

ARTICLE 15 DEFINITIONS

Section 15.1 Word Interpretations

For the purpose of this ordinance, unless otherwise expressly stated, the following words shall have the meanings herein indicated. Words not defined in this Article shall be given their ordinary and common meaning.

Section 15.2 Rules of Construction

For purposes of this Article, the following rules of construction shall apply:

A. Tense:

Words used in the present tense include the future tense;

B. Singular and Plural:

Words used in the singular number include the plural number, and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise;

C. Mandatory Meaning:

The words 'shall', 'will', and 'must' are mandatory in nature implying an obligation or duty to comply with the particular provision;

D. Gender:

Words used in the male gender include the female gender.

Section 15.3 References

Any references to a Section or Article shall mean a Section or Article of this Ordinance, unless otherwise specified. Whenever any provision or definition refers to or cites a section of the North Carolina General Statutes (NCGS) or any other state or local law and that section is later amended or superseded, this Article or other provisions within this Ordinance shall be deemed amended to refer to the amended statutes or law or the section that most nearly corresponds to the superseded section.

Section 15.4 Definition in Other Sections

In addition to the definitions found in this Section there are specific to various types of land use activities are set forth in other Section of this Ordinance. For example, definitions for signs (Article 10) are set forth in Section 10.2.20.

Definitions for Wireless Communication towers (Article 12) are in Section 12.4 of this Ordinance.

Section 15.5 Definition of Terms

Accessory: An incidental to another use or structure on the same lot.

Accessory Building: A detached subordinate building, the use of which is incidental to that of the principal building and located on the same lot therewith.

Accessory Structure Address: The official house, building, or structure number assigned by the County for a specific lot, building or portion thereof.

Address: The official house, building, or structure number assigned by the County for a specific lot, building or portion thereof.

Adult Business: See definition of Sexually-Oriented Business.

Adult Care Home: an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult Care Homes that administer to less than twelve residents are considered large residence care facilities that are homes for the aged and infirmed as defined and regulated by this ordinance. Adult care homes that provide care to two to six unrelated residents are commonly called Family Care Homes as defined in this ordinance. Adult care homes and family care homes are subject to licensure by the Division of Facility Services.

Aircraft: Any machine supported for flight in the air by buoyancy or by the dynamic action of air on its surfaces, including, but not limited to, powered airplanes, gliders, helicopters, and dirigibles.

Alley: A roadway which affords only a secondary means of access to abutting property.

Apartment: A room or unit of one or more rooms, each of which have kitchen facilities, and are designed or intended to be used, as an independent unit, on a rental basis.

Apartment Accessory: See Dwelling, Apartments

Assembly: A joining together of completely fabricated parts to create a finished product.

Athletic Field: Outdoor sites, often requiring equipment, designed for formal athletic competition in field sports (e.g. softball, soccer, football).

Auto Wrecking: A person or establishment that provides open storage, disassembling, or salvaging for junked motor vehicles.

Automobile Wash or Automatic Car Wash: A lot or structure on which motor vehicles are washed or waxed, either by the patron or by others, using machinery specifically designed for the purpose.

Automobile Repair Services: An establishment primarily engaged in one or more of the following activities: 1) general automotive repair or service, 2) automotive engine repair, 3) installation or repair of automotive transmissions, 4) installation or repair of automotive glass, 5) installation or repair of automotive exhaust systems, 6) repair of automotive tops, bodies and interiors, and 7) automotive painting and refinishing.

Basement: A story of a building or structure having one-half or more of its clear height below grade.

Board of Adjustment: A quasi-judicial body composed of representatives from the planning jurisdiction of Pinetops which are given certain powers under and relative to this ordinance.

Boarding House: A rooming house or structure which contains four (4) or more rooms, each of which have no kitchen facilities and are designed or intended to be used for residential occupancy on a rental basis.

Bona Fide Farm: Any tract of land containing at least three (3) acres which is used for dairying or for the raising of agricultural products, forest products, livestock or poultry and including the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market as well as facilities for the sale of such products from the premises where produced, provided that, a farm shall not be construed to include commercial poultry and swine production, cattle feeder lots and furbearing animal farms for purposes of this Ordinance.

Buffer: An area of natural or planted vegetation through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams and rivers. The widths of buffer areas are established pursuant to the requirements of **Article 10**.

Buffer Yard: A strip of land which is established to separate one type of land use from another type of land use and which contains natural or planted vegetation, berms, walks, or fences in accordance with the provisions of Article 10.

Building: Any structure that encloses a space used for sheltering any occupancy. Each portion of a building separated from other portions by a fire wall shall be considered a separate building.

Building, Commercial: Any building used for business purposes.

Building, Detached: A building having no party or common wall with another building except an accessory building.

Building Height: The vertical distance from grade to the highest finished roof surface in the case of flat roofs or to a point at the average height of the highest roof having a pitch. Height of a building in stories does not include basements, except as specifically provided for in this Ordinance.

Building Line: The line, established by this Ordinance, beyond which the building shall not extend, except as specifically provided by this Ordinance.

Building, Main: A building in which the principle use of the lot on which the building is situated is conducted.

Building, Site: Any lot or portion thereto, of a parcel of land upon which a building or buildings may be erected in conformance with the provisions contained herein.

Caliper Inches: Quantity in inches of the diameter of trees measured at six inches above the ground for trees four inches or less in trunk diameter and twelve inches above the ground for trees over four inches in trunk diameter.

Canopy Tree: A species of tree which normally grows to a mature height of forty feet or more with a minimum mature crown width of thirty feet.

