

THE ZONING ORDINANCE OF THE  
CITY OF SALUDA, NORTH CAROLINA

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THE ZONING ORDINANCE OF THE  
CITY OF SALUDA, NORTH CAROLINA

AN ORDINANCE REGULATING THE FOLLOWING: THE HEIGHT AND SIZE OF BUILDINGS AND OTHER STRUCTURES; MINIMUM LOT SIZES; THE SIZE OF YARDS AND OTHER OPEN SPACES; SIGNS; THE MINIMUM NUMBER OF PARKING AND LOADING SPACES PER BUILDING UNIT; THE DENSITY OF POPULATION; THE LOCATION AND USE OF BUILDINGS, STRUCTURES AND LAND FOR TRADE, INDUSTRY, RESIDENCE OR OTHER PURPOSES, AND THE ESTABLISHING OF ZONING DISTRICTS FOR SUCH USES; PROCEDURES FOR CHANGES IN THE REGULATIONS, RESTRICTIONS AND BOUNDARIES OF SUCH DISTRICTS; AND PROVIDING THE METHOD OF ADMINISTRATION, ENFORCEMENT AND AMENDMENT; PROVIDING FOR A ZONING BOARD OF ADJUSTMENT AND DEFINING THE DUTIES AND POWERS OF SUCH BOARD; REPEALING CONFLICTING ORDINANCES; PROVIDING FINES AND PENALTIES FOR VIOLATION; AND OTHER PURPOSES.

ARTICLE I  
PURPOSE AND AUTHORITY

Section 1.1 Purpose

The zoning regulations and districts as herein set forth have been made to promote the general welfare; to prevent the overcrowding of land; and to avoid undue concentration of population.

They have been made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and other improvements and encouraging the most appropriate use of land throughout the community.

The three primary objectives of this ordinance are: regulating the density of population in Saluda, segregating residential from other, public uses of land, and reasonable preservation of the historic character of the Main Street business district.

Section 1.2 Authority

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

ARTICLE II  
SHORT TITLE

Section 2.1 Short Title

This ordinance shall be known and may be cited as The Zoning Ordinance of the City of Saluda, North Carolina.

ARTICLE III  
GENERAL PROVISIONS

Section 3.1 Application of Regulations

- (1) Use. No building or land shall hereafter be used or occupied, and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this ordinance, or amendments thereto, for the district in which it is located.
- (2) Density. No building shall hereafter be erected or altered so as to exceed the density regulations of this ordinance for the district in which it is located.
- (3) Lot Size. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in size so that the lot width or depth, front, side or rear yards, lot area per family, or other requirements of this ordinance are not maintained. This prohibition shall not be construed to prevent the condemnation of narrow strips of land for public utilities or street right-of-way purposes.
- (4) Yard Use Limitations. No part of a yard or other open space required about any building for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other space similarly required for another building.

Section 3.2 Jurisdiction

The provisions of this ordinance shall apply within the corporate limits of the City of Saluda and within such additional extraterritorial area as may be permitted by law and over which the City of Saluda has duly elected to exercise its zoning authority.

Section 3.3 Nonconforming Uses

- (1) Intent.

Within the districts established by this ordinance or amendment thereto, there exist lots, structures, or uses of land and structures which were lawful before

this ordinance was adopted or amended, but which are not in conformity with the terms of this ordinance, as amended.

It is the intent of this section to permit the continuance of certain of these nonconforming uses and to require discontinuance within a reasonable time of certain other nonconforming uses, as they are removed by economic forces or otherwise.

(2) Exceptions in the case of single family residences on lots of record in the R-1 district.

In the event that a single family residence and/or its accessory building or buildings has existed continuously since on or before December 31, 1973; and in the further event that, as of January 14, 2008, the lot of record on which the single family residence and/or its accessory building or buildings has been continuously situated since on or before December 31, 1973 had an area of ten thousand square feet or less and is entirely within the R-1 district, or the single family residence is considered to be with the R-1 district by operation of subsection 4.3 (4) of this ordinance; then, if such single family residence and/or its accessory building or buildings is damaged or destroyed by fire, wind, water, or other involuntary agency of destruction exceeding sixty percent (60%) of its replacement cost immediately prior to the damage, the said single family residence and/or its accessory building or buildings may be repaired or rebuilt on or within its or their footprint as of the date of such damage. A single family residence and/or its accessory building or buildings shall be considered to have been in existence since December 31, 1973, notwithstanding that the residence and/or its accessory building or buildings existing on that date was subsequently repaired, enlarged, expanded, extended or otherwise modified. Proof that real estate taxes were paid on a residence and/or its accessory building or buildings located on the subject property for the year 1974 shall create a rebuttable presumption that a single family residence and/or its accessory building or buildings has existed continuously on the subject property since on or before December 31, 1973.

The right herein granted to rebuild a residence on a non-conforming lot and/or its accessory building or buildings within its or their footprint shall be held by the owner or owners of the said property as of the date the property is damaged or destroyed and by his, her, its or their successors in title. Said right shall terminate three years after the date the property is damaged or destroyed unless, within that three year period, a building permit has been issued for the rebuilt structure and the said permit remains valid under the terms of section 9.7 of this ordinance.

(3) Continuance.

It is the intent of this section to discourage the survival of nonconforming uses, and to prohibit their enlargement, expansion, or extension, except as provided in subsection (2) herein.

All nonconforming uses existing at the time of the enactment of this ordinance or any amendment thereto may be continued on the same land area on

the condition that the land area occupied by a nonconforming use may not be increased. Nonconforming uses shall not be:

- (a) Changed to another nonconforming use.
- (b) Enlarged or extended except in conformity with this ordinance.
- (c) Reestablished after discontinuance and/or demolition for one hundred twenty (120) days, except as permitted in subsection (2) herein.
- (d) Rebuilt, altered or repaired after damage by fire, wind, water, or other involuntary agency of destruction exceeding sixty percent (60%) of its replacement cost immediately prior to the damage, except as permitted in subsection (2) herein.

#### Section 3.4 Only One Principal Building On One Lot in R-1 District

Only one (1) principal building and its customary accessory buildings may be erected on one lot in the R-1 district, except as provided in Section 8.4 of this ordinance.

#### Section 3.5 Sign and Outdoor Advertising

##### (1) Measurement of Sign Area.

- (a) The area of a sign shall be considered to be that of the smallest rectangle or triangle which encompasses all lettering, wording, design, or symbols together with any background difference in the balance of the wall on which it is located, if such background is designed as an integral part of and obviously related to the sign.
- (b) The supports which affix a sign to the ground or to a building shall not be considered in the area of the sign unless the supports are greater in size than reasonably necessary to physically support the sign, in which case the area of the supports in excess of the necessary support structure shall be included in the area of the sign.
- (c) Where a sign has two or more faces, the maximum sign area limits set out in this section shall apply to the largest face, or, where a sign has equal sized faces oriented in different directions, to the area of one such face.

##### (2) Sign Location.

- (a) No sign shall project more than 48 inches from the face of the structure, or beyond any street line, and a sign shall be at least ten (10) feet above the level of any walkway it may overhang.

- (b) A sign permitted in any business district which is prohibited in any residential district shall be displayed only on that side of a structure or property facing upon a street which legally provides access to the property or upon the property line of an abutting lot which is zoned for business purposes, unless such a sign is located at least two hundred (200) feet from any residential district, and unless such a sign has an area of less than forty (40) square feet.

(3) Height of Signs.

- (a) Ground pole signs, including supports, shall not exceed a height of five (5) feet in a residential district, or twenty-five (25) feet in a business district, above the surface of the ground where the sign is located.
- (b) No sign attached to a structure shall project more than two (2) feet over the top of the exterior wall of such structure at the location of the sign.

(4) Illuminated and Moving Signs.

- (a) A sign may be illuminated externally if illumination is confined to or directed to the surface of the sign. Blinking, flashing, and/or internally lit signs are prohibited.
- (b) The light sources of signs shall be so designed and shielded that they cannot be seen from beyond the property line on which said sign is located. Externally illuminated signs shall be illuminated only by full cutoff fixtures. Full cutoff fixtures can put no light above the horizontal plane of the top of the sign so illuminated and no more than ten percent of its light above an angle of ten degrees below the horizontal plane of the top of the sign.

(5) Sign Repair.

