



PLANNING BOARD

August 17, 2015

7:00 PM

AGENDA

- 1. Call Meeting to Order**
- 2. Approval of May 18, 2015 PB Minutes**
- 3. Introduction of New Planner Elinor Hiltz**
- 4. Zoning Ordinance Amendment: Attached garages in front of house**
- 5. Zoning Ordinance Amendment: Parking allowed in front of business lots**
- 6. Zoning Ordinance Amendment: Car sales in front of business lots**
- 7. Zoning Ordinance Amendment: Temporary health care structures**
- 8. Subdivision Ordinance Amendment: Vacating platted lots**
- 9. Minimum Housing Code Amendment: Nonresidential standards**
- 10. Planning Board Contact List Update**
- 11. Other Business**
- 12. Adjourn**



Memorandum

To: Claremont Planning Board
From: John E. Wear, Planner
Date: July 13, 2015
Subject: Text Amendments 15-01 through 15-06 for ~~July 20th~~ ^{Aug 17th} planning board meeting

Einar Hitz

Enclosed are six different text amendments for various ordinances. Four of the amendments were initiated by the Planning Board at the May meeting, one is a legislative requirement, and one was initiated by a property owner.

1. **Zoning Ordinance Amendment: Attached garages in front of house**

Currently, attached garages cannot protrude out further than the front of the house. This amendment would allow for that. The planning board must also decide how far they want to allow garages to protrude. Additionally, the ordinance regulates detached garages differently in separate parts of the ordinance. This will be cleaned up as well.

2. **Zoning Ordinance Amendment: Parking allowed in front of business lots**

Parking is not currently allowed in the front of businesses, and buildings are required to be placed at the front of a lot. This amendment would allow for parking and building placement anywhere on the lot.

3. **Zoning Ordinance Amendment: Car sales in front of business lots**

Currently car and boat sales cannot display vehicles for sale adjacent to a road, so no vehicles displayed in front yards, or in side yards for a corner lot. This amendment would not put any requirements on location of those vehicles.

4. **Zoning Ordinance Amendment: Temporary Health Care Structures**

This amendment is a legislative requirement that allows for a specific type of structure to be placed in the rear yard of a home for living quarters for a caregiver or patient when the need arises.

5. Subdivision Ordinance Amendment: Vacating platted lots

A property owner has requested that we amend this ordinance to allow for a lot to be vacated (or removed) from an approved subdivision without the requirement of approval from other property owners who have purchased lots in the subdivision.

6. Minimum Housing Code Amendment: Nonresidential Standards

This would be a new subsection to the Minimum Housing Code that addresses buildings that are not used for residential purposes, such as accessory structures, business buildings, and industrial facilities. The excerpt presented is from the City of Conover's Ordinance.

Please find the attached proposed language for these Zoning Ordinance amendments. New language is highlighted and items taken out are crossed through. Items in question are red.

elino, hiltz

Please contact me prior to the meeting if you have any questions: john.wear@wpcog.org or ~~828-485-4283~~

828.485.4248



**PLANNING BOARD
MINUTES
May 18th, 2015**

Members Present

Robert Smith
Nick Colson
Todd Setzer
Jeff Barkley
Rupert Little
Gene Monday
Larry Pannell
Crystal Clark

Members Absent

Staff Present

Shelley Stevens, City Planner
Catherine Renbarger, City Manager

Chairman Robert Smith opened with prayer.

Call Meeting to Order & Approval of January 12th, 2015 PB Minutes

Mr. Smith called meeting to order at 7 pm and tended to first item on agenda – approval of January 12th meeting minutes. Jeff Barkley motioned to approve the January minutes, Rupert Little seconded, and the group unanimously agreed to approve the minutes.

Discussion of Garage and Parking Standards in Claremont's Zoning Ordinance

Shelley Stevens discussed with the group potential text amendments to allow garages in front of houses. Mr. Colson, Mr. Little, Mr. Smith and Larry Pannell commented that they are for the code amendments since garages have been built in front of houses in Claremont for years (Mr. Smith cited examples). Mr. Smith also noted that it may be very costly for citizens to situate garages level with the façade of a house or behind it, depending on lot shape and size. Ms. Stevens also noted that the housing stock in Claremont is quite diverse. Recently, a house that did not show a garage on the aerial site plan submitted by the application was built with a garage attached as part of the main building, which caused the City to ask the planner to discuss with the Planning Board their thoughts on amending the Zoning Ordinance. The board stated that they are in favor of text amendments that allow front-facing garages level with or in front of houses.

