section does not apply to adult motels as a ground for revoking the license unless the business licensee or employee allowed the act of sexual intercourse, masturbation, oral copulation, sodomy, or sexual contact to occur in a public place or within public view.

(e) When the Zoning Administrator revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the Zoning Administrator finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under the authority of subsection (b){5} or (6) of this section, an applicant

may not be granted another license, until the appropriate number of years required under section 115(a)(6) or (7), as the case may be, have elapsed.

60.11 NOTICE OF ACTION ON LICENSE

If the Town denies the issuance of a license, or suspends or revokes a license, or denies an appeal, the Town will send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action.

60.12 TRANSFER OF LICENSE

Unless a new application for a license is made, a licensee shall not transfer a license to another, nor shall a business licensee operate a different classification of a sexually oriented business than that designated in the application, or transfer ownership or control to another person(s), or operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. No sexually oriented business shall be operated under any name or conducted under any designation or classification not specified in the license for that business.

60.13 HOURS OF OPERATION

Sexually oriented businesses, except for an adult motel, shall not be open between the hours of 1:00 a.m. and 6:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 10:00 a.m. on Sundays, except to the extent allowed by state law and regulations pertaining to the sale of alcoholic beverages by the business if the sexually oriented business has a state ABC permit.

60.14 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

60.15 ADDITIONAL REGULATIONS FOR ADULT THEATERS, ADULT CABARETS, AND ADULT MOTION PICTURE THEATERS

(a) A person commits a violation if the person appears in a state of nudity in an adult cabaret, adult theater, or adult motion picture theater, or adult arcade.

(b) A licensee or employee commits a violation if the licensee or employee allows a person to appear in a state of nudity in an adult cabaret, adult theater, or adult motion picture theater, or adult arcade. Sec.

60.16 ADDITIONAL REGULATIONS FOR ADULT MOTELS

(a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

(b) A person commits a violation if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment whether or not such establishment has a sexually oriented business license, such person rents or sub-rents a sleeping room to another and, within ten hours from the time the room is rented, such person rents or sub-rents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

60.17 ADDITIONAL REGULATIONS FOR ALL SEXUALLY ORIENTED BUSINESSES

A person commits a violation if the person allows another person under the age of 18 years to enter or remain on or in the enclosed portion of a sexually oriented business, or for a person under the age of 18 years to enter or remain on or in the enclosed portion of a sexually oriented business.

60.18 REGULATIONS PERTAINING TO SEXUALLY ORIENTED BUSINESSES WITH VIEWING OR OTHER ROOMS

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motet, which either: (i) exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, videocassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, or (ii) has a room or booth (excluding restrooms) of less than 150 square feet to which patrons are admitted for any reason, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises. The Zoning Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has to be altered since it was prepared.
- (2) The application shall be sworn to be true and correct by the applicant(s).
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Zoning Administrator or his designee.
- (4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is

present inside the premises. It is the duty of the owners and operator of the premises and the employees who are present to ensure that no more than one person occupies a room or booth at any time, and that all other entrances to rooms, booths or viewing areas (and to the aisles, walkways, and hallways leading to rooms, booths or viewing areas), are maintained free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain or other device.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment, cameras, or any other kind of photographic equipment. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of all employees present in the premises to ensure that the line of sight and view area specified in subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted in the application filed pursuant to subsection (1).

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1.0 foot-candle as measured at the floor level.

(8) It shall be the duty of the owners and operator and it shall also be the duty of all employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(9) No operator, owner or employee shall allow openings of any kind to exist between rooms or booths.

(10) No person shall make or attempt to make an opening of any kind between rooms or booths.

(11) The operator or owner, shall, during each business day, regularly inspect the walls between the rooms or booths to determine if any openings or holes exist.

(12) The owner or operator shall cause all floor coverings in rooms, booths and viewing areas to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(13) The owner or operator shall cause all wall surfaces and seating surfaces in rooms, booths and viewing areas to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

(b) A person having a duty under subsections (a) (1) through (13) of this section above commits an offense if the person fails to fulfill that duty.

60.19 PENALTY

Violation of any provision of this Article shall subject the offender to a civil penalty in the amount of \$500. Each day's continuing violation of any provision of this Article shall constitute a separate and distinct violation.

60.20 LIABILITY OF LICENSEE FOR ACTS OF EMPLOYEES

A licensee of a sexually oriented business is jointly and individually liable for violations of and offenses under this article by the employees of the sexually oriented business, and for all civil penalties for such violations and offenses, including but not limited to license suspension or revocation, prescribed herein.