Certificate of Occupancy: A statement signed by the Zoning Administrator setting forth that the building, structure or use complies with the Zoning Ordinance and any applicable construction codes and that the same may be used for the purposes stated herein.

Collector Road: A road whose principal function is to carry traffic between cul-de-sac, local, and subcollector roads, and roads of higher classification, but which may also provide direct access to abutting properties.

Conditional Use Permit Development or Districts: In these developments or districts all development uses require a Conditional Use Permit approved by the

Town of Elm City Board of Commissioners. Conditional Use Permit procedures will be applied to property upon the specific request of the property owner. Conditional Use Developments include Planned Residential Development, Planned Office/commercial Development and Planned Industrial Development. Planned Conditional Use Districts include Planned Village Development.

Condominium: Portions of real estate which are designated for separate ownership, and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Construction, Trades: One who accomplished work or provides facilities under contract with another and specifically engages in a specialized trade such as plumbing, heating, wiring, sheet metal and roofing work, etc.

Congregate Care Facility: A facility providing shelter and services for ambulatory individuals who by reason of the age, functional impairment, or infirmity may require meals, housekeeping, and personal care assistance. Congregate care facilities do not include nursing homes or similar institutions devoted primarily to the care of the chronically ill or the incurable. Congregate care facilities include Homes for the Aged and Infirm and other similar group care facilities as defined in this ordinance.

Convenience Store: A retail store that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a 'supermarket'). It is designed to attract and depends upon a large volume of 'stop and go' traffic.

Corner Lot: A lot abutting two or more roads at their intersection.

County: Refers to Wilson County, North Carolina.

Day: Any reference to days shall mean calendar days unless otherwise specified. A duration of days shall include the first and last days on which an activity is conducted, and all days in between, unless otherwise specified by state law.

Day Care Center: A child day care facility as defined in NCGS 110-86(3) as well as a center providing day care on a regular basis for more than two hours per day for more than five adults. See the Development Standards in **Article 6** for specific provisions related to day care centers.

Developer: A person engaging in development.

Development: Any man-made change to improved or unimproved real estate, including, but not limited, to buildings or other structures, mining, dredging, filling,

grading, paving, excavation, or drilling operations or storage of equipment or materials.

Development, Density Of: The density of development shall be determined using a gross acreage system. The total area of the tract, including areas to be used for new roads, rights-of-way, drives, parking, structures, recreation areas, dedicated areas, and required setbacks, shall be used for density calculations.

Developmentally disabled person: A person with a disability attributable to mental retardation, cerebral palsy, epilepsy, autism (or dyslexia resulting from these), or any other conditions closely related to mental retardation in terms of intellectual and adaptive problems. The handicap must originate before age eighteen (18), can be expected to continue indefinitely, and constitutes a substantial handicap.

Drive-in (eating or drinking facility): Means an establishment that provides employee curb service or accommodations through special equipment or facilities for the ordering of food or beverage from a vehicle.

Duplex: (See Two-Family Dwelling).

Dwelling, Apartments Accessory to a Commercial Use: One (1) to three (3) multifamily dwelling units located within a commercial establishment.

Dwelling, Single-Family: A detached building designed for or occupied exclusively by one (1) family.

Dwelling, Two-Family: A detached building either designed for or occupied by two (2) families living independently of each other.

Dwelling, Multiple: A building designed as a residence and used for more than two (2) families living independently of each other.

Dwelling, Unit: One or more rooms designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided therein. Units in dormitories, hotels, motels, shelters for the homeless, or other structures designed for transient residents are not dwelling units.

Easement: A grant of one or more of the property rights, by the property owner, to, or for use by, the public, a corporation, or other entities.

Emergency Shelter: A facility providing, without charge, temporary sleeping accommodations, with or without meals, for individuals and/or families displaced from their residences as a result of sudden natural or man-made catastrophe including, but not limited to, earthquake, fire, flood, tornado, hurricane, or the release of hazardous or toxic substance(s) into the environment. Such a natural

or man-made catastrophe must be designated by the responsible local, state, or federal official, or an emergency agency such as the American Red Cross or the County Emergency Management Agency.

Erect: To build, construct, rebuild, reconstruct, as the same are commonly defined.

Existing Lot (Lot of Record): See Lot of Record.

Existing Development: Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria: (A) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or (B) having an outstanding valid building permit as authorized by NCGS 160A - 417, or (C) Having an approved site specific or phased development plan as authorized by NCGS 160A-385.1.

Fabrication: The processing and/or assemblage of various components into a complete or partially completed commodity. Fabrication relates to stamping, cutting or otherwise shaping the processed materials into useful objects. The refining aspects of manufacturing and other initial processing of basic raw materials such as metal ore, lumber and rubber, etc. are included.

Family: One or more persons occupying a dwelling unit and living as a single household.

Family Care Home: A home meeting the North Carolina Residential Building Code with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for six or less resident handicapped persons, pursuant to NCGS 168-21. Family care homes shall not be located less than one-half (1/2) mile from each other. Note: Zoning regulation of this use is as described in G.S. 168-20.

Fence: A physical barrier or enclosure consisting of wood, stone, brick, block, wire, metal or similar material, used as a boundary or means of protection or confinement, but not including a hedge or other vegetation.

Foster homes for children: Foster homes for children are homes for as many as five (5) children and must be licensed by the North Carolina Department of Human Resources. Foster parents may be reimbursed for room, board and clothing expenses but may not receive income for these services or derive a profit there from. (The reimbursement must not be considered as income by state or federal income tax statutes or regulations.)