Ms. Stevens also discussed with the board parking standards. An applicant is interested in creating his parking lot in front of his new business and wanted the idea brought before the Planning Board. The Planning Board discussed the idea and decided that parking in

front of businesses should be allowed, given that that has also has been allowed in the past. Text amendments for this portion of the Code will be drafted.

Discussion of Text Amendments to Claremont's Minimum Housing Ordinance

A City Council member is interested in incorporating language in the City's Code to allow for abatement of dilapidated accessory structures. Ms. Stevens discussed options for incorporating this type of language into the City's Code. The City attorney has recommended amending the Minimum Housing Ordinance to incorporate accessory structures in the language. This option was discussed among the Planning Board, and Mr. Barkley commented that Conover's Nuisance Code has a section on tearing down dilapidated accessory structures and that he will send that to Ms. Stevens for reference. Ms. Stevens discussed this option with the Planning Board; the Planner will look at Conover's Code example and draft text amendments for the nuisance section of the Code to share with the Planning Board.

Discussion of Land Development Plan Davidson Site Visit and Public Workshop

Shelley Stevens discussed with the group the Davidson site visit and public workshop held for the Land Development Plan. Many good comments on subdivision development and downtown development in Davidson were gathered from Planning Board members on the trip. Ms. Stevens discussed with the group the pros and cons the Board noticed in the development seen in Davidson.

The public workshop gathered some citizen input, and many Planning Board members were in attendance. The stations at the public workshop were briefly reviewed.

Other Business

Ms. Stevens provided development updates for Oxford Crossing. The site is set to be under construction in the near future, and the developers have agreed to install a fence adjacent Jackie Delvin's property before work begins.

Catherine Renbarger and Ms. Stevens discussed the upcoming joint Council and Planning Board Land Development Plan Workshop, which may be held in July; and Ms. Renbarger made an announcement that the City's Touch-a-Truck event would be held Jun 20th from 11 am – 2 pm.

Mr. Smith announced that New Life Baptist Church will host Singing in the Park, Saturday, May 30th from 12 pm to 5 pm.

Adjourn

Mr. Colson motioned to adjourn, Mr. Pannell seconded, and the group unanimously approved.

Robert Smith, Chairman

Shelley Stevens, Planner

1. Zoning Ordinance Amendment: Attached garages in front of house

9-3-27 Standards for Residential Garages and Parking in Residential Districts

1. On lots greater than 60 feet in width, front loading garages may be built flush with, but may not project more than 6(?) feet in front of, the primary plane of the front facade of the structure.
2. On lots 60 feet or less in width, alley access is required if on-site parking is provided.
3. In no case shall on-site residential parking extend into the public right of way, or into an easement for a public sidewalk on private property.
4. On-street parking at lot front, when specifically provided, may be counted toward all or part of the parking requirement of a dwelling unit.
5. Detached residential garages may only be placed in the established rear or side yard. If the garage is located in the side yard it must be constructed of similar materials as the principal residence located on the lot and must meet the minimum setbacks required for a principal structure. At minimum it will have at least one door that is large enough to allow entry of an automobile with two axles. In addition, the outside walls shall not be clad with metal siding and the building shall be completely enclosed.
6. The gross floor area residential garages shall not exceed seventy-five (75) percent of the gross floor area of the residence.
7. Vehicles used primarily for commercial purposes and with more than two axles are prohibited from parking on streets, in driveways, or on private property in residential districts. This shall not be construed as preventing the temporary parking of delivery trucks, moving vans, and similar vehicles which deliver goods or services.

9-3-70 Lot Types / Detached House

1. Building placement / parking / vehicular access:
 - b. Garages may be detached (entered from front or rear), or attached to the main dwelling, with or without habitable rooms above. Front loaded garages, if provided, shall meet the standards of Section 9-3-27.
 - c. ~~A detached garage may be located only in the rear yard.~~ Detached residential garages may only be placed in the established rear or side yard. If the garage is located in the side yard it must be constructed of similar materials as the principal residence located on the lot and must meet the minimum setbacks required for a principal structure. At minimum it will have at least one door that is large enough to allow entry of an automobile with two axles. In addition, the outside walls shall not be clad with metal siding and the building shall be completely enclosed.

