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HIGH IMPACT PROTECTION ORDINANCE

FOR

AVERY COUNTY, NORTH CAROLINA

HIGH IMPACT PROTECTION ORDINANCE
AVERY COUNTY, NORTH CAROLINA

ARTICLE 1
INTRODUCTION

Section 1.1 General Purpose.

The following regulations of High Impact Industry are adopted for the purpose of promoting the health, safety and general welfare of the citizens of Avery County. The Avery County Commissioners hereby establish certain criteria relating to High Impact Industries. These industries by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and/or other impacts upon the lands adjacent to them. These standards shall allow for the placement and growth of such uses, while maintaining the health, safety, and general welfare standards of established residential, agricultural and commercial areas in Avery County.

This Ordinance does not affect land uses not listed herein.

Section 1.2. Legal Authority.

This Ordinance is adopted under the authority granted to counties by the General Assembly of North Carolina in General Statute 153A, Article 18 and other pertinent statutes and amendments thereto.

Section 1.3. Territorial Coverage.

Pursuant to North Carolina General Statutes § 153A-320, this Ordinance shall apply to all areas of unincorporated Avery County, which are not within the extra-territorial planning jurisdiction of any municipalities.

Section 1.4. Compliance With Other Plans.

All proposed High Impact Industries / Uses must comply with all requirements of any adopted plans and Ordinances in effect in Avery County.

ARTICLE II
REGULATED INDUSTRIES

Section 2.1. Regulated Uses.

This Ordinance applies only to the following listed High Impact Industries / Land Uses. Each industry/use is grouped into categories based on impact to the surrounding area.

Class 1

(a) Concrete Suppliers (Ready Mix)
(b) Tub Grinding Operations - Temporary

Class 2

(a) Cement Manufacturing Facilities
(b) Chip Mills - Enclosed Facility
(c) Commercial Livestock Auctions
(d) Land Clearing and Inert Debris (LCID) Landfills
(e) Local Solid Waste Management Facilities/Convenience Centers - Privately Owned
(f) Sawmills
(g) Storage Facility of Bulk Inflammables (Fuel Oil, Propane, Gasoline, and Natural Gas)

Class 3

(a) Chip Mills - Open Facility
(b) Junk Yards - Vehicular
(c) Regional Solid Waste Management Facility Construction and Demolition (C&D) Landfill - Privately Owned
(d) Scrap Metal Salvage Yards
(e) Slaughtering and Processing Plants
(f) Tub Grinding Operations - Permanent/Non-Temporary

Class 4

(a) Chemical Manufacturing Facilities
(b) Manufacturing Facility of Bulk Inflammables (Fuel Oil, Propane, Gasoline, Natural Gas)
(c) Mining Extraction Operation of Soft Materials

Class 5

(a) Asphalt Plant(s)
(b) Commercial Incinerators
(c) Motor Sports Activities
(d) Pulp and Paper Mills
(e) Mining Extraction Operation of Hard Materials

Class 6

(a) Explosives Manufacturing Facilities
(b) Hazardous Waste Facilities
(c) Local/Regional Solid Waste Management Facility / Municipal Solid Waste Disposal (MSW) Landfills - Privately owned

Section 2.2. Exemptions.

The following are specifically exempted from this Ordinance:

A. Agriculture Chemical Storage Facilities and/or Buildings regulated by the North Carolina Department of Agriculture pursuant to the North Carolina Best Management Practices (BMP) and Integrated Pest Management (IPM) programs.

B. Avery County Airport operations, including air space and landing flight patterns, as regulated by the Avery County Airport Ordinance.

C. Portable sawmills as defined herein

D. The storage of less than 25,000 gallons of flammable or combustible liquids or gases at filling stations or convenience stores solely for retail distribution to individual customers.

Section 2.3. Definitions.

The following definitions shall be used for the purpose of interpreting this Ordinance; for terms not defined below, the common usage of the term shall prevail.

1. ***Area of Operation (same as Point of Operation)*** - The portion of a tract of land on which a High Impact Industry is situated that is actually under use for operations by the High Impact

Industry, including areas occupied by buildings, structures, equipment, excavation activities related to ore or mineral extraction, and other similar operations. Driveways and related items such as stormwater drainage and signage, utility easements and internal drives may extend beyond the point of operation.

2. ***Asphalt Plant*** - A facility, with all related equipment, for the manufacture and production of a black or brown "tar like" variety of bitumen, which, when mixed with proper amounts of sand or gravel or both, results in material suitable for paving and/or roofing, etc.

3. ***Board of Commissioners*** - The Avery County Board of Commissioners.

4. ***Cement Manufacturer*** - An establishment primarily engaged in manufacturing Portland, natural, masonry, pozzalanic, and other hydraulic cements. Cement manufacturing establishments may calcine earths or mine, quarry, manufacture, or purchase lime.

5. ***Chemical*** - An element, chemical compound, or mixture of elements or compounds.

6. ***Chemical Manufacturing*** - A facility primarily involved in the production, synthesis, formation processing, refining, manufacturing, and/or distribution of chemical products in bulk, for other than retail sales on-site. This definition does not include Pharmeceutical Manufacturing.

7. ***Chemical Storage Facility*** - A facility whose primary use is for the storage of chemical compounds in bulk.

8. ***Chip Mill*** - A mechanized facility that grinds whole logs into wood chips for paper, particle board and other products and is capable of producing at least 150,000 tons annually.

   A. Open Chip Mill Facility - The Area of Operation is less than 80% enclosed by a building structure.

   B. Enclosed Chip Mill Facility - The Area of Operation is enclosed 80% or more by a building structure.

10. ***Commercial/Commercial Use*** - Use for an occupation, employment, or enterprise that is carried on for profit by the owner, operator, lessee, or licensee.

11. ***Commercial Incinerator*** - 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.

12. *Commercial Livestock Auction* - A facility or area used for the commercial selling or buying of livestock on a set schedule, conducted on a site where such livestock are not raised, and which may be weekly or monthly or other,.

13. *Concrete Supplier (Ready Mix)* - An establishment primarily engaged in manufacturing hydraulic cement, including Portland, natural, and masonry cements to be delivered from the site 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 is the manufacture of concrete products from a combination of cement and aggregate.

14. *Cone of Illumination* - The area, as measured on the ground, which is being illuminated by a lighting device.

15. *Construction Activities* - Any studies, investigations, operations, improvements, or other activities undertaken at the site of a proposed High Impact Land Use pertaining to the construction, placement, erection, or establishment of the same, including but not limited to surveys, soil and other environmental tests, clearing and grading, pouring or pads, placing building materials or equipment at the site, locating or constructing buildings, structures, or other improvements, or any other similar activities.