60.21 SEVERABILITY

The terms, provisions, and conditions of this Article are severable.

ARTICLE VII

EXCEPTIONS AND MODIFICATIONS

Section 70. LOT OF RECORD

Where the owner of a lot of record in any residential district at the time of the adoption of this ordinance or his successor in title thereto does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this ordinance, such a lot may be used as a residential building site.

Notwithstanding the foregoing, wherever two (2) or more adjoining vacant lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as a single lot or several lots which meet the minimum requirements of this ordinance for the district in which such lots are located.

Section 71. FRONT YARD FOR DWELLINGS

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

Section 72. HEIGHT LIMITATIONS

The height limitations of this ordinance shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy, monuments, water towers, observation towers, transmission towers, masts, aerials and similar structures.

ARTICLE VIII

AMENDMENTS

This ordinance, including the zoning map, may be amended, supplemented, or change from time to time according to the following procedure:

Section 80. MOTION TO AMEND

The Jefferson Board of Aldermen may, from time to time, amend, supplement, change, modify, or repeal the boundaries or regulations herein, or subsequently amended. Proposed changes or amendments may be initiated by the Town Board, Planning Board, Board of Adjustment, or by one or more owners, optionees, or lessees of property within the area proposed to be changed or affected.

Section 81. PETITION FOR AMENDMENT

Petitions from the public at large to amend this ordinance shall be directed to the Jefferson Planning Board at least one month prior to the next regularly scheduled meeting of the Planning Board. The petition shall state the nature of the proposed amendment, and, if applicable, a description of the property involved, names and addresses of the owner(s) of the property, and a statement why the proposed amendment is necessary to promote the public health, safety, and general welfare. Each petition for amendment shall be accompanied by a fee of twenty-five dollars (\$25) to defray the cost of advertising and other administrative cost involved.

Section 82. PLANNING BOARD REVIEW AND FINDING

The Planning Board will review each petition for amendment with reference to the changing conditions; it shall make a written statement to the Town Board within forty-five (45) days after receiving the petition. The statement shall be the Planning Board's opinion, be it assent or dissent, concerning the validity of the amendment, and the reasoning behind the opinion(s). Failure of the Board to submit its recommendations within this time period shall constitute a favorable opinion as to its validity.

Section 83. PUBLIC HEARING

A public hearing shall be held by the Jefferson Board of Aldermen. (See 160A- 364). A notice of such public hearing shall be given once a week for two (2) consecutive calendar weeks in a newspaper of general circulation in Ashe County. Such notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days prior to the date established for such public hearing. Written notice shall also be given to the owners of each parcel of property which abuts the property involved in the rezoning hearing. Notice shall also be made by posting the property concerned with a poster indicating the proposed change and hearing.

Section 84. REFERRAL TO THE PLANNING BOARD

Upon completion of the public hearing, the Town Board shall refer the petition for amendment to the Planning Board for review and recommendations. After careful review, the Planning Board shall make a recommendation for adoption or rejection within a thirty (30) day period to the Town Board; also included shall be a brief summation of the information and considerations which led the Board to the conclusion(s) it reached.

Section 85. DETERMINATION OF THE TOWN BOARD

Upon receiving the recommendation of the Planning Board, the Town Board shall not be required to make a determination within a fixed period of time but shall, nevertheless, bear in mind that the public is not served by needless delay. A simple majority of the Town Board of Aldermen shall be required to amend this ordinance when such action has been recommended by the Planning Board; four-fifths (4/5) vote by the Town Board of Aldermen shall be required to amend this ordinance when the Planning Board recommends against such.

Section 86. PROTEST AGAINST AMENDMENT

In the case of a protest against a petition of a rezoning amendment, a petition signed by the owners of twenty (20) percent or more, either of the area of the lots included in the proposed change or of those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending one hundred (100) feet from the street frontage of the opposite lots, such amendment shall not become effective except by favorable vote of three-fourths (3/4) of all members of the Town Board (GS 160-385). This provision, however, does not apply to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise.

Section 87. DENIAL OF PETITION

When a petition for amendment is denied by the Town Board, a period of twelve (12) months must elapse before another petition for the same changes can be submitted.

ARTICLE IX

BOARD OF ADJUSTMENT

Section 90. CREATION OF BOARD OF ADJUSTMENT

There shall be and is hereby created a Board of Adjustment, hereinafter called the "Board", consisting of five (5) members. All members of the Board of Aldermen will simultaneously serve as the Board of Adjustment. Members shall serve without compensation but may be reimbursed for any expenses incurred in representing the Board of Adjustment and/or while attending institutions designed to further their responsibilities. The Jefferson Board of Aldermen may, at their discretion, appoint an equal number of alternates to the Board of Adjustment.