2. Zoning Ordinance Amendment: Parking allowed in front of business lots

9-3-64 Lot Type/ Shopfront Building

1. Building placement / parking / vehicular access:

~~a. Buildings shall be placed on the lot within the zone represented by the hatched area. In most cases, the build to line will range from zero (0) feet to fifteen (15) feet behind street right of way. Special site conditions such as topography, pattern of lot widths, or setbacks of existing buildings permit a larger building setback.~~

b. Building facades shall be generally parallel to front property lines.

~~c. Parking shall be located primarily to the rear of the building; side yard parking shall occupy no more than twenty five (25) percent of the primary frontage line and shall not be placed in any side yard abutting an intersecting street. Where dimensions of existing lots restrict parking behind buildings, the limitations on side yard parking may be modified.~~

~~d. Points of permitted access to parking are indicated by arrows.~~

9-3-66 Lot Type/ Highway Business

1. Building placement / parking / vehicular access:

~~a. Buildings shall be placed on the lot within the zone represented by the hatched area. In most cases, the build to line will be twenty (20) feet behind street right of way. Special site conditions such as topography, pattern of lot widths, parking patterns, or setbacks of existing buildings may permit a different building setback.~~

b. Setbacks may vary according to setting within limits indicated.

c. Building facades shall be generally parallel to front property lines.

d. Parking shall be located to the side, rear and front of the building. In no case shall more than two rows of parking or fifty percent (50%) of the total required parking, be placed in the front of the building. Side yard parking shall occupy no more than fifty percent (50%) of the primary frontage line and shall not be placed in any side yard abutting an intersecting street. Where dimensions of existing lots restrict parking behind buildings, the limitations on side yard parking may be modified.

e. Points of permitted access to parking are indicated by arrows.

f. Hedges, garden walls, or fences may be built on property lines or as the continuation of building walls. A garden wall, fence, or hedge (minimum three (3) feet in height) shall be installed along any street frontage adjacent to parking areas.

9-3-74 Lot Type / Civic Building

1. Building placement / parking / vehicular access:

~~a. Buildings shall be placed on the lot within the zone represented by the hatched area. In most cases, the build-to line will range from zero (0) feet to twenty five (25) feet behind street right-of-way. Special site conditions such as topography, lot width, or provision of a green or plaza will permit a larger building setback.~~

~~b. Parking shall be located to the rear of the building; side yard parking shall occupy no more than twenty five (25) percent of the primary frontage line and shall not be placed in any side yard abutting an intersecting street. Where dimensions of existing lots restrict placement of parking behind buildings, the limitations on side yard parking may be modified.~~

c. A planting strip or defined plaza should be provided to relate the building to the street.

d. Generally, building and street facades must extend parallel to frontage property lines.

~~e. Points of permitted access to the parking indicated by arrows.~~

3. Description:

A civic building is a building used for purposes that are public in nature (e.g. schools, libraries, government buildings, and churches). These buildings must be designed to take their appropriate places within neighborhoods as integral parts of the community. It is expected that the scale and architectural sophistication of these buildings will match their civic importance. Where possible, civic structures shall be designed to terminate vistas or serve as key focal points in the neighborhood. ~~The intention of buildings in all locations must be to relate the principal facade to the sidewalk and public space of the street. Civic buildings shall not be set back on the lot behind a standard parking lot.~~

ARTICLE H

OFF-STREET PARKING AND LOADING REQUIREMENTS

9-3-151 Permanent Parking Space Required

1. Off-street parking space shall be provided in accordance with this Article in all districts, except the B-1 Central Business District, if adequate public or on-street parking is available within 50 feet of the property. However, if provided in the B-1 district, off-street parking spaces shall be provided at one (1) space per 500 square feet of gross floor area and comply with the applicable landscaping requirements.

2. The off-street parking space required by this division shall be permanent space and shall not be used for any other purpose.

3. Each parking space shall be:

a. Angle parking: 30 degree, 45 degree, 60 degree and 90 degree: minimum nine (9) feet by eighteen (18) feet.

b. Parallel parking: minimum nine (9) feet by twenty-two (22) feet.