16. *Convenience Center/Transfer Station* - A facility used for the collection, temporary storage, and transfer of solid waste to a landfill as defined herein.

17. *County* - The County of Avery, North Carolina.

18. *Explosives Manufacturing* - Manufacturing 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, but does not include hand-loaded small arms ammunition.

19. *Hazardous Waste Facility* - A facility designed for the collection, storage, processing, recycling, recovery, treatment and/or disposal of hazardous waste as defined in NCGS §

130A-290.

20. ***High Impact Industry/High Impact Land Use/High Impact Use***- A use listed in Article II of this Ordinance that may by their very nature, produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and/or other impacts upon the lands adjacent to it.

21. ***Hospital/Medical Clinic*** - A facility as defined in NCGS § 131E-76 (3) or any facility used in the treatment or practice of medical care giving.

22. ***Industrial*** - Use engaged in the manufacturing, and basic processing of materials or products predominantly from extracted or raw materials, or previously prepared materials, including processing, fabrication, assembly, treatment, packaging, storage, sales, and distribution of such products.

23. ***Junk Yard -Vehicular*** - Defined as three or more motor vehicles situate upon a parcel of land that:

    A. do not display a current North Carolina License Plate and/or are partially dismantled or wrecked; and
    B. cannot be self-propelled; and
    C. are visible from a public roadway; and
    D. are held for a commercial use.

24. ***Land-Clearing and Inert Debris (LCID) Landfill*** - A disposal area for land clearing waste, inert debris, untreated wood and yard trash, that is operated in compliance with the local government solid waste plan.

    A. Type 1- Landfill area less than 2 (two) acres - The owner (LCID) is required (N.C. General Statutes 130A-294) to file Notification Form for recordation in the Register of Deeds office. The recorded notification, affixed with the registers seal, the date, book, and page number of recording shall be sent to the Division of Solid Waste Management, Asheville Regional District.
    B. Type 2 - Landfill area equal to or greater than 2 (two) acre sites - Individual permit is required per Title 15A.13B (0565) of NCGS 130A-294. The seal of a professional engineer is required when submitting plans for a Land Clearing and Inert Debris (LCID) landfill.

    Note: Both Type 1 and Type 2 LCID's must comply with all Avery County

Ordinances and all State and Federal requirements.

25. ***Light Mitigation*** - A good faith effort to reduce the emission of light or diminish the effects that emitted light has on adjacent parcels or the neighborhood.

26. ***Manufacturing Facility of Bulk Inflammables (Fuel Oil, Propane, Gasoline, and Natural Gas)*** - A facility whose primary purpose is the production, synthesis, formation, processing, refining, manufacturing, and/or distribution of chemical products in bulk of any amount. The storage of fuel oil, propane, gasoline or natural gas resulting from the manufacturing of the same is included in this definition.

27. ***Medical Waste Facility*** - A facility that stores or treats medical waste as defined by NCGS § 130A-309.26a.

28. ***Mining Extraction Operation of Hard Materials*** - An operation for the digging, extraction, mining, or quarrying of materials by use of hard rock mining. For the purposes of this definition, hard rock mining includes the removal of material which is not rippable, i.e. its removal requires the use of blasting or explosives. This definition shall not include excavation or grading when conducted solely in aid of on-site farming or of on-site construction for purposes other than mining. Removal of overburden and mining of limited amounts of any ores or mineral solids shall not be considered included herein when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of any natural deposit, provided that the affected land resulting from any such exploratory excavation does not exceed one acre in area. This definition does not include "gem" or other mining generally operated as a business use for the general public. This definition shall not include the removal of fieldstone for commercial or private use.

29. ***Mining Extraction Operation of Soft Materials*** - An operation for the digging, extraction, open or pit mining of material by using soft rock mining. For the purposes of this definition soft rock mining includes the removal of material which is rippable, i.e. can be removed, scooped out, or plowed by a trackhoe or other machinery without the use of explosives or blasting. This would include, be not be limited to, pegmatite and sand. This definition does not include "gem" or other mining generally operated as a business use for the general public.

30. ***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.

31. ***Non-Conforming Use*** - Any use which legally existed on the effective date of this Ordinance, and which does not conform to the regulations of this Ordinance.

32. ***North Carolina Design Professional*** - An architect, landscape architect, land surveyor, or engineer licensed by the State of North Carolina, provided such person is operating within his or her area of licensure by the State of North Carolina.

33. ***Noise Mitigation*** - A good faith effort to reduce the emission of noise or diminish the effects that emitted noise has on adjacent parcels or the neighborhood.

34. ***Objectionable*** - Undesirable or offensive.

35. ***Ordinance Administrator*** - The Avery County Planning Department Director or his designee.

36. ***Paper Mill*** - An establishment primarily engaged in manufacturing paper from pulp. These establishments may manufacture or purchase pulp.

37. ***Perennial Stream*** - A constantly flowing, drought-resistant stream that is depicted by a thin continuous blue line on the most recent version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined by local Government studies).

38. ***Person*** - A firm, corporation, general partnership, limited partnership, limited liability company, sole proprietor, individual, individual acting on behalf or another, or any other entity of any type whatsoever.

39. ***Pharmaceutical Manufacturing*** - Establishments primarily engaged in ore or more of the following: (1) manufacturing biological and medical products; (2) the processing (i.e., grading, grinding and milling) of botanical drugs and herbs; (3) isolating active medicinal principals from botanical drugs and herbs; and (4) manufacturing pharmaceutical products intended for internal and external consumption in such forms as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspension.

40. ***Planning Board*** - The Avery County Planning Board.

41. ***Planning Department*** - The Avery County Department of Planning and Inspections.

42. ***Point of Operation*** - See Area of Operation

43. ***Portable Sawmill*** - Any commercial operation employing two or more full-time employees in operation for a period of 45 days or less during a six month period, where timber is customarily processed into raw lumber, finished wood products or other wood products, regardless of whether the wood products are sold on premises or transferred to another facility for storage and sale. This definition includes the reprocessing of lumber and wood planing operations. Portable Sawmills set-up for more than 45 days at the same location are a Regulated Use as set forth

44. ***Propane*** - A heavy flammable gaseous alkane C_3H_8, found in crude petroleum and Natural gas, also known as LP gas.

45. ***Pulp Mill*** - An establishment engaged in manufacturing paper or paperboard from pulp is made by separating the cellulose fibers from the other impurities in wood or other materials, such as used or recycled rags, linters, scrap paper, and straw.