Frontage: All property abutting on one (1) side of a street measured along the street line.

Garage, Private: A building or space used as an accessory to a part of the main building permitted in any residential district that provides storage space for motor vehicles and in which no business, occupation of service for profit is in any way conducted.

Grade, Finished: The final elevation of the ground surface after development.

Grade, Natural: The elevation of the ground surface in its natural state before man-made alterations.

Gross Floor Area: The sum of the gross horizontal areas of one or several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading space for motor vehicles, or any space where the floor-to-ceiling height is less than six feet.

Group Care Facility: A facility licensed by the State of North Carolina (by whatever name it is called, other than 'Family Care Home' as defined by this Ordinance), with support and supervisory personnel that provides room and board, personal care or habilitation services in a family environment for not more than thirty people who are mentally or physically handicapped, aged, or disabled and are undergoing rehabilitation or extended care, and are provided services to meet their specific needs. Persons adjusting to non-prison life including, but not limited to, pre-release, work-release, probationary programs, and juvenile detention centers shall not be eligible for admission to a group care facility and are accommodated in environments such as a Halfway House and Home Shelters as defined and regulated in this ordinance. Home for the Aged and Infirm and Group home for the developmentally disabled adults are also types of Group Care Facilities as separately defined and regulated by this ordinance. This category includes group homes for all ages. Shelter foster homes, another type of Group Care Facility regulated and defined separately in this ordinance. Group Homes fall under the category of Congregate Care Facility in the Section 5.4.3 Table of Permitted Uses. A Nursing/convalescent Home although a group care facility is regulated and defined separately in this ordinance.

Group home for developmentally disabled adults: A small residence which provides care for two (2) to nine (9) adults who are developmentally disabled and who have or can develop self-help skills, are ambulatory, in need of a home and are able to participate in activities in the community. This type of facility is included under Congregate Care Facilities.

Greenway: A natural area containing a trail or walking/biking area and may be part of open space or recreational areas that are interconnected with other open space or recreational areas. Greenway may also consist of bridle (horse) and biking trails.

Habitable Floor: Any floor useable for living purposes which includes working, sleeping, eating, cooking or recreation or a combination thereof. A floor used only for storage purposes is not a habitable floor.

Halfway House: A facility licensed by the State of North Carolina where residents live following incarceration, probation ordered commitment or drug related recovery need in order to assist them in adjusting to life after imprisonment or drug recovery. Counseling and other services may be provided. The facility shall serve seven (7) to fifteen (15) unrelated individuals or less who live together while receiving therapy and counseling for adjustment to life after imprisonment as well as the following purposes: 1) to assist them to recuperate from the effects of drugs or alcohol; 2) to assist them to adjust to living with handicaps of emotional or mental order, mental retardation; and 3) to assist them to adjust to living with handicaps of physical disability. Persons who live in a Halfway House may also be receiving therapy and/or counseling for one or more of the following purposes: 1) To assist them to recuperate from the effects of or refrain from the use of drugs or alcohol; 2) to assist them to adjust to society as an alternative to imprisonment including, but not limited to prerelease, work release and probationary programs and/or 3) to assist them in readjusting to community life when returning from mental institutions and in-patient psychiatric units. The facility shall be licensed by the appropriate state agency. Persons adjusting to non-prison life including, but not limited to, pre-release, work-release, probationary programs, and juvenile detention centers shall not be eligible for admission to a group care facility.

Home Occupation: Any use conducted entirely within a dwelling or an accessory building and carried on by the occupants thereof, which use is incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Specific regulations concerning home occupations are delineated in Article 6.

Homeless Shelter: A facility operating year-round which provides lodging and supportive services including, but not limited to, a community kitchen; assistance in obtaining permanent housing; medical counseling, treatment, and/or supervision; psychological counseling, treatment, and/or supervision; assistance in recuperating from the effects of or refraining from the use of drugs and/or alcohol; nutritional counseling; employment counseling; job training and placement; and child care for indigent individuals and/or families with no regular home or residential address; and which complies with the following requirements: 1) the facility shall be contained within the building and operated by a government agency or nonprofit organization; 2) a minimum floor space of fifty square feet shall be provided for each individual sheltered; and 3) the facility operator(s) shall provide continuous on-site supervision by an employee(s) and/or volunteer(s) during the hours of operation.

Homes for the aged and infirmed: Any adult (18 years of age or over) who, because of a temporary or chronic physical condition or mental disability, needs

a substitute home may be admitted to an adult care home when, in the opinion of the resident, physician, family or social worker, and the administrator the services and accommodations of the home will meet the patient's particular needs. Such facilities may include special care units that are licensed to accommodate patients with Alzheimer or other mental health related disorder or disability. These homes are not intended for: 1) for treatment of mental illness, or alcohol or drug abuse (except as licensed as a special Alzheimer's or other mental disability care unit); 2) for maternity care; 3) for professional nursing care under continuous medical supervision; 4) for lodging, when the personal assistance and supervision offered for the aged and disabled are not needed; or 5) who pose a direct threat to the health or safety of others. Such homes provide living arrangements to meet the individual needs of aged and infirmed residents, the live-in staff and other live-in persons with physical environment and operations that meet the requirements set forth by the North Carolina Department of Health and Human Services. (See Development Standards in Article 6)

Horse Show: A temporary equestrian activity which is not conducted in conjunction with a riding academy

Industrial Discharge: The discharge of industrial process treated wastewater or wastewater other than sewage and includes: 1) Wastewater resulting from any process of industry or manufacture, or from the development of any natural resource; 2) Wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants; 3) Stormwater will not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater; or 4) Wastewater discharged from a municipal wastewater treatment plant requiring a pretreatment program.