Section 91. ORGANIZATION

The Board of Adjustment shall have a chairperson elected by its membership and shall have a secretary to keep appropriate records of the Board's proceedings. The Board shall adopt such procedural rules and regulations, as it deems necessary. All Board meetings shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or his/her absence or failure to vote, indicating such fact, and also keep records of its examination and any other official action. Unless it is stated that a conflict of interest exists, the abstaining from voting by a present member shall be considered as a "no" vote.

Members of the Board may be removed by action of the Jefferson Board of Aldermen; removal may be for inefficiency, neglect of duty or malfeasance in office and such removal may only come after a public hearing concerning the action to be held.

Section 92. APPEAL PROCEDURES

Procedure for appeals to the Board concerning the decisions of the ordinance administrator, variances to the zoning ordinance, and establishment of conditional uses and special exceptions in particular zoning districts:

- 92.1 Appeals from the decision of the Enforcement Officer, when considering the granting of variances, and for the establishment of conditional uses, may be taken to the Jefferson Board of Adjustment by any person aggrieved.
- 92.2 Appeals to the decisions of the Enforcement Officer shall be taken up by the Board within thirty (30) days of the first appeal.
- 92.3 The Enforcement Officer shall be the official recipient of all appeals and shall transmit said appeals to the secretary of the Board of Adjustment within one (1) week after receipt of said appeals.

- 92.4 An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of this ordinance, in which case proceedings shall not be stayed otherwise than by a restraining order, issued by the Board of Adjustment, or by a court of record.
- 92.5 The Board of Adjustment shall hold hearings at which specific appeals shall be heard, notice of said hearings being made public in at least two (2) of the following ways:
1. Published in a newspaper of general circulation throughout the community;
 2. Posting signs concerning the hearing in the neighborhood which is affected;
 3. Sending written notices to all of the adjoining property owners.
- 92.6 In any of the three (3) methods of notice each should contain the time, date, and place of the public hearing, and the property which will be affected.
- 92.7 The Board shall vote according to the procedures set forth in Subsection 84.1 when instituting action to overrule the decisions of the Enforcement Officer. Conditional use cases, special exceptions, and variance cases shall require a four fifths (4/5) vote of the members representing the town.
- 92.8 Any appeals to the decisions of the Board of Adjustment shall be taken to Ashe County Superior Court.
- 92.9 There shall be a fee of twenty-five dollars (\$25) payable to the Town of Jefferson to cover the costs of administration and public hearing advertisement for each case which the Board hears. The fee will be payable when the appeal is investigated.

Section 93. DECISIONS

It shall be the duty of the Board of Adjustment to take action on appeals to the decisions of the ordinance administrator; to hear and decide upon applications for conditional uses for the various districts; to hear and decide upon applications for special exceptions for the various districts.

- 93.1 When the Board overrules the decision of the Enforcement Officer, there must be at least four (4) out of five (5) members from the town in favor of such action. The results of such a vote shall be transmitted to the Enforcement Officer in writing before he shall issue a zoning permit for that particular case.

93.11 Special Uses. When considering a conditional use for a certain district the Board shall make the following findings:

- (a) The proposed use will not endanger the public health, safety and welfare;
- (b) The proposed use will not adversely affect surrounding properties in terms of value;
- (c) The proposed use will be in conformity with existing development within the area in question.

93.12 Special Exceptions. When considering a special exception for a certain district, the Board shall make the following findings:

- (a) The proposed use will not endanger the public health, safety and welfare;
- (b) The proposed use will not adversely affect the surrounding properties in terms of value;
- (c) The proposed use will meet all the applicable requirements specified in this ordinance that pertains to the use.

93.13 Variances. When considering a variance for a particular district, the Board shall make the following findings:

- (a) Special conditions and circumstances which exist are not the result of any actions on the part of the appellant, and such conditions are peculiar to the particular lot;
- (b) Literal application of the provisions of this ordinance would impose undue hardship upon the appellant or would deprive him of the same rights enjoyed by other properties in the same zoning district;
- (c) Granting the variance would not confer special privileges to the appellant which are denied by this zoning ordinance to other properties and landowners in the same district;
- (d) Granting the variance would not endanger the public health, safety, and welfare.

93.2 A copy of the Board's decision in each case shall be filed with:

The Zoning Officer
The Town Hall
The Appellant
The Board Files

Section 94. APPEALS TO ASHE COUNTY SUPERIOR COURT

Any appeal to the Superior Court shall be taken within thirty (30) days after a written copy of the decision of Board is delivered to the appellant by personal service or registered mail, whichever is later.

