

# Hot Springs

## Zoning Ordinance

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## Article I Title

This ordinance shall be known as the “Zoning Ordinance of the Town of Hot Springs, North Carolina.”

## Article II Authority and Enactment

The Board of Alderman of the Town of Hot Springs, North Carolina, in pursuance of the authority granted by the General Status of North Carolina, Chapter 160 D, hereby ordains and enacts into law the following articles and sections for the purpose of promoting the health, safety, morals, and general welfare of the community.

## Article III Jurisdiction

The provisions of this ordinance shall be applicable to all lands within corporate limits of the Town of Hot Springs, North Carolina, as established on the map entitled “Official Zoning Map, Town of Hot Springs.”

## Article IV Interpretation and Definitions

Except as specifically defined herein, all words used in this ordinance have their customary dictionary definitions. For the purpose of this ordinance, certain words or terms used herein are defined as follows:

### SECTION 400: WORD INTERPRETATION

Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

The words “Board of Alderman” means the Hot Springs Board of Alderman.

The words “Planning Board” means the Town of Hot Springs Planning Board.

The words “Board of Adjustments” means the Town of Hot Springs Board of Adjustments.

The word “may” is permissive.

The word “shall” is mandatory.

The word “lot” includes the words “plot” or “parcel.”

The word “building” includes the word “structure.”

The word “street” includes the words “road” and “highway.”

The words “person” or “applicant” includes a firm, association, organization, partnership, corporation, company, trust, individual, or governmental unit.

The words “zoning map” or “Hot Springs Zoning Map” shall mean the official Zoning Map of the Town of Hot Springs, North Carolina.

The words “used” or “occupied” as applied to any lands or structure shall be construed to include the words “intended, arranged, or designated to be used or occupied.”

#### SECTION 401: DEFINITIONS

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.

Administrative decision. – Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or Town of Hot Springs development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.

Administrative hearing. – A proceeding to gather facts needed to make an administrative decision.

Adult bookstore - An establishment having as a substantial or significant portion of its stock in trade, books, magazines, films, and other periodicals that are characterized by their emphasis on matter depicting, describing, or relating, to adult sexual activities or adult nudity.

Alley - A public way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Amusement center - Any building or other structure, or portion thereof, which is used for commercial games and/or entertainment which include but are not limited to coin or token operated game machines, billiards, tables, and other activities and facilities designed for commercial amusement or recreation.

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.

Apartment, Garage - A part of a garage consisting of a room or rooms intended, designed, or used as a residence by an individual or a single family.

Bed and Breakfast Establishment - A residence that provides temporary lodging and a morning meal to the public.

Bedroom - A room has at least 100 square feet and at least 50 percent of the room has a ceiling height of greater than 7 it can be called a bedroom. The room must have a window or door leading directly to the outside for access in case of an emergency.

Building - means any structure having a roof supported by columns or by walls and intended for shelter, housing, or enclosure of persons, animals, or chattels. The connection of two buildings by means of an open passageway, deck, or other such open structure, without a roof, shall not be deemed to make them one building. The word "building" includes the word "structure."

Blight – physical deterioration of improvements or other economic disinvestment.

Boarding House/Rooming House - A building where, for compensation, lodging and meals are provided for not more than five persons.

Buffer Strip - A buffer strip is a strip of land containing vegetation consisting of evergreen trees or shrubs and/or fencing located along the side and rear lot lines but said buffer along streets shall be set back sufficiently to avoid interference with street right-of-way. If consisting only of vegetation, such buffer strip shall not be less than 15 feet (15') in width and shall be composed of trees and shrubs of a type which at inception should not be less than 5 feet (5') in height unless otherwise specified. If a fence is used, said fence shall be opaque and at least 8 feet (8') in height. The Board of Adjustments may vary these requirements when deems appropriate.

Building - Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building.

Building Accessory - A detached building subordinate to the main building on the lot and used for purposes customarily incidental to the main or principal building and located on the same lot.

Building Height - The distance measured from the highest ground level at the structure foundation to the highest point of the roof.

Building, Principal - A building used for the same purpose as the principal use of the lot.

Building, Setback line - A line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Whenever the front, side or rear portions of a lot abut a street right-of-way, setback lines shall be measured from said right-of-way line.

Childcare Center - A use of land and buildings to provide group care for children.

Customary Incidental Home Occupation – Any profession or occupation conducted entirely within a dwelling by the family member or occupant permanently residing on the premises. No merchandise shall be sold or displayed on the premises, and no mechanical equipment shall be installed which is not normally used for domestic or professional purposes. No more than 25 percent (25%) of the total floor space of the dwelling may be used for a home occupation and only one home occupation shall be permitted in one dwelling unit. No exterior evidence of the presence of a home occupation shall be allowed other than a sign. Only members of immediate family residing in the same dwelling unit and not more than one other employee may be employed in the operation of a home occupation. One off-street parking space shall be required in addition to the parking requirements from the dwelling unit.

Determination. – A written, final, and binding order, requirement, or determination regarding an administrative decision.

Developer. – A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

Development. – Unless the context clearly indicates otherwise, the term means any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-8-2.
- d. The initiation or substantial change in the use of land or the intensity of use of land.

This definition does not alter the scope of regulatory authority granted by this Chapter.

Development approval. – An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.

Development regulation. – A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to this Chapter, or a local act or charter that regulates land use or development.

District - A section of the Town of Hot Springs in which zoning regulations are uniform.

Dwelling, Accessory - A single-family residential unit that is subordinate to the principal dwelling located on the same property and is used as a rental unit, guest house, or as the residence of an immediate family member of the owner and occupant of the principal dwelling.

Dwelling, Multi-family - A building or portion thereof used or designated as a residence for two or more families living independently.

Dwelling, Single Family - A building arranged or designed to be occupied by one family.

Dwelling. – Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of Article 12 of this Chapter, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

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

Easement - A grant by a property owner of a strip of land for a specified purpose and use by the public, a corporation, or persons.

Evidentiary hearing. – A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation

adopted under this Chapter.

Family - One or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage, or adoption, no such families shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

Family Care Home - A home with support and the supervisory personnel that provide room and board, personal care, and habilitation services in the family environment for not more than six residence handicapped persons.

Group Care Facility - An establishment qualified for a licensed by the State of North Carolina which provides resident services to individuals of whom one or more are unrelated. The individuals are handicapped, aged, or disabled, or undergoing rehabilitation or extended care and are provided services to meet their needs. This category includes group homes for all ages, half-way houses, and foster and boarding homes.

Handicapped Person - A person with a temporary or permanent physical, emotional, or mental disability including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments, but not including mentally ill persons who are dangerous to others as defined in G.S. 122-58.2(1) b.

Individual Sewer System - Any septic tank, ground absorption system, privy or other facility serving a single source or connection and approved by the county sanitarian.

Individual Water System - Any well, spring, or other source used to supply a single connection.

Junk Yard - Any land or land and structure in combination in which structures are incidental to the operation of the principal activity, used from the storage, bailing, packing, sorting, handling, disassembling, purchase or sale of any materials which are used, salvaged, scrapped or reclaimed, but are capable of being reused in some form including, but not limited to, metals, bones, rags, fibers, papers, cloth, rubber, rope, bottles, machinery, tools, appliances, fixtures, utensils, lumber, boxes, crates, pipes, pipe fittings, tires, motor vehicles, and motor vehicle parts.

Legislative decision. – The adoption, amendment, or repeal of a regulation under this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of this Chapter.

Legislative hearing. – A hearing to solicit public comment on a proposed legislative decision.

Lot – A parcel of land occupied or capable of being occupied by the building or group of buildings devoted to the common use, together with the customary accessories and open spaces belonging to the same. For the purposes of this ordinance, the word “lot” shall mean any number of contiguous lots or portions thereof, upon which one or more principal structures is to be erected for a single use.

Lot Depth – The average horizontal distance between front and rear lot lines as measured along the side lot lines.

Lot of Record – Any lot for which a plot has been recorded in the register of deeds office of Madison County, or described by metes and bounds, the description of which has been so recorded.

Lot Width – The distance between side lot lines measured at the front building line.

Manufactured Home – A factory assembled portable housing unit, or a portion thereof, built on a chassis and intended for use as a dwelling unit, and is not constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for one- and two-family dwellings. A manufactured home is designed to be transported on its own chassis and has a measurement of forty feet (40’) or more in length and eight feet (8’) or more in width. A manufactured home shall be construed to remain a manufactured home whether or not wheels, axis, hitch or other appurtenances of mobility are removed, and regardless of the nature of the foundation provided. All vehicles which are designated mobile homes by the Uniform Standards Code for Mobile Homes Act shall be considered manufactured homes. A manufactured home shall not be construed to be a travel trailer or other form of recreational vehicle.

Manufactured Home Park – Any premises where two or more manufactured homes are parked for living and sleeping purposes, or any premises used or set apart for the purpose of supplying to the public parking space for two or more manufactured homes or for living and sleeping purposes, and which include any buildings, structures, vehicles, or enclosures, used, or intended for use as part of such manufactured home park.

Nightclub – An establishment dispensing liquor and meals and in which music, dancing, or entertainment is conducted.

Nonconforming Use – Any parcel of land, use of land, building, or structure existing at the time of adoption of this ordinance, or any amendment thereto that does not conform to the use or dimensional requirements of the district in which it is located.

Nursing Home – A nursing home is designed as an institution, however named, which is

advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A nursing home is a home for chronic or convalescent who do not usually require special facilities, such as an operating room, x-ray facilities, laboratory facilities, and obstetrical facilities. A nursing home provides care for persons who have remedial ailments or other ailments from which medical and nursing care is indicated.

Parks – The term “park” shall include those areas developed either for passive or active recreational activities. The development may include, but that will not be limited to, walkways, benches, open fields, multi-use courts, swimming and wading pools, amphitheaters, etc. The term “park” shall not include zoos, travel trailer parks, amusement parks, or vehicle, equestrian, or dog racing facilities.

Planning and development regulation jurisdiction. – The geographic area defined in Part 2 of this Chapter within which a city or county may undertake planning and apply the development regulations authorized by this Chapter.

Recreational Vehicle (RV) - The term shall mean a vehicle, which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. designed to be self-propelled or permanently towable by a light duty truck; and
- d. designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Retail Business – Establishment selling commodities directly to the consumer.

Sleeping Unit – A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Street (Road) – A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Street Line – The public right-of-way line for a street.

Structure – Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Telecommunications Tower – A structure on which there are electronic facilities for receiving or transmitting communication signals. Those less than 15 feet (15’) above the roof line, when secured to the building, are exempt. Utility poles carrying telephone,

electrical, and cable T.V. lines are also exempt from this definition.

Threat to Public Safety and/or Nuisance - Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons.

Travel Trailer – Any vehicle self-propelled or otherwise which is designed for transient, nonpermanent living. See also Recreational Vehicle.

Variance – A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing the specific conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

Wholesale Business – The sale of goods in large quantities usually for resale.

Yard – A space on the same lot with the principal building that is open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted.

Yard, Front – An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the street right-of-way line and the front line of the building, projected to the side lot lines of the lot.

Yard, Rear – An open, unoccupied space on the same lot with a principal building, 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 lot lines of the lot.

Yard, Side - An open, unoccupied space on the same lot with a principal building, situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard.

Zoning Administrator – An official or designated person of the Town of Hot Springs charged with enforcing and administering the zoning ordinance.

## Article V Land Use Administration

Governing Board. - A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member must not vote on a

decision if the board member has a close family, business, or associational relationship with certain interested individuals (relationship with the property owner for a rezoning, the applicant for text amendment, and an affected person for quasi-judicial decision. A board member must not vote on a decision if the outcome would have a direct, substantial, and readily identifiable financial impact on the board member. Board member may recuse themselves. If there is objection to a board member participating, and the member choose not to recuse, then the remaining members of the board must vote on the member's participation. Board member may recuse themselves. If there is objection to a board member participating, and the member choose not to recuse, then the remaining members of the board must vote on the member's participation.

Appointed Boards. - Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member must not vote on a decision if the board member has a close family, business, or associational relationship with certain interested individuals (relationship with the property owner for a rezoning, the applicant for text amendment, and an affected person for quasi-judicial decision. A board member must not vote on a decision if the outcome would have a direct, substantial, and readily identifiable financial impact on the board member. Board member may recuse themselves. If there is objection to a board member participating, and the member choose not to recuse, then the remaining members of the board must vote on the member's participation.

Administrative Staff. - A staff person cannot make a decision if the outcome would have a direct, substantial, and readily identifiable financial impact on that person. A staff person cannot make a decision if that person has a close familial, business, or other associational relationship with the applicant or other person subject to the decision. Staff cannot have a financial or employment interest in a business with a financial interest in a development in the jurisdiction. An exception is provided for when the staff person is the owner of the property. The conflict standard also prohibits administrative staff from engaging in work that is inconsistent with their duties or the interest of the Town of Hot Springs. Town of Hot Springs policy can help clarify those expectations. While the statute does not explicitly refer to staff recommendations (such as a recommendation on a rezoning), it is prudent to apply the same conflict of interest standards as when the administrator is the decision-maker.

Quasi-Judicial Decisions – A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter must not vote if the board member has bias or undisclosed *ex parte* communications. Impermissible violations of the due process include, but are not limited to, and member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* Communication, a close familial, business, or other associational relationship with an affected person. A board member must not vote on a decision if the board member has a closed family, business, or associational relationship with certain interested individual (relationship with the property owner for a rezoning, the applicant for text amendment, and an affected person for

quasi-judicial decision. A board member must not vote on a decision if the outcome would have a direct, substantial, and readily identifiable financial impact on the board member. Board member may recuse themselves. If there is objection to a board member participating, and the member choose not to rescue, then the remaining members of the board must vote on the member's participation.

Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

Familial relationship. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Establishment of Zoning Districts and Map

#### SECTION 500: USE DISTRICTS

For the purpose of this ordinance, the Town of Hot Springs is hereby divided into the following use districts:

R-Residential

C 1- Central Business District

C 2- Highway Commercial District

M- Industrial District

#### SECTION 501: ESTABLISHMENT OF DISTRICT BOUNDARIES

The boundaries of these districts are hereby established as shown on the Official Zoning Map of the Town of Hot Springs

#### SECTION 502: ESTABLISHMENT OF ZONING MAP

A zoning map entitled the "Official Zoning Map of the Town of Hot Springs" setting forth all approved use districts and their representative boundaries is hereby made a part of this ordinance and shall be maintained in the office of the Zoning Administrator of the Town of Hot Springs. This map shall be available for inspection by interested persons during normal business hours of the Zoning Administrator. It shall be the duty of the Zoning Administrator of the Town of Hot Springs to maintain the said map and to post any changes hereto as they may be made.

### SECTION 503: RULES GOVERNING DISTRICT BOUNDARIES

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following shall apply:

- Boundaries indicated as approximately following the center lines of streets, highways, alleys, streams, rivers, or other bodies of water, shall be construed to follow such lines.
- Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- Boundaries indicated as approximately following town limit lines shall be construed as following such town limit lines.
- Where district boundaries are so indicated that they are approximately parallel to the center lines of streets, highways, or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is given on the map, such dimension shall be determined by the use of the scale shown on said zoning map.
- Where physical features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections (1) through (4), the Board of Adjustments shall interpret the district boundaries.

## Article VI Use Requirements by Districts

### SECTION 600: INTENT

It is the intent of this article that if any use or class of use is not specifically permitted in a district as set forth below, it shall be prohibited in that district.

### SECTION 601: R-RESIDENTIAL DISTRICT

1. Intent - The R-Residential District is established as a district in which the principal use of land is for residential purposes. This district is further intended to protect existing neighborhoods in Hot Springs from incompatible land use. Any use which would be detrimental to or interfere with the development of the residential character of the district is excluded.
2. Permitted Uses – Within the R-Residential District, the following uses are permitted:

- Single-family dwellings, including modular housing
  - Churches or similar places of worship, excluding revival tents
  - Parks, playgrounds, swimming pools, and community centers
  - Garage apartments
  - Home occupations
  - Customary accessory buildings, including private garages and noncommercial workshops and greenhouses. Such buildings shall be located in the rear yard, shall be no closer than five feet (5') from any property line, and shall be no more than 1,000 square feet in size if located less than 15 feet (15') from the property line.
  - Rooming and boarding houses
  - Bed and breakfasts
  - Municipal sewage treatment and handling facilities
  - A single accessory dwelling may be located within or in a building separate from the principal dwelling subject to the following requirements:
    - 1) The accessory dwelling shall not exceed the total area of the principal dwelling and shall be clearly incidental and subordinate to the principal dwelling.
    - 2) Accessory dwellings shall meet the accessory structure setbacks but shall be exempted from density requirements.
    - 3) Accessory dwellings shall be built to North Carolina Building Standards.
3. Special Uses – The following uses are permitted as special uses subject to a finding by the Board of Adjustments that all applicable provisions after Article VIII and Article X have been met:
- Manufactured Housing, excluding manufactured home parks
  - Multi-family dwellings, not to exceed nine (9) units per acre and not to exceed two (2) stories.
  - Public utility buildings and facilities, nursery, and private kindergartens, childcare centers, EMS, Fire and Police Stations if such use is essential for the service of the immediate area provided that:
    - 1) All buildings shall be located at least 35 feet from any lot line.
    - 2) Fences and/or other appropriate safety devices are installed to protect the public safety and welfare.
    - 3) No vehicles or equipment are stored, maintained, or repaired on the premises.
    - 4) All structures are in keeping with the residential character of the neighborhood
    - 5) Adequate landscaping, screening and/or buffering shall be provided to insure compatibility with the neighborhood.
    - 6) No solid waste landfills, incinerators, or transfer stations are permitted.

