TOWN OF BLACK MOUNTAIN
PLANNING BOARD

September 28, 2026 **REGULAR MEETING AGENDA** **Time: 5:00 PM**

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

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1. CALL TO ORDER

1.A. Welcome

1.B. Determination of Quorum

2. ADOPTION OF AGENDA

2.A. Motion: To adopt the agenda as presented [or as amended]

3. ADOPTION OF MINUTES

3.A. Motion: To adopt the minutes of August 21, 2026, as written [or as amended]

4. OLD BUSINESS

5. NEW BUSINESS

5.A. Review of Changes to Land Use Code for Adoption of New UDO

5.B. Proposed Text Amendment - Lot Access

6. COMMUNICATION FROM PLANNING BOARD

7. COMMUNICATION FROM STAFF

8. ADJOURNMENT

TOWN OF BLACK MOUNTAIN
PLANNING BOARD

The Black Mountain Planning Board held a UDO Workshop on Friday, August 21, 2026, at 1:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711.

I. **CALL TO ORDER**

The meeting was called to order with the following members present:

Joe Laudenslayer
Pam Norton
Kathy Phillips
Michael Churchman
Lauronda Teeple

Absent:

Chris Collins
Angela Levine

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator
Craig Justus, Town Attorney

Discussion was made about sidewalks and requiring developers to provide sidewalks rather than just granting an easement. That led into a discussion about walkability as a whole.

Based on proposed policy changes changes in the UDO draft, more review and scrutiny will be needed. Because of the short timeline, Craig Justus suggested working off of the existing Land Use Code, adding teeth to trees, signs, and sidewalks and incorporating the new parking regulations. This was amenable to all of the board members present and staff.

Jennifer Tipton will send the Word version of the Land Use Code to Mr. Justus. There will be no policy changes and he will add meat to trees, signs, and sidewalks. After the adoption of the UDO, then staff and the board can look at potential policy changes.

The proposed workshop schedule is as follows:
September 10, 2026 at 1:00 p.m.
September 28, 2026, at 5:00 p.m.
October 6, 2026, at 1:00 p.m.
October 22, 2026, at 1:00 p.m.
October 26, 2026 – have a presentable draft ready
November – presentation to Council and Special Call Meeting for public hearing for adoption

With no further business, the workshop ended at 2:00 p.m.

Prepared by:

_____
Chris Collins, Chair

_____
Jennifer Tipton, Senior Admin

APPENDIX A LAND USE CODE[1]

CHAPTER 1. STRUCTURE AND ADMINISTRATION

SECTION 1.1 TITLE, AUTHORITY, PURPOSE, SEPARABILITY AND APPLICATION

1.1.1 Title.

This code is adopted by reference in appendix A of the Town of Black Mountain Code of Ordinances and shall be known as the *Land Use Code* for the Town of Black Mountain.

1.1.2 Authority and jurisdiction.

These regulations are adopted pursuant to the authority granted by Chapter 160D of the North Carolina General Statutes (NCGS). The provisions of this code shall be applicable to all property within the town limits.

1.1.3 Purpose and intent.

A. The purpose of this title [appendix] of the Black Mountain Code of Ordinances is to provide regulations for the subdivision of land and guidelines for its development, in order to protect and promote the health, safety and general welfare of the town in accordance with the General Statutes of the State of North Carolina and the Town of Black Mountain Code of Ordinances. It is also the intent of the Town of Black Mountain Town Council that this land use code implement the planning policies reflected in the town's adopted comprehensive plan and other current, adopted planning documents, and that these regulations be easy to understand and that all processes required be simple and efficient.

B. These policies are intended to protect individual property values and development rights while:

1. Maintaining the small town character and community identity of the town;
2. Promoting social, cultural and economic diversity in our community;
3. Promoting a vibrant downtown district that encourages small business development and preserves the historical integrity of the existing buildings;

[1]Ord. No. O-21-05, §§ 1—83, adopted June 14, 2021, effective July 1, 2021, amended Appendix A in its entirety to read as herein set out. Former Appendix A, §§ 1.1—1.10, 2.1—2.3, 3.1—3.6, 4.1—4.7, 5.1—5.23, 6.1—6.4, 7.1—7.10, 8.1—8.4, 9.1—9.7, 10.1—10.10, 11.1—11.3, 12.1—12.3, pertained to similar provisions, and derived from Resolution No. R-09-32, adopted Dec. 14, 2009, with an effective date of March 14, 2010 and subsequent amendatory ordinances. See the Code Comparative Table for a complete derivation. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. Additions made for clarity are indicated by brackets.

4. Providing a network of safe and convenient transportation options that accommodate freight, automobiles, transit vehicles, pedestrians and bicyclists;
5. Preserving our natural resources, parks, open spaces, and view-sheds;
6. Minimizing risk to property and water quality from flood damage and stormwater;
7. Protecting environmental health and safety from natural and manmade disasters;
8. Providing a variety of housing types for citizens of all income levels, ages and physical abilities; and
9. Creating economic opportunities through organized development patterns that encourage investment and the redevelopment of blighted areas.

1.1.4 No use or sale of land or buildings except in conformity with ordinance provisions.

A. Development regulations set forth herein shall be considered minimum regulations and shall apply uniformly to each class or kind of structure or land unless specifically otherwise provided.

B. No person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his/her control except in accordance with all of the applicable provisions of this code.

C. For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

1.1.5 Relationship with adopted plans.

The administration, enforcement, and amendment of this code shall be accomplished with consideration of recommendations presented in the town's comprehensive plan and other adopted planning documents, including but not limited to the town's capital improvement program, comprehensive pedestrian plan, greenways plan, the French Broad River MPO Comprehensive Transportation Plan, and other local and regional plans adopted or endorsed by the town council.

1.1.6 Relationship with other regulations and existing development regulations.

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

B. To the extent that the provisions of this code are tied to specific zoning districts, the provisions will not supersede, repeal, or replace the existing regulations until such time as they are located and adopted as amendments to the zoning map. Existing zoning district regulations will remain as part of this code until such time as they are formally removed from, or replaced on the zoning map through the map revision process.

1.1.7 Relationship with existing permits, vested rights currently effective, and applications and violations in process.

A. It is not intended that this code repeal, abrogate, annul, impair, or interfere with any existing easements, valid covenants, deed restrictions, agreements, or vested rights which have been established pursuant to NCGS § 160D-108 and -108.1.

B. It is not intended that this code repeal, abrogate, annul, impair, or interfere with any existing building permits previously adopted or issued pursuant to law and currently effective.

C. Variances, appeals, conditional use and special use permits, subdivision plans, site plan approvals, and other similar development approvals that are valid before the effective date of this code will remain valid until their expiration date. Development may be completed in accordance with such approvals even if such building, development, or structure does not fully comply with provisions of this code. If building is not commenced and diligently pursued in the time allowed under the original approval or any extension granted, then the building, development or structure must meet the standards of these regulations in effect at the time of re-application.

D. All suits at law or in equity and all prosecutions resulting from the violations of any development regulation heretofore in effect which are pending in any of the courts of North Carolina or of the United States, shall be prosecuted to their finality, unless the act or structure which failed to comply with the prior regulations being prosecuted is in compliance with these regulations.

1.1.8 Separability.

If any section or specific provision of this code or any regulation or district boundary arising from it is found by a court to be invalid or unenforceable for any reason, the decision of the court shall not affect the validity or enforceability of any other section, provision, standard, or district boundary of these development regulations except the provision in question. The other portions of these development regulations not affected by the decision of the court shall remain in full force and effect.

Should any section or provision of this code be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the code as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

1.1.9 Previous ordinance repealed.

This code shall generally supersede, repeal, and replace the previous Town of Black Mountain Land Use Code, upon the effective date of July 1, 2021.

SECTION 1.2 INTERPRETATION AND DEFINITIONS

1.2.1 Purpose.

These development regulations are written to achieve the purposes for which they are adopted and in support of the town's comprehensive plan. Guidance for interpretation and definitions are included here for reference and apply to this Code in its entirety.

1.2.2 Guidance for interpretation.

A. Interpretations shall be guided by statements of intent or purpose within the context of the development regulations. In the event of any conflict in standards applying to a project, the standard more consistent with the comprehensive plan shall apply.

B. All words used in this ordinance shall have their common, dictionary definition, unless specifically defined below or within the context of a specific chapter of the code.

C. Interpretation of commonly used terms and words.

1. Words used in the present tense shall include the future tense.
2. Words used in the singular number shall include the plural and words used in the plural shall include the singular, unless the construction of the context indicates otherwise.
3. The words "person" or "one" or "no one" includes an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agents and political subdivisions, or other legal entity.
4. The words "used for" shall include the meaning "designed for."
5. The word "structure" shall include the word "building."
6. The word "lot" shall include the words "plot," "parcel" or "tract" meaning a piece of land described in an instrument duly recorded in the office of the register of deeds.
7. The word "boundary line" or "lot line" shall mean the legally established boundary of a lot, and will be considered coincident with any abutting public street right-of-way line unless the metes and bounds description in a recorded deed or plat clearly and specifically established the lot boundary at some other location.
8. The words "shall," "must," and "will" are always mandatory, indicating a requirement to comply with the particular provision.
9. The word "may" is permissive in nature except when used in the negative.
10. The word "should," whether used in the positive or the negative, is a suggested guideline.
11. References to "days" will always mean business days, excluding weekends and holidays, unless the context of the language clearly indicates otherwise.

D. Whenever any provision of the development regulations refers to or cites a section of the North Carolina General Statutes and that section of the general statutes is later amended or superseded, the development regulations shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

1.2.3 Definitions.

Abut: Having a common boundary or lot line not separated by a street, alley, railroad or other right-of-way (distinguished from adjacent which can include abutting property or those across a street).

Access management: Techniques for providing access to land in development while simultaneously preserving the flow of traffic on the surrounding road system in terms of safety, capacity and speed.

Accessory dwelling, accessory apartment, or *secondary dwelling:* A dwelling unit located on the same lot as a detached single-family house, such as garage apartments or "granny flats," but which is smaller in size than the principal structure (see also under dwelling and refer to guidelines for secondary dwellings, chapter 5).

Accessory structure: A structure detached from a principal building and located on the same lot and incidental and subordinate to the principal building or use which is not used as a dwelling unit.

Accessory use: A use of land or of a building or structure or portion thereof incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

Acre: means 43,560 square feet.

Additional required protection features: Fire suppression equipment that is installed in a structure and designed to lessen the exposure to potential fire damage, such as automatic fire protection and alarm systems or other features that provide increased levels of fire protection.

Adjacent: Either abutting or being directly across a street.

Administrative decision: Decision made in the implementation, administration, or enforcement of development regulations that involves the determination of facts and the application of objective standards set forth in these development regulations. Also known as "ministerial".

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

Adult day care center: A day care program for adults operated in a structure other than a single-family dwelling.

Adult day care home: A day care program for up to 16 adults operated in a single-family dwelling.