46. ***Receiving Use Property*** - The property which has a continuous property line with a high impact use which has the following use as set forth below.

    a. **Commercial/Business Use** - Includes, among other uses, the use of a building or structure, or a portion thereof of such parcel, for office, professional-type transactions, including storage or records and accounts. Business occupancies shall include, but not be limited to the following: animal hospitals, kennels and pounds, banks, barber and beauty shops, car wash, civic administration, clinic outpatient, dry cleaning, laundries, electronic data processing, laboratories, testing and research, motor vehicle showrooms, post offices, print shops, professional services (architects, attorneys, dentist, physicians, engineers, etc.) radio and television stations, telephone exchanges, businesses dealing with retail or mercantile stocks or goods, warehouses or merchandise incidental to such purpose and accessible to the public. Occupancies shall include, but not be limited to, the following: department stores, drug stores, markets, gas stations, retail or wholesale stores and sales room or buildings for mercantile goods.

    b. **Educational Use** - Includes, among other uses, the use of a building or structure, or a portion thereof of said parcel, by six or more persons at any one time for educational purposes for day care and kindergarten through 12th grade. It also

includes community colleges, four year colleges and institutions of higher learning.

c. **High Impact Industrial Use** - A use listed in Article II, Section 2.1 of this Ordinance that may by its very nature to produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and/or impacts upon the lands adjacent to them.

d. **Industrial Use** - A use engaged in the manufacturing, and basic processing of materials or products predominantly from extracted or raw materials, or previously prepared materials, including processing, fabrication assembly, treatment, packaging, storage for sales and distribution of such products.

e. **Residential Use** - Includes, among other uses, the use of a tract of land for habitation by permanent or semi-permanent residence. Examples are homes, apartment houses, condominiums, boarding houses, town houses, vacation time share and residential care/assisted living facilities.

47. ***Sawmill*** - Any commercial operation employing three or more full-time employees established for a period of six months or more where timber is customarily processed into raw lumber, finished wood products or other wood products, regardless of whether the wood products are sold on premises or transferred to another facility for storage and sale. This definition includes the reprocessing of lumber and wood planing operations.

48. ***Scrap Metal Salvage Yards*** - An establishment engaged in the wholesale distribution of automotive scrap, industrial scrap and other recyclable materials. This definition also includes auto wreckers primarily engaged in dismantling motor vehicles for the purpose of wholesaling scrap.

49. ***Screening*** - A continuous area of planted or existing vegetation, which at all times of the year has trees, shrubbery, and/or other natural vegetation sufficient in height, density, and foliage to screen, as much as is reasonably possible, a High Impact Land Use from the view of persons and motorists not on the property and who are standing at the property line and to reasonably prevent airborne particulate matter from escaping therefrom.

A. **Broken Screen** - Screening that is at least 75% opaque at maturity.

B. **Opaque Screen** - Screening that is at least 95% opaque at maturity.

50. ***Setback - Land Use*** - The minimum distance required between the Area of Operation of any

Regulated Use as defined in Section 2.1 and the nearest property line.

51. ***Setback - Stream*** - The distance required between the Area of Operation of any High Impact Industry and the top of the bank of any Perennial Stream.

52. ***Setback Accessory Usage Area*** - An area contiguous to the Area of Operation and contained within the Setback-Land Use, which will allow for limited activities to be conducted in relation with the High Impact Industry, within the Setback area, including but not limited to parking lots, office space or office buildings, raw material storage, finished product storage, scales, scale house, retail or wholesale sales of finished product. This area shall not contain those uses defined under Area of Operation.

53. ***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, or an establishment 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.

54. ***Solid Waste*** - As defined as such by the Avery County Solid Waste Ordinance.

55. ***Solid Waste Management Facility/Landfill*** - Land and equipment, other than Commercial Incinerators, used in the management of solid waste, including landfills and excluding convenience and transfer stations. These facilities shall be broken into the following two categories:

    1. **Local Solid Waste Management Facility Construction and Demolition (C&D) Landfill** - The disposal of waste resulting from construction, remodeling, repair and demolition of structures. Such waste includes but are not limited to bricks, concrete and other masonry materials, soil, rock, lumber, road spoils waste, rebar and paving materials.
    2. **Local/Regional Solid Waste Management Facility (MSW)/ Municipal Solid Waste Disposal** - The disposal of "solid waste" resulting from garbage, trash, refuse, abandoned material, spent material, by products, scrap, ash, sludge, and all discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from residential, commercial, industrial or agricultural activities.

56. ***Storage Facility of Bulk Inflammables (Fuel Oil, Propane, Gasoline and Natural Gas)*** - A facility whose primary purpose is the distribution, mixing, transfer or storage of flammable or combustible liquids or gasses received by or transferred by pipelines, tank car or tank truck in excess of 25,000 gallons at that location.

57. ***Temporary*** - A "temporary" activity is an activity that will be set up for a temporary time span not to exceed 30 days of operation (unless a greater time is specifically set forth herein), and is then removed.

58. ***Tub Grinding Operation*** - The process of using a mechanized unit of equipment or machinery which utilizes the long grinding hammer mill action of the mechanism to produce organic mulch from natural inert or organic material (for example, from tree stumps, tree branches, brush or any other type of natural forestry waste material). The equipment may be fueled either by diesel or electric sources and equipped with a grinding tub or tubs that are four (4) feet in diameter or greater.

ARTICLE III
REGULATIONS AND STANDARDS
(NEW HIGH IMPACT INDUSTRIES REGULATED)

No High Impact Use of a parcel or parcels of land shall be permitted, constructed, operated, or maintained except in accordance with the following standards.

Section 3.1. Screening and Fencing.

Screening shall be required for all High Impact Land Uses along all front, sides and rear property lines as follows:

Section 3.1.1. Required Screening and Fencing by Use Class.

Regulated Use Class	Existing Vegetation or Broken Screen	Existing Vegetation or Opaque Screen
1-2	Required	Not Applicable
3-7	Not Applicable	Required

Section 3.1.2. Screening and Fencing Requirements and Types.

A. **Existing Vegetation.** Existing vegetation **must be used** in lieu of the Screening required in 3.1.2.B and 3.1.2.C when:

1. The existing vegetation is of hardwood or evergreen type and at least six feet in height from the ground level; and

2. The existing trees are within thirty (30) feet of the property lines and meet the requirements of screening forth in Article II and Article III.

B. **Broken Screen**, composed of:

1. A single row of deciduous and/or evergreen trees placed a maximum of 25 feet apart on center, and

2. Either:
   a. A row of shrubs placed a maximum of 10 feet apart on center, **or**
   b. Opaque wooden fences, masonry walls or landscaped earth berms a minimum of six feet in height.