- c. The parking standards are for one vehicle, exclusive of adequate egress and ingress, drives, maneuvering space and landscaping.
4. Off-street parking spaces shall not be located in such a manner that parked cars will extend onto a public street or sidewalk.
5. Off-street parking areas, loading, egress and ingress, and maneuvering space shall be paved with asphalt or concrete. Any parking area not paved at the time of adoption of this ordinance shall be allowed to continue as such until an expansion of the building or parking area occurs. At such time, the parking area must be paved and meet current landscaping requirements.
- ~~6. Off-street parking areas shall not be permitted within the front yard.~~
7. Off-street parking areas shall be setback at least 10 feet from any public street.
8. All off-street parking areas shall provide curbing along the interior (islands) and exterior edges of the paved area.

3. Zoning Ordinance Amendment: Car sales in front of business lots

9-3-98 Outdoor Display of Vehicles and Boats for Sale

- ~~1. Vehicles and boats for sale shall not be displayed in an established front yard or in an established side yard abutting a street.~~
2. Vehicles and boats for sale may be displayed in a **front or** side yard which does not abut directly on a street, so long as:
 - ~~a. the display is placed behind the established front setback line of the building, extended to the side lot lines;~~
 - b. the display area meets the standards for a parking lot (Article H);
 - c. the display area is screened from abutting properties (Article K).
3. Nothing in this Section shall prohibit a break in a planted screen or wall for the crossing of a driveway which provides access to on-site parking from the fronting street or a rear alley, or access between the parking lots of abutting businesses.

4. Zoning Ordinance Amendment: Temporary Health Care Structures

(New) Sec. 9-3-180 Temporary Health Care Structures.

- (A) Temporary health care structures are permitted as accessory uses to single-family homes, if a zoning permit is obtained from the town.
- (B) A temporary health care structure is defined as a "transportable residential structure, providing an environment facilitating a caregivers's provision of care for a mentally or physically impaired person, that is (i) primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.
- (C) Temporary health care structures should adhere to setbacks for principal structures in the R-1 district.
- (D) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the building or elsewhere on the property.
- (E) Any temporary family health care structure installed shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section. If the temporary health care structure is needed for another mentally or physically impaired person, the temporary health care structure may continue to be used.
- (F) Only one temporary health care structure is permitted per lot.

5. Subdivision Ordinance Amendment: Vacating platted lots

Sec. 9-4-43 Recombination of land.

(a) Any plat or any part of any plat may be vacated by the owner at any time before the sale of any lot in the subdivision by a written instrument to which a copy of such plat shall be attached, declaring the same to be vacated.

(b) Such instrument shall be approved by the same agencies as approved the final plat. The governing body may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvements, streets or alleys.

(c) Such instrument shall be executed, acknowledged or approved and recorded and filed in the same manner as a final plat; and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, and public grounds, and all dedications laid out or described in such plat.

~~(d) When lots have been sold, the plat may be vacated in the manner provided in subsections (a) through (c) of this section by all owners of the lots in such plat joining in the execution of such writing.~~

6. Minimum Housing Code Amendment: Nonresidential Standards

(Excerpt from Conover Ordinance):

ARTICLE V. - MINIMUM NONRESIDENTIAL STANDARDS

Sec. 5-81. - Purpose.

In order to protect the health, safety and welfare of the city and its citizens, it is the purpose of this article to establish minimum standards of maintenance, sanitation, and safety relating to nonresidential buildings or structures, as expressly authorized by North Carolina General Statute 160A-439. This article provides for the repair, closing or demolition of nonresidential buildings or structures as a result of a public necessity caused by conditions that are dangerous to the public health, safety and welfare.

Sec. 5-82. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, and shall apply in the interpretation and enforcement of this article:

Basic structural elements means the parts of a building which provide the principal strength, stability, integrity, shape and safety of the building, including, but not limited to, plates, studs, joists, rafters, stringers, stairs, sub-flooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.

Building means any structure, place, or any other construction built for the shelter or enclosure of persons, animals, chattels or property of any kind or any part of such structure, shelter or property.

Code enforcement officer shall mean a code enforcement officer of the City of Conover or any agent of the code enforcement officer or officer who is authorized by the code enforcement officer or officer to enforce the provisions of this article.

Nonresidential means any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space or sleeping space for one (1) or more human beings, either permanently or transiently.

Occupant shall mean any person who is a tenant or has actual possession of a nonresidential building or structure or part thereof.

Operator shall mean any person who has charge, care, or control of a nonresidential building or structure, or part thereof.