Adult establishment: An adult bookstore, adult motion picture theatre, adult mini motion picture theatre, or adult live entertainment business as defined in N.C.G.S. § 14-202.10.

Affordable: A sales price or rent within the means of a low- or moderate-income household as defined by state or federal legislation within Buncombe County.

Agriculture: The science, art and business of cultivating the soil, producing crops and raising livestock, including the production, keeping or maintenance, for sale, lease or personal use, of plants and animals useful to man, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; fisheries, trout farms, livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation program. See chapter 5.4. The term "agriculture" shall also include state NCGS definitions for "Bona fide farm" and:

Boarding stable: A structure designed for the feeding, housing, and exercising of horses not owned by the owner of the premises and for which the owner of the premises receives compensation.

Breeding farm: An agricultural establishment where animals are impregnated either naturally or by artificial insemination, and the principal purpose of which is to propagate the species.

Farm: A parcel of land used for agricultural activities.

Farm stand: A temporary or permanent structure established only for the display and direct sale of farm products and home-made crafts which is less than 150 square feet in total area including display tables. This term shall include the temporary use of a vehicle such as a pick-up truck for the display and sale of farm products.

Farm structures: Any building or structure used for agricultural purposes.

Feedlot: A confined area or structure, pen, or corral, used to hold and feed livestock.

Market gardening: Cultivating herbs, plants, fruits, flowers, vegetables and home-made crafts for sale through local markets, including by not limited to tailgate markets, farmers markets, florists and produce stands, or for sale to restaurants or other establishment which serve them to the public.

Nurseries: Land or structures used to raise flowers, shrubs, and plants for sale, including greenhouses.

Alley: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Amusements: Establishments engaged in providing entertainment for a fee, including arcades, bowling alleys, billiard or pool halls, miniature golf and any coin-operated machines or devices whether mechanical or electronic for use as a game; entertainment or amusement.

Animal boarding or *kennel services:* A commercial establishment in which dogs or other domesticated animals are housed, groomed, bred, boarded, trained or sold, for a fee or compensation.

Animal grooming services: Establishments primarily engaged in providing grooming services to domesticated animals.

Animal hospital: Establishment of licensed veterinary practitioners primarily engaged in the practice of veterinary medicine, dentistry, or surgery for animals; and establishments primarily engaged in providing testing services for licensed veterinary practitioners.

Animal or *veterinary clinic:* A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use.

Apartment unit: One or more rooms with a private bath and kitchen facilities comprising an independent self-contained dwelling in a building containing three or more dwelling units.

Art studio: The workshop of an artist, sculptor, photographer or craftsperson.

Assisted living facility: A facility offering a combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living.

Automobile parking: Parking of operational and street legal motor vehicles on a temporary basis within an offstreet parking area.

Automobile services or *stations:* Any building, garage, land area, or other premises or portion thereof, used for dispensing or selling vehicular fuels, or servicing and repair of automobiles. (also see "neighborhood fueling facility" which is distinct from this category). This term shall include:

Automobile wash, car wash or *detail shop:* Any building or premises or portions thereof used for cleaning, washing, and/or waxing automotive vehicles, such as passenger cars, trucks, and vans, and trailers.

Automobile body shop: Any premises which repairs, paints or works on the exterior of vehicles, including window repair and tinting.

Audio installation: Any premise which installs or repairs vehicle audio systems.

Automobile rentals: Establishments primarily engaged in renting passenger cars without drivers, generally for short periods of time.

Automobile sales: The use of any building, land area, or other premises for the display and sale of new or used automobiles, light trucks, vans, trailers, or recreational vehicles.

Automobile wrecking/salvage: An establishment that cuts up, compresses or otherwise disposes of motor vehicles.

Awning: A structure made of cloth, metal, or other material affixed to a building in such a manner that it shades windows or doors below, but is not a constructed canopy.

Bakery, retail: An establishment primarily engaged in the sale of bakery products. The products may be purchased from others or made on the premises.

Bakery, wholesale: Establishments primarily engaged in manufacturing fresh or frozen bread and bread-type rolls and fresh cakes, pies, pastries and other similar "perishable" bakery products for wholesale.

Bank: A freestanding building, with or without a drive-up window, for the custody, loan, or exchange of money; for the extension of credit; and for facilitating the transmission of funds.

Bar: Premises used primarily for the sale or dispensing of alcoholic beverages in accordance with state and local laws for on-site consumption and where food is not necessarily provided.

Barber/beauty services: An establishment primarily engaged in furnishing beauty or hairdressing services which will include those providing tanning services, facials, pedicures, and manicures.

Basement: A building story where the floor level is more than four feet on average below the finished grade.

Bed and breakfast home: A private, owner-occupied residence with one to four guest rooms where overnight accommodations and a morning meal are provided to transients for compensation, and where the bed and breakfast use is subordinate and incidental to the main residential use of the building. The homeowner shall reside on site and employment shall not exceed the equivalent of one full-time employee in addition to the owner..

Bed and breakfast inn: A private, owner-occupied business with five to 12 guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the bed and breakfast inn is operated primarily as a business. The homeowner shall reside on site and employment shall not exceed the equivalent of three full-time employees in addition to the owner..

Bedroom: See *sleeping room*.

Boarding house or *rooming house:* A dwelling unit or part thereof in which, for compensation, lodging and meals are provided on a minimum of a weekly basis for at least three, but less than ten, unrelated individuals and where the owner or manager is a full-time resident of said establishment. Excludes hotels, motels, bed and breakfast homes and bed and breakfast inns.

Brewery: An establishment engaged in the production and distribution of beer and other fermented malt beverages. The establishment may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Brew pub restaurant: An establishment in which the beer, ale, porter and other fermented malt beverages are produced and sold onsite as part of a restaurant.

Broadcasting services: An establishment engaged in transmitting audio and visual programs to the public, and includes a studio, transmitter, or antennas.

Buffer: A strip of land. The term buffer may include natural or planted vegetation, the area located between a structure or use and a side or rear property line, or any area intended to spatially separate and visually obstruct the view of tow adjacent land uses or properties from one another, or any required screening, landscaping or stormwater that protect surface waters from runoff.

Buildable area: That portion of any lot which may be used or built upon in accordance with the regulations governing the zoning district within which the lot is located when the front, side, and rear yard requirements for the district and any open space requirements have been subtracted from the total area.

Building: A structure with a roof and walls built for permanent use. When used in reference to a residential structure, any one- or two-family dwelling or portion thereof, including townhouses, that is used, or designed or intended to be used for habitation for living, sleeping, cooking, or eating purposes or any combination thereof, including accessory structures.

Building, height of: The height of a building or structure as measured according to the guidelines of this code (see 4.5.2).

Building permit: Written permission issued by the building inspector for the construction, repair, alteration or addition to a structure.

Building materials sales: Establishments engaged in selling primarily lumber, or other general building materials, including, flooring, molding, doors, sashes, frames, roofing, siding, shingles, wallboard, paint, brick, tile, cement, sand, gravel, and other building hardware, materials and supplies.

Built-upon area (BUA): That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Business service: Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising, mailing, copy and duplication services, building maintenance, employment services, management consulting services, protective services, equipment rental and leasing, commercial research, development and testing, and personal supply.

Camp, summer or *seasonal:* Establishments engaged in seasonal or overnight, recreational housing and conducting a variety of educational and athletic activities. These establishments provide accommodation facilities, such as cabins or fixed campsites, food services, on-site recreational facilities and equipment, or organized recreational activities.

Campground: A plot of ground upon which two or more campsites are located, established, and maintained for occupancy by camping units as temporary living quarters for recreation, education or vacation purposes.

Campus: The grounds and buildings of a public or private college, university, school or institution.

Carnival: Any aggregation of shows or riding devices, games of skill or chance, or any combination of shows and riding devices, or any combination of several enterprises, such as revolving wheels, merry-go-rounds, giant swings, panoramas, musical and theatrical entertainments, or riding devices, whether carried on or engaged in or conducted in any field, park, or in a building or enclosure, and whether carried on, engaged in, or conducted as one enterprise or by several concessionaires, and whether one admission fee is charged for admission to all such shows or entertainments, or separate fee for admission is charged for each amusement.

Carport: A roofed structure providing space for the parking of motor vehicles and enclosed on not more than three sides.

Ceiling height: The vertical distance from the finished floor to the finished ceiling.

Cemetery: A designated parcel of land used for the interment of the dead in the ground or in memorial structures such as mausoleums or columbarium. See also "Columbarium."

Certificate of appropriateness: Document certifying compliance with historic district guidelines.

Certificate of occupancy (CO): Document allowing occupancy or use of a building and certifying that the structure or use is compliant with local and state codes and ordinances.

Certificate of zoning compliance: A certification that a use or completed structure conforms to the provisions of the land use code and may be used or occupied. Also, a certification that plans for land development or construction conforms to the provisions of the town's regulations.

Child care or *day care center:* An establishment providing for the care, supervision and protection of children that meets the North Carolina Licensing Standards for Day Care Centers. This term includes nursery schools, preschools, day care centers for individuals, and other similar uses but excludes public and private educational facilities or any facility offering care to individuals for a full 24-hour period.

Code enforcement officer: Any employee of the town whose assigned duties include the enforcement of one or more of the provisions of the code.

Columbarium: A structure for placement of cremated remains which may be outdoors or part of a mausoleum or memorial, but is not necessarily associated with a cemetery.

Commercial use: Activity involving the sale of goods or services carried out for profit.

Communication tower: A structure intended to furnish radio, cellular or television or other point-to-point communication services, whether by wire or radio, but not including amateur radio antennas affected and controlled by FCC regulations codified in, Chapter 47, Section 97, of the Code of Federal Regulations.

Community center: A building used for recreational, social, educational and cultural activities, open to the public or a designated part of the public, usually owned and operated by a public or non-profit group or agency.

Community facility: A building or structure owned and operated by a governmental agency to provide a governmental service to the public.

Composting: A controlled process of degrading organic matter by micro-organisms.

Condominium: A building or group of buildings in which dwelling units, offices, or floor area are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis. (as distinct from a town home).

Conference center: A facility used for conferences, retreats and seminars, with accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities and meeting rooms.

Congregate care facility: A licensed multi-unit facility which provides housing, part-time medical care, shared food preparation and dining areas, and recreational facilities, as well as significant social facilities to meet the needs of the elderly. Congregate care facilities do not include nursing care institutions or similar institutions devoted similarly to the care of the chronically ill or incurable.

Conservation easement: A designation that grants one or more property rights to and for the public, a corporation, or other entity for the purpose of protecting environmentally sensitive or culturally or historically significant areas in perpetuity unless otherwise specified.

Conservation subdivision: A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located and permanent open space is provided.

Convenience store: Any retail establishment consisting of no more than 3,500 square feet, offering for sale prepackaged food items, household items, newspapers, magazines, sandwiches or freshly prepared food for off-site consumption.