C. **Opaque Screen**, composed of:

1. A single row of deciduous trees placed a maximum of 20 feet apart on center, and
2. Evergreen trees placed a maximum of ten feet apart on center in two staggered rows or five feet apart in a single row, and
3. Either:
   a. A single row of shrubs placed a maximum of ten feet apart on center **or**
   b. Opaque wooden fences, masonry walls or landscaped earth berms a minimum of eight feet in height may be used to replace the requirements of shrubs, and to decrease the required number of evergreen trees by one-half.

D. **A Forestry Plan** may be used in lieu of the Screen required in 3.1.2.A-C when the

following are met:

1. The existing trees, of hardwood and/or evergreen varieties, and vegetation must be within fifty (50) feet of the property line or a distance of 10% of the land use setback in Article III, Section 3.3, for that particular classification, whichever is greater; and

2. The Forestry Plan shall allow for selective harvesting in the required screening area. The Selective harvesting allows for every other mature tree to be harvested and then replanted with another tree of evergreen or hardwood variety and meeting the requirements set forth in paragraphs A-C below. When the replanted trees meet an average height of twenty (20) feet, then the second harvest of mature trees may be harvested and replanted; and

3. The requirements of screening forth in Article II, Section 2.3 are met.

The following standards shall apply for trees and shrubs planted to meet the aforementioned screening requirements:

A. Trees shall be set back from the property line at a distance equal to 1/4 the canopy spread at maturity from the property line.

B. Trees shall be a minimum of six feet tall and have a 1 and ½ inch trunk caliper measured six inches above grade upon planting.

C. Trees shall be of a type that will reach a height of at least 20 feet at maturity.

D. Shrubs shall be a minimum of one foot tall after planting.

E. Shrubs shall be evergreen and of a type that will reach a height of at least five feet at maturity or within five years, whichever is shorter.

Section 3.2. Landscaping Plans:

A landscaping plan illustrating the required setbacks, screening and other site separation requirements shall be submitted through the Permit Process set forth in Article V for any use regulated by this Ordinance. The Ordinance Administrator may reasonably require adjustments and alternations to any proposed landscaping plan as is necessary to comply with the provisions of this

Ordinance.

Section 3.3. Setbacks. The following table details the setback requirements for each category of High Impact Land Use:

SETBACK TABLE

Regulated Use Class[a]	Land Use Setback[b]	Stream Setback[c]
Class 1	50 feet	100 feet
Class 2	125 feet	100 feet
Class 3	225 feet	100 feet
Class 4	400 feet	100 feet
Class 5	700 feet	100 feet
Class 6	1500 feet	100 feet

a. Regulated Use Classes are defined in Article II, Section 2.1.

b. As defined in Article II, Section 2.3.

c. As defined in Article II, Section 2.3. Under no conditions shall grading activities be allowed in North Carolina Division of Water Quality designated "undisturbed buffer areas" under the surface fresh water classifications, as defined below: All uses allowed by the State of North Carolina in the Stream Setback Area, such as underground drains, shall be allowed in the stream setback area. Any other uses are not allowed in the stream setback.

North Carolina Division of Water Quality

A. Primary Classifications	Buffer
Water Supply I (WSI)	100 ft.
Water Supply II (WSII)	100 ft.
Water Supply III (WSIII)	100 ft.
Water Supply IV (WSIV)	100 ft.
Water Supply V (WSV)	50 ft.

B. Supplemental Classifications	Buffer
Trout Waters B	50 ft.

Trout Waters C	50 ft.
High Quality Waters (HQW)	100 ft.
Outstanding Resource Waters (ORW)	100 ft.
Federal Wild & Scenic Rivers	100 ft.
N.C. Natural & Scenic Rivers	100 ft.

Section 3.3.1. Setback Accessory Usage Area.

The following table sets forth the Setback Accessory Usage Area for each category of High Impact Land Use:

SETBACK ACCESSORY USAGE AREA

Regulated Use Class	Percentage of Area Allowed For Accessory Use	Linear Depth of Setback Accessory Usage Area (Setback x Percentage)
Class 1	0%	None
Class 2	40%	50 Feet
Class 3	35%	79 Feet
Class 4	30%	120 Feet
Class 5	25%	175 Feet
Class 6	20%	300 Feet

Section 3.4. Lighting.

All lighting shall be pointed downward with the primary Cone of Illumination being primarily contained on the subject Regulated Use property. The exterior lighting fixtures shall be 95% overhead full cut-off fixtures.

Section 3.5. Noise Mitigation.

A Noise Mitigation Plan shall be submitted prior to obtaining an Avery County Development Permit. The Noise Mitigation Plan shall be designed and sealed by a N.C. Design Professional and include the standards set forth herein.

Section 3.5.1 Definitions.

1. dB (decibel) - A unit of sound pressure

2. Weighted Sound Level - A decibel value denotes either a sound level at a given instant, a maximum level, or a steady-state level.

Section 3.5.2. Permitted Sound Level [dB(A)]. Set forth herein are the permitted sound levels for the designated Receiving Use Properties resulting from sound levels generated by the High Impact Industry.

Table of Maximum Permitted Sound Level [dB(A)]

Receiving Use Property	Day (7:00 a.m. - 10:00 p.m.)	Night (10:00 p.m. - 7:00 a.m.)
Educational	55	60
Residential	55	50
Commercial/Business	65	60
Industrial	75	75

Section 3.5.3. General.

1. These terms in this Section 3.5 shall be in conformance with those contained in ANSI 5.1.1-1960, R 1971, Acoustical Terminology.

2. With respect to the standards established in the table of maximum permitted sound level dB(A) are expressed in terms of one whole dB (decibel) or 1/10 bel, which must be calculated by taking 100 instantaneous A-weighted sound levels at ten second intervals and computing dB=10 $\log_{10}$ I/IR in accordance with the Receiving Use Permitted Sound Level.

   Note: Napierian models will not be accepted unless conversion to (db) is performed.

3. No person may operate or cause or permit the operation of any stationary source of sound that exceeds the limits set forth herein for the set forth Receiving Use Properties when measured at the property line boundary of a High Impact Use.

4. When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories.

5. For any stationary source of sound which emits a pure tone, cyclically varying sound or repetitive impulsive sound, the standards defined herein shall be reduced by five dB(A).

6. The standards set forth in this section shall not apply to the following sources:
(1) Emergency warning devices; or
(2) Lawn care equipment used during daytime hours;

7. Subject to the provisions of Article IV (Pre-Existing High Impact Industries), any person who operates or permits to be operated any new stationary noise source after the effective date of this section shall comply with the standards set forth herein.