4. Signs- See Article XVI.

5. Recreational Vehicle as Temporary Dwelling

Outside of campground, one recreational vehicle may be permitted as a temporary dwelling on a lot with a single family dwelling only in situations in which all of the following conditions are met:

- 1) The recreational vehicle being used as a dwelling when located on a parcel where the single family dwelling is under construction or under major renovation that makes the primary residence uninhabitable. Or if there is an existing occupied single-family dwelling, a recreational vehicle may utilized by guests intermittently.
- 2) No recreational vehicle shall be used as a permanent place of abode as they are designed as temporary living quarters for recreational, camping, travel, or seasonal use. The recreational vehicle must be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or a jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions). Any action toward removal of wheels of a recreational vehicle except for temporary purposes of repair or to attach the trailer to the grounds for stabilizing purposes is hereby prohibited.
- 3) The recreational vehicle complies with all Town of Hot Springs or Madison County Environmental Health regulations pertaining to sewage disposal.
- 4) The recreational vehicle being used as a dwelling shall comply with all setback requirements for permanent structures for the zoning district where it is located.

If all of the above conditions are met, the zoning administrator may issue a temporary zoning compliance permit authorizing use of a recreational vehicle as a dwelling for up to 180 consecutive days. The zoning administrator may only renew the zoning compliance permit at the end of 180 days only if a good faith effort is under way to complete construction of the single family dwelling in a timely manner.

SECTION 602: C1-CENTRAL BUSINESS DISTRICT

1. Intent – Hot Springs can best be served by the development and maintenance of a compact downtown commercial area which retains the pedestrian-oriented village atmosphere of the downtown. It has been established as a district intended to protect and promote the continued vitality of the commercial business area of Hot Springs while protecting the historical heritage of the town and the Appalachian Trail. It is the intent of the district to encourage retail businesses and services to locate in the C-1 District.

Expansion of this district should be limited to lands adjacent to the existing C-1 District.

2. Permitted uses – Within the C-1 Central Business District, the following uses are permitted:

- Bakeries and other manufacturing of prepared food and miscellaneous food products
- Banking and other financial institutions
- Beauty and barbershops
- Bed and breakfasts
- Bicycle sales and repair
- Civic organizations and clubs up to fifty (50) members excluding temporary or mobile units. Any other groups should see Special Uses section.
- Dairy bars and ice cream manufacturers
- Depot/Train Station
- Florist shops
- General stores selling food, clothing, hardware, fabric, shoes, variety, notions, pharmacy, furniture, appliance, floor covering, paint, antiques, art goods, jewelry, gifts, music, toys, sporting goods, books and stationery, magazines, candy, tobacco, pet and hobby and craft stores, fabrication, repair shops (to occupy less than 50% of the retail frontage).
- Golf or baseball driving ranges,
- Hotels, motels, and resort and vacation rentals of under 30 rooms
- Medical and dental offices
- Municipal sewage treatment and handling facilities
- Museums and art galleries
- Offices: business, professional, public
- Photographic studios and camera supply stores
- Produce or fruit establishments, including farmer's markets
- Public utility buildings and facilities (no lagoons)
- Restaurants
- Single family dwellings excluding mobile homes
- Tailor, dressmaking, and millinery shops
- Theaters housed in permanent structures and drive-in theaters
- Wellness centers and spas
- Mobile Food Vendors - Licensed motor vehicles or mobile food units which offer for sale and consumption food and beverages (except alcohol) subject to the following requirements:
  - 1) Mobile food vendors shall secure a zoning compliance permit to operate within the jurisdiction of the Town of Hot Springs. Applicants shall provide such information

as is deemed necessary by the administrator to demonstrate compliance with this Ordinance; such information shall include, but shall not be limited to, a list of the mobile food vendor sites upon which the vendor proposes to operate, as well as confirmation of compliance with all applicable health regulations. In the issuance of permits for mobile food vendor sites and mobile food vendors, the Administrator shall have broad discretion to assign such conditions as may be necessary to protect the health, safety, and welfare of the public. Permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one (1) year, and shall be renewed annually. Permit fees shall be determined by the Town of Hot Springs Board of Aldermen as set forth in the Town of Hot Springs Schedule of Taxes, Charges, and Fees.

- 2) Mobile food vendors must have a base of operations such as a restaurant or commissary and must report to said base for supplies, cleaning, and servicing. If the base of operations is under different ownership than the mobile food vendor, a written agreement for use must be submitted as part of the zoning application. No waste, grease, or wastewater shall be released directly from a mobile food vendor into the Town's sanitary sewer or stormwater collection system, ditches, tree wells, or other public spaces.
  - 3) There shall be no limit to the number of mobile food vendors for parcel so long as all other separation and site requirements are met. Mobile food vendors shall be situated at least ten (10) feet from all property lines and any road right-of-way, shall not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. This requirement shall not apply to special events approved by the Town of Hot Springs. Mobile food vendors must be set back at minimum ten (10) feet in all directions from fire hydrants.
  - 4) Hours of operation for mobile food vendors shall be limited to 7:00 am to 10:00 pm, except during an approved special event, when other operating hours may be established as part of the event.
  - 5) Mobile food vendors operators or their designee must be present at all times during operation, except in the event of an emergency.
  - 6) Each mobile food vendor shall supply at least one (1) waste receptacle which must be removed and emptied at the end of each day. Town trash receptacles shall not be used for food truck waste.
  - 7) Mobile food vendors shall be limited to the same requirements as Temporary Signs Allowed in All Districts outlined in Section 1605: SIGNS ALLOWED WITH PERMITS.
3. Design Restriction – Along each property line which is adjacent to a residential district, the property owner or developer shall place and maintain a buffer strip as defined in this ordinance to provide appropriate screening against noise, glare, fumes, dust, and other harmful effects. The buffer strip may utilize existing evergreen vegetation.

4. Special Uses – Special uses may be allowed for applicants subject to the findings by the Board of Adjustments and subject to having met all applicable provisions of Articles VIII; X; and XVI.
5. Signs – See Article XVI

#### SECTION 603: C2-HIGHWAY COMMERCIAL DISTRICT

1. Intent - The C2-Highway Commercial District is established as a district intended to protect and promote businesses largely dependent on automotive traffic. Because of the limited buildable downtown area, this district is intended to allow for a wide variety of commercial and service-oriented uses, provide concentration of general commercial activities while discouraging extensive strip commercial development. While it is being established as described, it is also the intent to protect the history and heritage of the town and the Appalachian Trail.
2. Permitted Uses – Within the C2 –Highway Commercial District, the following uses are permitted:
  - Amusement Centers
  - Animal hospitals, boarding facilities, and open kennels (see Special Use)
  - Assembly halls, coliseums, gymnasiums, and similar structures
  - Automotive sales and service, including paint and body shops and garages, but excluding junk yards as defined in this ordinance. All repairs are to be made within a building, except when not practical or feasible, and all vehicles stored on the premises shall display a valid North Carolina inspection sticker.
  - Automobile service stations
  - Automobile washing establishments
  - Bakeries and other manufacturing of prepared food and miscellaneous food products
  - Banking and other financial institutions
  - Beauty and Barber shops
  - Bed and breakfast and boarding houses
  - Bicycle sales and repair
  - Bowling alleys
  - Bus terminals, trucking terminals
  - Business colleges, barber and beauty colleges, art schools, music and dance studios and similar uses, industrial or vocational trade schools
  - Colleges, universities, public elementary and secondary schools, and private schools having curricula approximately the same as ordinarily given in public schools and

- trade schools
- Commercial greenhouses
  - Dairy bars and ice cream manufacturers
  - Dry cleaning, laundry establishments, and laundry pick-up stations
  - Electrical repair shops
  - Fabricating shops such as woodworking, cabinet, etc.
  - Farm equipment sales and services
  - Feed and seed shops
  - Florist shops
  - Funeral homes and mortuaries
  - General stores selling food, clothing, hardware, fabric, shoes, variety, notion, pharmacy, furniture, appliance, floor covering, paint, antiques, art goods, jewelry, gifts, music, toys, sporting goods, books and stationary, magazines, candy, tobacco, pet and hobby and craft stores, fabrication repair shops
  - Glass and mirror shops, tile, flooring, etc.
  - Golf courses
  - Golf or baseball driving ranges
  - Group care facilities
  - Hospitals, sanitariums, nursing homes, medical or dental clinics
  - Hotels and motels under three (3) stories and under thirty (30) rooms
  - Locksmiths
  - Machine, sheet metal, and roofing shops
  - Medical and dental office clinics
  - Municipal sewage treatment and handling facilities
  - Museums and art galleries
  - Newspaper offices and printing plants
  - Nursey schools, childcare facilities, family care home
  - Offices: business, professional, public
  - Photographic studios and camera supply stores
  - Physical fitness centers, wellness centers, spas, treatment centers
  - Plumbing, heating, and air conditioning shops
  - Police, fire stations, and EMS
  - Printing, publishing, and reproducing establishments
  - Produce or fruit establishments, including farmer's markets, commercial greenhouses, and nurseries
  - Public utility buildings, and facilities, incinerators, transfer stations, lagoons
  - Radio and television stations

- Radio and television sales and service
- Restaurants, including restaurants with drive-thru service
- Retail establishments such as department, clothing, fabric, shoe, variety, notion, drug, hardware, furniture, appliance, floor covering, paint, antique, art goods, jewelry, gift, music, toy, sporting goods, book and stationery, magazine, candy, tobacco, pet, hobby, and craft stores, but, excluding adult establishments
- Service or filling stations including fuel oil or fuel dealers
- Shopping centers- Requirements listed in Article VIII- Section 801: Development Plan/Site Plan Requirements
- Sign Painting and fabricating shops
- Single and multi-family dwellings including modular housing
- Skating rinks, provided they are in a permanent structure
- Storage units
- Tailor, dress making, and millinery shops
- Taxi cab stands
- Telephone, telegraph, cable television or messenger service offices
- Theaters housed in permanent structures and drive-thru theaters
- Mobile Food Vendors - Licensed motor vehicles or mobile food units which offer for sale and consumption food and beverages (except alcohol) subject to the following requirements:
  - 1) Mobile food vendors shall secure a zoning compliance permit to operate within the jurisdiction of the Town of Hot Springs. Applicants shall provide such information as is deemed necessary by the administrator to demonstrate compliance with this Ordinance; such information shall include, but shall not be limited to, a list of the mobile food vendor sites upon which the vendor proposes to operate, as well as confirmation of compliance with all applicable health regulations. In the issuance of permits for mobile food vendor sites and mobile food vendors, the Administrator shall have broad discretion to assign such conditions as may be necessary to protect the health, safety, and welfare of the public. Permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one (1) year, and shall be renewed annually. Permit fees shall be determined by the Town of Hot Springs Board of Aldermen as set forth in the Town of Hot Springs Schedule of Taxes, Charges, and Fees.
  - 2) Mobile food vendors must have a base of operations such as a restaurant or commissary and must report to said base for supplies, cleaning, and servicing. If the base of operations is under different ownership than the mobile food vendor, a written agreement for use must be submitted as part of the zoning application. No waste, grease, or wastewater shall be released directly from a mobile food vendor into the Town's sanitary sewer or stormwater collection system, ditches, tree wells, or other public spaces.
  - 3) There shall be no limit to the number of mobile food vendors for parcel so long as all other separation and site requirements are met. Mobile food vendors shall be situated at least ten (10) feet from all property lines and any road right-of-way, shall not encroach onto any

street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. This requirement shall not apply to special events approved by the Town of Hot Springs. Mobile food vendors must be set back at minimum ten (10) feet in all directions from fire hydrants.

- 4) Hours of operation for mobile food vendors shall be limited to 7:00 am to 10:00 pm, except during an approved special event, when other operating hours may be established as part of the event.
  - 5) Mobile food vendors operators or their designee must be present at all times during operation, except in the event of an emergency.
  - 6) Each mobile food vendor shall supply at least one (1) waste receptacle which must be removed and emptied at the end of each day. Town trash receptacles shall not be used for food truck waste.
  - 7) Mobile food vendors shall be limited to the same requirements as Temporary Signs Allowed in All Districts outlined in Section 1605: SIGNS ALLOWED WITH PERMITS.
3. Design Restriction – Along each property line which is adjacent to a residential district, the property owner or developer shall place and maintain a buffer strip as defined in this ordinance to provide appropriate screening against noise, glare, fumes, dust, and other harmful effects. The buffer strip may utilize existing evergreen vegetation.
  4. Special Uses – Special uses may be allowed for applicants subject to the findings by the Board of Adjustments and subject to having met all applicable provisions of Articles VIII; X; and XVI.
  5. Signs – See Article XVI

#### SECTION 604: M-INDUSTRIAL DISTRICT

1. Intent – The M-Industrial District is established as a district intended to provide for manufacturing and warehousing and similar uses. It is not the intent of this district to allow such uses in areas where they would be incompatible with surrounding land uses.
2. Permitted Uses – Within the M-Industrial District the following uses are permitted:
  - Any manufacturing and warehousing industry operating indoors only, which does not cause injurious or obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazard, and/or other objectionable conditions
  - Farm equipment sales and services

- Municipal sewage treatment and handling facilities
  - Shopping centers- Requirements list in Article VIII Section 801: Development Plan/Site Plan Requirements
  - Solar Farm
  - Storage yard, not including junk yards, but including open storage (all storage must be enclosed within adequate fencing to ensure public safety)
  - Telecommunications towers
  - Transportation terminals
3. Special Uses – Within the M-Industrial District, the following uses shall only be permitted subject to the findings by the Board of Adjustments and subject to having met all applicable provisions of Articles VIII and X, and as indicated elsewhere in this ordinance :
- Adult Establishments (sexually oriented businesses)
  - Asphalt Plant/Cement Factory
  - Biomass Facility
  - Correctional Facilities
  - Cryptocurrency Mining and Data Centers
  - Hazardous Waste Disposal Facility
  - Landfill/Solid Waste Collection Center
  - Meat Processing Facility
  - Mining/
  - Quarrying
  - Race Track
  - Sawmill
  - Shooting Range
  - Slaughter House
4. Design Restriction – Along each adjacent property line, the property owner or developer shall place and maintain a buffer strip as defined in this ordinance to provide appropriate screening against noise, glare, fumes, dust, and other harmful effects. The buffer strip may utilize existing evergreen vegetation. No vehicles, equipment, or materials shall be stored on the premises, except within an enclosed building or enclosed within adequate fencing, not less than eight (8) feet in height, to ensure public safety. Access to the site shall not create a traffic nuisance to area residents. All buildings, structures, and accessory facilities shall be set back at least two hundred (200) feet from all property lines and at least four hundred (400) feet from all residential structures.
5. Signs – See Article XVI.

6. Standards - Operations shall be conducted in such a way as to cause the minimum nuisance or hazard to adjacent or neighboring properties at any time and shall not discharge into Spring Creek.
7. Pre-existing Development - Any development which conforms with the rules applicable at the time of that existing development, prior to June 14, 2024, shall be allowed to continue. Any new development must conform with rules adopted May 12, 2025.

## Article VII Area Yard Requirements

District	Density			Minimum Yard Requirements in Ft.					
	Min. Lot Area in sq. ft. [1]	Min. Land Area per dwelling unit in sq. ft.	Max Dwelling Units per Acre	Min. Lot Width at Building line	Front (whichever is greater)		Side Yard	Rear yard	Max. Height
					From ROW	From centerline			
R	12,000	[2]	9 Multifamily	50	30	50	15	15	35
C-1	[3]	[3]	[3]		[3]	[3]	[3,4]	[3,4]	35
C-2	[3]	[3]	[3]		[3]	[3]	[3,5]	[3,4]	35
M	[3]	[3]	[3]		[3]	[3]	[3,4]	[3,4]	

[1] Not including street right-of-way

[2] 12,000 for first unit plus 3,500 for each unit after the first

[3] For residential uses the requirements of R apply

[4] None required except when adjacent to residential zone, then 15 ft. required

[5] Five ft. required unless adjacent to a residential zone, the 15 ft. required

Note: The NC Building Code, NC Fire Prevention Code and NCDOT may require greater setbacks than those listed in this ordinance.

## Article VIII Specific Standards

### SECTION 800: PURPOSE

Certain uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district if the provisions of this and all other articles of this ordinance have been met.

### SECTION 801: DEVELOPMENT PLAN/SITE PLAN REQUIREMENTS

All applications which require a development plan or site plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

1. Existing site conditions including contours, water courses, identified flood hazard areas, or any unique, natural, or man-made features.
2. Boundary lines of the proposed development proposed lot lines, and plot designs.
3. Proposed location and use of all existing and proposed structures.
4. Location and size of all areas to be conveyed, dedicated, or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses.
5. The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way; Notations of proposed ownership of the street system (public or private).
6. Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved sedimentation and erosion control plan shall also be submitted where required. Provisions for storm water drainage shall be shown.
7. Location and/or notation of existing and proposed easements and right-of-way.
8. The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls.
9. Information on adjacent land areas, including land use, zoning classification, public facilities, and any unique natural features.

10. Where applicable, the following written documentation shall be submitted:
  - a) A legal description of the total site proposed for development including a statement of present and proposed ownership.
  - b) The zoning district or districts where in which the project is located.
  - c) A development schedule indicating approximate beginning and completion dates of development, including any proposed stages.
  - d) A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development.
  - e) Quantitative data from the following: proposed total number and type of residential dwelling units, parcel size, and total amount of open space.
  - f) Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.
11. Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

#### SECTION 802: THREAT TO PUBLIC SAFETY

1. Landscaping Maintenance – Plantings, fences, walls, or berms shall be properly maintained. The owner of the property where landscaping is located shall be responsible for the maintenance of all landscaping materials. Such maintenance shall include all actions necessary to keep the landscaped area and all plant growth from becoming a threat to public safety or a nuisance, from interfering with safe vehicular and pedestrian travel, or use of parking areas; and to keep walls, fences, and berms in good repair and neat appearance.
2. Exterior and Outdoor Lighting – Except as otherwise provided in this ordinance, exterior lighting used for decoration, security, recreational facilities or recreational areas shall be provided electricity or gas through the wall of the façade on which they are mounted or through underground wiring or piping. Light fixtures and poles and the type and intensity of the light shall be designed to be compatible with the architectural scale and character of the site. Light fixtures shall be designed as full cutoff fixtures, except on residential lots. Light fixtures shall be designed to direct light towards the ground area to be lighted and shall be located and directed so as to prevent light trespass and glare on adjoining properties and vehicular traffic; and from becoming a threat to public safety or a nuisance.