Cottage housing developments: A cluster of detached structures which are no larger than 1,100 square feet and which share common driveways, yards, and other exterior facilities.

Crematory: Establishments primarily engaged in operating sites or structures reserved for cremating the dead.

Cul-de-sac: The bulb-end design located on a short, dead-end street for the purpose of providing a turnaround for vehicular traffic.

Cultural or *community facilities:* Facilities designed to promote cultural advancement and serve the community such as art galleries, libraries, museums, art centers, community centers or facilities to house civic or fraternal organizations (provided that such facilities are not operated for profit).

Culvert: A conduit used to enclose a flowing body of water, and is frequently used to carry drainage water under a driveway, roadway, railroad, pedestrian walk or public way.

Curb: An improved boundary usually marking the edge of the roadway or paved area.

Curb cut: The opening along the curb line at which point stormwater, or motorized and non-motorized vehicles may enter or leave the roadway.

Demolish: The tearing down and disposal of an entire structure, leaving the property free and clear of any debris and without holes.

Demolition: The tearing down and disposal of an entire structure in a lawful manner, leaving the property free and clear of any debris or environmental hazards.

Density: The number of dwelling units per acre of residential land.

Deteriorated dwelling: A dwelling unit that can be repaired, altered or improved to comply with the minimum standards of the town's minimum housing code at a cost not in excess of 50 percent of its fair market value.

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

Developer: A person who undertakes any development and who is the owner of the property. To be developed or who has been authorized by the owner to undertake development on that property.

Development: The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site or demolition of any structure; excavation, grading, filling, clearing or alteration of land; the subdivision of land as defined in N.C.G.S. 160D-802; the mitigation or substantial use of land or the intensity of use of land.

Development approval: An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including but not limited to zoning permits, site plan approvals, special use permits, variances, and certificates of occupancy.

Development permit: A development approval in writing that is required prior to commencing development or undertaking any activity, project, or development, including any of the following: zoning permits, site plan approvals, special use permits, variances, certificates of appropriateness, plat approvals, development agreements, building permits, subdivision plat approvals, driveway permits, and sign permits.

Development regulation: A zoning regulation, subdivision regulation, erosion and sedimentation control regulation, flood plain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, state building code enforcement, or any other regulation that regulates land use or development.

Diameter at breast height (DBH), or *caliper:* The tree trunk diameter measured in inches at a height of 4.5 feet above the ground. Generally used for measuring existing trees.

Dilapidated dwelling: Any structure of dwelling unit that cannot be repaired or improved in order to comply with the minimum standards of the town's minimum housing code at a cost less than 50 percent of its fair market value.

Discharge: The introduction, either directly or indirectly, of any effluent, whether illicit or non-illicit, into North Carolina surface waters. (See chapter 8.2, Phase II Stormwater Ordinance).

Distillery: An establishment engaged in the production and distribution of spirituous beverages. The establishment may include areas for demonstration, education, tasting, and other uses permitted in the district, in accordance with state and local laws.

Dormitory: A building which is occupied or intended to be occupied as the dwelling for more than six persons who are not related by blood, marriage, or adoption but who are enrolled in, affiliated with, or employed by the same educational, religious, or health institution. "Dormitory" shall not include a boarding house, motel, hotel, group home, or health institution.

Drainage system: Pipes, swales, natural features, and man-made improvements which convey drainage.

Drip line: An imaginary vertical line extending from the outermost edge of a tree canopy or shrub branch to the ground.

Driveway: A private roadway providing access to a street or highway and serving less than four lots.

Driving range: A limited area on which golf players drive golf balls from a central driving tee, such area to include the driving tee and other incidental activities pertaining to this activity.

Dry cleaning: Establishments primarily engaged in providing dry cleaning, laundering, drop-off and pick-up sites or windows for laundry, or specialty cleaning services, without coin-operated machines.

Dumpster: Container designed to receive, transport and dump waste in conjunction with a hauling vehicle or truck. This definition includes containers used for recycling, oil containment, construction waste, or other materials and may be of varying size and design. This definition does not include containers used for waste or recyclable materials which may be wheeled or carried by hand, nor does it include temporary off-loaded dumpsters used for construction or yard waste which are removed after work is completed.

Duplex or *two-family residence:* A detached building which includes two individual dwelling units. A duplex may be held in single ownership or may be subdivided as a town home or condominium. It is a building designed as a single structure with two residential units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling unit.

Dwelling: Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied or that are occupied for living purposes.

Dwelling unit: A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, including the following types:

Accessory dwelling or *accessory apartment:* A dwelling unit located on the same lot as a detached single-family house such as garage apartments or "granny flats," but which is smaller in size than the principal structure.

Apartment unit: One or more rooms with private bath and kitchen facilities comprising an independent, self-contained dwelling unit in a building containing three or more dwelling units.

Condominium: A building or group of buildings in which dwelling units, offices, or floor area are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis.

Detached dwelling or *single-family unit:* A dwelling unit on its own lot, designed for one household and developed with no party walls and with open yards on all sides including modular homes, but not including manufactured homes, recreational vehicles, campers or motor vehicles.

Townhouse or *town home:* A single household dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical, common fire- resistant walls. A subdivision of property within a townhome development, duplex or special use permit shall include the footprint of the structure directly underneath the dwelling unit plus any yard area designated to that unit as part of an approved master plan or building permit.

Easement: A grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation, or another person or entity.

Education facility: A facility for the education of children and adults including public and private elementary and secondary schools, colleges, technical institutes and universities, but excluding specialized trade schools and nursery school.

Egress: An exit from a parcel, lot or area of property.

Emergency housing: The use of travel trailers, manufactured housing, building-code compliant structures for habitation, or other FEMA-approved shelters as a temporary use related to declared federal, state, or local disaster, for people:

1. Experiencing homelessness or inadequate shelter resulting from disaster-related damages; or
2. Assisting with disaster recovery efforts through a unit of government, agency, nonprofit, or company.

Emergency services: Buildings or facilities used to house, station, provide or support emergency services including fire departments, police departments, ambulance and EMS stations, fire and police substations and training facilities.

Encroachment: Any obstruction or intrusion into a delineated flood hazard area, right-of-way, or adjacent property.

Erosion: The detachment and movement of soil or rock fragments or the wearing away of the land surface by water, wind, ice and gravity.

Evergreen: Those plants that retain foliage throughout the year.

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

Excavation: Removal or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances, other than vegetation, from water or land, on or beneath the surface thereof.

Existing lot (of record): A lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

Exit: A clear and unobstructed way of departure from the interior of a dwelling or commercial building to the exterior of the building at street or grade level.

Exterior features: The architectural style, general design, and general arrangement of the exterior of a structure, including the kind, texture, and color of building materials, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures, and including the landscaping and natural features of the parcel containing the structure.

Extermination: The control and elimination of insects, rodents or other pests by removing or making inaccessible materials that may serve as their food, or by poisoning, spraying, fumigating, trapping or other recognized and legal pest elimination method.

Extractive use/mining: Establishments that extract naturally occurring mineral solids, such as rock, coal and ores; liquid minerals, such as crude petroleum; and gases, such as natural gas. The term mining is used in the broad sense to include quarrying, well operations, beneficiating (e.g., crushing, screening, washing, and flotation), and other preparation customarily performed at the mine site, or as a part of mining activity.

Family or *household:* A group of individuals not necessarily related by blood, marriage, adoption or guardianship, living together in a dwelling unit under single housekeeping unit.

Family care home: A home that provides room and board and personal care and rehabilitation and habitation services for no more than six resident persons with disabilities or handicapped persons. Handicapped persons are those with physical, emotional, and mental disabilities (as distinct from group home).

Farm: see "Agriculture."

Farm supply: Establishments primarily engaged in the merchant wholesale distribution of farm supplies, such as animal feeds, fertilizers, agricultural chemicals, pesticides, plant seeds, and plant bulbs.

Fence: A structural barrier intended to provide screening, prevent escape or intrusion, or to mark a boundary.

Financial and insurance services: Establishments engaged in financial services and transactions including banks, credit unions or agencies, savings and loans, check-cashing, brokerages, or other financial institutions.

Fire apparatus access road: A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as fire lane, public street, private street, parking lot lane and access roadway.

Flag lot or *interior lot:* A lot meeting the minimum lot requirements of the underlying zoning district but where access to the public road is by a portion of land adjacent to the lot between the "flag lot" known as a frontage lot and the street in a way that creates a private driveway. The driveway area therefore looks somewhat like a "pole" or "staff" connecting the lot to the street and can be referred to as the flag pole or flag staff of the flag lot.

Flea market: An occasional or periodic market held in an open area or structure where groups of individual sellers offer goods for sale to the public.

Freight handling facility: A facility providing terminals with the capability of handling a large variety of goods involving various forms of transportation such as rail to truck, truck to truck, or truck to air.

Funeral home: A building used for the preparation of the deceased for burial, the display of the deceased and rituals connected therewith before burial or cremation.

Garage: Deck or other structure, or part thereof, used or intended to be used for parking and storage of vehicles.

Garbage: Waste produced by the handling, processing, preparation, cooking, packaging and/or consumption of animal or vegetable products or other consumable goods, or other matter subject to decay or decomposition which generates noxious gases or offensive odors or that may serve as breeding or food material for rodents or other pests. This term does not include materials composting in closed containers or loose, yard waste which is gathered into a windrow or collected into a contained space.

Garden market: A place of business where retail and wholesale products and produce are sold to the consumer. These centers, which may include a nursery and/or greenhouses, import most of the items sold, and may include plants, nursery products and stock, potting soil, hardware, power equipment and machinery, hoes, rakes, shovels, and other garden and farm variety tools and utensils.

Golf course: A tract of land laid out with at least nine holes for playing a game of golf and improved with tees, greens, fairways, and hazards. A golf course includes a clubhouse and shelters as accessory uses.

Governmental facilities: Buildings, facilities and complexes used for the provision of governmental services, including solid waste, recycling, building maintenance, vehicle maintenance, administrative offices, warehousing and storage.

Green building: Buildings sited, designed, constructed and operated to enhance the well-being of occupants and to minimize negative impacts on the community and natural environment.

Greenhouse, accessory structure: An accessory structure constructed of rigid materials for both the roof and sides are permitted under accessory structure guidelines in this land use code.

Greenhouse, commercial: A building whose roof and sides are made largely of glass or other translucent material and in which the temperature and humidity can be regulated for the cultivation of plants for sale.

Greenway: A dedicated and accepted public right-of-way for non-motorized transportation or as a linear open space established for conservation (usually along a natural corridor such as a riverfront, stream valley or

ridgeline, or over land along a railroad right-of-way converted to recreational use, a canal, scenic road or other route identified in the town's greenway master plan).

Greywater, also known as sullage, is non-industrial wastewater generated from domestic processes such as dish washing, laundry and bathing. Greywater comprises wastewater generated from all of the house's sanitation equipment except for the septic tank (water from toilets is blackwater, or sewage).