Interior Setback: A setback from any property line not alongside a road.

Junk: Perused or unusable metallic parts and other nonmetallic manufactured products that are worn, deteriorated or obsolete making them unusable in their existing condition, but are subject to be dismantled and salvaged.

Junk/Salvage Yard: A commercial or industrial use of land or area that involves the storage, keeping, or accumulation of material, including scrap metals, waste paper, rags, or other scrap materials, or used building materials, for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

Junked Motor Vehicle: A motor vehicle that does not display a current license plate and is one or more of the following: 1) is partially dismantled or wrecked; or 2) cannot be self-propelled or moved in the manner in which it originally was intended to move; or 3) more than five years old and appears to be worth less than one hundred dollars; provided that any motor vehicle used on a regular

basis for business or personal use shall not be caused to be removed or disposed.

Kenel: A facility operated exclusively for profit and for the expressed purposes of providing shelter for animals.

Landfill: A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the NC General Statutes. For the purpose of this Ordinance, this term does not include composting facilities.

Landfill, Demolition and Construction Debris: .A disposal site for stumps, limbs, leaves, concrete, brick, wood and uncontaminated earth. Disposal of any other types of waste must be approved by the NC Division of Health Services. (Areas under two acres to be used for parking lots or non-habitable buildings for which a building permit has been issued, using solid blocks, bricks, and uncontaminated soil for filling, is exempt from this definition.)

Landfill, Discharging: A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

Landfill, Sanitary/Solid Waste: A site for solid waste disposal from residential, industrial or commercial activities.

Local Road: A road whose primary function is to provide access to abutting properties.

Lot: A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership, or for development or both. The word 'lot' includes 'plot', 'parcel', or 'tract'.

Lot Area: The total area circumscribed by boundaries of a lot except that when the legal instrument creating a lot shows the boundary of the lot extending into a public road or private right-of-way, then the lot boundary for purposes of computing the lot area shall be the road right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and 30 feet from the center of the traveled portion of the road.

Lot Corner: Any parcel of land having frontage on more than one street (road) which abuts and intersection of those streets (roads).

Lot Coverage: The portion of a lot covered by building(s) and/or structure(s)

Lot Depth: The distance measured along the perpendicular bisector of the smallest possible rectangle enclosing the lot.

Lot Line: Any boundary of a parcel of land.

Lot Line, Front: The boundary line of a lot running along a road right-of-way. If a lot has two property lines which are also road right-of-way lines abutting different roads, then the shorter of those two lines shall constitute the front lot line; if both lines are equal, the front lot line shall be determined by the property owner if the front property line has not been designated on a final plat (minimum building lines are construed to designate the front lot line).

Lot Line, Side: A boundary line which is not defined as a front or rear lot line.

Lot, Through: A continuous lot of the same depth as the width of a block, accessible from both rights-of-way upon which it fronts.

Lot of Record: A lot, plot, parcel, or tract recorded in the Office of the Register of Deeds in conformance with the ordinance(s) in effect at the time of recordation.

Lot Width: The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

Major Thoroughfare Road: Major thoroughfares consist of interstate, other freeway, expressway, or parkway links, and major roads that provide for the expeditious movement of high volumes of traffic within and through urban areas.

Manufactured Home: A dwelling unit, designed for use as a permanent residence, that is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed for installation or assembly and installation on the building site.

Manufactured/Mobile Home, Class A: A manufactured home, constructed after July 1, 1976, used as a dwelling unit that: (1) is not constructed in accordance with the requirements of the North Carolina Uniform Residential Building Code as amended, and (2) is composed of two or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site, and (3) meets or exceeds the construction standards of the US Department of Housing and Urban Development, and (4) conforms to the following appearance criteria:

- A. The manufactured home has a minimum width, as assembled on the site, of twenty feet;
- B. The pitch of the manufactured home's roof has a minimum nominal vertical rise of three inches for each 12 inches of horizontal run and the roof is finished with asphalt or fiberglass shingles;
- C. A continuous, permanent masonry curtain wall, unpierced except for required ventilation and access is installed under the manufactured home;

- D. The tongue, axels, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy;
- E. Stairs, porches, entrance platforms, ramps, and other means of entrance and exit to and from the home are installed or constructed in accordance with the standards set by the NC Department of Insurance and attached firmly to the primary structure and anchored securely to the ground;
- F. The exterior materials shall be of vinyl, wood, hardboard or aluminum comparable in composition, appearance, and durability to site built houses in the vicinity and which does not exceed the reflectivity of gloss white paint; and,
- G. The longest axis or length must face primary access street or road.

Manufactured/Mobile Home, Class E, Built before July 1, 1976: Any manufactured home that was manufactured prior to the required US Department of Housing and Urban Development standards, inspection, and approval beginning on July 1, 1976, shall not be permitted as a permanent residence within the town's planning jurisdiction. In addition, this class of manufactured home shall not be used as storage vehicles, containers, or facility where it is parked permanently within a residential used or zoned area.

Manufactured Home Space: A designated area of land within a manufactured home park designed for the accommodation of a single manufactured dwelling home in accordance with the requirements of this Ordinance.

Marquee: Any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather.

Minor Thoroughfare Road: Minor thoroughfares collect traffic from collector, subcollector, and local roads and carry it to the major thoroughfare system. Minor thoroughfares may be used to supplement the major thoroughfare system by facilitating movement of moderate volumes of traffic within and through urban areas and may also serve abutting property.