## Article IX Administration, Enforcements, Appeals

### SECTION 900: THE GENERAL PROCESS AND THE DUTIES OF THE ZONING ADMINISTRATOR, BOARD OF ADJUSTMENT, PLANNING BOARD, BOARD OF ALDERMAN, AND COURTS ON MATTERS OF ADMINISTRATION

All questions arising in connection with this ordinance shall be presented first to the zoning administrator, who shall be responsible for the day-to-day administration of this ordinance. The board of adjustment shall have the authority to rule on matters of interpretation of this ordinance, consider appeals, from decisions of the zoning administrator, issue Special use permits, and grant variances. Every quasi-judicial decision shall be subject to review by the superior court by proceeding in the nature of certiorari pursuant to G.S. 160 A-393 and as outlined in Section 1004. The duties of the Hot Springs Board of Alderman in connection with the ordinance shall not include the hearing and passing upon of disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as prescribed in this ordinance. The duties of the Board of Alderman in connection with this ordinance shall be the duty of considering and passing upon the initial ordinance and any proposed amendments or repeal of this ordinance as provided by law. The town planning board shall serve in an advisory capacity to the Board of Alderman and shall provide recommendations to the board including recommendations pertaining to zoning amendments and other matters as designated in G.S.160A-361.

### SECTION 901: ZONING ADMINISTRATOR

The Town of Hot Springs shall appoint a zoning administrator. It shall be the duty of the zoning administrator to administer and enforce the provisions of this ordinance.

1. Duties- The zoning administrator shall issue certificates of zoning compliance and certificates of occupancy as prescribed herein. The zoning administrator shall serve as clerk to the board of adjustment, and all applicants for variances and Special use permits shall first be presented to the zoning administrator, who in turn shall refer the applications to the board of adjustment.

If the zoning administrator finds that any of the provisions of this ordinance are being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings, or structures; removal of illegal buildings or structures, or additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the zoning administrator is questioned, the aggrieved party or parties may appeal such

ruling to the board of adjustment.

#### SECTION 902: CERTIFICATE OF ZONING COMPLIANCE REQUIRED

No building or other structure shall be erected, moved, added to, or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a certificate of zoning compliance shall be issued by the zoning administrator. No certificate of zoning compliance shall be issued except in conformity with the provisions of this ordinance. Upon approval of a Special use permit or variance by the board of adjustment, the zoning administrator shall issue a certificate of zoning compliance. A certificate of zoning compliance shall become invalid six months after issuance if no building permit or certificate of occupancy has been issued.

1. Applications for Zoning Compliance Certificate- All applications for zoning compliance certificates shall be accompanied by plans in duplicate and drawn to scale showing the actual dimensions of the lot to be built upon, accurate dimensions and the use of the proposed building, the location on the lot of the building or structure proposed to be erected or altered, and such other information as may be necessary to provide for the enforcement of the provisions of this ordinance. Prior to issuance of a certificate of zoning compliance, the zoning administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.

#### SECTION 903: BUILDING PERMIT REQUIRED

Upon receiving a certificate of zoning compliance, a building permit shall be obtained from the Madison County Building Inspections Office for the construction or alteration of any building or structure.

#### SECTION 904: CERTIFICATE OF OCCUPANCY REQUIRED

A certificate of occupancy issued by the zoning administrator is required in advance of:

- occupancy or use of a building hereafter erected, altered, or moved.
- change of use of any building or land.

In conjunction with the final building inspection, the zoning administrator shall certify that all requirements of this ordinance have been met. The applicant shall call for such certification coincident with the final building inspection or within 10 days following completion. A certificate of occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a certificate of zoning compliance and shall be issued within 10 days after the erection of the of structural alterations or change in use of the building, or part, shall have been completed in conformity with the provisions of this ordinance. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this

ordinance. If the certificate of occupancy is denied, the zoning administrator shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the zoning administrator, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

#### SECTION 905: COMPLIANCE

In case any building is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building or land is used in violation of this ordinance, the zoning administrator or any other appropriate town authority, or any other person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

#### SECTION 906: APPEAL FROM THE ZONING ADMINISTRATOR

All questions arising in connection with this ordinance shall be presented first to the zoning administrator, and such questions shall be presented to the board of adjustment only on appeal from a ruling of the zoning administrator. Any order, requirement, decision, or determination made by the zoning administrator may be appealed to the board of adjustment pursuant to the procedures found in this ordinance.

### Article X Board of Adjustment

#### SECTION 1000: ESTABLISHMENT OF ZONING BOARD OF ADJUSTMENT

There shall be and hereby is created a zoning board of adjustment consisting of five members to be appointed by the Board of Alderman. Members of the board shall serve a term of three years, provided that upon initial appointment the terms of office may be staggered. In filling vacancies created by resignation or other causes, a new member may be appointed to fill the unexpired term of the member so vacating. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member while attending any regular or special meetings of the board and serving in the absence of any regular members shall have and may exercise all the powers and duties of a regular member.

#### SECTION 1001: SELECTION OF ALTERNATE MEMBERS

The Board of Alderman shall also appoint two alternate members to serve on the board of adjustment in the absence, for any cause, of any regular member. Such alternate

members while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular members so absent. In no case, however, shall more than five regular members or combination of regular members and the alternate members be empowered to participate officially in any meeting or hearing, including asking questions of witnesses or engaging in deliberation of the case, make motions or to vote on any matter that comes before the board involving the zoning ordinance.

## SECTION 1002: POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT

Board of adjustment shall hear and decide Special use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term “decision” includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and Special use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

1. Appeals – The board of adjustments shall hear and decide appeals from any decision of determination made by the zoning administrator in the enforcement of this ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- a) Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.
- b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of or constructive notice of the decision within which to file an appeal.
- d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decisions from the date a sign containing the words “Zoning Decision” or “Subdivision Decision” in letters at least 6 inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision,

provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

e) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

f) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the forgoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations, the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

g) Subject to the provisions of subdivision (f) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

h) The official who made the decision shall present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

i) When hearing an appeal pursuant to G.S.160-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the

scope of review shall be as provided in G.S.160A-393(k).

- j) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

All appeals shall be made upon the form specified for that purpose, and all information required on the form shall be complete before an appeal shall be considered as having been filed. Once appeals have been filed with the town clerk, the town clerk shall immediately notify the zoning administrator who shall inform the chair of the board that such appeals have been received

2. Special Uses – Upon application, the Board of Adjustment may hear and decide Special use permits in accordance with standards and procedures specified in this ordinance and set forth as Special uses under the various use districts. Reasonable and appropriate conditions may be imposed upon these permits. A Special use permit may be granted by the board of adjustment only after making the following findings:

- a) An application for the Special use has been submitted as prescribed by the ordinance. Before issuing a Special use permit, the Board of Adjustment shall find that all standards for specific uses listed have been met.
- b) If the board of adjustment finds that, in the particular case in question, the use for which the Special use permit is sought will not adversely affect the health or safety of the persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood, a permit may be granted. In granting such a permit, the board of adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this ordinance.
- c) Before any Special use permit is issued, the board shall make written findings certifying compliance with the specific rules governing the individual Special use, and that satisfactory provision and arrangement has been made for at least the following where applicable:

- Satisfaction ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control
- Provision of off-street parking and loading areas where required, with particular attention to the items listed above, and the economic, noise, glare, and odor effects of the Special use on adjoining properties in the area
- Adequate and proper utilities, with reference to locations, availability, and compatibility.
- Buffering with reference to type, location, and dimensions
- Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
- Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size, and suitability
- Buildings and structures, with reference to location, size, and use
- Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood

d) A site plan has been submitted as required in Article VIII Section 801.

e) The zoning administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed, and agreements made in the issuance of the permit have been met as well as whether all requirements of the ordinance have been met. The zoning administrator shall report his findings to the board of adjustment. If at any time after a Special use permit has been issued the board of adjustment determines that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a Special use permit, the permit shall be terminated, and the operation of such use discontinued. If a Special use permit is terminated for any reason, it may be reinstated only after reapplying for a Special use permit.

3. Variances – When unnecessary hardships would result from carrying out the strict letter of zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon showing of all of the following:

a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

b) The hardship results from conditions that are peculiar to the property such as location, size, and /or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood, or the general public may not be the basis for granting a variance.

c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstance exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

d) The requested variance is consistent with the spirit and purpose of this ordinance, such that the public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance.

Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district of which the property is located.

A nonconforming use of the neighboring land, structures, or buildings in the same district, and permitted uses of land, structures, or buildings in other districts, will not be grounds for the issuance of a variance.

In granting a variance, the board of adjustments shall make findings that the requirements of this section have been met, and a written notice of the decision shall be prepared and delivered as specified in Section 1004. In granting any variance, the board of adjustment may impose appropriate conditions, provided that the conditions are reasonably related to the variance. Violation of such conditions when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under article XV of this ordinance.

Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

### SECTION 1003: PROCEDURES OF THE BOARD OF ADJUSTMENT

1. Officers and Meetings - The board of adjustment shall elect a chair and vice-chair from its members who shall serve for one year or until re-elected or until their successors are elected. As specified in section 901, the zoning administrator shall serve as clerk to the board. The board shall adopt by-laws and rules in accordance with the provisions of

this ordinance and Article 19, Chapter 160A of the General Statutes of North Carolina. Regular meetings of the board shall be held on the second Monday of each month, at 7:00 pm, in the Town of Hot Springs Town Hall, provided, however, that meetings may be held at other convenient places in the town or county if directed by the chair in advance of the meeting. If there is no business for the board, or if so many regular and alternate members notify the clerk that they cannot attend that a quorum will not be available, the chair may dispense with a regular meeting by giving written or oral notice to all members not less than 72 hours before the time set for the meeting.

2. Hearing Notice - The board of adjustment shall hold a public hearing regarding any application for Special use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. Such hearing shall be publicized and held in accordance with NC General Statute 160A 388, as follows. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owner of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. For the purpose of this section, “abutting” property owners include those whose property is located across a right-of-way. In the absence of evidence to the contrary the Town may rely on the county tax listing to determine owners’ property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or an adjacent street or highway right-of-way.

3. Oaths – The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of Class 1 misdemeanor.

4. Subpoenas – The board through the chair, or in the chair’s absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is not necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable, in nature and scope, and not oppressive. The chair shall rule on any motion quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring

that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

5. Conflicts – A member of any board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that violates affected persons’ constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* communications, a close familial, business, or other associational relationship, with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member’s participation and that member does not recues himself or herself, the remaining members shall by majority vote rule on the objection.

6. Voting – The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide on any other quasi-judicial matter or to determine an appeal made in the mature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

#### SECTION 1004: QUASI-JUDICIAL DECISIONS AND JUDICIAL REVIEW

1. Quasi-Judicial Decisions. The board shall determine contested fact and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board’s determination of detested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filling the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted to a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

2. Judicial Review – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with (1) above of this section. When first class mail is used to deliver notice, three days shall be added to the time to file the petition.

**SECTION 1005: FEES FOR VARIANCES, SPECIAL USES AND APPEALS/PLANNING AND ZONING FEES SCHEDULE AND PENALTIES FOR VIOLATIONS**

The fee for a request for a variance, or Special use, or for an appeal to the board of adjustment shall be determined by the Board of Aldermen, payable to Town of Hot Springs.

Application for Zoning Compliance Form                      \$40  
 (Zoning Administrator will come to look and issue you a form of approval if you do comply which is part of this fee. YOU MUST HAVE THIS TO GET YOUR COUNTY BUILDING PERMIT!)

Rezoning and Board of Adjustment forms

Application for Zoning Change                                      \$500  
 Application for Text Amendment                                      \$250  
 Appeal of Administrative Decision                                      \$250  
 Application for Variance    \$250  
 Application for Special Use    \$250

Communication Towers

Communication Tower Application                                      \$1,000  
 Co-location Application    \$500  
 Annual Renewal Fee    \$500/service (antenna or tower) annually

Signs

Initial Fees:  
 On Premise    \$25 per sign  
 Off Premise directional    \$50 per sign

If sign face changes or advertiser changes a new fee will apply. The annual fee for off premise signs will be due each year on June 30th. Prorating will be figured where applicable.

Watershed

Watershed Permit    \$50  
 10/70 Allocation hearing    \$500 + 100 per acre asked for

Planned Unit Development

Master Plan Application    \$500

For purposes of this fee schedule, units shall include single family, two family, multifamily, or rooms that could be occupied by a person or persons.

Preliminary Site Plans

<20 acres	\$40 per acre plus \$40 per unit
20-100 acres	\$35 per acre plus \$40 per unit

Fees shall be reduced if the amount of green space is increased as follow:

1. A \$500 reduction for total acreage over 400 and at least 50% total green space
2. A \$750 reduction for total acreage over 600 and at least 60% total green space

Final Plan

<20 acres	\$500
20-100 acres	\$750
>100 acres	\$1000

Miscellaneous Copies

Land and Use (Zoning Ordinance)	\$1 per page
Flood Damage Control	\$15
Comprehensive Plan	\$1 per page
Zoning Map (8.5 x 11)	\$7.50

Penalties for Violation:

1. Violation of the provision of this ordinance or failure to comply with any of its requirements, including violations of any condition and safeguards, established in connection with grants of variances or Special Use Permits, shall constitute a misdemeanor, punishable by a fine of up to five hundred dollars (\$500.00) or a maximum thirty (30) days imprisonment as provided in General Statute 14-4.
2. Any act constituting a violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations of any condition and safeguards established in connection with the grants of variances or Special Use Permits, shall also subject the offender to a civil penalty of one hundred dollars (\$100) for each day the violation continues. If the offender fails to pay the penalty within ten (10) days after being cited for a violation, the penalty may be recovered by the Town of Hot Springs in a civil action. A civil penalty may not be appealed to the Board of Adjustment within the prescribed time.

Nothing herein contained shall prevent the Town of Hot Springs from taking such other lawful actions prescribed in General Statute 153 A-123. Each day that a violation of this ordinance continues to exist shall be considered a separate and distinct offense.

Effective date- This ordinance shall take effect and be in force from and after the passage and adoption of the planning and zoning fee schedule.

## Article XI General Provisions

### SECTION 1100: ZONING AFFECTS EVERY BUILDING AND USE

No building or land shall hereafter be used, and no building or part thereof shall be erected, moved, or altered except in conformity with the regulations herein specified for the district in which it is located, except as provided in this ordinance.

1. Nonconforming Vacant Lots –This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the Register of Deeds office of Madison County, which at the time of the adoption of this ordinance, or any amendment thereto, fail to comply with the minimum area or width requirements of the districts in which they are located. Any such nonconforming lot may be used for any of these uses permitted in the district for which it is located provided that:
  - a) Where the lot area is not more than twenty (20%) percent below the minimum specified in this ordinance, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a certificate of zoning compliance.
  - b) Where the lot area is more than twenty (20%) percent below the minimum specified in this ordinance or other dimension requirements cannot be met, the board of adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.
2. Nonconforming Occupied lots- This category of nonconformance consists of lots occupied by buildings or structures at the time of the adoption of this ordinance, or any amendment thereto, and/or used for any uses permitted in the districts in which they are located, that fail to comply with the minimum requirements for area, width, yard, and/or setbacks for the district for which they are located. These lots may continue to be used for any of the uses permitted in the district in which they are located. However, the nonconformity shall not be increased.
3. Nonconforming Open Uses of Land-

- a) When a nonconforming use of land shall be changed to conforming use, it shall not thereafter revert to a nonconforming use.
  - b) A nonconforming open use of land shall be changed only to conforming uses.
  - c) A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.
  - d) When any nonconforming, open use of land is discontinued for a period in excess of one hundred eighty (180) days, and future use of the land shall be limited to those uses permitted in the district in which the land is located. Vacancy and/or non-use of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.
4. Nonconforming Uses of Structures- This category of nonconformance consists of buildings or structures in use at the time of enactment of this ordinance, or any amendment thereto, for purposes of use not permitted in the district in which they are located. A legally established nonconforming use of a structure may be continued as follows:
- a) A nonconforming use shall not be changed to another nonconforming use.
  - b) When a nonconforming use has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.
  - c) A nonconforming use may not be extended or enlarged, nor shall a structure containing a nonconforming use be altered except as follows:
    - Structural alterations as required by law or ordinance to secure the safety of the structure are permissible.
    - Maintenance and repair necessary to keep the structure in sound condition are permissible.
    - Expansion of a nonconforming use of a building or structure into portions of the structure which, at the time the use became nonconforming, were already erected, and arranged or designed for such nonconforming use is permissible.
    - When any nonconforming use of a building or structure is discontinued for a period in excess of one hundred eighty (180) days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

5. Reconstruction of Damaged Buildings or Structures- Any nonconforming structure, or any structure containing a nonconforming use, which has been damaged by fire, wind, flood, or other causes maybe be repaired and be used as before provided:

- a) Repairs are initiated in accordance with applicable building codes.
- b) The total amount of space devoted to a nonconforming use may not be increased.
- c) Reconstructed buildings may not be more nonconforming with respect to dimensional restrictions.