Grocery or *supermarket:* An establishment which primarily sells a variety of food and general supplies for the table and other household uses.

Group home: A facility which provides resident services to seven or more individuals of whom one or more are unrelated. These individuals are provided services to meet their needs such as halfway houses and foster homes so long as they house seven or more individuals and are distinct from group homes from developmentally disabled adults or adult care homes. Similar facilities providing care for less than seven individuals shall be treated as a single-family residence under zoning district regulations.

Habitable space: Any room or enclosed floor space used or intended for use for living, sleeping, cooking, or eating, including kitchens, but not including bathrooms, halls, corridors, pantries, storage space, or closets.

Health care services: Facilities whether public or private, principally engaged in providing health maintenance and treatment of mental or physical conditions, including medical or dental clinics, or doctors' offices. This definition shall also include certified massage therapists, acupuncture specialists and chiropractors who are licensed by the State of North Carolina.

Health club/fitness center: An establishment that provides facilities for aerobic exercises, running and jogging, exercise equipment, game courts, swimming facilities, and saunas, showers, massage rooms, or lockers.

Heavy timber construction: A type of construction in which the exterior walls are made of noncombustible materials and the interior structural building elements are of solid or laminated wood. To be considered heavy timber construction, supporting wood columns and roof framing shall not be less than six inches in width and eight inches in depth while floor framing members shall not be less than six inches in width and ten inches in depth. (See fire district overlay, chapter 4).

Heritage crafts: An enterprise that involves the production, sale, demonstration or teaching of a handcraft such as pottery, instrument making, spinning and dying yarn, hand weaving or woodworking using traditional methods.

Historic site: A structure or place of historic and cultural significance and designated as such by the Town of Black Mountain or by state or federal historic preservation agencies.

Home occupation: An occupation conducted in a dwelling unit or accessory building that is incidental and subordinate to its use for residential purposes by its occupants, and causes no change in the exterior of the dwelling.

Hospital: An institution providing health services primarily for human in-patient medical or surgical care for the sick or injured and included related facilities such as laboratories, out-patient facilities, and staff offices which are in an integral part of the facility. This term includes sanitorium.

Hotel or *inn:* A facility offering lodging accommodations to the general public and providing additional services, such as restaurants, meeting rooms, entertainment, and recreational facilities.

Impact fee: A fee imposed on a development to help finance the cost of improvements or services according to the direct or indirect effects of a proposed development on town services, infrastructure, or community goals.

Increased fire hazard: An increase in the volume of combustible material contained in an erected, repaired, altered or moved structure that is not offset by the installation of additional protection features; or changes in the building features that can increase fire movement from one building to another such as increasing the number of openings in exterior walls.

Industrial park: A tract of land, used primarily for industrial and related uses, that is under unified control and is planned, and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open space, and other site features and improvements.

Infestation: The presence within or around a dwelling of any insects, rodents, or other pests in such a manner as to threaten the health, safety or welfare of the occupants or public, or to undermine the integrity of the structure.

Ingress: Access or entry.

Instructional services or *studios:* Businesses with the function to provide classes and instruction, including, but not limited to, the martial arts, music, dance, specialized trade schools or visual arts and which are not subject to state licensing as public or non-public educational facilities (see educational facility).

Junkyard or *salvage yard:* The use of any lot, parcel, building, or structure, or part thereof, used primarily for the storage, collection, processing, purchase, sale, salvage or disposal of discarded items including recyclable or non-recyclable material such as paper, scrap metal, and machine parts. See also automobile wrecking/salvage.

Laboratories and research facilities: A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

Land, vacant: A lot or parcel of land that is partially or fully prepared for development (i.e., graded, utilities installed, access drive installed) on which no improvements that have been permitted or require permitting have been constructed.

Landscape: Lawns, trees, plants, and other natural materials, such as rock and wood chips, and decorative features, including sculpture, patterned walks, fountains, and pools.

Laundromat: Establishments primarily engaged in operating facilities with coin-operated or similar self-service laundry for customer use on the premises. (Does not include dry-cleaning).

LEED: "Leadership in Energy and Environmental Design:" A voluntary, consensus-based national standard for developing high-performance, sustainable buildings. This program is sponsored by the U.S. Green Building Council.

Legislative decision: The adoption, amendment, or repeal of a regulation, including the decision to approve, amend, or rescind a development agreement.

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

Loading zone or space: Space designated for pickups and deliveries and scaled to delivery vehicles, including tractor-trailers.

Lot: A portion of a subdivision, or any other parcel of land, intended as a unit of transfer of ownership or for development.

Lot, corner: A lot located at the intersection of two or more streets or located where one street makes an angle greater than 80.

Lot depth: The mean horizontal distance between the front and rear lines.

Lot line: A line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

Lot width: The mean horizontal distance between the two side lot lines.

Low-density project: A project that has no more than two dwelling units per acre or 24 percent built-upon areas (BUA) for all residential and non-residential development.

Lumber yard: An area used for the storage, distribution, and sale of finished or rough-cut lumber and lumber products, but not including the manufacture or fabrication of lumber, lumber products, or firewood.

Manufactured home or *manufactured housing:* A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein, or for which the manufacturer has voluntarily filed a certification required by the Secretary of HUD and which complies with the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974.

Manufactured home park: Three or more manufactured homes or park models on a parcel of land or a site containing spaces with improvements and utilities that are leased for the placement of manufactured homes or park homes for residential purposes and that may include services and facilities for the residents.

Manufacturing or *manufacturing assembly:* Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the fabrication of products, and the blending of materials, such as lubricating oils plastics, resins or liquors and which may take place indoors or out.

Manufacturing, light: Manufacturing activities taking place entirely indoors, including storage, and which do not emit any odor, noise, vibrations or chemicals outside of the building in which it is located.

Master plan: A comprehensive, long-range plan guiding the development of a tract of land or subdivision.

Medical clinic: A facility providing medical, psychiatric, or surgical service for sick or injured persons exclusively on an out-patient basis, including emergency treatment, diagnostic services, training, administration, and services to outpatients, employees, or visitors. The term "clinic" includes immediate care facilities, where emergency treatment is the dominant form of care provided at the facility.

Meeting hall: A building designed for public assembly containing at least one room of at least 2,400 gross square feet.

Micro-brewery: An establishment engaged in the production and distribution of beer and other fermented malt beverages with a capacity not to exceed 5,000 barrels per year. The establishment may include areas for demonstration, education, tasting, and other uses permitted in the district in accordance with state and local laws.

Micro-distillery: An establishment engaged in the production and distribution of spirituous beverages with a capacity not to exceed 30,000 gallons per year. The establishment may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Micro-winery/cidery: An establishment engaged in the production and distribution of wine, cider, and other fermented fruit beverages with a capacity not to exceed 30,000 gallons per year. The establishment may include areas for demonstration, education, tasting, and other uses permitted in the district, in accordance with state and local laws.

Mixed-use structure: A building containing residential in addition to non-residential uses.

Mobile food court/food vendor court: A plot of ground upon which two or more spaces and associated amenities are regularly provided for use by mobile food vendors to offer food or beverages for sale to the public.

Mobile food vendor: Any mobile food unit, pushcart or motor vehicle, including all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle, which is purposed for the sale for consumption of food and beverages.

Mobile retail vendor: A motor vehicle, or trailer towed by another vehicle, designed and equipped to sell goods directly to consumers, excluding firearms, ammunition, tobacco and vaping products.

Mobile retail vendor, artisan: Artists or craftspersons who produce originally designed unique hand-crafted products and of high-quality, including crafts, inedible products, beauty and body products, excluding firearms, ammunition, tobacco and vaping products, and sell using a motor vehicle, or trailer towed by another vehicle.

Motel: An establishment providing sleeping accommodations with a majority of all rooms having direct access to the outside without the necessity of passing through the main lobby of the building.

Multi-family dwelling: A single building containing three or more dwelling units.

Multi-use building: A building containing two or more distinct uses.

Mural: A graphic displayed on the exterior of a building, generally for the purposes of decoration or artistic expression, including but not limited to painting, fresco, or mosaic but excluding any commercial name, brand or message.

Neighborhood fueling facility: A facility for fueling vehicles be it gas, electric, or other fuel, which serves adjacent residential areas and accessory to a convenience store, which is designed to be compatible within a residential area in terms of design, lighting and hours of operation. It may also have additional accessory uses that provide neighborhood services.

Newsrack: A self-service, coin-operated or free dispenser installed, used, or maintained for the display and sale of newspapers, periodicals, or other published material, including real-estate, arts, or other journals.

Nonconforming: The state of not complying with the current ordinance. This term may apply to a lot, structure, or use which was lawful prior to the adoption, revision or amendment of the ordinance but that now fails by reason of such adoption, revision, or amendment, to conform to current development regulations.

Nursing care institution: A licensed healthcare facility, however named, governmental or non-governmental, which provides in-patient care to six or more non-related persons for whom planned and continued medical or nursing attention, or both, are indicated in contrast to the occasional or incidental care provided in congregate care facilities. A nursing care institution may be designed and marketed specifically for the elderly, physically handicapped, or both, but not specific for mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)(b).

Occupant: Any person living, sleeping, cooking or eating in, or having actual possession of a dwelling.

One-year, twenty-four-hour storm (1-year, 24-hour storm): A 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months.

Open space: Any parcel or portion thereof or area of land essentially left in or returned to a natural state and set aside, dedicated or reserved for ecological or recreational purposes for public or private use.

Outdoor theater: An establishment for the performing arts with open-air seating for audiences. Such establishments may include related services such as food and beverage sales and other concessions.

Owner or *landowner:* The holder of the title to land in fee simple. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

Park: A tract of land designated and used by the public for active and passive recreation.

Park models or *park homes:* Recreation vehicles designed as living quarters for camping or seasonal habitation and built on a single chassis, mounted on wheels and having a gross trailer area not exceeding 400 square feet of living area. These are typically built with modular construction and are distinct from manufactured homes.

Party of interest: Any individual, corporation or entity having interest of record in a dwelling or property.

Pier: A post, pole or column of masonry, concrete, steel or lumber extending from a footing to and supporting the building or portion thereof.

Place of worship: A building or group of buildings or structures that by design and construction are primarily intended for conducting organized religious services and associated accessory uses. The term includes, but is not limited to, free-standing churches, synagogues, and temples, and to places of worship located within shopping centers or other buildings. This definition does not include nor is it intended to limit the use of private homes for religious practices, prayer meetings, or other religiously oriented uses as long as the use can conform to the same restrictions on traffic, parking and neighborhood impacts as a home-based business. Child care centers, schools, and recreational facilities developed as a part of the place of worship shall meet the standards for these individual uses as set forth for the zoning district in which they are located.

Planned unit development (PUD): A development of land under unified control that is planned and developed as a whole in a single development operation or programmed series of development stages, including developments permitted as "unified housing developments" and "unified business developments." The development may include streets, circulation ways, utilities, buildings, open spaces and other site features and improvements. These may include various types of residential density and may or may not include a mixture of uses where the lot may or may not be divided or retained in single ownership.