All signs, conforming and nonconforming, shall be maintained in a good state of repair. Deteriorating or dilapidated signs shall be removed by the Zoning Administrator at the cost of the sign owner if the same has not been otherwise removed within 30 days after delivery of written notice to the property owner indicating the nature of the violation and ordering the action necessary to correct it.

(6) Signs Permitted in R-1, R-2 and R-3 Residential Districts.

The following signs shall be permitted in all residential districts, and all other signs are expressly prohibited:

- (a) Signs giving name and address of the property and/or occupant, and the name of and information about the property itself.
- (b) Signs pertaining to a lawful home business or occupation conducted on the property.

- (c) Signs pertaining to sale, lease or rental of property on which they are located, including signs identifying the rental agent of the property on which they are located.
- (d) Signs pertaining to and during the construction or repair of property on which they are located.
- (e) Signs on the premises offering lots and/or homes for sale within approved subdivisions.
- (f) The signs of civic or nonprofit organizations.
- (g) Holiday decorations without commercial advertising.
- (h) City or state directional sign or traffic signs.
- (i) Directional temporary signs.
- (j) Signs pertaining to political campaigns
- (k) Signs expressing opinions or beliefs, or making factual statements on any subject, provided the same do not incite physical violence or advocate or promote illegal activity.

(7) Size of Signs Permitted in R-1, R-2 and R-3 Residential Districts

TYPE OF SIGN	MAXIMUM SIZE OF SIGN	MAXIMUM NO. OF SIGN	MAXIMUM HEIGHT	LOCATION OF SIGNS
<b>Freestanding / Ground Signs</b>				
<ul style="list-style-type: none"> <li>• Churches, schools, public buildings</li> </ul>	32 sq. ft.	1 per frontage	5 ft.	Outside of street right-of-way and site triangle
<ul style="list-style-type: none"> <li>• Parks, community centers</li> </ul>	16 sq. ft.			
<ul style="list-style-type: none"> <li>• Nursing homes, hospitals, residences</li> </ul>	32 sq. ft.			
<b>Wall Signs</b>				
<ul style="list-style-type: none"> <li>• Churches, schools, public buildings, nursing homes, hospitals</li> </ul>	1 sq. ft. per linear foot of building wall the sign is attached to and not to exceed 32 sq. ft.	1 per building wall with frontage	Not to extend above vertical wall	
<ul style="list-style-type: none"> <li>• Home occupations, residences</li> </ul>	5 sq. ft.	1		

(8) Signs in C Business Districts.

The following signs are permitted in any business district, and all other signs are expressly prohibited:

- (a) Signs permitted in residential districts.
- (b) Signs advertising the use of land and buildings upon which they are displayed, and the sale of goods or services on the premises, and the name and location of the proprietor.
- (c) Off-Premise Directional Signs provided that their area is no greater than 20 square feet, and provided that the premises being directed to is located within the corporate limits of the City of Saluda.
- (d) Temporary portable signs advertising special events, which are not displayed for more than 72 hours during any two week period.

<b>MAXIMUM AREA OF BUSINESS DISTRICT SIGN</b>	<b>LOCATION</b>
The total area of all signs for each unit of occupancy on the first floor of a building shall not exceed two square feet for each lineal foot of exterior building wall abutting or facing a public street (s).	Back of street line
Within 10 feet of each entrance of a building, one common sign may be provided allowing not more than one square foot of sign area for each unit of occupancy which is served by said entrance. The total area of each common sign shall not exceed 24 square feet.	Back of street line
There shall not be more than one ground pole sign for each street frontage of the property, and the total sign area of such ground pole sign shall not exceed 36 square feet for each 100 feet or fraction thereof of street frontage which area shall be counted in the total sign area permitted on the lot. The maximum area of any one ground pole sign shall not exceed 50 square feet.	Back of street line
The sign area of portable signs shall not exceed six square feet aggregate	Back of street line and/or sidewalk
Signs temporarily attached or temporarily painted to a window, door or wall, announcing sale or special features, provided they do not exceed, in the aggregate, 25% of the area of said window, door or wall. Temporary signs shall be removed immediately after the termination of such sale or special feature not to exceed 30 days. Banners hanging outside the store front may be hung only for a 30-day period of time, no more than twice annually, and may not exceed, in the aggregate, 25% of the area of the window, door or wall to which attached.	

(9) Additional restrictions applicable in districts C-1 and C-H:

- (a) Pole signs in District C-1 shall be no higher than twelve feet above the surface of the ground where the sign is located. Pole signs are prohibited in District C-H.
- (b) The maximum size of any sign shall be 32 square feet.
- (c) Individual businesses are limited to one square foot of signage per lineal foot of building frontage upon any public or private road access to such building; provided that no sign shall exceed the maximum sign size permitted in subsection (b) herein.
- (d) In addition to the signage permitted in subsection (c) herein, directory signs setting out information about the name, business, and location of tenants within a building are permitted. Said directory signs shall not exceed in area 32 square feet. The number of directory signs per building shall be limited to one sign per every 125 feet of frontage upon any public or private road access to such building; provided, however, buildings with less than 125 feet of such frontage which are occupied by four or more business entities may have one directory sign, not to exceed 32 square feet in area.
- (e) No off-premises advertising or directional signs, or portable advertising or directional signs, are permitted.

(10) Nonconforming Signs.

Subject to the following schedule, a nonconforming sign may be continued and shall be maintained in good condition, but it shall not be: (a) Changed to another nonconforming sign, (b) structurally altered as to prolong the life of the sign, (c) expanded, (d) reestablished after discontinuance for ninety (90) days, or (e) reestablished after damage or destruction if estimated expense of reconstruction exceeds fifty percent (50%) of the cost of entirely replacing the sign.

Signs made nonconforming by the adoption or amendment of this ordinance may be maintained for the longer of the two following periods: (a) one year from the date this ordinance takes effect or is amended, or (b) a period from one to five years from the installation date or the most recent renovation date which preceded the effective date of this ordinance or any subsequent amendment which renders the sign non-conforming. If the date of the most recent renovation is chosen as a starting date, the period of time shall be calculated according to the cost of renovation. The terms of years to be determined by the cost of the sign or of such renovation, including installation, shall be as follows:

<u>Sign Cost or Renovating Cost</u>	<u>Permitted Years From Installation or Renovation Date</u>
Under \$1000.00	1 year
\$1000.00 - \$4,999.99	3 years
\$5,000.00 or more	5 years

Any sign located in the C-H district which was put in its present location on or prior to December 31, 1973, is declared to be a legacy sign, and such sign shall be permitted under the terms of this ordinance notwithstanding its violation of any size, location or other sign requirement set out in this ordinance. A legacy sign may be repaired or replaced as long as the same or similar materials are used for such repair or replacement and that, after such repair or replacement, the sign retains the dimensions and appearance, excepting wear and damage, which it had on January 14, 2008.

(11) Signs on Public Property:

All signs which are erected upon or over any public street, public right-of-way or other public property shall not exceed two square feet per side and shall be approved by the Board of Commissioners.

(12) Ozone Drive and US Highway 176 Sign Overlay District:

An Ozone Drive and US Highway 176 sign overlay district, as defined on the Official Zoning Map, is hereby established to further restrict signage in those parts of district C-2 that are not immediately adjacent to and visible from the Ozone Drive - Interstate 26 interchange. In the Ozone Drive and US Highway 176 sign overlay district the following additional restrictions apply:

- (a) Pole signs shall be no higher than twelve feet above the surface of the ground where the sign is located.
- (b) The maximum size of any sign shall be 32 square feet.
- (c) Individual businesses are limited to one square foot of signage per lineal foot of building frontage upon either Ozone Drive, US Highway 176 or any public or private road access thereto; provided that no sign shall exceed the maximum sign size permitted in subsection (2) herein.
- (d) In addition to the signage permitted in subsection (3) herein, directory signs setting out information about the name, business, and location of tenants within a building are permitted. Said directory signs shall not exceed in area 32 square feet. The number of directory signs per building shall be limited to one sign per every 125 feet of frontage upon any public or private road access to such building; provided, however, buildings with less than 125 feet of such frontage which are occupied by four or more business entities may have one directory sign, not to exceed 32 square feet in area.

- (e) No off-premises advertising or directional signs, or portable advertising or directional signs, are permitted.

### Section 3.6 Street Access

No building shall hereafter be erected on a lot which does not abut a publicly dedicated, publicly approved, or publicly maintained street. However, buildings may be erected on lots platted prior to the effective date of this ordinance which have access to such a street through a recorded easement.