**SECTION 1102: OFF-STREET LOADING AND UNLOADING SPACE REQUIRED**

Every lot on which business or trade use is hereafter established shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such 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 minimum dimensions of 12 feet (12') by 40 feet (40'). Required space shall be considered as follows:

- Retail business: one space of each 10,000 square feet of gross floor area.

**SECTION 1103: CORNER VISIBILITY**

On any corner lot there shall be no planting, fence, structure, or other obstruction to visibility with the range of three to seven feet above the curb level, within fifteen feet (15') of the intersection of the street right-of-way.

**SECTION 1104: REQUIRED YARDS NOT TO BE USED BY ANOTHER BUILDING**

The minimum yards or other open spaces required by this ordinance for each and every building hereafter erected, moved, or structurally altered shall not be encroached upon or considered to meet the yard or open space requirements or any other building except as provided in subsection 801(1) of this ordinance.

**SECTION 1105: ONE MAIN BUILDING ON LOT**

Every building hereafter erected or moved shall be located on a lot, and in no case shall there be more than one principal residential building and its accessory buildings except as provided in section 802 of this ordinance.

#### SECTION 1106: REDUCTION OF LOT AND YARD AREA

No yard or lot existing at the time of passage of this ordinance shall be reduced in size or area below the minimum requirement 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.

#### SECTION 1107: STREET ADDRESS

No building or use of land for other than agricultural purposes shall be established on a lot which does not abut a public street. Each new driveway shall have a culvert to provide adequate drainage where applicable. The culvert length and diameter will be determined by the Town as deemed necessary to provide adequate drainage. When required, culverts must be installed prior to the start of construction.

#### SECTION 1108: CORNER LOTS

On corner lots, the side yard on the side of the lot abutting the side street shall not be less than fifteen feet (15').

#### SECTION 1109: ESTABLISHMENT OF VESTED RIGHTS

1. Establishment of Vested Right. – A vested right is established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting plan as provided in this section. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.

(a) Approval and Amendment of Plans. – If a site-specific vesting plan is based on an approval required by a local development regulation, the Town of Hot Springs shall provide whatever notice and hearing is required for that underlying approval. A duration of the underlying approval that is less than two years does not affect the duration of the site-specific vesting plan established under this section. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by G.S. 160D-602 shall be held.

The Town of Hot Springs may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare. Conditional approval results in a vested right, although failure to abide by the terms and conditions of the approval will result in a forfeiture of vested rights. The Town of Hot Springs shall not require a landowner to waive the landowner's vested rights as a condition of developmental approval. A site-specific vesting plan is deemed

approved upon the effective date of Town's decision approving the plan or another date determined by the governing board upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the Town of Hot Springs as follows: any substantial modification must be reviewed and approved in the same manner as the original approval; minor modifications may be approved by staff if such are defined and authorized by local regulation.

(b) Continuing Review. – Following approval or conditional approval of a site-specific vesting plan, the Town of Hot Springs may make subsequent reviews and require subsequent approvals by the Town to ensure compliance with the terms and conditions of the original approval, provided that these reviews and approvals are not inconsistent with the original approval. The Town may, pursuant to G.S. 160D-403(f), revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations. G.S. 160D-108.1

(d) Duration and Termination of Vested Right. –

- (1) A vested right for a site-specific vesting plan remains vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the Town of Hot Springs.
- (2) Notwithstanding the provisions of subdivision (1) of this subsection, a Town of Hot Springs may provide for rights to be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Town of Hot Springs and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with subsection (a) of this section.
- (3) Upon issuance of a building permit, the provisions of G.S. 160D-1111 and G.S. 160D-1115 apply, except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section is outstanding.
- (4) A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(e) Subsequent Changes Prohibited, Exceptions. –

- (1) A vested right, once established as provided for in this section, precludes any zoning action by a Town of Hot Springs which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan, except under one or more of the following conditions:

- a. With the written consent of the affected landowner.
  - b. Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan.
  - c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the Town of Hot Springs, together with interest as provided under G.S. 160D-106. Compensation shall not include any diminution in the value of the property which is caused by the action.
  - d. Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the Town of Hot Springs of the site-specific vesting plan or the phased development plan.
  - e. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan or the phased development plan, in which case the Town of Hot Springs may modify the affected provisions, upon a G.S. 160D-108.1 finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.
- (2) The establishment of a vested right under this section does not preclude the application of overlay zoning or other development regulations which impose additional requirements but do not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to development regulation by a Town of Hot Springs, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new regulations become effective with respect to property which is subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this section.
- (3) Notwithstanding any provision of this section, the establishment of a vested right does not preclude, change, or impair the authority of a Town of Hot Springs to adopt and enforce development regulations governing nonconforming situations or us es.
- (g) Miscellaneous Provisions. –
- (1) A vested right obtained under this section is not a personal right, but attaches to and runs with the applicable property. After approval of a site-specific vesting

plan, all successors to the original landowner are entitled to exercise these rights.

- (2) Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.
- (3) In the event a Town of Hot Springs fails to adopt a development regulation setting forth what constitutes a site-specific vesting plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice. (2020-25, ss. 5(b), 50(b).)

Definitions- The following definitions shall apply to this section:

Site Specific Vest Rights - A site-specific vesting plan consists of a plan submitted to a Town of Hot Springs in which the applicant requests vesting pursuant to this section, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a special use permit, a conditional district zoning plan, or any other land-use approval designation as may be utilized by a Town of Hot Springs. Unless otherwise expressly provided by the Town of Hot Springs, the plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site-specific vesting plan under this section that would trigger a vested right shall be finally determined by the Town of Hot Springs pursuant to a development regulation, and the document that triggers the vesting shall be so identified at the time of its approval. A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

## Article XII Exceptions

### SECTION 1200: LOT OF RECORD

Where the owner of a lot consisting of one or more lots of official record in any 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 lot may be used as a building site provided, however, that the other requirements of this ordinance are met.

### SECTION 1201: FRONT YARD SETBACKS FOR DWELLINGS

The front yard setback requirements for this ordinance for dwellings shall not apply to any lot where the average setback of existing buildings located wholly or partially within 500 feet on either side of the proposed dwelling and on the same side of the same block and use district and fronting on the same street as such lot is less than the minimum required front yard depth. In such cases, the setback on such lots may be less than the required setback, but not less than the average of the existing setbacks on the aforementioned lots, or distance of 10 feet from the street right-of-way line, whichever is greater. For the purposes of computing such average, an adjacent vacant lot shall be considered as having the minimum required front open space specified for that zoning district.

## Article XIII Amendments

### SECTION 1300: AMENDMENTS

This zoning ordinance, including the zoning map, may be amended by the Hot Springs Board of Alderman in accordance with the provisions of this article.

### SECTION 1301: INITIATION OF AMENDMENTS

Proposed changes or amendments may be initiated by the Hot Springs Board of Alderman, the Planning Board, the Board of Adjustment, or one or more owners of property within the area proposed to be changed or affected. All proposed amendments shall be referred to the Planning Board for its review and recommendation to the Board of Alderman.

### SECTION 1302: APPLICATION

Before any action on a proposed change or amendment, an application shall be submitted to the office of the Zoning Administrator at least ten (10) days prior to the Planning Board's meeting at which the application is to be considered. The application

shall contain the name(s) and address (es) of the owner(s) of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question.

#### SECTION 1303: APPLICATION FEE

A fee, as determined by the Hot Springs Board of Aldermen, shall be paid to the Town of Hot Springs for each application for an amendment to cover costs of advertising and other administrative expenses.

#### SECTION 1304: PLANNING BOARD ACTION

Before taking any action on a proposed amendment to the ordinance, the Board of Aldermen shall consider the Planning Board's recommendation on each proposed amendment. The Planning Board shall have thirty-five (35) days after the first consideration of the application within which to submit its recommendations within the thirty-five (35) day period shall constitute a favorable recommendation.

#### SECTION 1305: PUBLIC HEARING

Before enacting any amendment to this ordinance, the Board of Aldermen shall hold a public hearing. A notice of such public hearing shall be given in accordance with Article 19 in Chapter 160A of the North Carolina General Statutes.

#### SECTION 1306: DECISION

The Board of Aldermen shall make a decision on the proposed amendment within sixty (60) days after the public hearing.

### Article XIV Enforcement

#### SECTION 1400: VIOLATIONS

Any of the following shall be a violation of this ordinance and shall be subject to the enforcement remedies and penalties provided by this article and by state law.

1. Development Without Permit – A “development without permit” means to engage in any development, use, construction, remodeling, or other activities of any nature upon the land or improvements thereof subject to the jurisdiction of this ordinance without required permits, certificates, or other forms of authorization as set forth in this ordinance. A “development without permit” violation shall result in the assessment of a

fee that is double the normal permit fee.

2. Development Inconsistent with Permit – A “development inconsistent with permit violation” means to engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

3. Violation by Act or Omission – A “violation by act or omission” means to violate, by act or omission, any term, variance or waiver, condition, or qualification placed by the Board of Aldermen or its authorized boards upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

4. Use in Violation – A “use in violation” means to erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this ordinance, or any other regulation made under the authority conferred thereby.

5. Continue a Violation – Each day’s violation of any provision of this ordinance is a separate and distinct offense.

#### SECTION 1401: ENFORCEMENT PROCEDURES

When the Zoning Administrator or his agent finds a violation of this ordinance or receives a complaint alleging a violation of this ordinance, it shall be his duty to notify the owner or occupant of the land, building, structure, or use of the violation. The owner shall immediately remedy the violation.

1. Notice of Violation – If the owner or occupant of the land, building, structure, or use in violation fails to take prompt corrective action, the Zoning Administrator shall give the owner or occupant written notice, by certified or registered mail, to his last known address, or by personal service, or by posting notice, of the violation conspicuously on the property:

- a) That the land, building, structure, or use is in violation of this ordinance.
- b) The nature of the violation and citation of the section of this ordinance.
- c) The measures necessary to remedy the violation; and

d) The time in which the violation is to be remedied

2. Appeal – Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Zoning Administrator to the Board of Adjustment, in accordance with the provisions of Section 1002, within thirty (30) days following the date of the Notice of Violation. The Board of adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the remedies and penalties sought by the Zoning Administrator in the Notice of Violation shall be final.

3. Order of Corrective Action – If upon hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall find that the owner or occupant is in violation of this ordinance the Board of Adjustment shall make order in writing to the owner or occupant affirming the violation and ordering compliance.

4. Failure to Comply with an Order – If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or an Order of Corrective Action following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law and Section 1402. If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a Court of competent jurisdiction.

#### SECTION 1402: PENALTIES AND REMEDIES

Any one or all of the following procedures may be used to enforce the provisions of this ordinance:

1. Injunction – Any violation of this ordinance or of any condition, order, or requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.

2. Civil Penalties – Any person who violates any provision of this ordinance shall be subject to the assessment of a civil penalty under the procedure provided in Section 1403.

3. Denial of Permit or Certificate – The Zoning Administrator may withhold or deny any permit, certificate, occupancy, or other form of authorization on any land, building, structure, or use in which there is an uncorrected violation of a provision of this ordinance, or, of a condition or qualification of a permit, certificate, or other authorization previously granted.

4. Special Use Permit - The Zoning Administrator may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil

penalties within a specified time, or the posting of compliance security approved by the town attorney.

5. Revocation of Permits – Permits shall be revoked for any substantial departure from the approved applications, plans, or specifications, refusal, or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an application state or local law may also be revoked.

6. Criminal Penalties – Any violation of this ordinance shall be a misdemeanor or infraction as provided by North Carolina General Statute 14-4.

7. State and Common Law Remedies – In addition to other enforcement provisions contained in this article, the Board of Aldermen may exercise any and all enforcement powers granted to it by state law or common law.

#### SECTION 1403: CIVIL PENALTIES – ASSESSMENT AND PROCEDURES

1. Penalties – Any person who violates any provisions of this ordinance shall be subject to assessment of the maximum civil penalty allowed by law.

2. Notice – No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation in accordance with Section 1401. If after receiving notice of violation under Section 1401 the owner or other violator fails to take corrective action, a civil penalty may be imposed under this section in the form of a citation. The citation shall be served in the manner of a Notice of Violation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within fifteen (15) days of the notice.

3. Responsible Parties – The owner or occupant of any land, building, structure, or use of land or part thereof, and any architect, builder, contractor, agent, or any other person who participates or acts in concert, assists, directs, creates, or maintains, any condition that is in violation of the requirements of this ordinance, may be held responsible for the violation and subject to the civil penalties and remedies herein provided.

4. Continuing Violation – For each day, the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

5. Demand for Payment – The Zoning Administrator shall make written demand for payment upon the property owner or the person in violation and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

6. Nonpayment – If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil penalty. Provided, however, if the civil penalty is not paid within the time prescribed, the Zoning Administrator may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to North Carolina General Statute 14-4.

## Article XV Legal Status Provisions and Effective Date

### SECTION 1500: SEVERABILITY

It is the legislative intent of the Board of Aldermen in adopting this ordinance that all provisions and sections thereof shall be liberally construed to protect and preserve the health, safety, and general welfare of the inhabitants of the Town of Hot Springs, and further, that should any provision, portion, section, or subsection of this ordinance be held to be invalid by a court of competent jurisdiction, such ruling shall not be construed as affecting the validity of any of the remaining provisions, portions, sections, or subsections, it being the intent of the Board of Aldermen that this ordinance shall stand, notwithstanding the invalidity of any provision, or section or part thereof.

### SECTION 1501: CONFLICT WITH OTHER LAWS

When provisions of this ordinance require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, provisions of this ordinance shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied or impose other higher standards than are required by the provisions made by this ordinance, the provisions of that statute or local ordinance or regulation shall govern.

### SECTION 1502: EFFECTIVE DATE

This ordinance shall take effect and be in force on: \_\_\_\_\_,

\_\_\_\_\_

Adopted this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Hot Springs Board of Aldermen,

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Town Clerk

## Article XVI Sign Regulations and Definitions

The following definitions shall apply for purposes of this Article:

**Advertising Sign** – A sign that directs attention to a business, commodity, service, or entertainment conducted, sold, manufactured, or offered. Such signs are further classified according to location, as follows:

- a) **On Premise**- On the same premises as the business, commodity, service, or entertainment advertised by the sign.
- b) **Off Premise** – Remote from the businesses, commodity, service, or entertainment advertised by the sign; (see “Billboard”).

**Awning** – A roof-like shelter of canvas or other material extending over a doorway, from the top of the window, over a deck, etc., in order to provide protection from the weather.

**Awning Signs** – A sign constructed of a fabric-like, non-rigid material which is part of a fabric or plastic awning. Awning signs constructed of a flammable substance are prohibited.

**Banner** – Any sign made of flexible fabric-like material except an awning sign.

**Billboard** – An advertising sign used as an outdoor display for the purpose of directing attention to a business, commodity, service, or entertainment conducted, sold, manufactured, or offered at a location other than the location of the said sign.

**Copy (as used in conjunction with signs)** – The wording on a sign surface either in permanent or removable letter form.

**Directional Off-Premise Sign** - An off-premise sign which carries no advertising message or information, but simply the name or the logo of an establishment and information directing persons to the location of said establishment and phone number. For the purposes of this ordinance, directional signs shall be free standing, not over four (4') feet in height, in C1 and C2 and five (5') feet in Residential and Industrial and shall not have a surface area greater than four (4) square feet per side of sign up to a maximum of eight (8) square feet in aggregate surface area. Such signs shall not be illuminated.

**Face of Sign** – The entire surface of a sign on which any copy could be placed.

**Ground Sign** – A sign that is not attached to any building structure. Such signs shall

include, but not be limited to, free standing signs mounted on poles and “A” frame signs.

Identification Sign – A sign which carries no advertising message and is used to identify only the following:

- a) The name of an institutional use or organization occupying the premises on which the sign is located:
- b) The name, title, and/or occupation or profession of the occupant of the premises on which the sign is located;
- c) The name and the type of non-retail business occupying the premises on which the sign is located, or;
- d) The name of the building on which the sign is located, including names and types of firms occupying the building.

Illuminated Sign – A sign that is illuminated by electric or other devices mainly for clear visibility at night.

Illumination of Signs – The lighting of a sign or exposing of a sign to artificial light either from within or without. In no instance shall the illumination of a sign interfere with adjacent traffic or disturb residential neighborhoods.

Incidental Sign- A sign which carries no advertising message, and is clearly incidental to other major advertising signs onsite, and which is used to do one or more of the following:

- a) Direct traffic flow, either vehicular or pedestrian.
- b) Indicates clearly the location of the ingress or egress points.
- c) Direct certain activities to certain areas (i.e., parking, waiting, etc.)
- d) Provide other incidental informal

Marquee Signs – A sign affixed to a hood, canopy, or projecting roof structure over the entrance to a building, store, or place of public assembly.

Nameplate Sign- A sign identifying only the name and occupation or profession of the occupant of the premises on which the sign is located. When nameplates are used to identify more than one (1) occupant, each nameplate shall be attached to one (1) free standing master identification sign.

Outdoor Advertising Device – A device consisting of twirling balloons, flags, flashing lights or other similar materials used to attract attention.

Political Sign – A sign attracting attention to political candidates or issues.

Portable Sign – A sign which rests on the ground or other surface, and is not directly attached to such surface, and which is designed and/or constructed to be mobile or movable.

Poster – Any sign made of rigid or semi-rigid, non-durable material, such as paper or cardboard, other than advertising copy applied to a permanent sign structure.

Product information sign – An on-premises advertising sign which denotes a particular commodity, service, or entertainment offered by said establishment. Identification signs and reader boards shall not be construed as product information signs.

Projection Sign – A sign projecting out from and attached to the exterior wall of any building and forming an angle of thirty (30) degrees or more to said wall.

Reader Boards – A permanent sign, affixed either to the wall of a structure or to an existing, free-standing identification sign, which is comprised of a surface to which letters may be attached on a temporary basis, thereby forming messages, advertising special sales, or services offered. Reader boards may not serve in substitution for identification signs.