Plat, final subdivision: The final map showing the boundaries and location of individual properties and streets on which the exact subdivision plan is presented for approval and which, if approved, will be financially guaranteed or submitted to the county register of deeds for recording.

Plat, preliminary subdivision: A tentative subdivision plan, in lesser detail than the final plat, indicting the approximate proposed layout of a subdivision as a basis of study and consideration prior to the installation of improvements.

Playground: An active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

Playhouse: A freestanding structure, exclusively for the use of children, with a maximum height of 12 feet and in an area not to exceed 120 square feet.

Plumbing: Any and all facilities connecting to water, sewer or gas lines.

Positive drainage: The construction of systems that slope in a way that allows for water to be directed away from the structure.

Premises: A building together with its immediate and adjacent grounds.

Principal building: A building in which is conducted the principal use of the parcel on which it is situated.

Principal use: The primary purpose or function that a parcel serves or is intended to serve.

Private clubs: Private organizations or business establishments using membership as a prerequisite to the purchase and consumption of alcoholic beverages on the premises, or using membership as a prerequisite to admission to the activities of the business if the purchase and consumption of alcoholic beverages on the premises is a part of the business or offered in conjunction with the principal activities of the business.

Private street: A non-public road for vehicular traffic, serving four or more lots.

Professional office: The office of a member of a recognized profession maintained for the conduct of that profession, such as those providing real-estate, legal, accounting, architecture, medical or survey services.

Quasi-judicial decision: A decision involving the findings of facts regarding a specific application of development regulations and that requires the exercise of discretion when applying the standards of the regulation.

Reasonable routine maintenance: Replacement of existing portions of a structure with like materials and design so as to avoid deterioration or further deterioration of the structure.

Recreation services, indoor: Establishments engaged in providing indoor recreation services. Indoor services may include public or private health or exercise clubs, tennis or other racquet ball courts, swimming pools, YMCA's or other similar uses which are enclosed in buildings and are operated on a fee or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreational use is located. Indoor recreation structures may include accessory uses, such as snack bars, pro shops, and locker rooms, which are designed and intended primarily for the use of patrons of the principal recreational use.

Recreation services, outdoor: Establishments engaged in providing outdoor recreation services such as public or private golf courses, country clubs, swimming pools, tennis courts, ball fields and ball courts, which are not enclosed in buildings and are operated on a commercial or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreation use is located. Outdoor recreation may include accessory uses, such as snack bars, pro shops, and clubhouses which are designed and intended primarily for the use of patrons of the principal recreational use.

Redevelopment: Any rebuilding activity other than a rebuilding activity that results in no net increase in built upon area and provides equal or greater stormwater control than the previous development.

Repair or *alteration:* Repairs or alterations to a building that exceed reasonable routine maintenance; that cost more than 50 percent of the current value of the building as listed in the assessed tax value; or that change the exterior finish, exterior configuration, number of openings in exterior walls, or the footprint of the building. If the structure has been damaged and is being repaired, the value of the structure shall be interpreted to mean the value before the damage or destruction occurred. (This term does not include emergency repairs needed to secure the structure from water, storms, or unauthorized access).

Residence: A structure or part of a structure containing dwelling units or rooming units, including single-family or two-family houses, multiple dwellings, boarding or rooming houses, or apartments. Residences do not include: such transient accommodations such as transient hotels, motels, tourist cabins, dormitories, and recreational vehicles.

Resident: An individual whose principle place of living and sleeping is in a particular location is a resident of that location.

Restaurant, brew pub/tavern: An establishment in which beer, ale, porter and other fermented malt beverages are produced and sold onsite as part of a restaurant operation in accordance with state and local laws.

Restaurant, drive-thru: An establishment where food and/or beverages are sold in a form ready for consumption, where a portion of the pick-up and consumption of food may take place from an automobile. This term shall include "fast food" restaurants.

Restaurant, eat-in: An establishment where food and drink are prepared, served, and consumed primarily within the principal building, and which may also prepare food for take-out. Eat-in restaurants may or may not serve beer and wine in conjunction with their food service and in accordance with a state ABC permit.

Restaurant, walk-up: An establishment where food and/or beverages are sold in a form ready for consumption where pick up and consumption of food is designed to take place outside the confines of the structure, and which may also prepare food for take-out. Includes food vendors and stands.

Retail sales: Establishments engaged in selling goods or merchandise to the general public and rendering services incidental to the sale of such goods including tailoring or repair. This includes, but is not limited to, specialty shops and stores as well as:

Books, news, recordings retail: Establishments primarily engaged in the sale of books, magazines, or recordings for general consumption as opposed to adult entertainment use.

Clothing and personal accessories merchandise retail: Establishments engaged in the sale of personal clothing, jewelry, watches, shoes, luggage, hats, etc.

Drugstore or *pharmacy:* A store where the primary business is the filling of medical prescriptions and the sale of drugs, medical devices and supplies, and nonprescription medicines, but where non-medical products may be sold as well.

Florist: Establishments primarily engaged in retailing cut flowers, floral arrangements, and potted plants purchased from others and including on-site preparation.

Garden center: Establishments primarily engaged in retailing nursery and garden products, such as trees, shrubs, plants, seeds, bulbs, and sod that are predominantly grown elsewhere. These establishments may sell a limited amount of a product they grow themselves.

Hardware store: Establishments primarily engaged in the retail sale of a number of basic hardware lines, such as tools, hardware, paint, glass, house wares and household appliances, cutlery and other items.

Musical instruments retail and repair: Establishments engaged in the sale, re-sale and/or repair of musical instruments.

Outlet store: A retail establishment selling a single or limited number of a manufacturer's product.

Right-of-way: 1) a strip of land acquired by purchase, reservation dedication, forced dedication, prescription, or condemnation and intended to be occupied by a roadway, greenway, sidewalk, railroad, utility, storm sewer, or other uses; and 2) the right of one to pass over the property of another.

Rubbish: Solid waste, combustible or noncombustible, excluding food waste, vegetation waste and ashes, which have been discarded from residences, commercial establishments and institutions.

Sanitary sewage: Any liquid waste containing animal or vegetable matter in suspension or solution or the water-carried waste resulting from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or any other source of water-carried waste of human origin or containing putrescent material. See also "greywater."

Sanitary sewage system: Conveyance and treatment of sanitary sewage by the Metropolitan Sewage District, septic systems, or other systems compliant with state building codes.

Screening: A method of visually shielding or obscuring one abutting nearby structure from another by fencing, walls or densely planted vegetation.

Self-service storage facility or *mini-storage:* A structure containing separate, individual and private storage spaces of varying sizes leased or rented on individual leases for varying periods of time.

Setback: The minimum distance by which any building or structure must be separated from a street right-of-way or lot line. Where no right-of-way is delineated and where property boundaries are located underneath the footprint of an existing road, then setback will be defined as the minimum distance between a building or structure and the edge of the roadway or back of curb. On NCDOT maintained roads where roadway right-of-way is not established, setback is the minimum distance between a building or structure and the back of the maintenance ditch or maintenance area (four feet from the edge of pavement).

Shared housing arrangements/community living: Dwellings, that offer communal areas and services such as housekeeping, transportation, organized social and recreational activities, and other support services for seven or more residents, but excluding assisted living facilities for the elderly or other medical facilities. See also "Group home."

Shopping center: A group of commercial establishments planned, constructed and managed as a total entity.

Short-term rental: Any dwelling or portion thereof that is available for use or is used for accommodations or lodging of guests paying a fee or other compensation for a period of less than 30 consecutive days.

Sidewalk: A paved or otherwise surfaced area designed for pedestrian and wheelchair use.

Sidewalk seating: An area adjacent to and directly in front of a street-level eating or drinking establishment located within the sidewalk area of the public right-of-way and used exclusively for dining, drinking, and circulation of customers. Excludes benches and similar furniture that is directly against the wall of a building and removed from the sidewalk area.

Sign: Any device, structure, fixture, painting, or visual image using words, graphics, symbols, numbers, or letters designed and used for the purpose of attracting attention or communicating a readable, comprehensive, legible message.

Site plan: A scaled drawing and supporting documents showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on a parcel or parcels of land, which may include site-specific details such as building areas, building height, floor area, setbacks and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review.

Sketch plan: An informal plan, not necessarily to exact scale, indicating salient existing features of a tract and its surroundings and the general layout of a proposed subdivision or development plan for use in technical review and plan development prior to the submittal of a master plan or preliminary plat.

Sleeping room, sleeping unit, or *bedroom:* A room designated as sleeping or bedroom on the plans and permit application. When no plan or permit application is available, a sleeping room, sleeping unit, or bedroom shall be defined as a room with a closet set up to act as a space for a person to sleep.

Special use permit: A permit issued by the board of adjustment in accordance with the principles, conditions, safeguards, and procedures specified in these regulations to authorize a specific use of land as required by these regulations.

Storm sewer or *stormwater sewer:* Pipe or conduit used to collect and carry away sewage or stormwater from generating sources to treatment plants, BMPs or receiving streams.

Stormwater: Stormwater from rainfall or snowmelt that runs off the ground or impervious surfaces like buildings, roads, parking lots, etc.

Street: A dedicated and accepted public right-of-way for vehicular traffic. This also includes the terms "roads," or "roadway."

Structure: Anything constructed, installed or portable, the use of which requires a location on a parcel of land, this includes a fixed or moveable building which can be used for residential, business, commercial, agriculture, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, above ground, below ground and permanent swimming pools, cisterns, sewage treatment plants, sheds, and similar accessory construction; however, it does not include landscape features such as ornamental pools, planting boxes, sculpture, birdbaths, open terraces, at-grade bridges and walkways, at-grade slab patios, driveways, small non-permanent shelters for pets, playhouses, open stairs, recreational equipment, flagpoles, underground fallout shelters, air-conditioning compressors, pump houses, wells, mailboxes, outdoor fireplaces, burial vaults, or cemetery marker monuments.

Subdivider: Any person who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision: All divisions of a lot, tract, or parcel of land into two or more lots, tracts, parcels, building sites or other divisions when any one of those divisions is created for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of new streets or a change in existing streets.

Subdivision, exempt: The types of land divisions or combinations that are exempt from state and local subdivision regulations (per N.C.G.S. § 160D-802.

Subdivision, major: A subdivision, other than an exempt subdivision, and which requires the extension of public right-of-way and/or public streets, or where the entire tract to be subdivided is greater than five acres, or where the subdivision will result in five or more lots after the subdivision is complete.

Subdivision, minor: A subdivision, other than an exempt subdivision, which involves no new public streets or roads, and where the entire tract to be subdivided is five acres or less in size, and where four or fewer lots will result after the subdivision is complete.

Substantial progress: For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

Summer camp: A recreation and residential center for children or adults that specializes in outdoor activities and programs and which is accredited or seeking accreditation from the American Camp Association (ACA) or other recognized accreditation service.