In the event of the subdivision of a tract or parcel of land which falls within the exception to the Subdivision Regulations of the City of Saluda set out in subsection 600 (d) thereof, then the lots so subdivided do not have to abut on a publicly dedicated, publicly approved, or publicly maintained street if each of the lots resulting from the subdivision is given access to such a street through a recorded easement. In the event that buildings are constructed or set in place on a plot of ground pursuant to section 8.4 of this ordinance, the buildings on such plot do not have to abut on a publicly dedicated, publicly approved, or publicly maintained street if each of the said buildings is given access to such a street through a recorded easement.

### Section 3.7 Exemption

This ordinance shall in no way regulate, restrict, prohibit or otherwise affect bona fide farms within the jurisdiction of this ordinance, now enacted or hereafter amended or revised.

### Section 3.8 Outdoor Lighting

In all districts, the following outdoor lighting restrictions shall apply, except as to streetlights and other outdoor lighting supplied by the City of Saluda.

- (1) All parking lot lighting shall use full cutoff lighting features. Full cutoff features can put no light above the horizontal plane of the top of the light and no more than ten percent of its light above an angle of ten degrees below the horizontal plane of the top of the light.
- (2) All wall-packs and floodlights, with the exception of motion activated floodlights which are programmed to turn off within 15 minutes after their activation, shall be either full cutoff design, as defined in subsection (a) herein, or shall be equipped with shields that prevent light from shining above the horizon, on roadways, or on neighboring properties.
- (3) Pole mounted "dusk-to-dawn" security lights shall use reflecting "sky caps" instead of clear plastic refractors.
- (4) Building façade lighting shall not shine above the horizontal plane of the highest point of the building façade.

- (5) No portion of a pole mounted outdoor lighting fixture shall extend more than 15 feet above the surface of the ground where the fixture is located; and no portion of an outdoor lighting fixture mounted onto a building shall extend above the building façade or roof line at the location of the light.
- (6) Lighting levels for buildings required by the NC Building Code to have plans prepared by a design professional shall be determined as defined by the Recommended Practices of the Illuminating Engineering Society of North Carolina or another publication recognized by the engineering profession as authoritative as to illumination standards. Compliance with such Recommended Practices shall not exempt the subject building from the requirements set out in subsections (a), (b), (c), (d) and (e) of this section.

### Section 3.9 Landscape Requirements in District C-2

In the C-2 District, the following Landscape Requirements shall apply to all new commercial building construction and to all renovation and/or repair of a commercial building the cost of which exceeds 60% of the value of the building prior to such renovation and/or repair, if the off-street parking area required under the terms of section 7.2 herein contains six or more parking spaces.

- (1) Ten percent of the total parking area must be landscaped.
- (2) Such landscaped area must be surfaced with soil, trees, and decorative plants, not pavement and weeds.
- (3) Such landscaped area shall contain at least one tree for every six parking spaces in the off-street parking area, along with shrubs, flowers, or other decorative plants arranged in the form of buffers, borders, area plantings, or islands. The choice of the species of trees or decorative plants and their arrangement in the landscaped area shall be at the sole discretion of the owner of the subject property.

## ARTICLE IV ESTABLISHMENT OF DISTRICTS AND BOUNDARIES

### Section 4.1 Use Districts

For the purpose of this ordinance, the City of Saluda is hereby divided into the following zoning districts:

R-1	Single-Family Residential District
R-2	Multi-Family Residential District
R-3	Multi-Family and Clustered Single-Family Residential District
C-H	Historical Commercial District
C-1	Downtown Restricted Commercial Use District
C-2	Restricted Commercial Use District

## C-3 Multiple Use Commercial District

Section 4.2 District Boundaries

The boundaries of these districts are hereby established as shown on a map entitled "Official Zoning Map, City of Saluda, North Carolina," adopted by the City Commissioners and certified by the City Clerk. Said map and all explanatory matter thereon accompanies and is hereby made part of this ordinance. Said map shall be retained in the office of the City Clerk.

Section 4.3 Rules Governing Boundaries

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

- (1) Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or railroad right-of-way lines or such lines extended, such center lines, street lines, or railroad right-of-way lines shall be construed to be such boundaries.
- (2) Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be said boundaries.
- (3) 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 there from as indicated on the zoning map. If no distance is given, such dimension shall be determined by use of the scale shown on said zoning map.
- (4) Where a district boundary line divides a lot in single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line.

ARTICLE V  
USE REQUIREMENTS BY DISTRICT

Section 5.1 Intent

It is the intent of this article that if any use or class of use is not specifically permitted in a district or sub district as set forth below, it shall be prohibited in that district or sub district. There are two primary districts. One, "R", is intended for residential use, which is private in nature; the other, "C", is intended for uses, such as commercial, governmental, and industrial, which are public in nature, as well as residential uses. This basic distinction between private and public use should be used as a guide in interpreting this Article.

### Section 5.1A Subdivisions of the Basic Districts

The two primary districts, "R" and "C", are herein subdivided for the following purposes:

- (1) The "R" district is subdivided in order to provide for a sub district limited to single family homes subject to the standard residential minimum lot size and setbacks (R-1); a sub district in which multifamily homes are permitted as well, also subject to the standard residential minimum lot size and setbacks (R-2); and a sub district in which all residences, whether single family, multifamily, or clustered single family subject to non standard residential minimum lot size, are permitted (R-3).
- (2) The "C" district is subdivided into a sub district for all lawful uses, including any residential, commercial, governmental, and industrial use, except as limited in section 5.10 herein (C-3); a sub district for all lawful uses, including any residential, commercial, governmental, and industrial use, subject to certain restrictions set out in sections 5.10 and 5.11 herein (C-2); a sub district for all lawful uses, including any residential, commercial, governmental, and industrial use, subject to certain restrictions set out in sections 5.10, 5.11 and 5.12 herein (C-1); and a sub district for all lawful uses, including any residential, commercial, governmental, and industrial use, subject to the same restrictions as apply to C-1, and, in addition, certain design restrictions because of its historic nature (C-H).

### Section 5.2 R-1 Single-Family Residential District

The single family residential district is established as a sub district in which the exclusive use of land is for single family residences and their accessory buildings, subject only to the following exceptions:

- (1) Buildings used for the purpose of public worship, including but not limited to churches;
- (2) Inn/bed and breakfast establishments, as hereinafter defined; and
- (3) Buildings used for single family residential purposes but within which, or within an associated accessory building, there is conducted a home business or occupation, as hereinafter defined, are also permitted in sub district R-1.

### Section 5.3 R-2 Multi-Family Residential District

The multifamily residential district is established as a sub district in which the exclusive use of land is for both single family and multifamily residences and their accessory buildings, subject only to the three exceptions set out in section 5.2 above; provided that the lot upon which any multifamily residence is located must have at least 5,000 square feet of area per residence unit.

#### Section 5.4 R-3 Multifamily and Clustered Single-Family Residential District

The multifamily and clustered single-family residential district is established as a sub district in which the exclusive use of land is for both single family and multifamily residences, and their accessory buildings, subject only to the three exceptions set out in section 5.2 above. If only single family residences are located on a lot in this district, and if the said lot is at least 20,000 square feet in size, then multiple single family residences may be located on said lot, provided that said lot has at least 5,000 square feet of area per single family residence and provided that the minimum distance between each such single family residence and its associated accessory building or buildings and any other single family residence and its associated accessory building or buildings located on said lot is 16 feet. The standard residential set back requirements shall apply to all lots in the R-3 district.

#### Section 5.5 C-H Historical District

This district, though not an official historic district, does contain buildings with historical, cultural and architectural significance to the Saluda community. All lawful land uses are permitted within this sub district, whether residential, commercial, industrial, or governmental, without restriction as to the nature and use of the structures erected thereon, unless such uses are specifically prohibited under the terms of sections 5.10, 5.11 ,and 5.12, of this ordinance; provided, however, that new development in this district shall be sensitive to existing and surrounding development so that the new development will complement and enhance the historical and cultural character of the downtown area, and will preserve the historical character of this district.