8. Measurement techniques to determine compliance with this section shall be set forth in the Noise Mitigation Plan.

9. The Noise Mitigation Plan shall apply also to traffic noise within the High Impact Industry site in regard to:
   a. Vehicular speed
   b. Vehicular compliance with N.C. Muffler Laws and Vehicle Manufacturer's Specifications
   c. Jake brake usage
   d. Regular vehicular use within the site

Section 3.6. Right of Way Requirements and Traffic Impact Analysis.

3.6.1. Roads and Streets Serving High Impact Industry.
All roads and streets proposed as entrance or exit road(s) by the developer of a High Impact Industry, including those proposed roads and streets that are not eligible to be placed on the State Highway system, shall be designed and constructed in compliance with the following:

A. **Minimum right-of-way for streets and roads.**
A fifty (50) foot right-of-way for streets and roads shall be required for all classes

of High Impact Industries (utility easements shall be provided, and where practical and necessary be incorporated with the street and road right-of-ways).

B. **Minimum travel surface width for entrance roads.**
Eighteen feet (18) of improved travel surface shall be required for all classes of High Impact Industries. (Improved travel surface means to be paved or provide a minimum of 8" compacted gravel surface.)

C. **North Carolina Department of Transportation Drive Way Permit Required.**
All High Impact Industries shall obtain a North Carolina Department of Transportation Driveway Permit.

3.6.2. Traffic Impact Analysis.
When a High Impact Industry is proposed to be located on a road that is not designated as a State or Federal numbered road, or would be at least ½ mile from any such road, and would create a volume of traffic in terms of vehicular trips per day that exceeds the road's practical carrying capacity as defined by the North Carolina Department of Transportation (NCDOT), such determination to be made by the Ordinance Administrator based upon reasonable evidence, a Traffic Impact Analysis (TIA) shall be performed by a NC licensed engineer or transportation planner and shall be provided by the applicant. The most updated version of the Institute of Transportation Engineers, *Trip Generation Manual* shall be used to determine the average number of daily trips generated by the proposed industry. These numbers will be compared to the most recent traffic counts performed by NCDOT for the surrounding road network.

As part of the TIA, specific recommendations for the mitigation of the impacts from the proposed traffic must be provided. These recommendations should address, but are not limited to: acceleration and deceleration lanes, road design standards, shoulder width, stop lights and outlying intersection improvements.

Section 3.7. Stormwater and Erosion Control Permits Required.

The following will be required for all Classes of High Impact Industries:

1. General Permit No. NCG010000 (NPDES). This is a National Pollutant Discharge Elimination System (NPDES) requirement of the North Carolina Division of Water Quality.

2. Avery County Erosion and Sedimentation Site Grading Permit is required when the land disturbing activity exceeds one acre or poses the potential for off-site sediment or erosion to surface freshwater tributaries or adjoining property owners.

3. Avery County Watershed Protection Permit is required when the proposed High Impact Industry is located within an Avery County Protected Water Supply Watershed.

4. Avery County Flood plain Development Applications, Permits and Certification Requirements - Application for a Flood plain Development Permit shall be made to the Avery County Flood plain Administrator prior to any development activities within a *Special Flood Hazard Area* located in Avery County.

5. Any other applicable local, state and federal permits and certifications.

6. All Temporary Sediment and Erosion Control Measures shall be designed to a minimum of a ten year rain event.

7. Permanent storm water measures shall be designed to a twenty-five year rain event.

8. All High Impact Industries shall be periodically inspected for compliance during the developmental phase and must call for and receive a "Letter of Final Compliance" from the Avery County Ordinance Administrator.

Section 3.8. Reporting.

At any time a report is required, or in the event at a citation is issued, by the State of North Carolina or any Agency of the State of North Carolina, concerning noise, dust, odor, or other environmental issues, the County shall receive a copy of the report and/or citation in addition to the resulting action taken by the affected industry. The responsibility for this reporting will be that of the industry.

Section 3.9. High Impact Industry Areas.

In an effort to promote the location of industries within the same general areas, the following will be allowed: When a High Impact Industry is proposed to be located on a site that is contiguous to an existing High Impact Industry, the land use setback and screening requirements specified in this

Article shall not apply to the property lines that are contiguous to the exiting High Impact Industry. All other provisions of this Ordinance shall apply.

ARTICLE IV
PRE-EXISTING HIGH IMPACT INDUSTRIES

Section 4.1. Application to Existing Non-Conforming High Impact Industries.

1. Any High Impact Industry existing upon the effective date of this Ordinance which does not conform to the requirements of this may continue so long as the use is not discontinued for more than ten (10) consecutive years.

2. A legal nonconforming High Impact Industry may be altered, added to, expanded or enlarged at the site of its operations if the same High Impact Use is undertaken solely on the property owned or leased to the High Impact Industry as of the effective date of this Ordinance. This expansion will be subject to a 25 foot setback for Class 1, 2 and 3 industries and a 50 foot setback for Class 4 & 5 industries; with a 200 foot setback for Class 6 Industries.

3. In the event that a non-conforming building is damaged or destroyed by fire, flood, or other hazard, repairs may be made, or reconstruction may take place, provided the original foundation footprint size is maintained, and located on the same property, but not necessarily in the same location. If expansion is made with reconstruction, then the provisions of 4.1 subparagraph 2 shall be met.

Section 4.2. New High Impact Industries Regulated.

After the effective date of this Ordinance, all new High Impact Industries as well as any pre-existing High Impact Industries that are moved, enlarged or altered, shall conform to the regulations contained in this Ordinance except as set forth in Article 4.

ARTICLE V
PERMIT PROCEDURES

The purpose of this Article is to provide the procedures to be followed for erecting, moving, adding to, or structurally altering any building or structure associated with a High Impact Industry regulated by this Ordinance.

Permits are required from the Avery County Planning Department for any industry regulated by this Ordinance. No permits shall be issued by the Planning Department until the appropriate Federal and State permits have been issued.

Section 5.1. Conditional Use Permit/Development Permit Required.

No building or other structure subject to this Ordinance shall be erected, moved, added to, or structurally altered without a conditional use permit/development permit having been issued by the Board of Adjustment. All conditional use/development permits are valid for one year. If a building permit or grading permit is not obtained during that time, the conditional use/development permit will be considered null and void.

Section 5.2 Application for Conditional Use/Development Permits.