Tattoo parlor/body piercing studio: An establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of one or more of the following: (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

Tavern: An establishment serving alcoholic beverages in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and snacks may be available for consumption on the premises.

Temporary sign: A sign with or without a structural frame, not permanently attached to a building, structure, or ground and intended for a limited period of display.

Tenant: Any person who occupies a dwelling unit under a verbal or written lease or holds a legal tenancy in a dwelling.

Theater or *music hall:* A building or part of a building devoted to showing motion pictures or for dramatic, dance, musical or other live performances. Areas for retail sale of food and beverages, including beer and wine in accordance with state ABC permits, are included in this definition as incidental to the primary use.

Townhome: A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls. Additionally, ownership of a townhome includes the footprint of the unit itself as well as any common areas established as part of the development plan.

Traffic impact study (TIS): A report analyzing anticipated roadway conditions with and without an applicant's development, and recommending appropriate mitigation measures.

Transient: Occupancy of a dwelling unit or sleeping unit for not more than 30 days.

Travel trailer: A vehicle primarily designed as a temporary or seasonal dwelling for travel, recreation, or vacation use, including moveable park model homes, recreational vehicles (RVs), and other similar vehicles.

Truck stop: Any building, premises, or land in which or upon which a business, service, or industry involving the maintenance, storage, or repair of commercial vehicles is conducted or rendered, including the dispensing of

motor fuel or other petroleum products directly into motor vehicles and the sale of accessories or equipment for trucks and similar commercial vehicles. It may also include overnight accommodations or restaurant facilities primarily for truck crew use.

Undeveloped land: Land in its natural state.

Unfit for human habitation: Conditions exist within a dwelling or dwelling unit which violate or do not comply with the minimum housing standards established by the town.

Unsafe: State of a structure deemed dangerous because of unstable conditions of walls, overloaded floors, defective construction, dangerous wiring or heating systems, inadequate means of egress, susceptibility to fire or other cause or conditions that make the building unsafe for people to enter or live.

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

Warehouse or *distribution center:* A building used primarily for the storage of goods and materials or an establishment engaged in the receipt, storage and distribution of goods, products, cargo or materials, including shipment by boat, rail, air or motor vehicle.

Warehouse, mini: Establishments primarily engaged in renting or leasing space for self-storage. These establishments provide secure space (i.e., rooms, compartments, lockers, containers, or outdoor space) where clients can store and retrieve their goods.

Watershed or *natural drainage:* The drainage basin, catchments, or area of land that drains water, sediment, and dissolved materials to a common outlet along a stream channel.

Wholesale establishment: An establishment or place of business primarily engaged in selling and/or distributing merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies. This is not considered a general commercial use.

Winery/cidery: An establishment engaged in the production and distribution of wine, cider, and other fermented fruit beverages. The establishment may include areas for demonstration, education, tasting and other uses permitted in the district in accordance with state and local laws.

Wood or *frame structure:* A type of construction whose primary structural elements are formed by a system of repetitive wood framing members, not including heavy timber, metal frame, or masonry construction where the exterior walls are composed of noncombustible materials that support the roof load. (See fire district overlay, chapter 4).

Wood and yard waste facility: An operation which collects, stores and/or processes waste and accumulation of tree branches, tree limbs, bushes, shrubbery, cuttings or clippings usually created as refuse in the trimming or cutting of trees, shrubs or bushes, including parts of trees, plant clippings, prunings, leaves and other discarded vegetative material from yards and gardens. Processing may include chipping or mulching to reduce woody material by mechanical means into small pieces to be used for mulch or fuel.

Yard: An open space that lies between the principal building or buildings and the nearest lot line. The minimum required yard as set forth in the ordinance is unoccupied and unobstructed from the ground upward except as may be specifically provided in the ordinance.

Yard, front: A space extending the full width of the lot between any building and the front lot line and measured perpendicular to the building at the closest point to the front lot line.

Yard, rear: A space extending across the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building at closest point to rear lot line.

Yard, side: A space extending from the front yard to the rear yard between the principal building and side lot line and measured perpendicular from the side lot line to the closest point of the principal building.

Zero-lot line lot: A lot created by the division of property along a shared wall of a single structure, with independent ownership for each unit.

Zone: A specifically delineated area or district in a municipality within which uniform regulations and requirements govern the use, placement, spacing, and size of land and buildings. The terms "district," "zone" and "zoning district" are synonymous and are used interchangeably throughout these regulations.

(Ord. No. O-21-16, 12-13-2021; Ord. No. O-22-01, 3-14-2022; Ord. No. O-21-20, 1-10-2022; Ord. No. O-22-02, 4-11-2022; Ord. No. O-24-17, 12-9-2024; Ord. No. O-25-01, 1-13-2025; Ord. No. O-25-24, 9-8-2025)

SECTION 1.3 NONCONFORMITIES

1.3.1 Nonconforming uses, structures, and lots.

A. Any use, structure, or lot which does not conform to the requirements of this code but which existed before the effective date of this chapter as a legal "pre-existing nonconformance" and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of this code or any subsequent rezoning or amendment to the text or official map of this chapter, may be continued or maintained only in accordance with the terms of this section.

B. This section shall not apply to any feature which is the subject of a variance from particular development regulations that has been granted by the board of adjustment. Where a variance has been granted which does not otherwise conform to the requirements of this section, that feature shall be deemed conforming.

C. Subject to the conditions and exceptions set out in the following sections, a nonconforming lot, building, structure, or use of land existing at the time of the enactment of this code or any amendment thereto may be continued or maintained provided that such nonconformity shall not be:

1. Enlarged or extended except in conformity with this chapter;
2. Reestablished after a discontinuance of 180 days; or
3. Extended beyond the adopted amortization period if applicable.

1.3.2 Single-family units or replacement manufactured homes on nonconforming lots in residential districts.

A single-family dwelling unit, or a replacement manufactured home meeting the criteria set forth in section 5.14, shall be permitted on any existing, residentially zoned lot of record which contains an area or width less than the required minimum lot size for a single-family dwelling in the district in which a lot is located as long as:

A. The lot is in separate ownership and not of continuous frontage with other lots in the same ownership on the effective date of this section. Where single ownership exists among adjacent lots, nonconforming lots shall be brought into compliance.

B. Variance of any district regulations other than lot size requirements is obtained from the board of adjustment.

C. A replacement, nonconforming manufactured home may be placed within 180 days after the previous home is removed and shall conform to the setback standards of the district in which it is located if possible, and, in the event it is not possible to conform to the setback standards of the district, the

replacement manufactured home shall not increase the nonconformity of the current setback requirements and shall be placed to achieve the maximum setback possible.

D. After 180 days, new construction or replacement manufactured homes shall conform to the setbacks and other standards of the district in which it is located.

E. All replacement and new manufactured housing shall comply with the requirements for manufactured homes found in Chapter 5.

1.3.3 Nonconforming structures occupying conforming lots.

A. Any nonconforming structures on conforming lots may be occupied by a conforming use. If any nonconforming structure is proposed to be changed by improving but not expanding the structure to an extent exceeding one-half or 50 percent of its current value, exclusive of foundations, as determined by the building inspector, or if any additions or expansions are made to the structure, then the entirety of the improved building or structure must be in conformance with the dimensional requirements of the district or a variance must be obtained through an action of the board of adjustment.

B. Structures which are nonconforming in so far as they violate the front, side and/or rear setback requirements of the district in which they are located can be added to providing that no further encroachment occurs to the setback.

C. Any multi-family dwellings that are in nonconforming structures must meet the minimum lot area standards for multi-family or for the applicable special use permit requirements in the zoning district in which it is located and may not be expanded. No variance may be provided by the board of adjustment to expand a nonconforming multi-family structure.

D. An existing nonconforming structure may be incorporated within a new special use permit request as long as the other structures and components of the master plan conform to the special use permit requirements.

E. A nonconforming structure does not make other structures, such as accessory structures and fences, nonconforming on the same lot. Each nonconforming structure stands alone in its nonconformance and will not affect a conforming structure.

1.3.4 Nonconforming use of structures, buildings, or land.

A. A legally established nonconforming use may be continued subject to the following limitations:

1. When a nonconforming use of a structure has been changed to a conforming use, it may not later be used for any nonconforming use.

2. A nonconforming use of a structure that is ceased for a continuous period of more than 180 days may not be re-established and all subsequent uses of the structure must be in conformance with the particular district regulations.

B. A nonconforming use of land or buildings or structures shall not be changed to any new use other than a use listed as permitted or special use within the district in which it is located.

1.3.5 Nonconforming vacant lots.

A. A nonconforming vacant lot may be used for any of the uses permitted in the zoning district in which it is located if the setbacks and district requirements are met or if the owner is granted a variance by the board of adjustment.

B. If a nonconforming vacant lot adjoins and has continuous frontage with one or more other lots in the same ownership, the owner of the nonconforming lot may not take advantage of the provisions of this section without combining these adjoining lots.

C. A lot that is only nonconforming due to the fact that it does not comply with access standards can be developed with one single-family residence and typical residential accessory structures if some form of legal access is provided to the property.

1.3.6 Maintenance and repairs of nonconforming structures.

A. Maintenance and repair necessary to keep any nonconforming structure in sound condition, or to maintain a conforming structure on a nonconforming lot in sound condition, are permissible as long as the repairs do not increase the nonconformity.

B. Nothing in this chapter shall prevent the strengthening of, or restoration to, a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by the building inspector, fire marshal, or any other duly authorized town official.

C. Any nonconforming building or structure which is damaged by fire or natural casualty may be repaired, provided such repair be accomplished:

1. Without any increase in the square footage, building height, or floor area;
2. Without any change in location except to provide greater conformance with district setback requirements;
3. Within 180 days of a fire; provided that the fire-damaged structure does not otherwise violate the state fire prevention code;
4. That the use to which the building or other structure is put after repair does not result in a change from one nonconforming use to another nonconforming use.

D. Any nonconforming building or any building containing a nonconforming use which has been damaged by fire to an extent exceeding 50 percent of its structure or 50 percent of its value at the time of the destruction, shall cause any repair, reconstruction, or re-use to be in conformity with the provisions of this chapter.

SECTION 1.4 ADMINISTRATION AND PROCEDURES

1.4.1 Town staff.

A. The provisions of the land use code shall be administered by the Town of Black Mountain Planning and Development Department, including building inspections, subdivision administration, zoning administration, plan review, long-range planning services, and other duties as directed by the town manager, and as provided by the N.C.G.S. ch. 160D. This may include, but not be limited to the following assignments:

1. A zoning administrator is assigned the duty and authority to administer and enforce the zoning and general provisions of these development regulations.
2. A subdivision administrator is assigned the duty and authority to review major and minor subdivisions, approve final plats for minor subdivisions, and provide all other technical assistance and administration as required by the subdivision regulations.
3. A building inspector is assigned the duty and authority to enforce the requirements of the state and international building codes and requirements as referenced and otherwise provided.