#### Section 5.6 C-1 Downtown Restricted Commercial Use District

This district is adjacent to and exists as a buffer to the C-H historical district. It is intended to protect the C-H historical district from uses which are incompatible therewith, particularly those uses which require major highway frontage, large tracts of land, outdoor sales, open storage areas, or buildings that are larger in scale than those presently in the C-H district. Subject to such qualifications, all lawful land uses are permitted within this sub district, whether residential, commercial, industrial, or governmental, without restriction as to the nature and use of the structures erected thereon, except as provided in sections 5.10, 5.11 and 5.12. Commercial, industrial, or governmental buildings in this sub district shall be subject to the setback restrictions set out in section 6.1. Residential buildings in this sub district shall be subject to all lot area, density, lot dimension, building spacing, height, and setback restrictions and limitations applicable to the specific category into which the building falls, single family, multifamily or clustered single family, as set out in sections 5.3, 5.4, and 6.1.

#### Section 5.7 C-2 Restricted Commercial Use District

All lawful land uses are permitted within this sub district, whether residential, commercial, industrial, or governmental, without restriction as to the nature and use of the structures erected thereon, unless such uses are specifically prohibited under the terms of sections 5.10 and 5.11. Commercial, industrial, or governmental buildings in this sub district

shall be subject to the setback restrictions set out in section 6.1. Residential buildings in this sub district shall be subject to all lot area, density, lot dimension, building spacing, height, and setback restrictions and limitations applicable to the specific category into which the building falls, single family, multifamily or clustered single family, as set out in sections 5.3, 5.4, and 6.1.

#### Section 5.8 C-3 Multiple Use Commercial District

All lawful land uses are permitted within this sub district, whether residential, commercial, industrial, or governmental, without restriction as to the nature and use of the structures erected thereon, except as provided in section 5.10. Commercial, industrial, or governmental buildings in this sub district shall be subject to the setback restrictions set out in section 6.1. Residential buildings in this sub district shall be subject to all lot area, density, lot dimension, building spacing, height, and setback restrictions and limitations applicable to the specific category into which the building falls, single family, multifamily or clustered single family, as set out in sections 5.3, 5.4, and 6.1.

#### Section 5.9 Accessory Buildings in R-1, R-2, R-3 and C-H

Accessory buildings or structures in districts R-1, R-2, R-3, and C-H shall be permitted only in the rear yard and side yard, and shall not be less than ten (10) feet from any property line; and further provided that in the case of corner lots such buildings or structures shall be setback at least twenty (20) feet from the center line of any street right-of-way. The area covered under the roof of any accessory building in districts R-1, R-2, R-3, and C-H shall not exceed the area within the footprint of its principal building.

#### Section 5.10 Manufactured Homes

Manufactured homes are not permitted in districts R-1, R-2, C-1, C-2, C-3, and C-H.

#### Section 5.11 Uses Prohibited in Districts C-H, C-1, and C-2

The following commercial uses shall be prohibited in Districts C-H, C-1, and C-2:

- (1) High Impact Land Uses
- (2) Sexually oriented businesses
- (3) Tattoo parlors and body piercing establishments
- (4) Junk Yards
- (5) Storage trailers and storage containers not subject to being registered with and licensed by the North Carolina Department of Motor Vehicles

Section 5.12 Uses Prohibited in Districts C-H, and C-1

The following commercial uses shall be prohibited in Districts C-H, and C-1:

- (1) Animal hospitals, veterinarians or open kennels
- (2) Appliance sales or service with outside storage
- (3) Assisted living facilities or nursing homes
- (4) Auto repair or paint shops
- (5) Auto sales
- (6) Bowling alleys
- (7) Bus terminals
- (8) Car washes
- (9) Sale of motor fuels for highway use
- (10) Drive-in theaters
- (11) Restaurants with physical facilities specifically designed for delivery of food or drink to motorists while they are inside their vehicle at the time of delivery
- (12) Dry cleaning or laundry service
- (13) Funeral homes, crematoriums, or mortuaries
- (14) General retail merchandise stores with over 7,200 square feet of interior floor space
- (15) Golf ranges, driving ranges, or batting cages
- (16) Hospitals
- (17) Facilities for the manufacture of any non-food products, except craft or art objects, or facilities for growing plants on a wholesale basis
- (18) Hotels or motels which are not an Inn/Bed and Breakfast establishment
- (19) Livestock sales
- (20) Telecommunication towers

**ARTICLE VI  
MINIMUM AREA, DIMENSIONAL AND YARD REQUIREMENTS**

Section 6.1 Minimum Lot Area, Dimensional and Yard Requirements

DISTRICT	*MINIMUM LOT AREA (SQ. FT.)	MINIMUM LAND AREA PER RESIDENCE UNIT (SQ. FT.)	MINIMUM *****		MINIMUM YARD REQUIREMENTS ** & ***			MAXIMUM BUILDING HEIGHT (FEET) ****
			LOT WIDTH (IN FEET)	LOT DEPTH (IN FEET)	FRONT (FEET)	SIDE (FEET)	REAR (FEET)	
R-1	20,000	20,000	100	120	35	16	30	35
R-2 and R-3	10,000	5,000	85	100	25	8	30	35
C-1, C-2, C-3, and C-H	--	--	--	--	60 ft from center line of Ozone Dr. if abutting same	10 foot side and rear yard where adjacent to any residential zone, not required elsewhere		35

\*The minimum lot area for lots not served by public water and/or sewer shall be subject to approval by the Polk County or Henderson County Health Department to ensure adequate land area and soil conditions for septic tanks and wells. In no case, however, shall minimum lot areas be less than those specified in this table.

\*\*All buildings or structures in any residential district (R-1, R-2, R-3) shall be set back a minimum of 25 feet from any street line, or 35 feet in the case of those lots in R-1 which are required to have at least 20,000 square feet of lot area.

\*\*\* Measured from the property line or the center line of the street, whichever is greater.

\*\*\*\* Measured from the ground vertically to the end of the ridgeline which is closest to the ground; from the highest point of the coping of a flat roof to the average elevation of the ground on all sides of the building; or from the highest point of the roof framework of any other type roof to the average elevation of the ground on all sides of the building.

\*\*\*\*\* See definitions of lot depth and width in section 12.3.

Section 6.2 Exception Regarding Existing Lots of Record in the R-1 District

Lots of record in the R-1 district on the effective date of September 10, 2001, shall be issued a Certificate of Zoning Compliance for a single family residence, provided the area of the

lot is at least 10,000 square feet, but less than 20,000 square feet and meets the minimum dimensional requirements and the minimum yard requirements as follows:

Minimum lot width	85 feet
Minimum lot depth	100 feet

The minimum yard requirements for said lots shall comply with the following:

Front yard	25 feet as measured from the front property line or the street line, whichever is greater, except as otherwise provided in Section 8.2
Side yard	8 feet as measured from the side yard property line
Rear yard	30 feet as measured from the rear yard property line

Note: All buildings or structures shall be set back a minimum of 25 feet from any street line.

Any lot of record that does not meet the minimum lot area requirement of 10,000 square feet, any minimum dimensional requirements or any front, side or rear yard requirement, and requires a variance to any of the above minimum requirements shall be required to apply to the Board of Adjustment for a variance in accordance with the provisions in Section 10.4; provided, however, if one, and only one, of the lot area, width, or depth dimensions is within 20% of the minimums set out above, then no variance shall be required and that lot may be used as a building site.

### Section 6.3 Sub-minimum Size Lots Predating the Saluda Zoning Ordinance

Lots of record in the R-1 district on the effective date of December 31, 1973, shall be issued a Certificate of Zoning Compliance for a single family residence, without regard to the size or the dimensions of such lot, provided they comply with the following minimum yard requirements:

Front Yard	25 feet as measured from the front property line or the street line, whichever is greater, except as otherwise provided in Section 8.2
Side Yard	8 feet as measured from the side property line
Rear Yard	30 feet as measured from the rear yard property line

Note: All buildings or structures shall be set back a minimum of 25 feet from any street line.

## ARTICLE VII OFF-STREET PARKING AND LOADING REQUIREMENTS

### Section 7.1 Intent

It is the intent of these regulations that adequate parking and loading facilities shall be provided on private property in order to promote the public safety, to lessen congestion in the

public streets, and to help make possible the full use of existing streets for traffic movement. To achieve these purposes, it is further intended that upon the erection of any building or the use of any lot, there shall be provided on the lot not less than the minimum space for parking and loading required herein. Compliance with these requirements shall be a continuing responsibility.