Owner shall mean any person who alone, or jointly, or severally with others:

- (1) Shall have title in fee simple to any nonresidential building or structure, with or without accompanying actual possession thereof; or
- (2) Shall have charge, care or control of any nonresidential building or structure as owner or agent of the owner, or as executor, executrix, administrator, administration, trustee or guardian of the

estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

Parties in interest means all individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

Premises means any lot or parcel of land inclusive of any building or improvements located thereon.

Safe means a condition which is not likely to do harm to humans or to real or personal property.

Structure means anything constructed or placed upon a property which is supported by the ground or which is supported by any other structure, except a currently operable licensed vehicle.

Structurally sound means substantially free from flaw, defect, decay or deterioration to the extent that the building or structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

Unsafe means a condition which is reasonably likely to do harm to humans or to real or personal property if not corrected or stopped.

Vacant manufacturing facility means any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

Vacant industrial warehouse means any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

Sec. 5-83. - Applicability and compliance.

- (a) The provisions of this article shall apply to all nonresidential buildings or structures which are now in existence or which may be built within the corporate limits of the city.
- (b) Every nonresidential building or structure and the premises on which it is situated shall comply with the provisions of this article, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this article, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or structure or for the installment or repair of equipment or facilities. This article establishes minimum standards for all nonresidential buildings and structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or structure, equipment or facilities contained therein.

Sec. 5-84. - Maintenance standards for nonresidential buildings and structures.

All nonresidential buildings and structures shall be free of all conditions that are dangerous and injurious to the public health, safety, and welfare of occupants or members of the general public. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety and welfare for which a public necessity exists for the repair, closing, or demolition of such building or structure and must be corrected in accordance with the provisions of this article:

- (1) Interior walls, vertical studs, partitions, supporting members, sills, joists, rafters, or other basic structural members that list, lean, or buckle to such an extent as to render the building unsafe, that are rotted, deteriorated or damaged, and that have holes or cracks which might admit rodents.
- (2) Exterior walls that are not structurally sound, free from defects and damages, and capable of bearing imposed loads safely. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, such wall must have all doors, windows, vents, or other similar openings closed with material of the type comprising the wall. The exposed wall shall be painted, stuccoed, or bricked and sufficiently weatherproofed to prevent deterioration of the wall.
- (3) Floors or roofs which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used. Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used. Roofs shall be kept structurally sound and shall be maintained in such a manner so as to prevent rain or other objects from penetrating into the interior of the building.
- (4) Such damage by fire, wind, or other causes as to render the building unsafe.
- (5) Dilapidation, decay, unsanitary conditions, or disrepair, which is dangerous to the health and safety of the occupants or members of the general public.
- (6) Lack of adequate ventilation, light, heating, or sanitary facilities to such extent as to endanger the health, safety or general welfare of the occupants or members of the general public.
- (7) Buildings and structures including their environs that have accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary manner.
- (8) Buildings and structures that have loose and insufficiently anchored overhanging objects, which constitute a danger of falling on persons or property.
- (9) Buildings and structures including their environs that have insufficiently protected holes, excavations, breaks, projections, obstructions, and other such dangerous impediments on and around walks, driveways, parking lots, alleyways, and other areas which are accessible to and generally used by persons on or around the premises.
- (10) Buildings and structures that have cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic, or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration and repaired or replaced with like or similar material according to its original use.
- (11) Buildings and structures that have objects and elements protruding from building walls or roofs, which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects.

- (12) Chimneys, flues, and vent attachments thereto which are not structurally sound. Chimneys, flues, gas vents, or other draft-producing equipment which are in use shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight, and capable of withstanding the action of flue gases.
- (13) Exterior porches, landings, balconies, stairs, or fire escapes which are not structurally sound. All exterior porches, landings, balconies, stairs, and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept sound, in good repair, and free of defects.
- (14) Cornices which are not structurally sound. Rotten or weakened portions shall be repaired and/or replaced. All exposed wood shall be treated or painted.
- (15) Improperly attached gutters or down-spouts that are located so as to cause a hazard to pedestrian, vehicular traffic, or adjacent property.
- (16) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members, and other similar attachments and structures that cause a safety hazard to the occupants or members of the general public.
- (17) All exterior surfaces that may cause unsafe conditions due to a lack of maintenance. Exterior surfaces shall be painted or sealed in order to protect the underlying surface from deterioration. All exterior surfaces that have been painted shall be maintained generally free of peeling and flaking. Where fifty (50) percent or more of the aggregate of any painted surface shall have peeling or flaking or previous paint worn away, the entire surface shall be repainted in order to prevent further deterioration.
- (18) Windows containing broken or cracked glass that could be in danger of falling or shattering. All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints, or broken or loose mullions.
- (19) All openings originally designed as windows, doors, loading docks, or other means of egress or ingress which have been temporarily closed by boarding or other manner in a nonsecure manner so as to allow unauthorized admittance. If an opening is temporarily closed by boarding to secure the building or structure, the boarding shall be trim fit, sealed to prevent water intrusion, and painted or stained to properly conform with the other exterior portions of the building and the building or structure shall be maintained in a state that secures the building or structure from any unauthorized admittance from humans, animals, or birds.
- (20) Any graffiti present for a period exceeding fourteen (14) days shall be removed by cleaning, painting or resurfacing the affected area. For the purpose of this ordinance [Ord. No. 2-11] graffiti shall be defined as any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary without the consent of the owner of the property or the owner's authorized agent.
- (21) Any combination of conditions which in the judgment of the code enforcement officer or officer renders any building or structure dangerous or injurious to the health, safety, or general welfare of occupants or members of the general public.