Modular Home: A dwelling unit constructed in accordance with the standards set forth in the NC State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two or more sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the NC State Building Code), or a series of panels or room sections transported on a truck and erected or joined together on the site.

Nonconforming: A lot, structure, sign, or use of land, which is now prohibited under the terms of this Ordinance, but was lawful at the date of this Ordinance's enactment, or any amendment or revision thereto.

Nonconforming Lot(s): A lot of record that does not conform to the dimensional requirements of the zoning district in which it is located. The nonconformity may result from adoption of this Ordinance or any subsequent amendment.

Nonconforming Project: Any structure, development, or undertaking that is incomplete at the effective date of this Ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

Nonconforming Situation: A situation that occurs when, on the effective date of this Ordinance, any existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and set-back requirements) is not in conformity with this Ordinance, because signs do not meet the requirements of this Ordinance, Article VIII, or because land or buildings are used for purposes made unlawful by this Ordinance.

Nonconforming Structure(s): A structure that does not conform to the requirements of this Ordinance. The nonconformity may result from adoption of this Ordinance or any subsequent amendment.

Nonconforming Use: A use which once was a permitted use on a parcel of land or within a structure, but which is not now a permitted use. The nonconformity may result from the adoption of this Ordinance or any subsequent amendment.

Nonconformity, Dimensional: A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

Nursing Home: An establishment which provides full-time convalescent or chronic care, or both, to persons who are not related by blood or marriage to the operator, or who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Open Space: Areas that are set aside in development and may be left in a natural condition or consist of open area recreational facilities or fields. These areas may also include natural areas that contain greenways or pedestrian walkways. These areas also include environmentally sensitive areas, such as streams, wetlands, forests and lakes.

Outdoor Religious Event: An activity of a religious organization that is conducted outdoors as a free-standing use and is not an accessory use to a principal use such a church or other place of worship. An example of an outdoor religious event would be a tent revival.

Owner: A holder of any legal or equitable estate in the premises, whether alone or jointly with others, and whether in possession or not.

Pedestrian Way: A right-of-way or easement dedicated to public use to facilitate pedestrian access to adjacent roads and properties. Pedestrian ways include greenways and other trail systems for pedestrians, including sidewalks.

Permit-issuing Authority: The person or board authorized by this Ordinance to issue a permit in accordance with the requirements of this Ordinance. The term applies to the Zoning Administrator when issuing a zoning permit, the Board of Adjustment when issuing a Special Use Permit and the Board of Commissioners when issuing a Conditional Use Permit.

Planned Development: An alternative development type for residential (Planned Residential Development) Office/Commercial (Planned Office/Commercial Development) and industrial (Planned Industrial Development) where the entire development is planned and approved as a whole with unifying design and characteristics. Modifications from ordinance standards and mixed land use types are allowed in the ordinance to encourage design flexibility. These developments require Conditional Use Permit approval from the Board of Commissioners.

Planned Village Development: This type of development establishes approved modified zoning dimensions and elements as part of a unified and holistically planned development. A planned Village Development first requires rezoning to PVD followed by a unified development plan that required preliminary and final Conditional Use Permit approval from the Board of Commissioners. (See Article 12, Section 12.4)

Planning Board: Means, for the purposes of this Ordinance, a body appointed by the Town of Elm Board of Commissioners to perform the following duties: develop and recommend long range development plans and policies and to advise the Board of Commissioners in matters pertaining to current physical development and zoning for the Town's planning jurisdiction. (See Article 2.)

Principal Building: A building in which is conducted the principal use of the zone lot on which it is located or, in a group development, of the building site on which it is located. Any dwelling is considered a principal building unless it is accessory to a nonresidential use (limited to one such residence per lot - see Articles 5 and 6).

Principal Dwelling: Any principal building or structure which is used and designed for human habitation including living, sleeping, cooking and eating activities excluding dormitories, hotels, motels, shelters for the homeless or other structures designed for transient residents.

Principal Structure: A structure(s) in which is conducted the principal use(s) of the lot on which it is located.

Private Dormitory: A multiple unit residential accommodation which is established directly or indirectly, in association with a college, business college, trade school or university, for the purpose of housing students registered and attending such an institution. A private dormitory may contain food preparation and eating facilities primarily for the use of its occupants.

Private Drive: A vehicular travel way not dedicated or offered for dedication as a public road, providing access to parking lot(s) for two or more principal buildings in a group housing or group nonresidential development.

Private Sewer: A system which provides for collection and/or treatment of wastewater from a development, or property, and which is not maintained with public funds.

Private Road: A vehicular travel way not dedicated or offered for dedication as a public road, but resembling a cul-de-sac or a local road by carrying traffic from a series of driveways to the public road system. Private roads must comply with the requirements of the Town's Subdivision Regulations.

Private Water: A system which provides for the supply and/or distribution of potable water for use by a development, project, or owner, and which is not operated or maintained by a government organization or utility district.

Processing: Any operation changing the nature of material or material's chemical composition or physical properties. Does not include operation described as fabrication.

Public Sewer: A system which provides for the collection and treatment of sanitary sewage from more than one property, and is owned and operated by a government organization or sanitary district.

Public Road: A dedicated public right-of-way for vehicular traffic which 1) has been accepted by NCDOT for maintenance; or 2) is not yet accepted but in which the roadway design and construction have been approved under public standards for vehicular traffic. Alleys are specifically excluded.

Public Water: A system which provides distribution of potable water for more than one property and is owned and operated by a government organization or utility district.