#### Section 7.2 Off-Street Parking

On every lot in all districts one off-street parking space shall be provided for each 200 square feet of floor area that is enclosed by walls and a roof and is used for non-residential purposes, and two off-street parking spaces shall be provided for each residence unit in a building; provided, however, if no parking space can be reasonably provided on the same lot, such space shall be provided on any lot a substantial portion of which is within five hundred (500) feet of such uses. The required parking space for any number of separate uses may be combined in one lot, but the required parking space for any one use may not be assigned to another use at the same time, except that one-half (1/2) of the parking space required for churches, theaters or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at nights or on Sundays. Each off street motor vehicle parking space shall be not less than two hundred (200) square feet in area exclusive of adequate access drives and maneuvering space. Such space shall be provided with vehicular access to a street or alley; and such access shall not thereafter be encroached upon or altered.

#### Section 7.3 Off-Street Loading and Unloading Space

Every building or structure used for business, trade or industry hereafter erected shall provide space as indicated herein for the loading and unloading of vehicles off the street or a public alley. Such space shall have access to an alley, or if there is no alley, to a street. For the purposes of this section, an off-street loading space shall have minimum dimensions of twelve (12) feet by forty (40) feet, and an overhead clearance of fourteen (14) feet in height above the alley or street grade.

- (1) Retail business: One (1) space for each 5,000 square feet of floor area.
- (2) Wholesale and industry: One (1) space for each 10,000 square feet of floor space.

#### Section 7.4 Historical Commercial District Parking Exception Overlay District

A Historical Commercial District Parking Exception Overlay District, as defined on the Official Zoning Map in zoning district C-H, is hereby established in which the off-street parking requirements set out in Section 7.2 herein do not apply.

ARTICLE VIII  
EXCEPTIONS AND MODIFICATIONS

Section 8.1 Lot of Record

Where the owner of a lot of record in any district at the time of the adoption of this ordinance or any amendment thereto or his successor in title thereto does not own sufficient contiguous land to enable him to conform to the minimum lot area or minimum dimensional requirement of the district in which the lot is located, such lot may be used as a building site provided that no more than one of said minimum area or dimensional lot requirements are reduced below the minimums specified in this ordinance by no more than 20 percent of the applicable minimum requirement. If, however, the owner of two or more adjoining lots that do not conform to the minimum lot area requirements of the district in which they are located decides to build on or sell off these lots, he must first combine said lots to comply with the minimum lot area and minimum dimensional requirements of the ordinance; provided, however, that the 20% exception referred to in the first sentence of this section shall be applicable to any single lot resulting from such combination. Any lot that has area or dimensional lot measurements that are below the minimums set forth in Article VI and to which the 20% exception referred to in the first sentence of this section or in the last paragraph of section 6.2 is not applicable, cannot be used as a building site unless the Zoning Board of Adjustment has granted an appropriate variance. In granting a variance, the Board of Adjustment shall provide that any variance in the minimum lot area, dimensional and yard requirements shall conform as closely as possible to the minimum lot area, dimensional and yard requirements of the district in which the lot is located.

Section 8.2 Front Yard Setbacks for Residences

The front yard setback requirements of this ordinance for residences shall not apply to any lot where the average setback of existing buildings located wholly or partially within one hundred (100) feet on either side of the proposed residence 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 case, 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 a distance of ten (10) feet from the street right-of-way line, whichever is greater. Special exceptions to the front yard setback requirements of this ordinance for residences may be granted by the Zoning Board of Adjustment where the terrain of the lot presents difficulties in compliance with such setback requirements that do not meet the extraordinary and exceptional standard set out in section 10.4(4)(a).

Section 8.3 Projections Into Required Open Space

Every part of a required yard shall be open from its lowest point to the sky unobstructed, except for:

- (1) The ordinary projection of sills, belt course, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above mentioned

projections shall project into a minimum side yard more than twenty-four (24) inches.

- (2) Open or enclosed fire escapes, fireproofed outside stairways and balconies projecting into a minimum yard not more than three and one-half feet (3 ½) feet, and the ordinary projections of chimneys and flues may be permitted by Zoning Administrator where same are so placed as not to obstruct the light and ventilation available to other property owners.

#### Section 8.4 Group Projects

In the case of two (2) or more buildings to be constructed or set in place on a plot of ground of at least two (2) acres not subdivided into the customary streets and lots and which will not be so subdivided, a group project may be authorized as a special exception (special use permit) by the Zoning Board of Adjustment in a manner that will be in harmony with the character of the neighborhood, provided;

- (1) Such uses are limited to those permitted within the zoning district in which the project is located.
- (2) The overall intensity of land use is no higher, and the standard of open space is no lower, than that permitted in the district in which the project is located.
- (3) The distance of every building from the nearest property line shall meet the front, side and rear yard requirements of the district in which the project is located.
- (4) If the property lies within or abuts upon a residential district and is to be used for a nonresidential purpose, there shall be a densely planted buffer strip at least ten (10) feet in height along the rear and/or side lot lines abutting the residential properties. No such buffer shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining residential lot.

#### Section 8.5 Tents and Temporary Uses

Tents and temporary uses such as real estate sales field offices, manufactured homes, skid type buildings, or shelter for materials and equipment being used in the construction of a permanent structure may be permitted by the Zoning Administrator in any district provided they do not create health, safety or nuisance hazards. Such temporary uses shall not be located on a lot for more than one hundred twenty (120) days during any calendar year. Tents shall not be located on a lot for more than 14 days during any 60 day period.

ARTICLE IX  
ADMINISTRATION AND ENFORCEMENT

Section 9.1 The General Process and the Duties of the Zoning Administrator, Zoning Board of Adjustment, Planning Board, City Commissioners, and Courts on Matters of Administration

All questions arising in connection with the enforcement of this ordinance shall be presented first to the Zoning Administrator who shall be responsible for the day to day administration of this ordinance. The Zoning 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 exceptions, and grant variances. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law.

Section 9.2 Zoning Administrator

The Saluda City Commissioners shall appoint a Zoning Administrator. It shall be the duty of the duly appointed Zoning Administrator to administer and enforce the provisions of this ordinance.

(1) Duties.

The Zoning Administrator shall issue certificates of zoning compliance and shall perform the preliminary foundation inspection and certification. All applications for variances and special exceptions shall first be presented to the Zoning Administrator, who in turn shall refer the applications to the Board of Adjustment. The Zoning Administrator may be either a natural person or a corporation.

If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he 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 of 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 9.3 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 have been issued by the Zoning Administrator. No certification 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.

(1) Application for Zoning Compliance Certificate.

All applications for zoning compliance certificates shall be accompanied by plans showing: the actual dimensions of the plot to be built upon; the locations on the lot of the building or structure proposed to be erected or altered; the size of the building to be erected; the location of any existing structures; the number of residence units and/or the amount of non-residential space the building is designed to accommodate; all setback lines; the proposed use of land and structures; and such other information as may be necessary to provide for the enforcement of the provisions of this ordinance.

(2) Application Fee for Zoning Compliance Certificate.

All applications for a zoning compliance certificate shall be accompanied with an application fee in accordance with the City of Saluda fee schedule.

#### Section 9.4 Requirements Prior to Issuance of a Building Permit

Prior to the issuance of a building permit, the applicant shall obtain the following approvals:

- (1) If connection is to be made to the Saluda water or sewer systems, the applicant shall obtain written approval from the City Administrator and/or Water and Sewer Commissioner for a tap from the city.
- (2) If individual septic tanks and/or wells are to be used, the applicant shall obtain approval from the Polk County or Henderson County Health Department and shall comply with all applicable water and sewer regulations of the City of Saluda.

#### Section 9.5 Building Permit Required

Upon receiving a certificate of zoning compliance, a building permit shall be obtained from the Polk County or Henderson County Building Inspections Office for the construction or alteration of any building, pursuant to the procedures of the Polk County or Henderson County Building Inspections Office.

#### Section 9.6 Inspection of preliminary foundation work

No construction shall proceed beyond the digging of footings or any other preliminary foundation work which is subject to the first inspection by the Polk County or Henderson County Building Inspections Office until the Zoning Administrator (1) has inspected the site to determine if the applicable set back restrictions are being complied with and (2) has delivered to the Clerk of the City of Saluda his written certification to the effect that the footings or other foundation work as constructed to date are in compliance with said set back restrictions.

### Section 9.7 Construction Progress

If after issuance of the building permit no substantial construction progress has been made for any continuous six (6) months period, the building permit becomes invalid for the purposes of section 3.3 (2). In all other cases, the validity of the building permit shall be determined by the county which issued it.

### Section 9.8 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 city authority, or any person who would be damaged by such violation, shall proceed with enforcement of this ordinance in accord with the terms of Article XIII herein.