Sec. 5-85. - Duties of the enforcement officer.

The code enforcement officer is hereby designated as the public officer to enforce the provisions of this article and to exercise the duties and powers herein prescribed. It shall be the duty of the code enforcement officer or officer:

- (1) To investigate the conditions of nonresidential buildings and structures in the city and to inspect nonresidential buildings and structures located in the city in order to determine which nonresidential buildings and structures are not being maintained so that the health and safety of its occupants or members of the general public are jeopardized and for the purpose of carrying out the objectives of this article with respect to such nonresidential buildings and structures;
- (2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect the repair or demolition of nonresidential buildings and structures which have not been properly maintained in compliance with minimum standards established by this article;
- (3) To keep a record of the results of inspections made under this article and an inventory of those non-residential buildings and structures which have not been properly maintained in compliance with the minimum standards established by this article;
- (4) At regular intervals, prepare informational materials for the City Council regarding ongoing open cases. Materials may include, but not be limited to inspection dates, findings, photographs, copies of notices, minutes of hearings; and
- (5) To perform such other duties as may be herein prescribed.

Sec. 5-86. - Powers of the enforcement officer.

The code enforcement officer or officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:

- (1) To investigate nonresidential buildings and structures in the city to determine whether they have been properly maintained in compliance with the minimum standards established by this article so that the safety or health of the occupants or members of the general public are not jeopardized;
- (2) To administer oaths and affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations and inspections provided that such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession; and
- (4) To appoint and fix duties of such officers, agents, and employees as the code enforcement officer or officer deems necessary to carry out the purposes of this article.

Sec. 5-87. - Inspections.

For the purpose of making inspections, the code enforcement officer or officer is hereby authorized to enter, examine, and survey at all reasonable times, nonresidential buildings and structures. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly

issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

Sec. 5-88. - Procedure for enforcement.

- (a) Preliminary investigation. Whenever it appears to the code enforcement officer or officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this article, the code enforcement officer or officer shall undertake a preliminary investigation.
- (b) Complaint and hearing. If the preliminary investigation discloses evidence of a violation of the minimum standards established by this article, the code enforcement officer or officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the code enforcement officer or officer at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the serving of the complaint, that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer or officer.
- (c) Procedure after hearing.
 - (1) If, after notice and hearing, the code enforcement officer or officer determines that the nonresidential building or structure has been maintained in that the property meets the minimum standards established by this article, the code enforcement officer or officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of said determination.
 - (2) If, after notice and hearing, the code enforcement officer or officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by this article, the code enforcement officer or officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of subsection (c)(3) and (c)(4) of this section and subject to the limitations set forth in sections 5-89 and 5-90.
 - (3) If the code enforcement officer or officer determines that the cost of repair, alteration, or improvement of the building or structure would not exceed fifty (50) percent of its then-current value, then the code enforcement officer or officer shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either (i) repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by this article or (ii) vacate and close the nonresidential building or structure for any use.
 - (4) If the code enforcement officer or officer determines that the cost of repair, alteration, or improvement of the building or structure would exceed fifty (50) percent of its then-current value, then the code enforcement officer or officer shall state in writing the findings of fact

in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either (i) remove or demolish the nonresidential building or structure or (ii) repair, alter or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this article.