Real Estate Signs – Any sign pertaining to the sale, lease, or rental of land or buildings.

Roof Signs – A sign erected, constructed, or maintained upon the roof of the building.

Sign – Any words, lettering, numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names, or trademarks, by which anything is known, including any surface fabric, other materials, or structure designed to carry such devices, such as are used to designate or attract attention to an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which are exposed to public view, and used to attract attention. This definition shall not include the flag, badge, or insignia of any governmental unit.

Sign Height – The vertical distance measured from the street grade of the closest point in the street the sign is located along or the grade at the base of the sign, whichever is higher, to the highest point of the sign structure.

Surface Area – The entire area of a sign as measured by the square, rectangle, semicircle, or parallelogram thereof, and comprising the entire sign inclusive of any border or trim and all of the elements of the matter displayed, but excluding the base or apron, supports, and all other structural members. In the case of three-dimensional letters or painted letters directly on the wall surface, the surface area shall be defined as the area encompassing the individual letters themselves, including any trim or border and excluding the background that supports the three-dimensional letters.

Suspended Sign – A sign which is suspended from the underside of a horizontal plane surface, such as a canopy or marquee, and is supported by such surface.

Temporary Sign – A sign that can be used for thirty (30) days as specified by this ordinance.

Traffic Sign – A sign indicating federal, state, or city regulations for automobile, truck, bicycle, and pedestrian traffic.

Visible – Capable of being seen without visual aid by a person of normal visual acuity.

Wall Sign – A sign affixed to the surface of, and whose plane is parallel to, the exterior wall of a building, or which forms an angle of less than thirty (30) degrees with said wall and does not project out more than twenty-four (24) inches from said wall. No wall sign shall extend above the roofline of the building upon which it is located. In cases of flat roofs, no sign shall extend above the parapets. Mansard roofs with an angle of sixty (60) degrees or more from horizontal shall be considered as wall space for the placement of signs.

Window Sign – Any sign oriented toward and visible from the exterior of a building.

## SECTION 1600: PURPOSE

The purpose of this Article is to permit such signs in the Town of Hot Springs that will not, by their reason, size, location, construction, or manner of display, endanger the public safety of individuals, confuse, mislead, or obstruct the vision necessary for traffic safety, or otherwise endanger public health and safety; and to permit and regulate signs in such a way as to support and complement land-use objectives set forth in the Zoning Ordinance for the Town of Hot Springs.

## SECTION 1601: GENERAL REGULATIONS

The following regulations shall apply to all signs in all districts:

1. Compliance – No sign of any type shall be constructed, erected, painted, posted, placed, replaced, or hung in any district except in compliance with this ordinance.

a) Repainting or Reposting of Signs – Nonconforming painted signs may be repainted so long as the new coat of paint is for maintenance purposes and the design of the sign is not altered in any fashion. If, during repair, the design of the sign structure is altered in any way, then the entire structure shall comply with the provisions of this ordinance. (See also Section 1601.2) Billboards existing at the time of enactment of this ordinance or during authorization period (when applicable) shall be allowed to be reposted so long as the structure of the billboard and the advertising message carried on such board shall be subject to all other provisions of this ordinance. If at any time an advertising message on a billboard becomes obsolete or in disrepair, the advertising copy itself shall be subject to Section 1601.3, even though the structure may not be subject to removal.

b) Vandalism and Adverse Weather- Signs destroyed by vandals or adverse weather conditions shall be allowed to be replaced even if such signs do not conform to this ordinance provided, they existed before the date of enactment of this ordinance and they are replaced in the exact location, in the exact manner, and with the exact same advertising copy of the same size as the previously destroyed sign. Adverse weather conditions shall not be interpreted to be the normal weatherization of a sign. If a sign is allowed to deteriorate over time due to exposure to the weather elements, then it shall not be deemed as replaceable under this section.

2. Maintenance – All signs, together with braces, guys, and supports shall at all times be kept in good repair. If at any time a sign should become unsafe or poorly maintained, the Zoning Administrator shall notify the owner or lessee of the sign of such condition within thirty (30) days, the Zoning Administrator shall enforce compliance as provided in Section 1601.10.

3. Removal of Obsolete Signs – Signs identifying establishments no longer in existence, products no longer being sold, and services no longer being rendered shall be removed from the premises within thirty (30) days from the date of termination of such activities. Upon failure of the owner or lessee to remove such signs within the prescribed time period, the Zoning Administrator shall order their removal subject to the terms of Section 1601.10. Temporary signs and political signs shall be removed within ten (10) days after the termination of the event or election advertised. Upon failure of the owner

or lessee to remove such signs within the prescribed time period, the Zoning Administrator shall order their removal subject to the terms of this article and any additional expense of removal shall be billed to the owner or lessee of said signs.

4. Nonconforming Signs – Any off-premise sign existing on the date of enactment of this article which is not regulated by the provisions of General Statute 136-131. Shall be taken down and removed by the owner, agent, or person having the beneficial use of the building, land, or structure upon which such sign may be found within the period of time prescribed in the following schedule:

Replacement Value of Sign	Period for Removal
\$0 to \$500	1 year
\$501 to \$1500	2 years
\$1501 to \$3000	3 years
\$3001 to \$5000	4 years
\$5001 to over	5 years

a) Removal of Nonconforming Signs – Any nonconforming sign existing on the date of enactment of this article shall not be repaired if fifty (50%) percent or more of the structure must be restored in order for it to be deemed in good repair: instead, such a sign shall be removed and a new sign which conforms to the regulations set forth by this article may be erected.

b) Relocation of Nonconforming Signs – Any nonconforming sign existing on the date of enactment of this article may be relocated on the same premises of the establishment having beneficial use of said structures so long as it is the same sign structure and the nonconformance is not increased in any manner beyond the point of noncompliance that existed before the movement of said structure.

5. Measurement of Area; Height – Sign area shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof which will encompass the entire advertising copy of art designed to attract attention including borders and other architectural embellishments. Sign height shall be measured from the street grade of the closest point in the street the sign is located along or the grade at the base of the sign, whichever is higher, to the highest point of the sign structure.

6. Building Code Compliance – All signs shall fully comply with the requirements of the State of North Carolina building and electrical codes.

7. Sign Setback Requirements – No portion of any free-standing sign may be located

closer than ten feet (10') to any street right-of-way except in the C-1 and C-2 districts. Setbacks in C-1 and C-2 districts shall be no closer than five feet (5') to any street right-of-way. No portion of any free-standing sign shall be located any closer than twelve feet (12') to any side or rear property line. No sign shall be located in such a manner as to constitute a traffic or safety hazard.

8. Illumination of Signs – Unless otherwise expressly prohibited, signs, may be illuminated provided that lighting directed toward a sign shall be shielded in such a manner as to illuminate only the face of the sign, and shall not project into any portion of the traveled roadway.

9. Sign Permit Required – A sign permit, issued by the Zoning Administrator, shall be required for all signs except those specified in Sections 1603 and 1604. No permit shall be issued until the building inspector inspects signs plans for such signs and determines that they are in accordance with the requirements contained in this article. The fee for sign permits shall be twenty-five dollars (\$25) per sign.

10. Enforcement of Regulations- Any nonconforming sign constructed after date of enactment of this Article, or any sign in violation of section 1601.2 or 1601.3, or any sign off-premise directional maintained in a nonconforming manner after the passage of amortization period specified above (1601.4) shall be subject to the following actions:

a) Notice – The Zoning Administrator shall notify in writing the following persons of the nonconforming structure:

- The owner or lessee of the sign;
- The owner of the property on which the sign is located; and
- The occupant of the property on which the sign is located.
- Notice shall also be given to the above persons that the nonconforming condition shall be corrected within thirty (30) days from the date of notification.

b) Penalties – After passage of the thirty (30) day notice period, the owner or lessee of a nonconforming sign shall be fined fifty dollars (\$50) for each nonconforming structure.

c) Appeals – Any person having an interest in a sign found to be nonconforming or the property on which it is located, may appeal a determination by the Zoning Administrator ordering removal or compliance to the Board of Adjustment as provided in this ordinance.

d) Removal – If the nonconforming sign has not been brought into

compliance with the provisions of this ordinance or removed within thirty (30) days of the assessment of penalties as specified above, then said sign shall be removed by the Town and the cost of removal shall be billed to the owner or lessee of the sign.

e) Failure to Pay Removal Costs – If the owner or lessee of a nonconforming sign that has been removed by the Town fails to pay for the costs of removal within thirty (30) days of the billing date for such action, then the Town will collect the costs as a lien on the property. The amount of such lien may include the actual cost of removal of said sign, plus any fines which may have been levied and not paid, plus fifteen percent (15%) representing penalty and interest for cost of collection.

#### SECTION 1602: PROHIBITED SIGNS

1. Signs Constituting Traffic Hazards – Any sign located in a manner or place so as to constitute a hazard to traffic as demonstrated by the Zoning Administrator.
2. Signs in Street Right-of-Way – Any free-standing sign located in a street right-of-way or projecting over into a street right-of-way.
3. Signs Obstructing Passages – Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress for any building.
4. Off-Premise Advertising Signs - Billboards.
5. Flashing Devices – Any Moving signs or device to attract attention, all, or any part of which moves by any means, including motion by the movement of the atmosphere or by electrical or other means, including but not limited to, pennants, flags, propellers, or discs, whether or not any such device has a written message.
6. Posted Signs – Any sign posted off-premises to utility poles, trees, fences, rocks, or other signs.
7. Copies of Official Signs – Any sign which is a copy or an imitation of an official sign, or which purports to have official status.
8. Portable Off-Premise Signs – Any sign defined in Article XVI, Definitions.
9. Roof Signs – Only signs on mansard roofs shall be permitted. In instances where signs on mansard roofs are used, the area of said sign shall be computed as a portion of the

area allotted for a wall sign.

10. Signs Not Permitted – Snipe signs or any sign not expressly permitted elsewhere in this ordinance.

### SECTION 1603: EXEMPT SIGNS

The following signs are exempt from the provisions of this ordinance:

1. Governmental Agency Signs – Signs erected by a governmental agency to regulate, control, or direct traffic including signs indicating bus stops, taxi stands, and similar transportation facilities. Such signs may be illuminated, flashing, or moving as required for public safety. Furthermore, signs erected by a governmental agency which convey information regarding a public service, or the location of a public facility may also be illuminated, as necessary.
2. Signs required by Law
3. Warning Signs – Signs which warn of hazards to life, limb, and property such as high voltage electrical equipment, explosives, and the like.
4. No Trespassing Signs – “No Trespassing” signs not to exceed four (4) square feet in surface area.

### SECTION 1604: SIGNS PERMITTED WITHOUT PERMIT

The following types of signs shall be permitted in any use district without the issuance of a sign permit provided they meet the stated requirements:

1. Temporary Real Estate Signs – Temporary real estate signs advertising a specific piece of property for sale, lease, rent, or development located on said property provided such signs shall not exceed eight (8) square feet in surface area per side of sign up to a maximum of sixteen (16) square feet of aggregate surface area. Signs shall not be illuminated and shall not exceed one (1) per parcel of land unless such land is located at an intersection of two streets; in such a case, two signs shall be allowed, on effacing each street.
2. Signs Incident to Place of Worship – One (1) free-standing sign on the property on which a place of worship is located is permitted except where a place of worship is located on a corner lot, then said place of worship is allowed two (2) free-standing signs, one (1) facing each street that borders the lot. Maximum size of such free-standing signs shall be the same as that allowed under Section 1005 for other uses in the district in which the place of worship is located. Signs located in residential

districts shall not exceed thirty-two (32) square feet in surface area per side of sign up to a maximum of sixty-four (64) square feet of aggregate sign surface. In addition, each place of worship shall be allowed one (bulletin) board not to exceed twelve (12) square feet of surface area (which may be a wall sign or a free-standing sign). Each place of worship located more than one hundred and fifty feet (150') from a major thoroughfare or collector street shall be allowed one (1) directional sign. These signs may be located on private property, with the written permission of the owner, at the nearest intersection of the major thoroughfare or collector street to the site of the place of worship.

3. Signs on Window Glass – Signs on window glass regardless of size.
4. Private Traffic Signs – Private, unofficial traffic signs not exceeding two (2) square feet in surface area per side of sign up to maximum of four (4) square feet with aggregate surface area per sign, which indicate directions, entrances, and exits. Such signs are to be located entirely on the property to which they pertain and shall not contain any advertising message.
5. Organization Signs – Any flag, badge insignis, or design customarily displayed by any governmental agency or government, or any charitable, civic, fraternal, patriotic, religious, or similar organization.
6. Service Station Signs – Gasoline service stations or any businesses selling gasoline are allowed, in addition to other provisions of this ordinance, the following signs:
  - a) Price and Self-Service Signs – Gasoline price/self-service signs located at and secured to each pump island and not exceeding nine (9) square feet per side of sign. One gasoline price/self-service sign may be free-standing and located at a place other than the pump island but must be on the business site and meet all other sign regulations. If such signs are free-standing signs, they shall not exceed forty inches (40") in height.
  - b) Brand Name and Grade Signs – Each brand sign, emblem of gasoline sold, the grade of gasoline, and any other related signage shall not exceed nine (9) square feet in total aggregate surface area for each pump island. If free-standing, said sign shall not exceed forty inches (40") in height.
  - c) NC Inspections Signs – A North Carolina Inspections sign at any location on the business premises as long as said sign is not placed in any right-of-way, a permit shall be required from the Zoning Administrator. Said sign shall not exceed forty inches (40") in height.

7. Municipal, School, Recreation, Club Sign – Municipal, school, recreation, and civic club sponsored signs, scheduled events, rules and regulations, and parking signs shall not require a permit, but if they are to exceed forty-eight (48) square feet of aggregate area surface per sign, then they must be approved by the Zoning Administrator.
8. Outdoor Menu Sign – Outdoor menu signs when used in conjunction with drive-thru windows at restaurants.
9. Number and Nameplates – House numbers and name plates not exceeding two (2) square feet in area for each residential building.
10. Construction Signs – One (1) construction sign per construction project not exceeding thirty-two (32) square feet of sign area in residential districts or sixty-four (64) square feet in commercial or industrial districts , provided that such signs shall be erected no more than five (5) days prior to the beginning of construction for which a valid building permit has been issued, shall be confirmed to the site of construction, and shall be removed five (5) days after completion of construction and prior to occupancy.
11. Public Notice – Official notices posted by public officers or employees in the performance of their duties.
12. Commemorative Plaques - Commemorative plaques of recognized historical agencies or identification emblems of such agencies, provided that no plaque or emblem shall exceed four (4) square feet in area.
13. Town of Hot Springs Signs.

#### SECTION 1605: SIGNS ALLOWED WITH PERMITS

The following types of signs shall be allowed upon the issuance of a sign permit for each proposed sign and subject to the regulations set forth below:

1. Signs Allowed in Residential Zones – The following types of signs shall be allowed in all of the residential districts subject to the accompanying restrictions and the issuance of a sign permit:
  - a) Nameplate Signs – Each home occupation shall be allowed one (1) nameplate sign for purposes of identification. Said sign shall not exceed two (2) square feet of surface area. Nameplate signs shall not be illuminated.
  - b) Subdivision and Unified Housing Development Signs – One (1) ground

sign per entrance to a subdivision, unified housing development, or mobile home park. Said sign(s) shall be no larger than thirty-two (32) square feet of surface area per side of sign up to a maximum of sixty-four (64) square feet of aggregate surface area per sign. Signs shall not exceed ten feet (10') in height and may be indirectly illuminated.

2. Signs Allowed in Commercial and Industrial Zones – The following types of signs shall be allowed subject to the accompanying restrictions and the issuance of a sign permit. Each business shall be allowed a wall sign, and in addition hereto, may either have a ground sign or a suspended sign.

a) Ground Signs – A ground sign shall not exceed the following limitations:

- C-1 and I Districts – Thirty-two (32) square feet in surface area per side of sign, up to a maximum of sixty-four (64) square feet of aggregate surface area for the entire sign. No signs shall be located higher than twenty-five feet (25') above ground level or twenty-five feet (25') above road level, whichever is higher.
- C-2 District – One Hundred (100) square feet in surface area per side of sign up to a maximum of two (200) hundred square feet of aggregate surface area for the entire sign. No signs shall be located higher than twenty-five feet (25') above ground level or twenty-five feet (25') above road level, whichever is higher.
- Ground signs shall be located on the property where the advertised use is located. If a business or industry is located on a large tract of land such that the business or industrial use does not extend throughout the entire tract, then the ground sign shall be located at the site of the firm's main building, as determined by the Zoning Administrator. Where a business or industrial use is located on the property which does not abut a public street, a directional ground shall be allowed at the public street where the entrance driveway or access to the property is located. This directional sign shall be allowed in addition to the other signs permitted in this Article. Such sign shall not exceed four (4) square feet in surface area per side or four feet (4') in height.

b) Wall Signs – Wall identification signage may be placed on any portion of a building, occupied by a business, provided that the signage does not exceed 50% of the surface area of the wall or walls on which it is to be located, said surface area to be computed excluding glass or doors, or the following specifications, whichever is less:

- C-1 and I Districts – Thirty-two (32) square feet
- C-2 Districts – Seventy-five (75) square feet
- In addition, each establishment shall be allowed one (1) small business identification sign not to exceed eight (8) square feet in surface area, located on the rear or the side of the building denoting the identification of the establishment.

c) Suspended or Projection Signs – A suspended or projection identification sign not to exceed twelve (12) square feet per side, up to a maximum of twenty-four (24) square feet for the entire sign.

d) Unified Business Developments – Properties owned by the same individuals or entities or properties which are being jointly developed as multi-unit businesses shall be classified and governed as unified business developments and their signage shall be regulated as follows:

1. Business Development – Each unified business development as a whole shall be allowed one (1) free-standing identification sign denoting the name of the development. Said sign shall be conformed in all respects with the signage requirements of individual businesses not a part of unified business developments as set forth in Section 1605.2 hereinabove. Said signage may also mention individual businesses located within the development. The content of same shall be under the total control of the developer provided said sign otherwise complies with the terms of this ordinance.