### Section 9.9 Appeal from the Zoning Administrator

All questions arising in connection with the enforcement of the 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 procedure found in Article X of this ordinance.

## ARTICLE X THE ZONING BOARD OF ADJUSTMENT

### Section 10.1 Establishment of Zoning Board of Adjustment

A Zoning Board of Adjustment is hereby established. Said board shall consist of five (5) members to be appointed by the Board of Commissioners for overlapping terms of three (3) years. Initial appointment shall be as follows: one (1) member for a term of three (3) years; two (2) members for a term of two (2) years; and two (2) members for a term of one (1) year. Any vacancy in the membership shall be filled for the un-expired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Zoning Board of Adjustment.

The Board of Commissioners may designate the Planning Board or the Mayor and Board of Commissioners themselves to perform any or all of the duties of the Zoning Board of Adjustment.

### Section 10.1A Alternate Members

There shall be two alternate members of the Zoning Board of Adjustment to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy

pending the appointment of a member. Alternate members shall be appointed by the Board of Commissioners at the same time as regular members for overlapping terms of three (3) years. Initial appointment shall be one (1) alternate member for a term expiring at the expiration of the latest-expiring term of the regular members, and one (1) alternate member for a term expiring at the expiration of the next-latest expiring term of the regular members. Any vacancy in the term of an alternate member shall be filled for the un-expired term by appointment by the Board of Commissioners. Alternate members shall serve without pay but may be reimbursed for any expenses incurred while representing the Zoning Board of Adjustment. Each alternate member, while attending any regular or special meeting of the board and serving in the absence, disqualification, or abstention of any regular member, shall have and may exercise all the powers and duties of a regular member.

### Section 10.2 Proceedings of the Zoning Board of Adjustment

The Zoning Board of Adjustment shall elect a Chairman and a vice Chairman from its members who shall serve for one (1) year or until reelected or until their successors are elected. The board shall appoint a secretary, who may be a municipal officer, an employee of the city, a member of the Planning Board, or a member of the Zoning Board of Adjustment. The board shall adopt rules and bylaws in accordance with the provisions of this ordinance and of Article 19, Chapter 160A of the General Statutes of North Carolina. Meetings of the board shall be held at the call of the Chairman, and at such other times as the board may determine. The Chairman, or in his absence the vice Chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the board shall be open to the public.

The City Clerk or the City Clerk's Administrative Assistant shall serve as clerk to the Board of Adjustment. The Board of Adjustment may at its discretion require that the party appealing from a decision of the Zoning Administrator employ and pay for a court reporter to take and to provide to the Board a verbatim transcript of the hearing of the appeal.

### Section 10.3 Appeals, Hearings and Notice

An appeal from the decision of the Zoning Administrator may be taken to the Board of Adjustment by any person aggrieved or affected by such decision. Such appeal shall be taken within forty-five (45) days of the delivery of the written notice required under section 9.2 of this ordinance or within thirty (30) days of the delivery of the written notice required under section 3.5(5) of this ordinance by filing with the Zoning Administrator and the Zoning Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate the stay would, in his opinion, cause imminent peril to life and/or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Adjustment or by a court of record on application, on notice to the Zoning Administrator, and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the

order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case. To this end the board shall have all the powers of the officer from whom the appeal is taken.

#### Section 10.4 Powers and Duties of the Zoning Board of Adjustment

The Zoning Board of Adjustment shall have the following powers and duties:

(1) Interpretation.

To interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and any other questions of interpretation that may arise in the administration of this ordinance.

(2) Administrative Review.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this ordinance.

(3) Special Exception (Special Use Permit).

To hear and decide special exceptions to the terms of this ordinance upon which the Zoning Board of Adjustment is required to pass under this ordinance.

(4) Variances.

To authorize upon appeal in specific cases such variances from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, and so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The existence of a nonconforming use of neighboring land, building, or structures in the same district, or of permitted or nonconforming uses in other districts, shall not constitute a reason for the requested variance. The fact that property may be utilized more profitably will not be considered adequate to justify the board in granting a variance. Such variance may be granted in such individual case of practical difficulty or unnecessary hardship upon a finding by the Zoning Board of Adjustment that all of the following conditions exist:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

- b. 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.
- c. A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
- d. The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- e. The special circumstances are not the result of the actions of the applicant, or of the failure of the applicant to act at a time when the variance sought would have been in compliance with this zoning ordinance.
- f. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.
- g. The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved.

No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

The Zoning Board of Adjustment may subpoena witnesses and compel the production of evidence pursuant to the provisions of NC G.S. section 160A-388.

#### Section 10.5 Appeals from the Zoning Board of Adjustment

Any person or persons, jointly or severally, aggrieved by any decision of the board, any taxpayer, or any officer, department, board or bureau of the City of Saluda may, within thirty (30) days after the filing of the decision in the office of the board, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of said board shall be subject to review by certiorari as provided by law.

#### Section 10.6 Decisions of the Zoning Board of Adjustment

The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to affect any variation of this ordinance. For the purposes of this section, vacant positions on the board of adjustment and members who are disqualified from voting on a quasi-

judicial matter shall not be considered "members of the board" for the calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote in any quasi-judicial matter in a manner that would violate any affected person's constitutional rights to an impartial decision maker. Impermissible conflicts 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 recuse himself or herself, the remaining members shall by majority vote rule on the objection.

On all appeals, applications and other matters brought before the Zoning Board of Adjustment, said board shall inform in writing all the parties involved of its decisions and the reasons therefore. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

#### Section 10.7 Fees for Variance and Special Exception (Special Use Permit)

A fee in accordance with the City of Saluda fee schedule shall be paid to the City of Saluda for each application for a variance or application for a special exception.

### ARTICLE XI AMENDMENTS

#### Section 11.1 Amendments

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

#### Section 11.2 Initiation of Amendments

Proposed changes or amendments may be initiated by the Saluda Board of Commissioners, 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 their review and recommendation to the Board of Commissioners.

#### Section 11.3 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. The Planning Board and the Board of Commissioners will not consider an application for property denied within the preceding twelve (12) months by the Board of Commissioners.

#### Section 11.4 Application Fee

A fee in accordance with the City of Saluda fee schedule shall be paid to the City of Saluda for each application for an amendment to cover costs of advertising and other administrative expenses.

#### Section 11.5 Planning Board Action

Before taking any action on a proposed amendment to the ordinance, the Board of Commissioners shall consider the Planning Board's recommendation on each proposed amendment. The Planning Board shall have thirty (30) days after the first consideration of the application within which to submit its recommendations to the Board of Commissioners. If no written report is received from the planning board within thirty (30) days of referral of the amendment to that board, the Board of Commissioners may proceed in its consideration of the amendment without the Planning Board report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.

The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been officially adopted and is applicable to the proposed amendment; and the Planning Board shall provide a written recommendation to the Board of Commissioners pertaining to its recommendations regarding the proposed amendment and its consistency with the comprehensive plan. Members of the Planning Board shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

#### Section 11.6 Public Hearing

Before enacting any amendment to this ordinance, the Board of Commissioners shall hold a public hearing. A notice of such public hearing shall be published in a newspaper of general circulation in the City of Saluda once a week for two (2) successive weeks, the first publication shall not appear less than ten (10) days or more than twenty-five (25) days prior to the date fixed for the public hearing. In computing such period, the day of publication is not to be included. The notice shall include the time, place and date of the hearing, and include a description of the property or the nature of the change or amendment to the ordinance and/or map.

Whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice by the Zoning Administrator of the proposed classification by first class mail at the last address listed

for such owners on the county tax abstracts. The person mailing such notices shall certify to the City Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.

When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons.

In case of a protest against a zoning map change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or five percent (5%) of a 100 foot wide buffer extending along the entire boundary of each discrete or separate area to be rezoned, an amendment shall not become effective except by favorable vote of three-fourths of all members of the City Commissioners. A street right-of-way shall not be considered in computing the 100 foot wide buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100 foot wide buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listings to determine the owners of potentially qualifying areas. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise.

#### Section 11.7 Decision

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

### ARTICLE XII DEFINITIONS

#### Section 12.1 Intent

It is the intent of this ordinance that all of the words included herein, except those specifically hereinafter defined or which are defined at the point where they are used in the ordinance, shall carry their customary meanings.