Section 5.2.1. Application. All applications for conditional use/development permits shall be accompanied by three sets of plans, drawn to scale, showing the actual dimensions and shape of the lot or parcel to be built upon; the exact sizes and locations on the parcel of any buildings already existing; the Area of Operation; the location and dimensions of the proposed building or alteration; and other site improvements in compliance with the standards of Article III. All plans must be prepared by a North Carolina Design Professional authorized to prepare such plans.

The application shall include such other information as may reasonably be required by the Ordinance Administrator, including a description of all existing or proposed buildings or alterations; existing and proposed uses of the buildings and the parcel; conditions existing on the parcel; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this Ordinance.

Section 5.2.2. Application Fee. All applications for a conditional use permit/ development permit shall be accompanied by such fee as established by the Avery County Board of Commissioners. Said fee is non-refundable.

Section 5.2.3. Permit Review Procedures. The conditional use permit/development permit shall be reviewed by the Board of Adjustment in accordance with the provisions of Article VII Section 6.6 of this Ordinance. In conducting its review, the Board of Adjustment shall be guided by the following standards for approval, and the Board's findings in approving or

denying the conditional use permit/development permit shall reflect the applicant's compliance or noncompliance with these standards, as applicable:

1. The use does not materially endanger the public health or safety;

2. The use meets all required conditions and specifications of the Ordinance;

3. The use will not substantially injure the value of adjoining property or be a public necessity;

4. The use will be in harmony with the area in which it is located; and

5. The use will be and be in general conformity with the Ordinance and the public and/or private infrastructure, including, but not limited to, transportation facilities, water and sewer supply, public safety services, sanitation services and similar facilities and services.

High Impact Industries applications shall be reviewed for approval and issued or disapproved within 45 days of date or receipt of the completed application. All unapproved applications will be returned with the reasons for the denial and shall refer to the specific sections of the Ordinance with which the application does not comply. The applicant shall have 60 days from receipt of the written notification to bring the application into compliance. If the applicant fails to do so within said 60 day period, the applicant shall be required to file a new application.

An application shall further be denied upon a determination by the Board of Adjustment that said application or information submitted in connection therewith contains a material misrepresentation, either of commission or omission.

All permits issued hereunder are issued on the condition that they are and shall remain subject to the applicant's continued compliance with those certifications contained on the application and with the requirements of the Ordinance.

All permits issued hereunder are further issued on the condition that all buildings, structures, facilities, and other aspects of the High Impact Industry will be constructed as shown on the plans submitted with the application and accompanying information.

At issuance of the permit, one copy of the plans submitted shall be returned to the applicant, the second copy of the plans shall be retained by the Ordinance Administrator. The third set shall be marked as the general contractor's set and retained at the job site until the project is completed.

Section 5.3. Operational Permits. After completion of all requirements of the conditional use/development permit, the applicant shall submit an application for an operational permit. All applications for operational permits shall be on a form approved by the County, shall be fully completed, and shall be signed by the applicant; provided, that no such application maybe filed until a conditional use/development permit for the same proposed High Impact Land Use has been issued as required above. All applications shall be accompanied by an as-built survey showing the actual dimensions and shape of the lot built upon, all buildings, structures, flood plains, flood ways, land activities or phases and such other information as may be required reasonably by the Ordinance Administrator to determine conformance with and provide for the enforcement of this Ordinance. Where the proposed site includes any part of a road which has been designated as such upon the officially adopted road or road plan of the County or a municipality within the County, such part of such road shall be shown on the survey.

The application shall additionally contain certifications that:

The High Impact Land Use for which the permit is being requested will at all times comply with the applicable regulations and standards imposed under this ordinance.

The applicant has not constructed, maintained operated, or modified any High Impact Land Use in Avery County without the approval of the County.

No permit issued to the applicant under this ordinance, or under any successor ordinance hereto, has ever been revoked.

The proposed High Impact Land Use is properly permitted under, and complies with, and at all times will be maintained and operated and will continue to be permitted under all rules, regulations, and other requirements imposed by the North Carolina Department of Transportation, North Carolina Department of Environmental and Natural Resources, and any other applicable Regulatory Agency or Governmental Body.

The applicant is the owner or lessee of the tract or tracts upon which the High Impact Land Use is located and will continue to be the owner or lessee of the same for so long as the High

Impact Land Use Industry is situated thereon.

The applicant has been duly issued a conditional use/development permit by the Board of Adjustment for the same proposed High Impact Land Use, which permit is still valid as of the date of filing of the application for the operational permit.

Section 5.3.1 Issuance or Denial of Operational Permit. The Board of Adjustment shall compete its review of the application and notify the applicant in writing as to what action has been taken with respect to the same. Said notification shall be issued no later than 45 days of the later of the following to occur: Receipt by the Board of Adjustment of all information required to be submitted by the applicant under this section; and received by the Board of Adjustment of all information which is authorized to be obtained hereunder. Action by the Board of Adjustment shall consist of one of the following:

If the Board of Adjustment determines that the application or the proposed High Impact Land Use, or both fails to meet one or more of the requirements of this ordinance, or that any one or more of the certifications required in Section 5.3 above, cannot truthfully and correctly be made, the application for the operational permit shall be denied. Written notification of the denial from the Board of Adjustment to the applicant shall note the reason (s) for the denial and shall refer to the specific section(s) of this ordinance with which the application or proposed High Impact Land Use does not comply. The applicant shall have 60 days from receipt of said written notification to bring the application and proposed High Impact Land Use into compliance in which event the provisions herein below shall apply. If the applicant fails to do so within said period of 60 days, the applicant shall be required to file a new application, or in alternative the applicant may file an appeal as herein below set forth. The Board of Adjustment shall provide written notification to the applicant as to the Board of Adjustment decision with regard to any attempts by the applicant to bring the application or proposed High Impact Land Use into compliance.

An application for an operational permit shall further be denied upon a determination by the Board of Adjustment that said application or information submitted in connection there with contains a material representation, either of commission or of omission.

If the Board of Adjustment determines that the application and proposed High Impact Land Use meets all of the requirements of this ordinance, and that the application

does not violate the provision of subparagraph 2 above, the Board of Adjustment shall issue an Operational Permit to the applicant.

If the Board of Adjustment fails within the above stated period of 45 days to notify the applicant as to what action has been taken, the application shall be deemed approved and an Operational Permit shall be issued to the applicant. For purposes of this subparagraph 4, the date of notification shall be the date on which the same is mailed, faxed, or otherwise sent or delivered to the applicant.

All Operational Permits hereunder issued on the condition that they are and shall remain subject to the holders continued compliance with those certifications contained in the application and with requirements of this ordinance. No Operational Permit may be assigned or transferred by the holder to any other person.