Recreational Vehicle: A vehicle which is built on a single chassis, designed to be self-propelled or permanently towable by a light duty vehicle, and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Includes, but is not limited to truck campers, camping trailers, and self propelled motor homes.

Recreational Vehicle Park: Any site or tract of land, of contiguous ownership, upon which fifteen or more recreational vehicles or tent spaces are provided for occupancy according to the requirements set forth in this Ordinance.

Recreational Vehicle Space: A plot of land within a recreational vehicle park designed for the accommodation of one recreational vehicle in accordance with the requirements set forth in this Ordinance.

Retail: The sale of a commodity to the ultimate consumer and not customarily subject to sale again.

Retaining Wall: A structure, either masonry, metal, or treated wood, designed to prevent the lateral displacement of soil, rock, fill or other similar material.

Reverse Frontage Lot: A through lot which is not accessible from one of the parallel or non-intersecting roads upon which it fronts.

Riding Academy: A commercial facility or school which is open to the general public and offers such activities as riding lessons, horse training, and boarding of horses. For purposes of this ordinance, riding academy does not include the keeping of horses for personal use.

Road Right-of-Way: A strip of land occupied or intended to be occupied by a travel way for vehicles and also available, with the consent of the appropriate governmental agency, for installation and maintenance of sidewalks, traffic control devices, traffic signs, road name signs, historical marker signs, water lines, sanitary sewer lines, storm sewer lines, gas lines, power lines, and communication lines.

Road Setback: Any setback from a street, road, or lane.

Roof Line: The top edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette.

Rooming Unit: A room designed, occupied, or intended for occupancy as separate living quarters with sleeping, but not necessarily cooking and sanitary facilities provided therein.

Rural Family Business: A nonresidential use allowed by Special Use Permit as an accessory use to a residential use in certain designated residential zoning districts. Rural family occupations must comply with the requirements of Articles 5 and 6.

Salvage Yard, Auto Parts: Any establishment listed in the Standard Industrial Classification Manual under Industry Number 5015. Also, any land or area used, in whole or part, for the storage, keeping, accumulation, dismantling, demolition, or abandonment of inoperable vehicles or parts there from.

Salvage Operation: The reclamation, dismantling or storage of perused commodities, junk and similar material for the purposes of resale, processing, distribution or disposition.

Seating Capacity: The actual seating capacity of an area based upon the number of seats, or one seat per eighteen inches of bench or pew length. For other areas where seats are not fixed, the seating capacity shall be determined as indicated by the NC Building Code.

Service Station: A building or lot where gasoline, oil, grease and automotive accessories are supplied and dispensed to a motor vehicle trade.

Setback (Front, Rear and Side)

Front: The distance between the minimum building line and the street right-of-way line and where no street right-of-way is involved, the property line shall be used in establishing the setback.

Rear: A setback from an interior property line lying on the opposite side of the lot from the front road setback.

Side: Any interior property line setback other than a rear setback.

Sexually-oriented Business: For the purpose of this section, 'sexually oriented businesses' means any businesses or enterprises that have as one of their principal business purposes or as significant portion or preponderance of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Such sexually-oriented businesses include adult book, magazine and/or video stores, adult arcade, adult movie theaters, adult massage parlor, or adult clubs as defined below.

Adult book, magazine and/or video store means a bookstore which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, and other periodicals) other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are

distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; and/or has as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, and other periodicals other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas, as defined in this section."

Adult arcade means an establishment where, for any form of consideration, one or more motion picture projectors, slide projectors or similar machines for viewing by five or fewer persons each or used to show films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified anatomical areas.

Adult business means any business activity, club or other establishment that permits its employees, members, patrons or guests on its premises to exhibit any specified anatomical areas before any other person or persons.

Adult club: A nightclub, bar restaurant, or other commercial establishment that regularly features, exhibits, or displays as one of its principal business purposes persons who appear nude or semi-nude; or live performances which are characterized by the exposure of specified anatomical areas and/or films, motion pictures, video cassettes, slides, or other photographic reproductions which depict specified anatomical areas

Adult movie theater means an establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are shown, and in which a substantial portion (25 percent) of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified anatomical areas.

Specified anatomical areas means less than completely and opaquely covered human genitals, pubic regions, and buttocks or female breasts.

Sexual activity means vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted; or masturbation, excretory functions, or lewd exhibition of uncovered genitals; or an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.

Indecent exposure is defined by this State Law as occurring when an individual willfully exposes "the private parts of his or her person in any public

place and in the presence of any other person or persons, of the opposite sex, or aids or abets in any such act,” or when an individual “procures another to perform such act.” “Private parts” as here in referenced is defined as male and female genitalia and do not include female breasts. Thus the indecent exposure prohibition prohibits “bottomless” but not “topless” dancing.

Adult Massage Parlor: A commercial establishment where, for any form of consideration, massage, alcohol rub, fomentation, electrical or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the State of North Carolina. The definition does not include an athletic club, physical fitness center, and school, gymnasium, reducing salon or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

Shelter homes for families and/or children: Shelters for families and/or children that house families or children who need temporary care or refuge because of domestic violence, dependency, or their inability to remain at home for other reasons. Such homes may be licensed as foster shelter homes or group shelter homes by the North Carolina Department of Health and Human Services:

- A. Foster shelter homes provide a temporary shelter for up to five (5) individuals for a period not to exceed ninety (90) days.
- B. Group shelter homes provide a temporary shelter for five (5) to twelve (12) individuals for a period not to exceed ninety (90) days.