4. A floodplain administrator is assigned the duty and authority to enforce and administer the floodplain regulations.

5. A stormwater management administrator is assigned the duty and authority to enforce and administer the phase II stormwater ordinance.

6. A technical and long range planner may provide general land use planning services and oversight.

7. Ensuring development compliance with these development regulations, North Carolina General Statutes and the state building code.

B. Staff duties with respect to administration of the land use code shall include:

1. Providing technical and staff level review for permit and development applications and preparing staff reports on proposals for boards and commissions as appropriate;

2. Providing public notification, minutes, and agenda preparation for public meetings;

3. Preparation of reports, research, documentation, maps and recommendations for the town council, board of adjustment (quasi-judicial) and other citizen advisory boards;

4. Maintenance of the official zoning map of the Town of Black Mountain;

5. Issuing zoning, building, floodplain, stormwater and other development permits and certificates of occupancy as described;

6. Assisting the town clerk with maintenance of the official public record; and

7. Ensuring development compliance with local land use regulations, North Carolina General Statutes and the state building code.

C. Conflicts of interest. No staff member shall make a final decision on an administrative decision if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by these development regulations or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a city local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

1.4.2 Boards and commissions.

A. In accordance with chapter 2, article III of the Town of Black Mountain Code of Ordinances establishing town administration policies, several boards, each with their own membership, function and duties, provide advisory assistance to implement town goals and policies concerning land use and development.

B. All meetings of town boards and commissions are open to the public and shall follow the procedures provided in the Black Mountain Code of Ordinances, chapter 2, article III and in the Town of Black Mountain's Boards and Commissions Handbook.

C. The following boards and commissions have specific powers and duties with respect to the land use code:

1. The town council is the elected, governing body of the town and shall:

a. Amend this code and adopt a statement describing how its action is consistent with the comprehensive plan and/or other adopted plans

b. Adopt new zoning maps and amendments to zoning maps and adopt a statement describing how its action is consistent with the comprehensive plan and other adopted plans;

c. Adopt amendments to the comprehensive plan and adopt new plans;

d. Accept or close platted or granted rights-of-way; and

e. Carry out additional powers and duties as set forth in local and state regulations.

2. The town planning board is an appointed advisory committee to the town council on land use and planning issues and shall:

a. Advise and comment on text or zoning map amendments and provide a written recommendation to the town council that addresses how amendments are consistent or inconsistent with the comprehensive plan and/or other adopted plans;

b. Recommend amendments to the comprehensive plan or other land use and land development plans or development regulations as well as to initiate studies or other planning initiatives;

c. Approve preliminary plats for subdivisions;

d. Advise and comment on special use permit applications or annexations and provide a written recommendation to the board of adjustment or town council as assigned;

e. Advise and comment on right-of-way closure or acceptance petitions and provide a written recommendation to the town council;

f. Carry out additional powers and duties as set forth in local and state regulations and as assigned by the town council;

3. The town board of adjustment is the town's quasi-judicial body that hears sworn testimony, obtains evidence and provides for cross examination of witnesses, and must make decisions solely on the evidence presented. It shall have the authority to:

a. Hear and decide appeals of staff interpretations of ordinances;

b. Consider and grant variances;

c. Consider and issue special use permits;

d. Hear and decide appeals where it is alleged that there is error in any order, decision, interpretation or determination made by zoning officials;

e. Vary or modify any of the regulations or provisions of the development regulations so that the spirit of the development regulations is observed, public safety and welfare secured, and substantial justice is done. No change in permitted uses may be authorized by variance;

f. Impose appropriate conditions that are reasonably related to a special use application or to a variance request;

g. Carry out additional powers and duties as set forth in local and state regulations.

4. The town historic preservation commission is an advisory committee to the town council with the authority to issue certificates of appropriateness within the historic district and shall:

a. Review, consider and issue certificates of appropriateness for major and minor works applications prior to the issuance of a building permit;

b. Recommend to the town council districts or areas to be designated by ordinance as historic overlay districts or conservation districts;

c. Recommend to the town council individual structures, buildings, sites, areas, or objects for designation by ordinance as historic landmarks;

d. Adopt and amend guidelines for alterations, demolitions, and new construction within historic districts and for the alteration or demolition of designated landmarks;

e. Recommend to the town council any revocation of historic district or landmark designation; and

f. Carry out additional powers and duties as set forth in local and state regulations.

Editor's note(s)—References to title III may be found in documents on file at the office of the city clerk.

1.4.3 Board and commission member conduct and conflict of interest.

A. No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the board is not a matter involving a member's own financial interest or official conduct.

B. Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business or other associational relationship.

C. Members of appointed boards exercising quasi-judicial functions shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Editor's note(s)—References to title III may be found in documents on file at the office of the city clerk.

1.4.4 Retention of records.

The planning department shall maintain a record of all permits and issued certificates of occupancy on file according to the schedule of municipal records as established by the State Government Records Branch of North Carolina. Copies shall be made available on request and at copying cost to interested parties. Official records of public meetings, plans, and other items as appropriate for the public record shall be maintained by the town.

1.4.5 Procedures for development applications.

The general provisions of this section apply to all development applications and procedures under these development regulations, unless otherwise stated.

A. Application forms are available through the on-line portal and on the town's website.

B. Authority to file applications.

1. Applicant is not the owner. If the applicant is not the owner of the land, or is a contract purchaser of the property, a letter signed by the owner consenting to the submission of the application shall be submitted.

2. Applicant is not the sole owner. If the applicant is not the sole owner of the land, a letter signed by the other owners, an association representing the owners, or their authorized agent consenting to or joining in the application for approval shall be submitted.

C. Simultaneous processing. Whenever two or more forms of review and approval are required under this ordinance (e.g., a rezoning, development agreement or a special use permit), the applications for those development approvals may, at the option of the planning director, be processed simultaneously, so long as all applicable state and local requirements are satisfied for each application. However, whenever these development regulations require two types of review for the same approval (e.g., a master plan for subdivision and a final plat for subdivision), those two review and approval procedures must be completed as separate steps in the order specified.

D. Completeness. The burden of presenting a complete application to the planning department or to the permit issuing board shall be upon the applicant. Applications will not be acted upon until such time as the application is complete. An application shall be deemed complete if it is submitted in the required form, includes all requested information, and is accompanied by the applicable fee. A determination of application completeness shall be made within five working days of application filing. If an application is determined to be incomplete, the planning director shall provide written notice to the applicant along with the explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within 20 working days, the application shall be considered withdrawn.

E. Amendment. An applicant may revise a development application for any of the following reasons.

1. To address deficiencies provided as part of the technical review;

2. To make limited changes that directly respond to specific requests or suggestions made by a reviewing board or staff in response to a reviewing board, as long as they constitute only minor additions, deletions, or corrections and do not include substantive changes to the development proposed in the application. Additional application fees to defray the additional costs of processing the revised application may be required; or

3. To have the application reviewed under a new rule or ordinance change that went into effect after the applicant received a written notice of application submittal acceptance, but prior to receiving a written decision on the application.

For any other amendment for which approval has not been granted, the application shall be withdrawn and a revised application shall be submitted and reviewed as a new application. The revised application may be subject to additional application fees to defray the additional costs of processing the revised application.

F. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of these development regulations remains at all times on the applicant.

1.4.6 Technical review required.

A. To minimize development planning costs, promote public safety, avoid misunderstandings or misinterpretation and ensure compliance with requirements, a pre-application consultation between

applicants and the town staff with a sketch plan is encouraged for all projects and required for some to allow for technical review at the beginning of the planning process.

B. A pre-application consultation and technical review is required for:

1. Work impacting the exterior of any structure within the historic district;
2. Major and minor subdivisions;
3. Special use permits;
4. A Conditional zoning;
5. Any work within a flood hazard area as indicated on the FIRM maps; or
6. Projects within the ICD, OI-6, or CB districts; or
7. Projects adjacent to US Highway 70 within the US 70 overlay district.

C. A sketch plan of the project should be prepared for the consultation, drawn approximately to scale (1 inch = 60 feet). Sketch plans for subdivisions, special use permits and institutional campus development have specific, additional requirements. All sketch plans shall contain at a minimum the following information as applicable:

1. The name and address of the developer;
2. Total acreage of the subject parcel;
3. The proposed site layout, including street and lot arrangement, designation of driveways, parking lots, open space, greenways, and stormwater management areas;
4. Topographic lines and drainages; and
5. Other information believed necessary to obtain the opinion of the planning department staff as to the proposed project's compliance with the requirements of this code.

D. The planning director, zoning administrator, building inspector, and fire marshal shall meet with the property owner or developer as soon as conveniently possible to review the sketch plan and to provide technical comments. Other staff or agencies may be invited by the planning director. Staff shall review the application and confer with the applicant to ensure that the applicable requirements have been met and that the application represents what the applicant proposes to do. Staff will then determine the necessary approval process and prepare recommendations or a report and documentation for advancing the project through the appropriate channels, such as the historic preservation commission, the planning board, and/or the board of adjustment, or other board or commission.

(Ord. No. O-21-07, 8-9-2021)

1.4.7 Timing of submittals.

Any application, sketch plan, master plan, or plat that must go before the planning board, historic preservation commission, board of adjustment, or town council must be submitted at least 14 days prior to the regularly scheduled meeting in order to be placed on that meeting's agenda.

1.4.8 Administrative and permit fees.

The town council may adopt a schedule of fees for permits and processing costs associated with the administration of these development regulations.

A. *Fees to be paid.* No application shall be processed until the established fee has been paid.

B. *Refund of fees.* Application fees are not refundable except where the planning director determines that an application was accepted in error, or in the event the fee paid exceeded the amount due, the amount of the overpayment will be refunded to the applicant.

SECTION 1.5 AMENDMENTS

1.5.1 Amendments to the land use code text and the zoning map.

A. These development regulations and the zoning map may from time to time be amended, supplemented, changed, modified or repealed by the town council after the following procedures and standards provided in this chapter have been met and in accordance with state statutes.

B. Reserved.

C. No text or map amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning board for review and recommendation.

1.5.2 Requirements for consideration of zoning map and text amendments.

A. The planning board and town council must consider the following in their consideration of any text or map amendments:

1. If the public necessity, convenience, general welfare, or good zoning practices justify such action, and

2. If the action is consistent with the town comprehensive plan or other adopted plans.

B. Reserved.

1.5.3 Reconsideration of zoning map amendments.

The town council shall not reconsider a proposed amendment to the zoning map for a period of six months from the date of the determination of the prior request; unless, the planning board recommends that reconsideration be given after a substantial change in the character of the area or evidence of factors or conditions that were not considered by the planning board or the town council in previous deliberations and which might substantially alter the basis upon which the previous determination was made.

1.5.4 Procedure for map or text amendments.

A. *Board initiation of amendments.* A proposed amendment to the text of the development regulations or the official zoning map may be initiated by the town council or the planning board, whether on their own initiative or upon recommendation of any town board or commission submitted to the planning board.