(d) Failure to comply with order and ordinances.

- (1) If the owner fails to comply with an order to either (i) repair, alter, or improve the nonresidential building or structure or (ii) vacate and close the nonresidential building or structure, the code enforcement officer or officer shall submit to the city council an ordinance ordering the code enforcement officer or officer to cause such nonresidential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this article or to be vacated and closed for any use. The property shall be described in the ordinance. If city council adopts the ordinance, the code enforcement officer or officer shall cause the building or structure to be vacated and closed for any use.
- (2) If the owner fails to comply with an order to either (i) remove or demolish the nonresidential building or structure or (ii) repair, alter, or improve the nonresidential building or structure, the code enforcement officer or officer shall submit to the city council an ordinance ordering the code enforcement officer or officer to cause such nonresidential building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the city council. The property shall be described in the ordinance. If city council adopts the ordinance, the code enforcement officer or officer shall cause the building or structure to be removed or demolished.

Sec. 5-89. - Limitations on orders and ordinances—Historic landmark or historic district.

Notwithstanding any other provision of this article, if the nonresidential building or structure is designated as a local historic landmark listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the city council determines, after a public hearing, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, an order issued by the code enforcement officer or officer pursuant to section 5-88(c) and an ordinance approved by city council pursuant to section 5-88(d) may only require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this article.

Sec. 5-90. - Limitations on orders and ordinances—Vacant manufacturing facility or vacant industrial warehouse.

Notwithstanding any other provision of this article, an order issued by the code enforcement officer or officer pursuant to section 5-88(c) and an ordinance approved by city council pursuant to section 5-88(d) may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and ordinance may require such

building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any of use.

Sec. 5-91. - Vacated and closed nonresidential buildings or structures.

- (a) If the city council has adopted an ordinance or the code enforcement officer or officer has issued an order requiring the building or structure to be repaired, altered, or improved or vacated and closed and the building or structure has been vacated and closed for a period of two (2) years pursuant to the ordinance or order, then if the city council finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the city in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area, then city council may, after the expiration of the two-year period, adopt an ordinance and serve such ordinance on the owner, setting forth the following:
 - (1) The ordinance shall require that the owner either (i) demolish and remove the nonresidential building or structure within ninety (90) days or (ii) repair, alter, or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this article within ninety (90) days.
 - (2) The ordinance shall require that if the owner does not either (i) demolish and remove the nonresidential building or structure within ninety (90) days or (ii) repair, alter, or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this article within ninety (90) days, then the code enforcement officer or officer shall demolish and remove the nonresidential building or structure.
- (b) In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five (5) years before city council may take action under this section
- (c) If the owner fails to comply with the requirements of the ordinance within ninety (90) days, the code enforcement officer or officer shall demolish and remove the nonresidential building or structure.

Sec. 5-92. - Methods of service of complaints and orders.

- (a) Complaints or orders issued by the code enforcement officer or officer under this article shall be served upon persons either personally or by registered or certified mail and, in conjunction therewith, may be served by regular mail. When the manner or service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after mailing, service shall be deemed sufficient. The person mailing the complaint or order by regular mail shall certify that fact and the date thereof, and such certificate shall be conclusive in the absence of fraud. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

- (b) If the identities of any owner or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement officer or officer in the exercise of reasonable diligence, and the code enforcement officer or officer makes an affidavit to that effect, then the serving of the complaint or order upon the unknown owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

Sec. 5-93. - Interim action by the code enforcement officer.

After failure of an owner of a nonresidential building or structure to comply with an order of the code enforcement officer or officer issued pursuant to the provisions of this article and upon adoption by the city council of an ordinance authorizing and directing the owner to do so, as provided by G.S. 160A-439(f) and section 5-88(d) of this article, the code enforcement officer or officer shall proceed to cause such nonresidential building or structure to be repaired, altered, or improved to comply with the minimum standards established by this article, or to be vacated and closed or to be removed or demolished, as directed by the ordinance of the city council. The code enforcement officer or officer may cause to be posted on the main entrance of any nonresidential building or structure which is to be vacated and closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a class 3 misdemeanor.

Sec. 5-94. - Costs, a lien on premises.

- (a) As provided by G.S.160A-439(i), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the code enforcement officer or officer pursuant to section 5-88(d) or section 5-91 shall be a lien against the real property upon which such costs were incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by Article 10, Chapter 160A of the North Carolina General Statutes. The amount of the costs shall also be a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.
- (b) If the nonresidential building or structure is removed or demolished by the code enforcement officer or officer, the code enforcement officer or officer shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the code enforcement officer or officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the

power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 5-95. - Ejectment.