#### Section 12.2 Interpretation of Certain Terms and Words

Words used in the present tense include the future tense. Words used in the singular number include the plural, and words used in the plural number include the singular. The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual. The word "lot" includes the words "plot" or "parcel." The word "structure" includes the word "building." The word "shall" is always mandatory and not merely directory. The words "used" or "occupied" as applied to any land or buildings shall be construed

to include the words “intended, arranged or designed to be used or occupied.” The words “zoning map” or “Saluda Zoning Map” shall mean the “Official Zoning Map of the City of Saluda, North Carolina.”

### Section 12.3 Definitions

Building: Any structure, whether manufactured or not, having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattels.

Building, Accessory: A building located upon a lot which is used to supplement the use of a principal building. An accessory building may not be used as a residence, but it can be used as a guest house, to provide a place for people to live, eat, and sleep on a non-regular basis.

Building, Principal: The building located on a lot which defines the use to which the lot is being put.

Family: One or more persons occupying a residence and living together as a single housekeeping unit, but not including a group occupying a boarding house, lodging house, club, fraternity house or similar type residence.

Footprint: The area upon which a building is built. In the case of a slab foundation the footprint is the area described by the outside of the slab. In the case of a pier foundation, the footprint is the area described by a line drawn around the outside of the external piers. In the case of a block foundation, the footprint is the area described by the outside of the foundation blocks.

Group Project: Two or more buildings constructed on a plot of ground of at least two acres not subdivided into the customary streets and lots. (To be considered as a “special exception” by the Board of Adjustment.)

High Impact Land Uses: Certain land uses which, by their nature, produce noise, odors, vibrations, fumes, light, smoke, dust and other impacts which interfere with the quiet enjoyment of adjacent lands and disturb the peace and dignity of the City.

Airfield / Airstrip: Any runway, land area or other facility designed or used either publicly or privately by any person for landing and takeoff of aircraft, including all necessary taxiways. “Airfield / Airstrip” is further defined as aircraft storage and tie-down areas, hangars, and other necessary buildings appurtenant to a public airport. Aircraft storage and tie-down areas, hangars, and other necessary buildings appurtenant to a private airport are deemed accessory buildings or uses.

Asphalt Plant: The equipment necessary to produce petroleum bitumen, which when mixed with proper amounts of sand or gravel (or both) results in or may be used in producing material suitable for paving and/or roofing.

Chip Mill: Any non-portable wood-chipping facility that stands alone and apart from a sawmill or a pulp mill, and whose purpose is to provide wood chips to an off-site fabricating facility including but not limited to a paper mill or oriented strand board mill.

Commercial Incinerators: Any enclosed device that burns more than 250 pounds of any material per hour other than the classical boiler fossil fuels, such as natural gas, propane, coal or fuel oil, which is a principal use on any lot or parcel.

Concrete Supplier: An establishment primarily engaged in manufacturing hydraulic cement, including Portland, natural, and masonry cements delivered to a purchaser in a plastic and unhardened state. This industry includes production and sale of central-mixed concrete, shrink mixed concrete, and truck mixed concrete. Also included are the manufacture of concrete products from a combination of cement and aggregate.

Helicopter Sightseeing Operation: Any individual, corporation or commercial enterprise that carries passengers by helicopter for compensation for the purpose of aerial observation of landmarks and other manmade or natural sites, touring, pleasure flying or amusement or for the purpose of transporting passengers for tourist-related activities.

Manufacturer and/or Storage Facility of Bulk Inflammables (Fuel Oil, Propane, Gasoline), Chemicals, or Explosives: A facility whose primary purpose is one of the following:

- (1) Manufacturing and/or storage of a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. This term includes but is not limited to dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks.
- (2) The production, synthesis, formation, processing, refining, manufacturing, distribution, and/or storage of chemical products in bulk.
- (3) The storage, distribution, mixing or transfer of flammable or combustible liquids or gases received by or transferred by tank vessel, pipelines, tank car, piping, or portable tank or container; except such storage, distribution, mixing or transfer of flammable or combustible liquids or gasses shall not include filling stations or convenience centers used solely for retail distribution to individual customers.

Mining & Extraction Operation: Any establishment or business primarily engaged in dressing and beneficiating of ores; the breaking, washing, and grading of coal; the crushing and breaking of stone; and the crushing, grinding, or otherwise preparing of sand, gravel and nonmetallic chemical and fertilizer minerals. This definition specifically excludes gem mines and other recreational mining operations.

Motor Sports Activities: The use of any parcel by an establishment or business for the operation, for more than two hours during any eight hour time period, of more than three motor propelled conveyances powered by internal combustion engines including but not limited to automobiles, motorcycles, and All Terrain Vehicles.

Sawmill: Any commercial operation established for a period of six months or more where logs are customarily processed into lumber, finished wood products or other wood products, regardless of whether the products are sold on premises or transferred to another facility for storage and sale.

Slaughtering and Processing Plant: An establishment primarily engaged in slaughtering, dressing, packing, freezing, canning, cooking and/or curing animals or poultry or their by-products or processing or manufacturing products from such animals or poultry or their by-products; and establishments primarily engaged in the collection and/or processing of the inedible portion(s) of animals or poultry or their carcasses. This definition specifically excludes: slaughtering and processing activities performed for personal use only and those slaughtering and processing plants processing less than 100 animals per month for other than personal use.

Solid Waste Management Facility: Land and equipment, other than incinerators, used in the management of solid waste, including transfer stations, landfills, and recycling facilities which are not owned or operated by a unit of local government.

Home Business or Occupation: Any use conducted entirely within a residence, its yard, and any accessory buildings and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the building for residence purposes and does not change the character thereof. In connection with said use there shall not be more than one person not a resident on the premises who is employed specifically in connection with the home business or occupation. No mechanical equipment shall be installed or used on the premises except that which is normally used for domestic or professional purposes, and not over twenty-five percent (25%) of the total floor space of the principal building shall be used for home occupations.

Housekeeping Unit: A single person, or a group of persons who regularly eat, sleep and live together, who occupies or occupy a residence.

Inn/Bed and Breakfast: A building of less than 15 rental units having a live-in owner/manager. A lobby or registration area is not required. Building must have at least one bathroom per every two rental units. Units must have daily maid service. Building must have a dining area large enough to seat at least two people per rental unit. One meal per day will be included in the price of the unit. No in room cooking will be allowed. Building may have additional entertainment areas (reading room, TV room, etc.). Units will be rented to travelers on a daily basis.

Junk Yard: A lot and any structure thereon used for collecting and storage of discarded material, including but not limited to waste paper, rags, and scrap metal, for the primary purpose of resale; or for collecting and storage of inoperable machinery or vehicles for the primary purpose of resale. A lot or structure upon which discarded material and/or inoperable machinery or vehicles are collected or stored for the primary purpose of using same to supply parts and material for a manufacturing, repair or restoration business conducted on the same or an adjacent lot is not a junk yard, provided that such discarded material and/or inoperable machinery or vehicles is screened from view from any public street. A lot having on it one or more bins or other containers which, in aggregate, have a storage capacity of 5,000 cubic feet or less and are used to collect non-toxic discarded material for recycling is not a junk yard.

Lot: A parcel of land occupied or capable of being occupied by a structure or group of-structures devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Lot, Depth of: The average distance between front and rear lot lines.

Lot, Width of: The distance between side lot lines measured along a line which is parallel to the street frontage of the lot and which touches the front line of the principal building at the point such front line is closest to the street. In the case of a corner lot, the front line of a building shall be determined in accord with the definition of "Yard, Corner Lot" in this section.

Lot of Record: A lot which is a part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds of Polk County or Henderson County, North Carolina, or a lot described by metes and bounds, the description of which has been so recorded.

Manufactured Home: A residence which is:

- (1) designed for transportation after fabrication on streets and highways, either singly or in sections, on its own supporting framework or chassis, and is
- (2) designed to be set in place at the site where it is to be occupied as a residence without the substitution of the entire framework or chassis upon which it was transported by floor joists or floor trusses, and is
- (3) upon arrival at such site, ready for occupancy, except for minor and incidental unpacking and assembly operations, location on jacks or permanent foundations, connections to utilities, and the like.

Nonconforming Use: A structure or land lawfully occupied by an existing use which does not conform with the permitted uses or with the lot area, density, lot dimension, building spacing, height, and setback restrictions and limitations for the zoning district in which it is situated, either at the effective date of this ordinance, or as a result of subsequent amendments to this ordinance.