ARTICLE X

ADMINISTRATION AND ENFORCEMENT

Section 100. DUTIES OF THE ORDINANCE ADMINISTRATOR, BOARD OF ADJUSTMENT, TOWN BOARD, AND COURTS AS TO ORDINANCE ENFORCEMENT AND MATTERS OF APPEAL

It is the intention of this ordinance that all questions arising in connection with the enforcement of this ordinance shall be presented first to the Zoning Enforcement Officer and that such questions shall be presented to the Board of Adjustment only on appeal from the Enforcement Officer, and that from the decision of the Board of Adjustment recourse shall be had to courts as provided by the law. It is further the intention of this ordinance that the duties of the Town Board in connection with the ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof, but that the procedure for determining such questions shall be as herein set out in the ordinance, and that the duties of the Town Board in connection with this ordinance, shall be only the duty of considering and passing upon any proposed amendment or repeal of the ordinance as provided by law.

Section 101. ORDINANCE ADMINISTRATOR

The position of the Zoning Enforcement Officer is hereby created for the purpose of enforcement of this zoning ordinance. The Zoning Enforcement Officer shall be appointed by the Jefferson Board of Aldermen, the length of term and compensation being determined by the Town Board.

Section 102. ZONING PERMIT REQUIRED

After the adoption of this zoning ordinance, it shall be unlawful for any person to erect, move, or alter any structures, or to begin, extend, move or enlarge any use of the land, in the zoning jurisdiction of the Town of Jefferson unless that person has been issued a zoning permit for the specific purposes found in this ordinance. Such permit shall be made on a cardboard substance 12" x 12" in size, and shall be displayed in a conspicuous place on the particular parcel of land which is being affected by the permit. A written record of the issuance of such a permit shall be kept on file in the office of the Enforcement Officer; the permit shall contain the following information:

- 102.1 The name and address of the person who has applied for the permit.
- 102.2 The street address of the property affected by the permit.
- 102.3 The proposed action to be taken by the petitioner of the permit.
- 102.4 The date, seal, and signature of the ordinance administrator.

Section 103. VIOLATION OF ZONING ORDINANCE

If the Zoning Enforcement Officer finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and stating that if such violation(s) is (are) not corrected within two (2) weeks, legal action will have to be taken.

If a ruling of the Zoning Enforcement Officer is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment. Statutory Authority and Civil and Criminal procedures are outlined in GS 160A-175.

Section 104. APPLICATION FOR ZONING PERMIT

All applications for a zoning permit shall be accompanied by two (2) sets of plans showing the dimensions and slope of the parcel to be built upon, the exact sizes, uses, and location and dimensions of the proposed building or alterations. The application shall include such other information as may be necessary to determine conformance with and provide for the enforcement of the ordinance. A fee of twenty dollars (\$50) payable to the Town of Jefferson shall be charged for the processing of each such application. The petitioner shall furthermore notify the Enforcement Officer prior to the pouring of the foundation or beginning the alterations or repairs.

Section 105. CERTIFICATE OF OCCUPANCY

Upon completion of a structure for which a zoning permit has been required, the petitioner shall notify the Enforcement Officer of the fact; the Zoning Enforcement Officer shall go into the field and check to see that the provisions of this ordinance have been met. The Certificate of Occupancy to be signed shall be designed in such a manner that the Enforcement Officer can certify that the necessary inspections preceding have been completed.

Section 106. DENIAL OF CERTIFICATE OF OCCUPANCY

Should the Zoning Enforcement Officer find the building fails to conform to the requirements of this ordinance, he shall refuse to issue the certificate. His refusal and the reasons therefore should be written and kept on file.

ARTICLE XI

LEGALITY AND PENALTIES

Section 101. INTERPRETATION, PURPOSE AND CONFLICT

In the interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, and general welfare. Whenever the requirements of this ordinance are at variance with other requirements of lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive, or that imposing the highest standards, shall govern.

Section 102. VALIDITY

Should any section or provision of This ordinance be declared invalid by the courts, such decision shall not affect the validity of the ordinance as a whole, or any other part thereof, other than the part so declared invalid.

Section 103. PENALTY

Any person, firm, or corporation who violates the provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding fifty dollars (\$50) or imprisoned not exceeding thirty (30) days. Each day that a violation continues to exist shall be considered a separate offense.

Section 104. EFFECTIVE DATE

This ordinance shall take effect and be in force from and after its adoption by the Board of Aldermen of the Town of Jefferson, North Carolina, this 23rd day of June, 1981.