For purposes of this ordinance, a "group shelter home," as a shelter for families and/or children, is not considered as a "group care facility," as defined and regulated by this ordinance, and "foster shelter homes" are not considered as "foster homes for children," as defined and regulated by this ordinance.

Shopping Center: A group of commercial establishments planned, developed, and managed as a unit with a unified design of buildings and with coordinated parking and service areas. Shopping centers typically include a concentration of three (3) or more businesses and provision of shared parking and common driveways and driveway cuts (entrances).

Sign Area (See also Section 10.2.20): Means that sign shall be computed by the smallest square, triangle, rectangle, circle, or combination thereof which will encompass the entire sign including lattice work, wall work, frame or supports incidental to its decoration. In computing the area only one (1) side of a double face sign structure shall be considered.

Sign, Business Identification (See also Section 10.2.20): Any sign which advertises an establishment, service, commodity, or activity conducted upon the premises where such sign is located.

Sign, Outdoor Advertising (See also Section 10.2.20): Any sign which advertises an establishment, service, commodity, goods or entertainment sold or offered on premises other than that on which such sign is located.

Sign Permit (See also Section 10.2.20): A zoning permit issued by the Zoning Administrator that authorizes the location of a sign.

Sign, Portable (See also Section 10.2.20): Any sign not exceeding eighty (80) square feet in billboard area and constructed as a part of or attached to a trailer.

Single-Family Detached Dwelling: See Dwelling, Single Family.

Special Promotion: An advertising activity or circumstance of a business which is not part of its daily activities or normal routine, and in which the display or sale of merchandise, wares, or other tangible items is the sole purpose for the promotion. Special promotions include grand openings or closeout sales, but do not include reoccurring sales advertisements or other similar publicity.

Special Use Permit: A permit issued by the Board of Adjustment that authorizes the recipient to make use of property in accordance with the requirements of this Ordinance or as well as any additional requirements imposed by the Board of Adjustment

Stabilizing Vegetation: Any vegetation that protects the soil against erosion

Storage: The disposition of commodities or items for the purposes of future use or safekeeping.

Street: See Public Road

Structure: Anything constructed, erected, or placed.

Subdivision: All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale or building development and all division of land involving the dedication of new streets or a change in existing streets, however that the following shall not be included within this definition:

- A. The combination or recombination of a portion of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standard as contained in the Subdivision Regulations.
- B. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.

- C. The public acquisition by purchase of strips of land for the widening or opening of streets.
- D. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three (3) lots, where no street right-of way dedication is involved and where the resultant lots are equal to or exceed the standards as prescribed in the Subdivision Regulations.
- E. The division of land for use as gravesites.

Subdivision, Major: A subdivision involving more than five (5) lots and requiring a new access easement(s), or requiring a new public or private road(s) for access to interior property, or requiring extension of a public sewer or water line.

Subdivision, Minor: A subdivision involving five (5) or less lots fronting on an existing approved public road(s), not requiring any new public or private road(s) nor easements for access to interior property, not requiring extension of a public sewer or water line, and not requiring a waiver or variance from any requirement of this Ordinance.

Swimming Pool: A water-filled enclosure, permanently constructed or portable, having a depth of more than eighteen (18) inches below the level of the surrounding land, or an above-surface pool, having a depth of more than thirty inches designed, used, and maintained for swimming and bathing.

Swimming Pool, Accessory (See Section 6.3.6): A permanent outdoor (above or on-grade) installation that serves as a swimming pool that is an accessory to a principle use.

Swimming Pool Security Barrier (Also see Section 6.3.6): A fence, wall, building wall, or a combination thereof which completely surrounds a permanent swimming pool and obstructs access to the permanent swimming pool as described below:

- A. Walls, Fences, Structures as Barriers: The top of the wall/fence shall be at least five (5) feet (60") above grade measured on the side of the wall/fence which faces away from the swimming pool. Where placed on a deck, the fence shall be at least thirty-six inches in height. The maximum vertical clearance between grade and the bottom of the wall/fence shall be four inches (4").
- B. Chain-link fence: Where a chain link fence is provided as the barrier, the perpendicular distance between parallel sides of the link shall not exceed two and one-quarter inches (2 1/4").

- C. Picket/Ornamental fence: Where a picket/ornamental fence is provided as the barrier, the horizontal open-air spacing between pickets shall be a maximum of four inches (4") between all vertical pickets and support posts.
- D. Access gates: Access gates shall be required and be self-closing, self-latching and accommodate a locking device at least forty-eight inches (48") above grade.
- E. Pool Wall: An above ground/on-grade pool wall, itself, may be the barrier if the pool structure is on grade and the wall is at least forty-eight inches (48") in height.

Temporary Building: Any building of an impermanent nature, or one which is designed for use for a limited time, including any tent or canopy.

Temporary Construction Trailer: A structure standing on wheels, towed or hauled by another vehicle, and used for short-term construction personnel office space on a construction site.

Temporary Emergency, Construction, or Repair Residence: A residence (which may be a manufactured home) that is: (i) located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by the persons displaced by such disaster, or (ii) located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the persons intending to live in such permanent residence when the work is completed; or (iii) located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such construction site. (See Article 6 for specific standards related to such residences.)