Residence: A building providing complete living facilities and which is designed and actually arranged so that its primary use is to provide a place for people to live, eat, and sleep on a regular basis.

Residence, Multi-Family: A building or portion thereof used or designed as a residence for two or more families living independently and as multiple housekeeping units.

Residence, Single Family: A residence designed to be occupied by people living as a single housekeeping unit.

Residence Unit: A specific type of residence, being an apartment or other self contained space within a multifamily residence which provides complete living facilities and is designed to be occupied by people living as a single housekeeping unit.

Sexually Oriented Business: An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing. As used in this Ordinance the following definitions shall apply:

Adult Arcade (also known as "Peep Show"): Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or

mechanically-controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe “specified sexual activities” or “specified anatomical areas.”

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

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

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

- (1) Person who appear nude or semi-nude; or
- (2) Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which depict or describe “specified sexual activities” or “specified anatomical areas.”

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

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

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

Adult Theater: A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes,

persons who appear in a state of nudity or semi-nude, or live performances that expose or depict “specified anatomical areas” or “specified sexual activities.”

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

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

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

Nudity or a State of Nudity:

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

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

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

Specified Anatomical Areas: Human genitals in a state of sexual arousal.

Specified Sexual Activities: Is and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or

- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) above.

Sign: The physical representation of a visual message.

Deteriorating Sign: A sign having defects resulting in a degeneration of the structure from its original form that would require more than normal expenditures for rehabilitation.

Dilapidated Sign: A sign having an accumulation of minor and major defects of such extent that rehabilitation is economically infeasible.

Ground Pole Sign: A sign supported by one or more uprights, poles or braces placed in or upon the ground surface and not attached to any building.

Illuminated Sign: A sign that provides artificial light directly (or through any transparent or translucent material) from a source of light connected with such sign, or a sign illuminated by a light so shielded that no direct rays from it are visible from any public right-of-way or from the abutting property.

Off-Premise Sign: A sign which contains a message unrelated to a business or profession conducted, or to a commodity, service or entertainment sold or offered upon the premises where such sign is located.

Portable Sign: A free-standing sign not permanently anchored or secured to either a building or the ground, such as but not limited to “A” frame, “T” shaped sign structures.

Temporary Sign: A sign constructed of cloth, canvas, fabric, wood or other temporary material, with or without a structural frame, and intended for a limited period of display, including decorative displays for holidays or public demonstration.

Special Exception (Special Use Permit): A type of use of land or structure which the Zoning Board of Adjustment may authorize provided certain conditions set forth in this zoning ordinance are met. A special exception differs from a variance (defined below) in that a hardship is not involved.

Street or Road: A dedicated and accepted public right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Street Line: The curb, paved or gravel edge of a dedicated public right-of-way designed for vehicular traffic.

Structure: Anything constructed, set in place, or erected on a lot.

Tattoo or Body Piercing Establishments: Any establishment which exists for the purposes of tattooing or body piercing.

Tent: A structure which is constructed of fabric or pliable material, is supported by any manner except by the contents that it protects or encloses, and is enclosed by sides or drops on more than 25% of its perimeter. An awning, which is a structure attached to a building for the principal purpose of sheltering doors or windows from sun and precipitation, is not a tent, provided that the space which it covers is less than 700 square feet.

Variance: A use of land or structure which is prohibited under the literal interpretation of the terms of the zoning ordinance. Only the Board of Adjustment can authorize a variance, which may be granted in certain hardship situations where the conditions set out in this ordinance are found to exist, to enable a property owner to make use of his property in the manner which he requests.

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

Yard, Corner Lot: Where a lot is bounded by two or more public streets, which have been opened and are actually in use, the "front line of the building" as referred to in the definition of "Yard, Front" herein shall be whichever side of the building that has at least one exterior door and that is determined by the owner or owners of the lot, in his, her, its or their sole discretion, to be the front of the building.

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 and the front line of the building, projected to the side 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 lines of the lot.

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

## ARTICLE XIII VIOLATIONS, PENALTIES AND REMEDIES

### Section 13.1 Violations

Whenever, by the provisions of this ordinance, the performance of any act is prohibited, or whenever any regulation, dimension or limitation is imposed on the use of any land, or on the erection or alteration, or the use or change of use of a structure, or the uses within such structure,

a failure to comply with such provisions of this ordinance shall constitute a separate violation and a separate offense.

### Section 13.2 Penalties

Unless otherwise provided herein, each violation of this ordinance shall constitute a misdemeanor, except as otherwise provided by statute, and violations of such provisions of this Ordinance shall be punished by fine or imprisonment as by law provided. Each day any violation of this Ordinance shall continue shall constitute a separate offense, except as may be specifically provided.

Violations of this Ordinance shall constitute either a misdemeanor or, at the election of the City, shall subject the offender to a civil penalty upon the issuance of a citation for said violation as hereinafter provided. The civil penalty, if not paid to the City of Saluda within fifteen days of the issuance of a citation, may be recovered by the City in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this ordinance, said civil penalties shall be in accordance with the City of Saluda fee schedule for each violation and each day any single violation continues shall be a separate violation.

In addition to the civil penalties set out above, any provision of this Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate and it shall not be a defense to the application of the City for equitable relief that there is an adequate remedy at law.

In addition to the civil penalties set out above, any provision of this Ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the General Court of Justice. When a violation of such a provision occurs, the City may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the City may execute the order of abatement. The City shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by judicial order. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

The provisions of this Ordinance may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.

### Section 13.3 Procedure

Upon determination of a violation of any section of the Zoning Ordinance, the penalty for which is a civil penalty, the enforcement official of the City of Saluda shall cause a warning citation to be issued to the violator. Such citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time shall be stated during which the violation shall be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs and attorney fees.

An appeal from a warning citation shall be taken within ten (10) days from the date of said warning citation to the Board of Adjustment. Except in any case where the section violated, which is the subject of the warning citation, specifically grants to the Board of Adjustment other powers in considering appeals and such appeal is applied for, the Board of Adjustment in considering appeals of warning citations shall have the power only in the matter of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of this Ordinance, in the factual summation as it relates to the application of this Ordinance, or both.

Where the enforcement official of the City determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the enforcement official may amend the warning citation to provide for additional time.

Upon failure of the violator to obey the warning citation a civil citation shall be issued by the appropriate official of the City of Saluda and either served directly on the violator, his duly appointed agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the City or obtained at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. The citation shall direct the violator to appear before the City Administrator of the City of Saluda, or his designee, within fifteen days of the date of the citation, or alternatively pay the citation by mail. The violation for which the citation is issued shall have been corrected by the time the citation is paid; otherwise further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

Within fifteen days from the date the first civil citation is served, the City Administrator shall have the authority, upon written request of the violator, to void the civil citation(s) issued to the to date and relieve the violator of any civil penalties due. The written request shall state the reasons why the violator believes that the civil citation(s) should be voided. Prior to any civil citations being voided, the violation for which the citation(s) were issued shall be fully corrected. The City Administrator shall use extreme discretion in voiding civil citations and such action shall be taken only under extraordinary circumstances. Such circumstances may include, but not be limited to, an error by an official of the City, civil citations not reaching the violator due to

mail delivery difficulties and severe weather constraints. After fifteen days from the first civil citation being served, the City Administrator may only exercise said authority when correcting an error made by an official of the City. In those circumstances involving an error by an official of the City, the City Administrator may exercise said authority without a written request by the violator but shall consider the recommendation of the official making the error.

If the violator fails to respond to a citation within fifteen days of its issuance, and pay the penalty prescribed therein or receive relief from the City Administrator as described above, the City of Saluda may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees and such other relief as permitted by law.

#### ARTICLE XIV LEGAL STATUS PROVISIONS AND EFFECTIVE DATE

##### Section 14.1 Severability

It is the legislative intent of the City Commissioners 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 City of Saluda, 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 City Commissioners that this ordinance shall stand, notwithstanding the invalidity of any provision, or section, or part thereof.

##### Section 14.2 Conflict with Other Laws

All ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

##### Section 14.3 Effective Date

This ordinance shall take effect and be in force on January 14, 2008.

(Ord. O-08-01, adopted 01-14-08; Am. Ord. O-08-04, adopted 5-12-08)

Adopted this the 12th day of May, 2008.

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Rodney Gibson, Mayor

ATTEST:

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Doris Marion, City Clerk

(SEAL)

APPROVED AS TO FORM:

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A. Bailey Nager, City Attorney