Section 5.3.2 Conditions of Permit. Each Operational Permit approved hereunder shall be issued on condition that:

Certifications contained in the application are true and correct, and if continuing in nature, shall at all times remain true and correct;

The application and the information submitted in support of the same, contains no material representation, either of commission or omission;

All building structures, facilities, and other aspects of a High Impact Land Use will be constructed as shown in the application and accompanying information; and

Applicant is and will at all times remain in compliance with the terms and conditions of the Operational Permit and with all requirements or this ordinance.

Section 5.3.3 Duration and Scope of Permit. An operational permit shall be valid only for the proposed High Impact Land Use as described in the application for the same, and unless revoked as set forth below, or voluntarily surrendered by the holder thereof, shall remain valid until such time as that High Impact Land Use has for any reason been discontinued for a period of two years. In the event of damage to a nonconforming High Impact Land Use by fire, flood, or other hazard which is not caused by the intentional conduct of the owner or operator, and which causes the High Impact Land Use to discontinue operations for two years or more consecutive days, the owner operator may file a request for a variance with the

Board of Adjustment as set forth herein for one extension of said two year period; provided that the variance request shall set forth the reason(s) why repairs cannot be completed and operations resumed within the time required herein; provided further, that any such variance request shall be filed prior to the expiration of the proceeding period during which repairs are to be completed and operations resumed. For purposes of this section, a High Impact Land Use shall not be deemed to be discontinued during such time as the owner or operator thereof has temporarily suspended operations due to solely seasonal nature of the business.

Section 5.3.4 Alterations and Expansions. Any alteration, addition to, expansion, or enlargement of a High Impact Land Use shall require the application for an issue of a new Operational Permit hereunder. For purposes of this section, an alteration, addition to, expansion, or enlargement of a High Impact Land Use shall be deemed to require a new Operational Permit if it is such as to require the issuance of a building permit, zoning permit, environmental health permit, water shed permit, or State or Federal Environmental or Department of Transportation permit.

Section 5.4. Revocation of Permit

The Board of Adjustment may, after due notice to the holder of a conditional use/development permit, or Operational Permit, and getting an opportunity to be heard to such holder, revoke such permit upon the finding that:

The holder has violated any of the terms or conditions of the permit, or any other requirements to this ordinance; or the application on which issuance of the permit was based contained material misrepresentation, either of commission or omission.

Section 5.5. Appeal of Permit Denial or Revocation.

If an application for conditional use/development permit or operational permit is denied, or if such permit is revoked, the applicant or holder may appeal the action as set forth herein.

Section 5.6. Administrator to Maintain Permit Records.

The Ordinance Administrator shall maintain a record of all development permits.

Section 5.7. Remedies for Noncompliance.

The failure to obtain any other required development permit shall be a violation of this Ordinance. Further, the conditional use/development permits shall issue on the basis of applications approved by the Board of Adjustment and authorized only for that use, arrangement, and construction applied for and approved. Any use, arrangement or construction not in compliance with the authorized use

shall be a violation of this Ordinance, and shall be subject to penalties and remedies provided by Article VII of this Ordinance.

ARTICLE VI
APPEALS AND VARIANCES

Section 6.1. Board of Adjustment.

The Avery County Planning Board is hereby designated as the Board of Adjustment pursuant to NCGS §153A-345(a), and shall hear appeals, requests for variances, and all challenges to the decision or interpretation of the Ordinance Administrator.

Section 6.2. Powers and Duties of Board of Adjustment.

The Board of Adjustment shall have the following powers and duties in regard to this Ordinance:

1. Administration;
2. Appeals;
3. Variances;
4. All powers set forth in NCGS § 153A-345;
5. Conditional Uses.

Each of these powers and duties are more particularly set forth below:

Section 6.2.1. Administration.

A. Application for variances, requests for interpretations, and appeals for review of decisions of the Ordinance Administrator shall be filed with the Department of Planning and Inspections, as agent for the Board of Adjustment, on forms provided by the Planning Department.

B. All meetings of the Board Adjustment shall be open to the public. The Board of Adjustment shall keep a record of its meetings.

C. All evidence to the Board of Adjustment shall be sworn. The person acting as Chairman of the Board of Adjustment is authorized to administer oaths to any

witness in any matter coming before the Board.

D. In presenting an appeal, the Petitioner shall bear the burden of proof.

Section 6.2.2. Appeals.

The Board of Adjustment shall hear and decide appeals from any order, requirement, decision or determination made by the Ordinance Administrator in the enforcement of this Ordinance. No appeal shall be heard by the Board of Adjustment unless notice thereof is filed within 30 days after the interested party receives notice of the order, requirement, decision or determination of the Ordinance Administrator. The applicant must file his application for a hearing with the Ordinance Administrator, who shall act as Clerk for the Board of Adjustment in receiving this notice. All applications shall be made upon the form specified for that purpose and all information required thereon shall be complete before an appeal shall be considered as having been filed.

Section 6.2.3. Variances.

The Board of Adjustment may authorize a variance from this Ordinance where, owing to special circumstances, a literal enforcement of the provisions of this Ordinance will result in undue hardship or practical difficulty

It is the intent that the spirit of this Ordinance be observed, the public safety and welfare be secured, and substantial justice done.

The Board of Adjustment may grant a variance upon finding that the following exists:

1. The hardship or practical difficulty is a result of the application of the Ordinance itself;

2. The hardship must be related to the specific property involved;

3. The practical difficulties or substantial hardships are not self-induced or self-created on the part of the applicant;

4. The hardship or practical difficulties are unique or peculiar to the property involved,

including, but not limited to, factors involving size, shape, or topography; and

5. The variance would not seriously deter from the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.

A hardship, as used in the context of this section, shall be considered to be some unique or unusual character of the proposed site, including but not limited to unique size, shape, contour, or distance requirement. An economic hardship to the applicant is not to be considered for a variance.

The Board of Adjustment may impose reasonable conditions upon the granting of any variance in order to protect the public interest or neighboring property owners. Violations of any such conditions shall be a violation of this Ordinance and subject to the penalties set forth in Article VII of this Ordinance.

It is specifically understood that the Board of Adjustment may hear variance applications regarding expansion of preexisting High Impact Uses.

Section 6.2.4. Other Powers. The Board of Adjustment shall have all powers set forth in NCGS §153A-345.

Section 6.2.5. Conditional Uses. The Board of Adjustment shall grant, in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses as authorized in this Ordinance.

Section 6.6. Hearings and Decisions.

Section 6.6.1. Hearings. Board of Adjustment hearings shall be conducted as follows:

1. **Time.** After receipt of the notice of appeal or the request for a variance, the board chairperson shall schedule the time for a hearing, which shall be at a regular or special meeting within 31 days from the filing of such notice or request.