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the code enforcement officer or officer may file a civil action in the name of the city to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed ten (10) days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the code enforcement officer or officer produces a certified copy of an ordinance adopted by the city council pursuant to G.S. 160A-493(f) and section 5-88(d) to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least thirty (30) days before the filing of the summary ejectment proceeding, that the city council has ordered the code enforcement officer or officer to proceed to exercise his duties under G.S. 160A-493(f) and section 5-88(d) to vacate and close or remove and demolish the nonresidential building or structure.

Sec. 5-96. - Filing of ordinances.

An ordinance adopted by city council pursuant to sections 5-88(d) or 5-91 of this article shall be recorded in the office of the Register of Deeds of Catawba County and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-439(f) and (g).

Sec. 5-97. - Alternative remedies.

Neither this article nor any of its provisions shall be construed to impair or limit in any way the power of the City of Conover to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this article by criminal process as authorized by G.S. 14-4, and section 5-101 of this article, and the enforcement of any remedy provided herein or in other ordinances or laws.

Sec. 5-98. - Board of adjustment to hear appeals.

- (a) All appeals which may be taken from decisions or orders of the code enforcement officer or officer pursuant to this article shall be heard and determined by the board of adjustment. As the appeals body, the board shall have the power to fix the times and places of its meetings, to

adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties.

(b) Appeals shall be subject to the following:

- (1) An appeal from any decision or order of the code enforcement officer or officer may be taken by any person aggrieved thereby. Any appeal from the code enforcement officer shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the code enforcement officer or officer and with the board of adjustment a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer or officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When the appeal is from a decision of the code enforcement officer or officer refusing to allow the person aggrieved thereby to do any act, the code enforcement officer or officer's decision shall remain in force until modified or reversed. When any appeal is from a decision of the code enforcement officer or officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the code enforcement officer or officer certifies to the board, after the notice of appeal is filed, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant) a suspension of the requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one (1) day's written notice to the code enforcement officer or officer, by the board, or by a court of record upon petition made pursuant to G.S. 160A-446(f) and section 5-99.
- (2) The board shall fix a reasonable time for the hearing of all appeals, shall give notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the code enforcement officer or officer, but the concurring vote of four-fifths of the members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer or officer. The board shall have power also in passing upon appeals, in any case when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this article, to adapt the application of the article to the necessities of the case to the end that the spirit of the article shall be observed, public safety and welfare secured, and substantial justice done.
- (3) Every decision of the board shall be subject to review by the Superior Court by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the board, but not otherwise.

Sec. 5-99. - Temporary injunction remedy for aggrieved person.

Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board of adjustment shall have the right within thirty (30) days after issuance of the order or rendering of the decision, to petition the Superior Court for a temporary injunction restraining the code enforcement officer or officer pending a final disposition of the cause, as provided by G.S. 160A-446(f).

Sec. 5-100. - Conflict with other provisions.

In the event any provision standard or requirement of this article is found to be in conflict with any other ordinance or code of the city, the provisions which establishes the higher standard or more stringent requirement for the promotion and protection of health and safety of the citizens of the city shall prevail.

Sec. 5-101. - Violations; penalty.

- (a) It shall be unlawful for the owner of any nonresidential building or structure to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the code enforcement officer and officer duly made and served in accordance with the provisions of this article, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any nonresidential building or structure, with respect to which an order has been issued pursuant to section 5-88(c) of this article, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, improvement, or its vacation and closing, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
- (b) The violation of any provision of this article shall constitute a misdemeanor, as provided by G.S. 14-4.
- (c) In addition to or in lieu of the other remedies provided by this article, any owner of a nonresidential building or structure that fails to comply with an order of the code enforcement officer or officer within the time specified therein, shall be subject to a civil penalty in the amount of fifty dollars (\$50.00) for the first offense, one hundred dollars (\$100.00) for the second offense in the calendar year, and two hundred fifty dollars (\$250.00) for the third and subsequent offenses in the calendar year. Each subsequent offense after the third will be subject to a civil penalty of two hundred fifty dollars (\$250.00). Each 30-day period or part thereof in which a violation is allowed to persist will constitute a separate and distinct offense.