2. Individual Businesses – Individual businesses located within the unified business development may have one of the following types of signs:

- Wall identification sign
- Suspended or projection identification sign not exceeding six (6) square feet per side;
- Product information signs;
- Reader board

3. Marquee Signs Allowed in All Commercial Districts – Movie theaters located within commercial districts shall be allowed a marquee with one (1) or two (2) copy sign surfaces. Total copy area allowance, for all sign surfaces, shall not exceed five (5) square feet per linear foot of canopy with a maximum total height limit of no more than five feet (5') at any point. A marquee shall not extend more than ten feet (10')

from the building nor be less than nine feet (9') above the ground or sidewalk at the lowest point.

4. Temporary Signs Allowed in All Districts – Temporary signs, flags, or banners advertising the initial openings of businesses, establishments, special events, or special sales may be permitted provided the location of such signs is approved by the Zoning Administrator. Such signs may be free-standing or attached to any part of the building wall and said sign shall not exceed thirty (30) square feet in aggregate surface area and shall meet all other requirements. Permits for these On-Premise Signs are limited to thirty (30) days. Temporary signs shall require a deposit of fifty dollars (\$50) to insure the cost of removal of such signs. The deposit shall be returned after the signs have been removed.
5. Off-Premise Directional Signs - (See fee schedule)
6. Grandfathering in Off-Premise Signs that Were in Place Before the Change in Criteria- Off-premise, non-conforming signs (see definitions “Advertising Sign”) installed prior to December 31, 2013 shall be allowed to remain until such time as repair or replacement is required. At this time, they shall be taken down and the business shall follow all Sign Regulations in effect as of November 4, 2013, when the Aldermen voted to approve the Amendment allowing Off-Premise directional signs.

#### SECTION 1607: STREETScape DIRECTIONAL SIGNS

Definition of Streetscape Plan: The visual elements of a street including the road, adjoining buildings, street signs, furniture, trees, and open spaces that combine to form the street’s character.

This plan will include the development of strategies, engaging the arts community, AT Conservancy and hikers, businesses, tourism, and general public by, with and in the design process. It will also include innovative and non-traditional techniques for advertisement.

Streetscape directional signs shall be a maximum height of 16 feet (16') and shall have a maximum size of four (4) square feet per side. Streetscape directional signs shall be installed on town right-of-way or with a letter of permission on private property. Sign locations shall be determined by town. The architectural design shall be determined by the Town of Hot Springs Design Committee which shall consist of the Mayor, or an Alderman appointed by the Mayor and an appointed member of HSTA and one member of the Planning Board. The post may be set in the ground, mounted on concrete slab, or attached to a permanent structure.

1. Under Banners:

a) Signage may include banners, canvas, or other available material, mounted to utility poles, building, or existing, stationary wooden or metal poles. Final design shall be subject to approval by the Town of Hot Springs Design Committee.

2. Appalachian Trail (AT) Directional Signs

3. Directional Business Signs

## Article XVII Adult Establishments

WHEREAS, North Carolina General Statute 160A-181.1 permits municipalities to regulate sexually oriented businesses; and

WHEREAS, the Board of Aldermen of Hot Springs recognizes that reasonable Town of Hot Springs regulation of sexually oriented businesses, in order to prevent and ameliorate adverse secondary impacts, is consistent with the federal constitutional protection afforded to non-obscene but sexually explicit speech; and

WHEREAS, the Board of Aldermen has determined that sexually oriented businesses shall be required to observe specific location requirements before they commence business;

NOW AND THEREFORE, THE BOARD OF ALDERMEN FOR THE TOWN OF HOT SPRINGS ORDAINS:

### SECTION 1700: PURPOSE

Based upon the evidence presented to the Board of Aldermen, it is recognized that sexually oriented businesses and adult establishments can and do cause adverse secondary impacts on neighboring properties. The Board of Aldermen takes note of the adverse secondary impacts often associated with adult establishments and finds they do not vary greatly among comparable communities in this country.

Moreover, it is the finding of the Board of Aldermen that under certain circumstances, adult establishments and sexually oriented businesses begets criminal behavior and creates undesirable community conditions. Among the acts of criminal behavior identified are disorderly conduct, prostitution, drug use, and drug trafficking. Among the undesirable community conditions identified are increases in neighborhood blight, decreases in surrounding property values, and increased demands on law enforcement to police establishments. Therefore, the Board of Aldermen finds that the limitation of adult establishments is in the public welfare in order to help prevent the occurrence of criminal behavior and other

adverse secondary impacts associated with sexually oriented businesses and adult establishments.

## SECTION 1701: DEFINITIONS

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**Adult Bookstore** – A bookstore which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in North Carolina General Statute 14-202.10, or other periodicals, videotapes, compact discs, other pornographic, electronic, magnetic, digital, or other imaging medium. And/or having a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications, including book, magazines, other periodicals, videotapes, compact discs other pornographic, electronic, magnetic, digital, or other imaging medium, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in North Carolina General Statute 14-202.10.

**Adult Cabaret** – A nightclub, bar, restaurant, or similar commercial establishment that on a regular, sporadic, or transient basis features:

- Persons who appear in a state of nudity or semi-nudity
- Live performances that are characterized by the exposure of specified anatomical areas of specified sexual activities.
- Films, motion pictures, videocassettes, slides, or other pornographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

**Adult Establishment** – Any business or enterprise that has, as one of its principal business purposes or as a significant portion of its business, an emphasis on matter and conduct depicting, describing, or related to specified anatomical areas and specified sexual activities as specified in North Carolina General Statute 14-202.10. This definition includes, but is not limited to an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult mini motion picture theater, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. This term may be used interchangeably with “adult business establishment” or

sexually oriented business.”

Adult Live Entertainment – Any performance of or involving the actual act of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

Adult Live Entertainment Business – Any establishment or business wherein adult live entertainment is shown for observation by patrons. This shall apply whether the entertainment is presented on a regular, sporadic, or transient basis.

Adult Mini Theater – An enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this section for observation by patrons therein.

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

1. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from the public right-of-way that advertises the availability of this adult type of pornographic reproductions.
2. Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours.
3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 24 hours.

Adult Motion Picture Theater – An enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein.

Day-Care Center – A facility licensed by the State of North Carolina, whether situated within the Town of Hot Springs or not, that provides care, training, education, custody, treatment, or supervision for children under fourteen (14) years of age, where the children are not related by blood, marriage, or adoption to the owner or operator of the facility for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the service it offers.

Escort – A person who, for consideration, agrees or offers to privately model lingerie or to privately perform a striptease for another person, or whose advertisements, promotions, or obvious intent to the public is sexual in nature.

Escort Agency – A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration, and whose advertisements, promotions, or obvious intent to the public is sexual in nature.

Entertainer – Any person who provides entertainment within or at an adult establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided by that person as an employee or an independent contractor.

Erotic – Refers to any seductive, titillating, lustful, immodest, indecent, suggestive, passionate, or similar, reference, act, service, or deed.

Exotic Car Wash – A facility that offers a car cleaning or washing service performed by employees that are in a state of nudity or semi-nudity.

Nude Model Studio – Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

Nudity or a State of Nudity – The appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than fully opaque covering, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

Premises – The real property upon which the sexually-oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually-oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto.

Semi-Nude – The appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or wearing apparel, provided the areola is not exposed in whole or in part.

Sexual Encounter Center – 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.
- 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-nudity...

Sexually-Oriented Business – Any business or enterprise that has, as one of its principal business purposes or as a significant portion of its business, an emphasis on matter and conduct depicting, describing, or related to specified anatomical areas and specified sexual activities as specified in North Carolina General Statute 14-202.10. This definition includes, but is not limited to, an adult motel, adult mini motion picture theater, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. This term may be used interchangeably with “adult establishment” or “adult business.”

**SECTION 1702: RESTRICTION OF LOCATION USES**

The location of adult establishments shall be regulated by the Zoning Ordinance of the Town of Hot Springs.

1. No adult establishment shall be located within one thousand (1000) feet of any other adult establishment.
2. No adult establishment shall be located within fifteen hundred (1500) feet of any church, elementary or secondary school, public park, library, child daycare center, or any business that is oriented primarily to children.
3. No adult establishment shall be located within three hundred (300) feet of the boundary of any residential zoning district.

For the purpose of this section, measurements shall be taken in a straight line from the nearest portion of the building or structure used as part of the premises where an adult establishment is located to the nearest property line of the premises listed in subsections above.

**SECTION 1703: PROHIBITED ACTS OF CONDUCT**

1. No person under the age of twenty-one (21) years shall be permitted on the premises of any adult establishment.
2. No person in an adult establishment shall appear in a state of nudity or depict specified sexual activities.
3. No person in an adult establishment shall appear in a semi-nude condition unless the person is an employee, who while semi-nude, shall be at least ten (10) feet from any

patron or customer. No patron or customer in and adult establishment shall pay or give any gratuity to an employee of the adult business while said employee is semi-nude.

4. No person, while semi-nude in an adult establishment shall solicit any pay or gratuity from any patron or customer. No patron or customer in an adult establishment shall pay or give any gratuity to any employee of the adult business while said employee is semi-nude. 5. No person in an adult establishment shall perform any specified sexual activities, wear, or use any device or covering that is exposed to view that simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any specified sexual activities, or participate in any act of prostitution.

#### SECTION 1704: EXTERIOR PORTIONS OF ADULT ESTABLISHMENTS

1. It shall be unlawful for an owner or operator of an adult establishment to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

2. It shall be unlawful for the owner or operator of an adult establishment to allow the exterior portion of the establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner, except as permitted by Section 6 of this ordinance.

3. One (1) parking space per one hundred (100) square feet of gross floor area shall be provided upon the premises immediately adjoining the structure housing the adult establishment.

4. All parking areas and exterior entrances and exits shall be fully illuminated with night lighting to help deter criminal activities.

5. Perimeter buffer areas shall be established in order to create spatial separation and to lessen the possible adverse impacts upon adjacent land uses. A front yard setback of sixteen (16) feet and side and rear yard setbacks of twenty-four (24) feet shall be observed for buildings and parking.

#### SECTION 1705: SIGNAGE

1. It shall be unlawful for the owner or operator of an adult establishment to erect, construct, or maintain any sign from the business except in conformance with the sign regulations of the Town of Hot Springs.

2. Any sign visible from the exterior of the building shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and shall only contain

the name of the enterprise.

**SECTION 1706: HOURS OF OPERATIONS**

During all hours of operation, the establishment must follow the Town of Hot Springs' noise ordinance and all other Town and State regulations.

**SECTION 1707: PENALTIES AND ENFORCEMENT**

This chapter may be enforced by any and all remedies provided by applicable state law and the ordinances of the town of Hot Springs. Furthermore;

1. The violation of any provision of this capitol ordinance shall constitute a misdemeanor and shall be punishable by a fine of five hundred dollars (\$500.00) or imprisonment of thirty (30) days, or both fine and imprisonment. Each day on which any violation of this capitol ordinance shall constitute a separate and distinct violation and offense.
2. In addition, this ordinance may be enforced by injunction or other equitable relief by an action brought in the Capitol General Court of Justice.

**SECTION 1708: SEVERABILITY**

Each provision of this ordinance is independent and stands alone. If any provision, part, paragraph, phrase, or sentence is found to be invalid, all other provisions, parts, paragraphs, phrases, or sentences shall remain valid and in full force and effect.

**SECTION 1709: EFFECTIVE DATE**

This ordinance shall be in full force and effect on and after the \_\_\_\_\_, 2012.

**Article XVIII Communication Towers**

It is the desire of the Town of Hot Springs to encourage communication facilities in order to ensure an adequate level of service to the Town, while at the same time, protecting the health, safety, welfare, and scenic beauty of the community.

**SECTION 1801: COMMUNICATION FACILITY**

A communication facility is a tower or other transmission or receiving device operating for the purpose of broadcasting or receiving verbal or visual communication

signals.

#### SECTION 1802: PERMIT REQUIRED

It shall be unlawful for any person, corporation, or entity to erect any communication facility without first obtaining a permit from the Zoning Administrator. Permits must be obtained for all commercial broadcast and rebroadcast facilities. A permit, however, shall not be required for the erection of any non-commercial communication facility, such as shortwave, CB and T.V. antennas, having a height from its location on the ground of less than seventy-five feet (75').

#### SECTION 1803: APPLICATION REQUIRED FOR PERMITS SECTION

1. Any individual, corporation or entity desiring to construct a communication facility shall submit an application for a permit to the Zoning Administrator and shall pay an application fee in the amount of \$500.00
2. The application shall be on a form approved by the Zoning Administrator and shall include or have attached at least the following information:
  - a) A site development plan which contains the following information:
    1. The name of the telecommunications tower owner and/or property owner and tax identification number of the parcel.
    2. All identifiable structures located on the parcel; all private and public roads, highways, and underground and overhead utilities.
    3. Surveyed boundary lines of the parcel containing the proposed communication facility, construction area and its fall area.
    4. The names, addresses and tax parcel numbers of all of the adjoining property owners.
    5. The elevation of the proposed tower's base.
    6. A preliminary tower design plan, prepared by a registered professional engineer showing all guideline anchors and support structures, proposed building and other proposed improvements, including access roads and utility connections.
    7. Showing the proposed height of the tower, lighting and antennas and the tower's design of load.

8. All communications towers above seventy-five feet (75') and their facilities are permitted only in the M-Industrial Zone.

b) The applicant shall identify all possible alternative existing structures within the proposed broadcast area and explain why given those facilities, the proposed tower is necessary.

#### SECTION 1804: SPECIAL USE PERMIT

All Communication towers shall be subject to a Special Use Permit granted by the Hot Springs Planning Board. A communication facility may be sited in M-Industrial Zone.

#### SECTION 1805: WRITTEN STATEMENTS

Written statements shall be provided from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) establishing that the proposed communication facility complies with all regulations administered by the FAA and the FCC or establishing that the proposed facility is exempt from administration by the FAA and the FCC.

#### SECTION 1806: CONDITIONS TO BE MET

1. Prior to granting a permit for construction of a communication tower facility, the Planning Board shall conduct a public hearing as required by this Ordinance, and shall establish that the facility meets at least the following minimal standards:

- a) The facility shall be situated in such a manner so it will not fall across a public street or adjoining property lines in the event of a structure failure. Same may be established by either sitting the tower a distance from the adjoining property line greater than the height of the tower, or by using a self-collapsing structure that will collapse upon itself. Any self-collapsing structure must be documented by a professional engineer.
- b) The setbacks for the communication facility and any accessory structures shall not be less than that required in the zoning district in which the facility is located.
- c) The tower must be set back a distance greater than the height of the tower from any residence or structure on adjoining properties.

\*March 30, 2015, Public Meeting:

Recommendation from the Hot Springs Planning Board to the Hot Springs Alderman – Text Amendment

## Article XVIII: Communications Towers

Section 1800A-3 (2) (a) 8.... All communication towers above (75) feet and their facilities are permitted only in the M-industrial district and on any property owned by a governmental entity. Pg. 59

Section 1800A-4: Special Use Permit...All communication towers shall be subject to a Special use permit granted by the Hot Springs Planning Board. A communication facility may be sited in M-industrial district and on any property owned by a governmental entity.

1. The communication facility must be of a type or height such that the Federal Aviation Administration would not require the tower to be lighted or painted.
2. All communication facilities for broadcast must be designed and constructed to provide for the co-location of a minimum of four services. Certification must be provided by a professional engineer establishing that the tower will accommodate at least four users, prior to a Special use permit being issued.
3. The applicant must certify that the future co-locations on the tower being issued will be allowed and made available at a fair market value, and the application must outline the method to be used by the applicant in determining what would constitute a fair value.
4. As a condition for the issuance of any permit for construction of a communications facility, the owner must record in the office of the Madison County Register of Deeds a letter of intent to allow such co-locations which shall bind all subsequent owners for the facility.
5. No new broadcast communication facilities shall be approved unless the Planning Board finds that the equipment for the proposed tower cannot be accommodated on existing towers located within a two-mile search radius of the proposed site.
6. The only acceptable reason why a communication facility could not be located on the existing tower would be that the equipment exceeds the structural capacity of the existing tower, or that the planning equipment would cause interference with equipment already located on the tower which could not be prevented at reasonable cost.
7. Documentation presented stating that the applicant for the communication tower is licensed by the Federal Communications Commission to provide communication services, or if the applicant is not such a licensee, it must demonstrate it has binding commitments from one or more FCC licensee to utilize the proposed facility.

8. The owner of a communication facility shall provide a certificate of insurance evidencing it has liability coverage in the amount of at least \$1,000,000 and the certificate shall contain certification that the insurance company will notify the Town of Hot Springs thirty (30) days prior to the cancellation or modification of said policy.