2. **Notice of Hearing.** The Ordinance Administrator shall mail notices of the hearing to the affected parties to the action appealed from at least 10 days prior to the hearing. Such notice shall state the location of the property and the general nature

of the question involved for the hearing, and the time and place of the hearing.

3. **Conduct of Hearing.** Any party may appear in person or by agent or by attorney at the hearing. Witnesses may be called and factual evidence may be submitted, but the Board of Adjustment shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board of Adjustment may view the premises before arriving at a decision. All witnesses before the Board of Adjustment shall be placed under oath and the opposing party may cross examine such witnesses.

4. **Rehearings.** A request for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the request shall initially be limited to that which is necessary to enable the Board of Adjustment to determine whether there has been a substantial change in the facts, evidence or conditions in the matter. The request for rehearing shall be denied if the Board of Adjustment finds that there has been no substantial change in facts, evidence or conditions. If the Board of Adjustment finds that there has been a change, it shall then treat the request in the same manner as any other application.

5. **Voting.** The current concurring vote of 4/5ths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Ordinance Administrator, or to grant a variance from the provisions of this Ordinance.

6.6.2. Decisions. Decisions shall be made in the following manner:

1. **Time.** A decision by the Board of Adjustment shall be made within 30 days from the time of hearing.

2. **Form.** Written notice by certified or registered mail, of the decision in a case shall be given to the applicant by the clerk to the Board of Adjustment as soon as practical after the case is decided. Also, written notice shall be sent via first class mail to owners of the subject property (if not the applicant) and to other persons who have made written request for such notice.

   The final decision of the Board of Adjustment shall be shown in the record of the case as entered in the minutes of the Board of Adjustment and signed by the

Ordinance Administrator and the Chairperson upon approval of the minutes of the Board of Adjustment. Such record shall reflect a summary of the evidence presented and the findings of fact by the Board of Adjustment.

Where a variance is granted, the record shall reflect the undue hardship or practical difficulties the Board of Adjustment finds to exist.

3. **Expiration.** Unless otherwise specified, any granting of a variance or a conditional use shall expire if a building permit for such use is not obtained by the applicant within one year from the date of the decision.

Section 6.7. Appeal Stays Further Proceedings.

An appeal to the Board of Adjustment from a decision or determination of the Ordinance Administrator stays all proceedings in the furtherance of the decision or determination appealed from, except as provided by NCGS § 153A-345(b), during the pendency of the appeal.

Section 6.8. Appeals of Board of Adjustment.

Every decision of the Board of Adjustment shall be subject to review at the instance of any aggrieved party in the Board of Adjustment by proceedings in the Superior Court in the nature of certiorari. Such proceedings initiated against the Board of Adjustment shall be initiated within 30 days of the recorded minutes of the decision in the office of the Board of Adjustment or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board of Adjustment at the time of its hearing of the case, whichever is later. Appeals not received within this 30 day period are not timely.

The Board of Adjustment is authorized to stay enforcement of this Ordinance during the pendency of an appeal from the decision of the Board of Adjustment upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interest of the County.

ARTICLE VII
ENFORCEMENT AND PENALTIES

Section 7.1. Administration and Enforcement.

The Ordinance Administrator shall be responsible for the administration and enforcement of this Ordinance.

If the Ordinance Administrator determines that any of the provisions of this Ordinance are being violated, the Ordinance Administrator shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct the violation within ten (10) working days. The Ordinance Administrator may order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and may take any other action authorized by this Ordinance to insure compliance with, or to prevent violation of, its provisions.

Section 7.2. Conflict with Other Laws.

Whenever the provisions or application of this Ordinance impose higher standards than are required in any other local Ordinance or regulation, the provisions of this Ordinance shall govern. Wherever the provision of any other statute or local ordinance impose higher standards than are required by the provisions or application of this Ordinance, the provisions of such other statute or local ordinance shall govern.

Section 7.3. Penalties.

Section 7.3.1. Criminal Penalties.

Any violation of any provisions of this Ordinance shall constitute a Class 3 Misdemeanor as provided by NCGS §14-4 and shall subject the violator to a fine not to exceed $50.00 and/or imprisonment not to exceed 20 days. Each day such violation shall be permitted to exist shall constitute a separate offense. Enforcement shall be administered through the issuance of a citation on the North Carolina Uniform Citation Form (AOC-CR-501).

Section 7.3.2. Civil Penalties. In lieu of, or in addition to the criminal penalties outlined above, the violation of this Ordinance shall subject the violator to a civil penalty, pursuant to NCGS § 153A-123c, as set forth herein.

A. The violator shall be issued a written notice of the violation and penalty, which shall require payment to be made to the Sheriff of Avery County within 72 hours of receipt

of notice by the violator. Notice of the civil penalty and violation shall be delivered in person to the violator or mailed by certified mail, return receipt requested, to the violator's last known address.

B. Upon the violator's failure to pay the required amount within the designated 72 hour period, the Ordinance Administrator acting through the County Attorney may institute a civil action in the nature of a debt to recover such amount, and shall be entitled to recover all actual costs of collection.

C. Violation of the Ordinance shall subject the violator to a civil penalty not to exceed $500.00 per day.

D. Each day's continuing violation of this Ordinance shall be considered a separate and distinct offense

Section 7.4. Other Relief. The County shall have all rights of equitable relief, abatement, injunction and other relief as set forth in NCGS 153A-123.

Section 7.5. Severability Clause.

It is hereby declared to the intention of the Board of Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and actions of this Ordinance, since the same would have been enacted by the Board of Commissioners without the incorporation into this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 7.6. Ordinance Amendments.

This Ordinance may be amended by the Board of Commissioners following a public hearing on the proposed changes. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published in compliance with NCGS 153A-323.

ARTICLE VIII
EFFECTIVE DATE

Section 8.1. Effective Date.

This Ordinance shall become effective upon adoption by the Avery County Board of Commissioners.

Section 8.2. New High Impact Industries Regulated.

After the effective date of this Ordinance, all new High Impact Industries as well as any pre-existing High Impact Industries which are moved, altered or enlarged shall conform to the regulations contained in this Ordinance except as set forth in Article III. Section 1, 2, and 3.

ARTICLE IX
ADOPTION

This Ordinance shall be in full force and in effect from and after the 5th day of November, 2007.

Attest:

Nancy Cook

Nancy Cook

Kenny R. Poteat, Chairman
Avery Board of Commissioners

Susan Pittman

Phyllis Forbes

Dan South

Scott Heath