Temporary Event: An activity sponsored by a governmental, charitable, civic, educational, religious, business, or trade organization which is infrequent in occurrence and limited in duration. Examples include arts and crafts shows, athletic events, community festivals, carnivals, fairs, circuses, concerts, conventions, exhibitions, trade shows, horseshows, outdoor religious events and other similar activities. (See Article 6)

Temporary Construction Trailer: A structure standing on wheels, towed or hauled by another vehicle, and used for short-term construction personnel office space on a construction site. (See Article 6)

Temporary Hardship Manufactured Home: A temporary hardship manufactured home on the same lot as a principal dwelling. Such temporary residence is intended for short-term occupancy by a person or persons receiving care and/or supervision by a related person or persons occupying the principal

dwelling. (See Article 6 for specific standards related to temporary hardship manufactured homes.)

Temporary Structure: Any structure of an impermanent nature or one which is designed for use for a limited time, including any tent or canopy.

Tenant: Any person who alone, or jointly, or severally with others occupies a building under a lease or holds a legal tenancy.

Thoroughfare Plan: A plan adopted by either the County, NC DOT or a designated area transportation organization and accepted by the Town as the plan for the development of existing and proposed major roads that will adequately serve the future travel needs of an area in an efficient and cost effective manner.

Tourist Home: A private residence in which accommodations are provided for lodging and may include meals for overnight guests for a fee.

Tower Co-location (See Article 12): An arrangement whereby more than one user occupies a single tower or structure.

Tower, Communications (See Article 12): A structure whose primary purpose is to support communications equipment. This definition includes ham radio structures and governmental tower/antenna/building combinations. The standards in Article 12 apply to all wireless towers other than ham radio and governmental. The standards for ham radio and governmental towers are set forth in Section 6.6 – Communication and Telecommunication Towers and Communication towers for Amateur Radio. This definition shall not include wire-supporting electric power transmission and telephone poles. (See Tower, Wireless Telecommunication Facilities)

Tower, Lattice (See Article 12): A guyed or self-supporting multi-sided, open, steel frame structure used to support communications equipment.

Tower, Monopole (See Article 12): A structure composed of a single spire used to support communications equipment.

Tower, Wireless Telecommunication Facilities (See Article 12): A structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types, kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services,

microwave services and any commercial wireless telecommunication service not licensed by the FCC.

Townhouse Dwelling: A building consisting of single-family residences attached to one another in which each unit is located on an individually-owned parcel, generally within a development containing drives, walks and open space in common area.

Townhouse Lot: A parcel of land intended as a unit for transfer of ownership, and lying underneath, or underneath and around, a townhouse, patio home, or unit in a nonresidential group development.

Toxic Substance: Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

Tract: All continuous land and bodies of water in one ownership, or contiguous land and bodies of water in diverse ownership, being developed as a unit, although not necessarily all at one time.

Travel Trailer: See Recreational Vehicle.

Understory Tree: A species of tree which normally grows to a mature height of fifteen to thirty-five feet in height.

Use: The purpose or activity for which land or structures is designed, arranged or intended, or for which land or structures are occupied or maintained.

Use(s), Accessory: A structure or use that: 1) is clearly incidental to and customarily found in connection with a principal building or principal use; 2) is subordinate to and serves a principal building or principal use; 3) is subordinate in area, extent, or purpose to the principal building or principal use served; 4) contributes to the comfort, convenience, or necessity of occupants, business, or industry, in the principal building or principal use served; and 5) is located on the same lot as the principal building or principal use served.

Use, Mixed: Occupancy of building or land by more than one use.

Use(s), Principal: The primary purpose or function that a lot or structure serves or is proposed to serve.

Utility Easement: An easement which grants to other utility providers the right to install and thereafter maintain any and all utilities including, but not limited to, water lines, sewer lines, septic tank drain fields, storm sewer lines, electrical power lines, telephone lines, natural gas lines and community antenna television systems.

Variance: Official permission to depart from the requirements of this Ordinance. All variance requests are heard and decided by the Board of Adjustment (Article 3).

Warehouse: A building or compartment in a building used and appropriated by the occupant for the deposit and safekeeping or selling of his own goods at wholesale, and/or for the purpose of storing the goods of others placed there in the regular course of commercial dealing and trade to be again removed or reshipped.

Watershed: The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).

Wet Detention Pond: A pond that has a permanent pool and which also collects stormwater runoff, filters the water, and releases it slowly over a period of days.

Wholesale: Sale of a commodity for resale to the public for direct consumption.

Yard: Any open space on the same lot with a building and unoccupied from the ground upward except by trees, shrubbery or fences.

Yard, Front: A yard across the full width of a lot, extending from the front line of the building to the front lot line.

Yard, Rear: A yard located behind the rear line of the main building, if extended, to the perimeter of the lot.

Yard, Side: A yard between the building and side lot line, extending from the front building line to the rear building line.

Zero Side Setback: An alternate form of dimensional requirements that allows a dwelling unit to have one side setback of zero distance from a side property line. This definition does not apply to townhouses.

Zoning Administrator: The person(s) authorized by Article X who is responsible for administering and enforcing this Ordinance

Zoning Certificate (See Zoning Permit): A certificate issued by the Zoning Enforcement Officer, or his authorized agents, that permits the applicant to use or occupy a tract of land or a building; or to erect, install or alter a structure, building or sign situated in the jurisdiction of the town fully meets the

requirements of this Ordinance. A Zoning Certificate is the same as a Zoning Permit under the Town of Elm City Unified Development Ordinance.

Zoning District: An area defined by this Ordinance and delineated on the Official Zoning Map, in which the requirements for the use of land and in which building and development standards are prescribed.

Zoning Permit: A permit issued by the Zoning Administrator that authorizes the recipient to make use of property in accordance with the requirements of this Ordinance (See Zoning Certificate)

Zoning Vested Right: A right established pursuant to NCGS 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site development plan. (See Article 3)