#### SECTION 1807: ADDITIONAL MANADATORY CONDITIONS

The Planning Board shall not issue a Special use permit for the purposes of this Article, unless the following conditions are also made a part of the permit:

- a) All communications facilities and their accessory structures and equipment shall be enclosed within a secure fence.
- b) No advertising of any kind will be permitted on or about the communication facility.
- c) If a communication facility ceases to function for its intended purpose for a continuing period of ninety (90) days, the owner of the tower and/or the owner of the property upon which the property is located shall be required to dismantle and remove the entire structure within ninety (90) days of notification of the expiration of the aforesaid ninety (90) day period.
- d) The owner of the tower shall be required to provide the Zoning Administrator a copy of any notice of cessation of operation which is with the FCC, within seven days of said filing, and likewise shall be required to provide the Zoning Administrator within seven days and notice issued by the FCC directing the cessation of operation of the facility.
- e) All towers shall be unpainted, light grey or environmental green.
- f) The owner of the tower must allow the location of telecommunication facilities operated by the Town of Hot Springs, if it is determined that the proposed tower is situated in a location that will benefit the telecommunications system of the Town of Hot Springs, provided that the Town of Hot Springs makes said request within sixty (60) days of the filing of the permit application.
- g) Each telecommunication facility must be designed to survive a natural disaster without interruption in operation. Said design shall include the following: Non-flammable exterior wall and roof covering; openings and all equipment enclosures shall be protected against penetration by fire and in-blown embers; the tower, when fully loaded, must be designed to withstand “maximum credible earthquake” and all equipment shall be mounted in such a manner that a quake will not tip them over, throw equipment off shelves or otherwise apt to damage equipment; backup generators must be available for use at all communication facilities.

h) Failure to comply with any of these conditions shall constitute a fine to be recommended by the Planning Board to the Town of Hot Springs.

SECTION 1808: ADDITIONAL REQUIREMENTS

The Planning Board may impose additional requirements before the issuance of the permit to address the following:

- a) To prevent the facility from causing significant adverse visual impact on nearby residences.
- b) To provide for public safety.
- c) To ensure that the communication needs of the town of Hot Springs are met.

SECTION 1809: TECHNICAL ASSISTANCE

If, in the course of its consideration of an application, the Planning Board deems it necessary, it may employ an engineer or other expert of its choosing to review the application submitted, and shall in such cases, assess the reasonable costs for same to the applicant in an amount not to exceed \$2,500.

SECTION 1810: RENEWAL OF SPECIAL PERMIT

An annual telecommunication permit shall be required for each communication facility constructed pursuant to this Article. The holder of any such permit must file an annual report, on a form provided by the Zoning Administrator, which should demonstrate the continued compliance with the requirements of this Article. A \$250 annual permit fee shall be required and said fee shall not be prorated.

The Zoning Administrator shall make an annual inspection of each site as a part of the permit renewal to certify that all conditions set forth by the Planning Board are being met, that fences are in good repair, that no unauthorized communication facilities are present and to determine whether there are any hazards associated with the facility. Failure to obtain the annual permit within thirty (30) days after the commencement of the annual period shall result in the facility being deemed abandoned and subject to removal as required by Section 1800A7 (c).

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

## Article IX Vacation Rentals

### SECTION 1900: VACATION RENTALS

The development of any structure intended for use as a Vacation Rental shall comply with all standards applicable to construction of a residence within the land use category the Vacation Rental is proposed. Vacation Rentals are permitted as long as they are one per lot up to 12,000 square feet in size. Lots larger than 12,000 square feet may contain additional rental structures at 12,000 square feet per structure. More than three contiguous rental structures shall go before the Planning Board for a Special Use Permit and shall conform to all applicable standards (however where the planning board grants a special use the lot restriction may be waived in lieu of PUD approval). The use of a mobile or motor home as a vacation rental is not permitted. Any property used as a vacation rental or bed and breakfast shall comply with the following standards:

1. Intent – The purpose of this section is to establish a set of regulations applicable to vacation rentals. These regulations are in addition to all other provisions of this ordinance. In the adoption of these standards, Hot Springs Planning Board finds that vacation rentals have the potential to be incompatible with surrounding residential uses, especially where several are concentrated in the same area, thereby having the potential for a negative effect on the adjacent full-time residents. Special regulations of Vacation Rentals are necessary to ensure that they will be compatible with surrounding land uses and will not act to harm or alter the neighborhoods they are located within.
2. Permit Requirements – A Zoning Certificate of Compliance, business listing with Tax Assessor and Room Tax registration (when applicable) for each vacation rental will be required. Where water and sewage disposal are provided by the Town of Hot Springs, evidence shall be submitted with the application for Zoning Clearance to show that the service provider(s) has been informed of the proposed use of the property as a vacation rental and has confirmed there is adequate service.
3. Location – Vacation rentals shall be permitted in all zoned districts only if the current zoning requirements are met as well as any other requirements of this section.
4. Number of Occupants Allowed – The maximum number of occupants allowed in an individual vacation rental shall not exceed the number of occupants that can be accommodated consistent with the on-site parking requirements set forth in subsection (h) hereof. The Zoning Certificate of Compliance shall specify the maximum number of occupants allowed in each individual vacation rental.
5. Appearance / Visibility – The Vacation Rental as well as any Accessory

Structures must be in harmony with the surrounding area so as not to create or become a nuisance as interpreted by the Planning Board.

6. Signs – Signs must conform to the sign regulations set forth in the Town of Hot Springs Sign Ordinance.

7. Traffic – Vehicles used, and traffic generated by the Vacation Rental shall not exceed the type of vehicle volume normally generated by a home occupied by full-time resident in a residential neighborhood. For purposes of this section, normal residential traffic volume means on average 10 trips per day.

8. On-site Parking Required – All vacation rental lots must have one parking space for each sleeping area with a minimum of two spaces in accordance with Subsection (4), above. All parking associated with a Vacation Rental shall be entirely on-site, in the garage, driveway, or otherwise out of the roadway. Tenants of Vacation Rentals shall obey the Town of Hot Springs Parking Ordinance.

9. Noise – All vacation rentals shall comply with the Town of Hot Springs Noise Ordinance. No vacation rental is to involve on-site use of equipment requiring more than standard household electrical current at 110 or 220 volts or that produces noise or vibration detrimental to occupants of adjoining dwellings.

10. Local Contact Person – All vacation rentals shall designate a local contact person. The local contact person shall be available 24 hours a day to respond to tenant and neighborhood questions or concerns. All the requirements listed in this section shall continue to apply:

a) The name, address, and telephone number(s) of the local contact person shall be submitted to the Hot Springs Police Department, the local fire agency, and supplied to the property owners within a 300-foot radius of the Vacation Rental. The name, address and telephone number(s) of the local contact person shall be permanently posted in the rental unit in a prominent location(s). Any changes in the local contact person's address or telephone number shall be promptly furnished to the agencies and neighboring property owners as required in this subsection.

b) If the local contact person is unavailable or fails to respond, the complaining party may contact the Hot Springs Police Department. The HSPD will attempt to reach the local contact person. The penalties as set forth in Subsection (13) shall apply.

11. Square Footage – Rentals in all districts shall follow guidelines set forth in Hot

Springs Zoning Ordinance.

12. Effect on Existing Residential Vacation Rentals – Each individual Vacation Rental in existence on the effective date forward of this section shall be subject to a Zoning Compliance Certificate, Business Listing, and/or Room Tax Registration, and all standards set forth in this section. If the Zoning Compliance Certificate, Business Listing, and Room Tax Registration have not been requested within 90 days after the effective date, the penalties set forth in section (13) shall apply.

13. Violation of Vacation Rental – It is unlawful for any person to use or allow the use of a property that is in violation of the provisions of this section. Penalties for violation of this section will be set forth by recommendation from the Planning Board to the Town of Hot Springs. Additional Penalties for violation of this section may include revocation of the Zoning Certificate of Compliance. If a local contact person is not able to be reached by the Hot Springs Police Department, this shall be grounds for revocation of the Zoning Certificate of Compliance.

14. Inspection – Each Rental shall be subject to a zoning compliance inspection and fire/safety inspection. It shall meet the requirements given by the Town of Hot Springs.

SECTION 1901: BED AND BREAKFAST FACILITIES

1. The facility shall be located in a structure originally constructed as a single-family dwelling or as an inn.
2. The facility shall be limited in the number of guest rooms it contains. Bed and breakfast facilities shall contain no more guest rooms than is permitted in the Certificate of Compliance.
3. The contact information for the owner or resident manager shall be posted in each guest room and in the check-in area and main entrance area. This information shall also be supplied to local police and fire agencies.
4. The exterior advertising shall conform to the sign regulations set forth in the Hot Springs Sign Ordinance.
5. The facility shall meet all building and fire codes, as well as, all applicable requirements, including any regulations adopted under authority of the NCGS.
6. There shall be a buffer strip meeting the specifications of dimensional requirements of the zoning district that the facility is located in.

7. No cooking shall be allowed in the lodging units.
8. Two off-street parking spaces shall be provided for the dwelling unit, and one off-street space shall be provided for each lodging unit. Parking area(s) in or adjacent to residential use districts shall be screened by vegetation, fencing or walls. The applicant shall submit a site plan which shall indicate where the parking is to be located and the manner in which it is to be screened.
9. Each Bed and Breakfast shall be subject to all Residential Vacation Rental requirements, as well as meet all applicable state and local regulations. It shall comply with all regulations set forth by the Madison County Inspections and Zoning office and Hot Springs Zoning Ordinance.

## Article XX Subdivision Regulations Town of Hot Springs

A:1 ORDINANCE ESTABLISHING PROCEDURES AND STANDARDS FOR DEVELOPMENT AND SUBDIVISION OF REAL ESTATE AND FOR THE SURVEYING AND PLATTING THEREOF; DEFINING CERTAIN TERMS AND HEREIN, PROVIDING FOR THE METHOD OF ADMINISTRATION AND AMENDMENT; REQUIRING THE INSTALLATION OF CERTAIN IMPROVEMENTS; PROVIDING PENALTIES FOR VIOLATIONS; REPEALING CONFLICTING ORDINANCES, AND FOR OTHER PURPOSES.

### SECTION 2001: SHORT TITLE

This ordinance shall be known and may be cited as the Subdivision Regulations of the Town of Hot Springs, North Carolina.

### SECTION 2002: AUTHORITY AND ENACTMENT CLAUSE

The Town Board of the Town of Hot Springs, pursuant to the authority conferred by an act of General Assembly of the State of North Carolina (General Statutes, Chapter 160, Section 226) does hereby ordain and enact into law these Articles and Sections.

### SECTION 2003: JURISDICTION

These regulations shall govern all subdivisions of land lying within corporate limits of the Town of Hot Springs.

### SECTION 2004: PURPOSE

The purpose of this regulation is to establish procedures and standards for the development and subdivision of real estate within the corporate limits of the Town of Hot Springs in effort to, among other things, insure proper legal description, identification, documentation, recordation of real estate boundaries; further, the orderly layout and appropriate use of the land; provide safe, convenient, and economic circulation of vehicular traffic; provide suitable building sites which are readily accessible to emergency vehicles; assure the proper installation of streets and utilities; promote the eventual elimination of unsafe or unsanitary conditions arising from undue concentration of population; and help preserve and protect the physical and economic resources of the Town of Hot Springs and its environs.

### SECTION 2005: DEFINITION OF TERMS

For the purpose of this Ordinance, certain words or terms used herein shall be defined

as follows:

1. Shall – The word “shall” is always mandatory and not merely directory
2. Subdivision - A “subdivision” shall include all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions, for the purpose whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this Ordinance.
  - a) The combination or re-combination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as required by this Ordinance.
  - b) The division of land into parcels greater than five (5) acres where no street right-of-way dedication is involved.
  - c) The public acquisition by purchase of strip of land for the widening or opening of streets.
  - d) The division of a tract of land in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceed the standards of the city, as required by this Ordinance.
3. Sub-divider – Any person, firm, or corporation who sub-divides or develops any land deemed to be a subdivision as herein defined
4. Planning Board – The Hot Springs Planning Board
5. Official Maps or Plan – Any maps or plans officially adopted by the Town Board as a guide for the development of the town and surrounding area.
6. Street – A dedicated and accepted public right-of-way for vehicular traffic.
  - a) Highway: A traffic artery designed primarily to carry heavy volumes of through vehicular traffic.
  - b) Major Street: A street designed primarily to carry heavy volumes of local vehicular traffic.
  - c) Collector Street: A street designed to carry medium volumes of vehicular traffic and to provide access to major street systems and collect the vehicular

traffic from intersecting minor streets.

- d) Minor Street: A street whose principal purpose is to provide vehicular access to the properties abutting it.
  - e) Cul-de-sac: A street permanently terminated by a turn around.
  - f) Marginal Access Street: A minor (service) street which parallels and is immediately adjacent to a major street or highway; and which provides access to abutting property.
7. Lot - A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership of for the development or both. The word “lot” includes the word “plot” or “parcel.”
  8. Easement - A grant by the property owner of use, by the public, a corporation or person(s) of a strip of land for specified purposes.
  9. Building Setback Line - A line parallel to the front property line in front of which no structure shall be erected.
  10. Double-frontage Lot - A continuous lot of the same depth as the width of a block containing two tiers of lots and which is accessible from both of the streets upon which it fronts.
  11. Single-Tier Lot - A lot which backs up to a limited access highway, railroad, a physical barrier, or a non-residential use and to which access from the rear of the lot is usually prohibited.
  12. Group Development – A development comprising two or more buildings such as a group of apartments, and the land is not subdivided into the customary streets and lots.
  13. City Engineer, Designee – The official or agency designated by the Town Board to act as the town engineer in the absence of an official town engineer.

#### SECTION 2006: PLAT SUBMISSION PROCEDURE AND PLAT REQUIREMENTS

1. Submission of Sketch Plan- In order to afford the sub-divider an opportunity to obtain advice and assistance facilitating subsequent preparation and approval of the subdivision plans, the sub-divider may submit a simple sketch plan of the proposed subdivision to the Zoning Administrator.

2. Sketch Plan Requirements- A simple sketch plan, if submitted, shall be drawn at an approximate scale of 200 feet to one inch and shall show the tentative street layout, approximate right-of way width, lot arrangements, the location of the nearest water and sewer lines, water courses, existing structures, total acres, approximate number of lots, adjoining streets, north point, tract boundary and proposed use of land.

3. Submission of Preliminary Plat- The procedure for obtaining preliminary plat approval is as follows:

a) The sub-divider shall submit to the Zoning Administrator at least three (3) black or blue-line prints of the proposed subdivision prepared in accordance with the plat requirements. Additional prints may be required when deemed necessary.

b) The Planning Board shall act on the preliminary plat within fifteen (15) days after submission. Should the Planning Board fail to act within fifteen (15) days the preliminary plat shall be deemed approved.

c) Before acting on the preliminary plat the Planning Board shall request a report from any person or agency directly concerned with the proposed development, such as the District Highway Engineer, County Health Department and the Superintendent of Schools, and such other officials or agencies thought necessary. Such reports shall certify compliance with or note deviations from the requirements of this Ordinance and include comments on the other factors which bear upon the public interest.

d) If the Planning Board disapproves or approves conditionally the preliminary plat, the reasons for such action shall be stated in writing and entered in the records of the Planning Board. The plat may be re-submitted when the reason for disapproval is corrected.

e) Any request for approval of subdivision, involving five lots or less shall not be required to go before the Town Planning Board and the Town Board for approval but may be approved administratively by the Zoning Administrator. All subdivisions of greater than five lots must be approved by the Planning Board and Town Board.

4. Preliminary Plat Requirements - The preliminary plat shall be clearly and legibly drawn at a scale of not less than 200 feet to one inch and may be drawn on a sheet 14 inches by 18 inches or 18 inches by 24 inches or such other size acceptable to the Register of Deeds of Madison County. The preliminary plat shall be prepared by a Registered Surveyor or Civil Engineer and shall show the following information:

a) Name of owner of record.

b) Proposed name of subdivision, date, north point, and graphic scale.

- c) Name and seal of registered surveyor or civil engineer.
  - d) Name of municipality or county in which subdivision is located.
  - e) Vicinity map showing location of subdivision
  - f) Exact boundaries of the tract of land being subdivided shown with bearings and distances.
  - g) Names of owners of record of all adjoining land and all property boundaries which intersect with the perimeter of the tract being subdivided.
  - h) Hooded areas, marshes, and any other conditions affecting the site.
  - i) The location of existing streets, buildings, water courses, railroads, transmission lines, sewers, culverts and drainpipes, water mains, city limit lines and public utility easements on and adjacent to the tract being subdivided.
  - j) Should the Planning Board determine that the land to be subdivided warrants special consideration because of topographical or other conditions peculiar to the site, the sub-divider shall submit upon request, a topographic map of an interval deemed necessary by the Board.
  - k) Proposed streets and alleys, right-of-way percent of finished grades and street names.
  - l) Proposed rights-of-way or easement; location, widths, and purposed.
  - m) Proposed lot lines with bearings and distances, and lot and block numbers.
  - n) Proposed minimum building setback lines.
  - o) Proposed parks, school sites, or other public open spaces, if any.) Site data:
    - Acreage in total tract
    - Smallest lot size
    - Total number of lots
    - Lineal feet in streets
  - q) Preliminary plan for surface drainage, storm drainage, and /or other drainage structures.
5. Submission of Final Plat - The final plat shall constitute only that portion of the

approved preliminary plat which the sub-divider proposes to record and develop at the time of submission. Approval of the final plat shall be subject to the installation of the improvements designated in section 71 of these regulations or certified evidence from the Town that said improvements shall be installed in accordance with these regulations. The procedure for obtaining final plat approval is as follows:

- a) The sub-divider shall submit to the Zoning Administrator within on (1) year of the date of preliminary plat approval at least three (3) black or blue-line prints of the final plat, a reproducible copy of the final plat on linen or polyester film, and one (1) print on sepia transparency.
  - b) The Planning Board shall check the final plat for conformance with the approved preliminary plat, and with the requirements of these regulations. The Planning Board shall notify the sub-divider in writing of any noncompliance with these regulations or any deviation from the approved preliminary plat which is found on the final plat or submit a report to the Town Board certifying compliance of the final plat with the requirements of these regulations within seven (7) days after submission of the final plat to the office of the Planning Board.
  - c) Before acting on the final plat the Planning Board may request a report from any person or agency directly affected by the proposed development. Such reports shall certify compliance with or note deviations from the approved preliminary plat and the requirements of these regulations.
  - d) The Town Board shall approve or disapprove the final plat at the first regularly scheduled meeting after submission of the report certifying compliance from the Planning Board.
  - e) Action of the Town Board shall be noted on the original linen tracing, the sepia print and on the three (3) prints of the final plat. The linen tracing of the plat shall be returned to the sub-divider, one (1) print shall be filed with the County or Town Engineer, and one (1) print and the sepia shall become a permanent record of the Planning Board.
  - f) The final plat shall be properly signed and executed as required for recording by the Register of Deeds of Madison County. The approved final plat must be recorded with the Register of Deeds of Madison County within six (6) months after approval by the Town Board.
6. Recording of the Final Plat - Within six (6) months after the final plat has been approved by the Hot Springs Town Board, it shall have been recorded with the Register of Deeds of Madison County. Should the six (6) month time limit expire before the plat is recorded, it must be re-submitted to the Zoning Administrator for reprocessing. Upon

adoption of this Ordinance, the Register of Deeds shall not thereafter file or record a plat of subdivision located within the city limits of the Town of Hot Springs, subdivision regulations until said plat has been approved by the Town Board. Without the approval of the legislative body, the filing or recording of a subdivision plat shall be null and void. The Clerk of Superior Court of Madison County shall not order or direct the recording of a plat where such recording would be in conflict with the ordinance.

7. Final Plat Requirements - The final plat shall be drawn on linen with India Ink at the same scale and on the same sheet size as the preliminary plat and shall conform substantially to the preliminary plat as approved. The final plat shall be prepared by a Registered Surveyor or Civil Engineer and shall show the following information:

- a) Name of owner of record
- b) Name of subdivision, date, north point, and graphic scale.
- c) Name and seal of registered surveyor or civil engineer.
- d) Name of municipality or county in which subdivision is located.
- c) Exact boundaries of the tract of land being subdivided shown with bearings and distances.
- e) Names of owners of record of all adjoining land and all property boundaries which intersect with the perimeter of the tract being subdivided.
- f) Streets and alleys, rights-of-way, percent of grades, and street names.
- g) Rights-of-way or easement- location, widths, and purposes
- h) Lot lines and lot and block numbers
- i) Minimum building setback lines
- j) Parks, school sites, or other public open spaces, if any.
- k) Sufficient data to determine readily and reproduce on the ground the location, bearing and length of every street line, lot line, boundary line, block line and building line, whether curved or straight and including true north point. This should include the radius, central angle, point of tangent, tangent distance and arcs and chords of all curved streets and curved property lines.
- l) All dimensions should be to the nearest one-tenth (1/10) of a foot and angles to the nearest minute.

m) Accurate description of the location of all monuments and markers.

n) Utility layouts:

1. Water
2. Gas
3. Sanitary sewer
4. Storm drainage

o) Forms for Final Certifications: The following certificates shall be lettered, and rubber stamped on the final plat in such a manner as to insure that said certificates will be legible on any prints made therefrom:

1. Certificate of Approval by the Planning Board

I \_\_\_\_\_ Chairman of the Planning Board, hereby certify that said Board fully approved the final plat of the

Subdivision entitled

\_\_\_\_\_

On \_\_\_\_\_ day \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_

Chairperson

2. Certificate of Ownership and dedication

I (we) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish minimum building lines and dedicate all streets, alleys, walks, parks, and other sites to public or private use as noted. Further, I (we) certify the land as shown hereon is within the platting jurisdiction of the Town of Hot Springs, N.C.

\_\_\_\_\_

date

\_\_\_\_\_

owner

\_\_\_\_\_

owner

Certificate of Accuracy

(As required under General Statutes 47-30 as amended)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Registered Civil Engineer or Registered Surveyor

3. Certificate of Approval of Private Water and Sewer systems

I hereby certify that the water supply and sewage disposal system installed or proposed for installation in the subdivision entitled \_\_\_\_\_ fully meet the requirements of the North Carolina State Health Department and are hereby approved as shown.

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Health Officer or his/her Legal Representative

4. Certification of Approval of the installation and construction of streets, utilities, and other required improvements.

I hereby certify (1) that streets, utilities, and other required improvements have been installed in an acceptable manner and according to town specifications and standards in the subdivision entitled

\_\_\_\_\_ or, (2) that a guarantee of the of the installations of the required improvements in an amount or manner satisfactory to the Town of Hot Springs has been received.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Town Engineer / Designee

6. Certificate of approval for recording Plat and Acceptance of Dedications.

I, \_\_\_\_\_, the Zoning Administrator of the Town of Hot Springs, North Carolina, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the Town Board of the Town of Hot Springs approved this plat for recording and accepted the dedication of the streets, easements; rights-of-way and public parks and other sites for public purposes as shown hereon, but assume no responsibility to open or maintain same until, in the opinion of the governing body of the Town of Hot Springs, it is in the public interest to do so.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Zoning Administrator

(Seal)

**SECTION 2007: INSTALLATION OF PERMANENT REFERENCE POINTS AND IMPROVEMENTS**

1. Permanent Reference Points - Prior to approval of the final plat permanent reference points shall have been placed in accordance with the following requirements:
  - a) Subdivision Corner Tie: At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker. If a corner is within two thousand (2,000) feet of a U.S. Coast and Geodetic Station of N.C. Grid System coordinated monument, or City of Hendersonville coordinated system, then this corner shall be marked with a monument so designated by computed X & Y coordinates which shall appear on the map with a statement identifying this station or monument to an accuracy of 1:10000. When such a monument or station is not available, the tie shall be made to some pertinent and readily recognizable landmark or identifiable point, physical object, or structure.
  - b) Monuments: Within each block of a subdivision at least two (2) monuments designed and designated as Control Corners shall be installed. The surveyor shall employ additional monuments if and when required. All monuments shall be constructed of concrete and shall be at least four (4) inches in diameter or square and not less than three (3) feet in length. Each monument shall have imbedded in its top or attached by a suitable means a metal plate of noncorrosive materials and marked plainly with the point, the surveyor's registration number, the month and year it was installed and the word "monument" or "control center." A monument shall be set at least thirty (30)

inches exposed above the ground unless this requirement is impractical.

c) Property Markers: A steel or wrought iron pipe or the equivalent not less than 3-fourths (3/4) inches in diameter and at least thirty (30) inches in length shall be set at all corners, except those located by monuments. A marker shall also be set at a point of curve, point of intersection, property corner, point of tangency and reference point unless a monument has already been placed at said points. Additional markers shall be placed at other points as required.

d) Accuracy: Land surveys within the Town limits shall be at an accuracy of at least 1: 7500

2. Improvements Within the Town Limits - Approval of the final plat shall be subject to the sub-divider having installed the improvements hereinafter designated or having guaranteed, to the satisfaction of the Town, the installation of said improvements.

3. Street Improvements – The following requirements shall apply to all streets within the corporate limits of the Town of Hot Springs.

a) Grading: All major and collector streets shall be graded to their full right-of-way width. The sub-divider shall be reimbursed by the town for street improvements in excess of those required for minor streets on a fifty (50) foot right-of-way when the subdivision is forty percent (40%) developed. All other streets shall be graded to their full pavement width back-to-back of curb, and for an additional three feet on each side of the pavement width. Finished grade, cross-section and profile shall be approved by the Town Engineer, Designee.

b) Surface Treatment: Road base and surface treatment shall be installed in accordance with the provisions of Section 81 of this Ordinance and Town specifications and standards.

c) Curb and Gutter: Combination curb and gutter shall be installed in accordance with the provisions of section 81 of this Ordinance and town specifications and standards.

4. Sidewalks – Sidewalks, if constructed will be constructed within the street right-of-way and installed in accordance with town specifications and standards.

5. Utilities – Storm sewers shall be designed by a registered engineer and shall be approved by the Town Engineer Designee. Sanitary sewers and water mains shall be installed in accordance with town specifications and standards. Should private water and sewerage systems be provided, such shall meet the requirements of the North Carolina State Health Department. It is recommended that a percolation test be made prior to the

installation of private waste disposal facilities.

6. Guarantee of Improvements – Where the required improvements have not been completed prior to the submission of the plat for final approval, the approval of said plat shall be subject to the sub-divider guaranteeing the installation of the improvements within a period of time specified by the Town Board and in one of the following methods:

- a) Filing a performance or surety bond in an amount to be determined by the Town Board.
- b) Depositing or placing in escrow a certified check or cash in an amount to be determined by the Town Board. Portions of the security deposit may be released as work progresses.
- c) Entering into an agreement with the Town Board guaranteeing the completion of the required work, said agreement to be binding on subsequent purchasers of the property and to be recorded at the option of the Town. The agreement shall provide that satisfactory security be furnished guaranteeing the completion of the necessary improvements before each section is developed.

#### SECTION 2008: GENERAL REQUIREMENTS AND MINIMUM STANDARD OF DESIGN

1. General requirements:

- a) Conformity to Existing Maps or Plans – The location and width of all proposed streets shall be in conformity with official plans and maps of the Town of Hot Springs and with existing or amended plans of the Planning Board.
- b) Continuation of Adjoining Street System – The proposed street layout shall be coordinated with the street system of the surrounding area. Where possible, existing principal streets shall be extended.
- c) Access to Adjacent Properties – Where it is desirable to provide for street access to an adjoining property, proposed streets shall be extended by dedication to the boundary of such property and a temporary turn-around shall be provided.
- d) Private Streets and Alleys – There shall be no private streets or alleys platted in any subdivision.
- e) Large Tracts or Parcels – Where land is subdivided into larger parcels than ordinary building lots such parcels shall be arranged so as to allow for the opening of future streets and logical further re-subdivision.

- f) Lots – All lots shall front upon a public street. Double frontage lots shall be avoided unless no other design is practical.
- g) Alleys – Alleys shall be provided to the rear of all lots used for other than residential purposes. Alleys are prohibited in residential blocks unless such are approved by the Planning Board. All dead-end alleys shall be provided with a turn-around.
- h) Contour Map – A contour map shall be provided if requested by the Planning Board. The contour interval required shall depend upon topographic and drainage characteristics and shall be specified by the Planning Board.
- i) Street Names – Proposed streets, which are obviously in alignment with others existing and named, shall bear the assigned name of the existing streets. In no case shall the name of proposed streets duplicate or be phonetically similar to existing street names, irrespective of the use of the suffix, street, avenue, boulevard, drive, place, court, etc.

2. Design Standards -The following design standards shall be considered minimum requirements:

- a) Streets – The design standards which shall apply to streets are as follows:
  - 1. Right-of-way Widths: Minimum street right-of-way widths shall be in accordance with the Major Street Plan and shall be not less than the following:
    - Highways 80-100 feet
    - Major Streets 80 feet
    - Collector Streets 45 feet up to 12% grade over 12% 60 feet of right-of-way
    - Minor Streets “
    - Marginal Access Streets “
    - Cul-de-Sacs “
    - Must be certified by a registered engineer that roads are built to said standards.
    - Maximum grade of road 18%
  - 2. Width of Surface Treatment: 18 feet paving width to consist of 6” of compacted stone base, 2 (two) inches of 1-2 bituminous plant mix.

Shoulders of road shall be seeded to prevent erosion and ditching to meet Town approval, 3' wide ditch 18" below road grade.

All work must be certified by a registered engineer that said standards have been met.

3. Street grades: Street grades shall not be more than twelve percent (12%) nor less than one-half of one percent.

Grades approaching intersections shall not exceed five percent (5%) for a distance of not less than one hundred (100) feet from the centerline of said intersection.

4. Horizontal Curves: Where a centerline deflection angle of more than ten (10) degrees occurs, a circular curve shall be introduced, having a centerline radius of not less than the following:

- Major streets                300 feet
- Collector streets            200 feet
- Minor streets                100 feet

5. Vertical Curves: All changes in street grades shall be connected by vertical curves of a minimum length equivalent in feet to fifteen times the algebraic difference in the rates of grade for major and collector streets and one-half this minimum for all other streets.

6. Tangents: A tangent of at least one hundred (100) feet shall be provided between curves on all streets.

7. Intersections: Street intersections shall be laid out as follows:

- a) Streets shall intersect as nearly as possible at right angles and no street shall intersect at less than sixty (60) degrees.
- b) Intersections with a major street or highway shall be at least eight hundred (800) feet apart measured from centerline to centerline.
- c) Property lines at street intersections shall be rounded with a minimum radius of twenty (20) feet. At an angle of intersection of less than seventy-five (75) degrees a greater radius may be required. Where a street intersects a highway the design standards of the State Highway Commission shall apply.

d) Centerline off-sets of at least one hundred and twenty-five (125) feet shall be provided at street jogs.

8. Cul-de-Sacs: A dead-end street shall not be more than 2,500 feet in total length with the turn-around or cul-de-sac on this length being at least 70 feet and a right-of-way diameter of at least 80 feet. Temporary dead-end streets should be provided with a turn-around having a 70-foot diameter. The width of surface treatment should be at least 70 feet diameter.

- b) Alleys: All alleys shall be constructed in accordance with town specifications and standards and shall meet the following requirements:
- Right-of-way width- 20 feet
  - Minimum centerline radius when a deflection angle of more than ten (10) degrees occurs- 35 feet
  - Property line radius at alley intersections- 15 feet
- c) Blocks: The maximum and minimum length and width of blocks shall be as follows:
- Length: Block lengths shall not exceed fifteen hundred (1500) feet nor be less than four hundred (400) feet. Where deemed necessary by the Planning Board a pedestrian crosswalk of at least ten (10) feet in width may be required.
  - Width: Blocks shall have sufficient width to allow two tiers of lots of minimum depth. Blocks may be one lot in depth where single-tier lots are required to separate residential development from through vehicular traffic or non-residential uses.
- d) Lots: Residential lots shall comply with the following requirements:
- Area: All lots shall have an area of at least fifteen thousand (15,000) square feet. Additional lot area is required when:
    - A lot is served by public water but not public sewer. In such case said lot shall be not less than fifteen thousand (15, 000) square feet in area.
    - Public water or sewer is not provided. In such case said lot shall be not less than twenty thousand (20,000) square feet in area.
  - Width and Depth: All lots shall have a minimum width at the building line feet. All other lots shall be width at the building line of seventy (70) feet and a minimum width at the street line of thirty-five (35) feet. Corner lots shall have an extra width of ten (10) feet to permit adequate setback from side streets. The minimum lot depth of single-tier lots shall be one hundred and twenty-five (125) feet. All other lots shall be one hundred

(100) feet in depth. Greater lot width and depth is required when:

- A lot is served by public water but not public sewer. In such case said lot shall not be less than seventy-five (75) feet. In width at the building line and not less than one hundred and ten (110) feet in depth.
- Public water or sewer is not provided. In such case said lot shall be not less than one hundred (100) feet in width at the building line and not less than one hundred and twenty (120) feet in depth.
- Orientation of lot Lines: Side lot lines shall be substantially at right angles or radial to street lines.

e) Building Setback Lines: The minimum setback from property lines shall be as follows:

- From the front property line                      30 feet
- From the side property line                      15 feet
- From the rear property line                      25 feet
- From the side property line  
    which abuts a street                              20 feet

f) Easements: Utility and other easements shall be provided as follows:

- Utility easements centered on rear or side lot lines shall be provided where deemed necessary by the Town Engineer, Designee, and shall be at least ten (10) feet in width.
- Where a subdivision is traversed by a water course, drainage way/channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such or both, as may be adequate for the purpose. Parallel streets or parkways may be required in connection therewith.
- Lakes, ponds, creeks, and similar areas within the Town will be accepted for maintenance only if such approved by the Town Board.

## SECTION 2009: EXCEPTIONS AND VARIANCES

1. Exceptions - The standards and requirements of this Ordinance may be modified by the Planning Board in the case of a plan or program for a complete group development, which in the judgement of the Board provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated, and which also provides such covenants or other legal provisions as may assure conformity to and achievement of the plan.

2. Variances - Where strict adherence to any of the provisions of this Ordinance would cause unnecessary hardship, due to topographical or other conditions peculiar to the site, the Planning Board may recommend and the Town Board may approve a variance. The reasons for the granting of any such variance shall be clearly specified and entered into the minutes of the Town Board.

#### SECTION 2010: PENALTIES

1. Violation a Misdemeanor - The following penalties as proposed in the General Statutes of North Carolina (160-226.5) shall prevail. Any person who, being the owner or agent of the owner of any land located within the platting jurisdiction granted to the municipality (General Statutes 160-226) thereafter transfers or sells such land by reference to a plat showing a subdivision of such land before such plat has been approved by said legislative body and recorded in the office of the appropriate Register of Deeds shall be guilty of a misdemeanor, and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. Said municipality, through its Town Attorney or other official designated by its local legislative body, may enjoin such transfer or sale by action for injunction.

#### SECTION 2011: AMENDMENTS

1. Amendment Procedure- This ordinance may be amended from time to time by the Town Board as herein specified, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have thirty (30) days within which to submit its report. If the Planning Board fails to submit a report within the specified time, it shall be deemed to have approved the amendment.

#### SECTION 2012: LEGAL STATUS PROVISIONS

1. Validity - Should any section or provision of this Ordinance be declared by the Courts to be unconstitutional or invalid such a declaration shall not affect the Ordinance as a whole, or any other part thereof other than the part so declared to be unconstitutional or invalid.

2. Effective Date- This Ordinance shall take effect and be in force from and after its adoption, the public health and welfare demanding it.

3. Repeal of Conflicting Ordinances - All Ordinances or parts of Ordinances other than the Zoning Ordinance of the Town of Hot Springs which are in conflict herewith are hereby repealed. Should the requirements of this Ordinance conflict with those of the Zoning Ordinance the more stringent requirement shall prevail.