B. *Citizen petitions for amendments.* Any citizen of Black Mountain may request an amendment to the text of this code or the official zoning map by submitting an application to the planning department. Completed forms, together with any additional information the applicant feels to be pertinent, shall be filed with the planning department. The property owner or the holder of a conditional sales contract may request an amendment to the development regulations for a particular piece of property.

C. *Only completed applications will be considered.* Applications or board recommendations received at least two weeks prior to the planning board meeting shall be heard at that meeting. Any communication purporting to be a petition for an amendment shall be regarded as notice to seek relief only or an informal

recommendation to the planning board, until such time as the amendment petition is filed with the planning and development department.

D. *Petitions for changes in zoning classification (or "rezonings")* shall indicate the location, intended use of the site, and the names of all property owners and existing land uses within 200 feet of the petitioned property boundary.

E. *Petition fees.* Recommendations for changes to the development regulations text or map that come from town appointed boards or commissions shall not require a petition fee.

Notice of planning board meeting to consider proposed map amendment. When a zoning map amendment is proposed, staff shall prominently post a notice of the public meeting on the site of the proposed rezoning or on an adjacent public street or highway right-of-way at least ten but not more than 25 days prior to the date of the hearing. When multiple parcels are included within a proposed zoning amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so as to provide reasonable notice to interested persons. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed amendment and the date of the public meeting. If the zoning map amendment affects more than 50 properties, owned by at least 50 different property owners, staff may publish a notice of the hearing, provided that each advertisement shall not be less than one-half of a newspaper page in size as long as the property owners residing outside the newspaper circulation are still notified by mail.

F. *Proposed text and/or map changes shall be submitted to the planning board for review and recommendation.* The planning board shall, within 30 days, submit a recommendation to the town council with a statement describing whether the proposed amendment is consistent with the comprehensive plan and other officially adopted plans as applicable. A comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan or other officially adopted plans shall not preclude consideration or approval of the proposed amendment by the town council. If the planning board fails to act within the required 30-day period, the town council may act on the amendment without the planning board report.

G. *Public hearing required.* Before enacting an amendment to the development regulations or official zoning map, the council shall first hold a public hearing.

H. *Notice of hearing required.* When a zoning map amendment is proposed, public notice of the public hearing shall be posted, advertised, and mailed as follows:

1. Staff shall prominently post a notice of the public hearing on the site of the proposed rezoning or on an adjacent street or highway right-of-way within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so as to provide reasonable notice to interested persons.

2. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

3. Staff shall mail a notice of the hearing to all property owners within 200 feet of the subject property by first class mail at the last addresses listed for such owners on the county tax records. The notice must be deposited in the mail at least ten but not more than 25 days prior to the date scheduled for the hearing. If the zoning map amendment affects more than 50 properties, owned by at least 50 different property owners, in lieu of mailed notice, staff may publish a notice of the hearing as an advertisement in a newspaper of general circulation within the Town of Black Mountain, provided that such

advertisement shall not be less than one-half of a newspaper page in size and all property owners residing outside the newspaper circulation area must still be notified by mail.

I. *Reserved.*

J. *Written statement of consistency.* Per N.C.G.S. § 160D-605, in adopting or rejecting any zoning amendment, the town council shall also adopt a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan.

K. *Changes in the zoning map.* Following final action by the town council, zoning designation changes will be considered immediate unless an alternate effective date is established by action of the board, and any necessary changes in the zoning map itself shall be made as soon as possible. A written record of the type and date of the changes shall be maintained by the planning department.

1.5.5 Application for conditional zoning.

A. *Timing and submittal of application.* All applications for conditional district rezoning shall be submitted to the planning and development department by the owner or any other person having a recognized interest in the land for which the development is proposed or their authorized agent. Application forms are available through the on-line portal and on the town's website.

B. *Content of application.* Every application for conditional zoning shall include, at a minimum, the following:

1. A proposed site plan, which shall include:
    a. The name and address of the owner;
    b. Total acreage of the subject parcel;
    c. The proposed site layout, including street and lot arrangement; the general location, orientation and size of principal structures; designation of driveways, parking lots, open space, greenways, and stormwater management areas; the location, size and treatment of environmentally sensitive areas; and any existing or proposed easements, utility lines, water lines, or sewer lines.
2. Proposed total density and a summary of the total land area devoted to each type of general use of land;
3. A full list of the proposed uses consistent in character with the underlying zoning district, whether permitted by right or conditionally;
4. A proposed development schedule if the development is to proceed in phases;
5. Identification of any required variation from existing regulations of the underlying base zoning district;
6. A list of proposed conditions, if any;
7. The names of all property owners and existing land uses within 200 feet of the boundary of the subject property.

C. *Application fee.* Application fees shall be established by the town council and the required fee must accompany the application. Application fees are nonrefundable except where the application is withdrawn prior to consideration by the planning board.

D. *Technical review required.* Every application for conditional district zoning shall conform to the technical review requirements set out in section 1.4.6 of this Code.

E. *Planning board review required.* Following the required technical review, the application shall be placed on the agenda for consideration at the next regularly scheduled planning board meeting.

F. *Planning board recommendation.* The planning board shall submit a recommendation to the town council with a statement describing the following:

1. Whether the proposed conditional district is consistent with the comprehensive plan and other officially adopted plans, as applicable;
2. The uses to be permitted in the district;
3. Any required variation from the regulations of the underlying base zoning district, if any;
4. Recommended conditions, if any.

G. *Public hearing required.* Following consideration by the planning board, the application shall be forwarded to the town council for public hearing.

H. *Notice of hearing required.* Public notice of the public hearing shall be posted, advertised, and mailed as follows:

1. Staff shall prominently post a notice of the public hearing on the site of the proposed rezoning or on an adjacent street or highway right-of-way within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so as to provide reasonable notice to interested persons.
2. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of the hearing.
3. Staff shall mail a notice of the hearing to all property owners within 200 feet of the subject property by first class mail at the last address listed for such owners on the county tax records. The notice must be deposited in the mail at least ten but not more than 25 days prior to the date scheduled for the hearing. If this requirement would result in notices being sent to more than 50 different property owners, in lieu of mailed notice, the staff may publish a notice of the hearing as an advertisement in a newspaper of general circulation within the Town of Black Mountain, provided that such advertisement shall not be less than one-half of a newspaper page in size and all property owners residing outside the newspaper circulation area must still be notified by mail.

I. *Approval.* The town council may approve or deny the application or may approve the application with reasonable and appropriate conditions attached. Any conditions to be attached must be consented to by the owner of the property in writing. The council shall adopt a brief statement describing whether its action to either approve or deny the proposed rezoning is consistent or inconsistent with the comprehensive plan or any other adopted plan. A certified copy of the ordinance bearing the signature of the property owner to evidence the property owner's consent shall be recorded in the records of the Buncombe County Register of Deeds within 30 days of approval.

J. *Effect of approval.* Following approval, the applicant may proceed with the development pursuant to the approved site plan. If the proposed development involves the subdivision of land, approval of the master plan and conditional zoning designation shall serve as preliminary plat approval for the purposes of this code.

1. *Final approval.* Approval of final plats conforming to the approved master plan shall be approved by the planning director without the need for additional review ordinarily required for subdivisions or special use permits.

2. *Substantial changes.* Any substantial changes to an approved plan shall be reviewed by the planning board and approved or denied by the town council as a text amendment to the zoning ordinance. The following changes are considered substantial for purposes of this section:

    a. The addition or removal of land from the zone;

    b. The additional or relocation of a building or structure;

    c. Addition or relocation of streets, roads, or driveways not contemplated in the original plan;

    d. Modification of special performance criteria, design standards, or other conditions or requirements specified by the enacting ordinance;

    e. A change in land use or development type beyond that permitted in the enacting ordinance;

    f. An increase in the total number of residential dwelling units; or

    g. An increase of more than ten percent in total floor area of any nonresidential structures.

3. *All other changes.* The planning director shall have authority to review and either approve or deny any other proposed changes to the approved plan of development. Appeals from the decision of the planning director to approve or deny a proposed change shall proceed according to section 1.7 of this Code.

(Ord. No. O-21-07, 8-9-2021)

SECTION 1.6 CERTIFICATE OF COMPLIANCE AND OCCUPANCY REQUIRED

1.6.1 Certificate of compliance and occupancy required.

A. No building shall be used or occupied, or re-used or reoccupied, for commercial, institutional or industrial purposes, and no new residential construction shall be occupied until a certificate of compliance and occupancy, or "C.O." is obtained from the building inspector or his/her designee, stating that the building, any building and/or site improvements, or the proposed use complies with the provisions of these development regulations. Any residences which are converted to any type of non-residential use are required by North Carolina State Law to have a building inspection done. Any converted building shall be required to comply with required site plan or building renovation permit submittal and to obtain a commercial certificate of occupancy.

B. Applications for a CO must be submitted to the planning department and shall be accompanied by a site plan, approved final plat, or other such plans and specifications as the building inspector, fire marshal and zoning administrator may require in order to render a decision regarding the conformity of the proposed use, reuse, construction or renovation, to the applicable development regulations.

C. The CO shall be issued only when the building inspector, fire marshal and zoning administrator certify that the project is in compliance with applicable development regulations and the site and building improvements have been completed in accordance with the previously submitted and approved plans.

D. The fire marshal and the building inspector or their designees are authorized to post information of certificate of occupancy requirements and other building code information on vacant, unattended or abandoned premises in order to assist business owners in meeting the town occupancy requirements and to comply with the safety requirements of the NC Fire Code and the NC Building Code. Signs, tags or seals posted or affixed by the code official shall not be mutilated, destroyed, tampered with, or removed without authorization from the code official.

SECTION 1.7 APPEALS AND VARIANCES

1.7.1 General procedures.

A. Any persons or interested parties wishing to seek a variance shall file an application with the town planning and development department for a hearing with the board of adjustment. Any persons or interested parties wishing to seek an appeal of a zoning interpretation or staff determination shall file an application with the town clerk for a hearing with the board of adjustment.

B. An application fee shall accompany each application for a variance and this fee shall be nonrefundable except in any case where the application is withdrawn prior to its consideration by the board of adjustment. There is no fee for an appeal.

C. Before filing the application, the applicant is strongly encouraged to meet with the planning director or zoning administrator to discuss the proposed variance or appeal and to become more familiar with the applicable requirements and approval procedures of the town.

D. Upon receipt of a complete application, the planning and development department shall forward the application to the board of adjustment according to the following procedures:

1. The board of adjustment shall hold an evidentiary hearing regarding applications once the completed application and accompanying fees are received by the planning and development department and upon proper notification (see below) for the next regularly scheduled board of adjustment meeting. Special hearings may be scheduled at the direction of the board of adjustment chair.

2. Staff shall place notification of the evidentiary hearing. Staff shall place notification of the evidentiary hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

3. Notice of hearings shall be mailed to the person or entity whose appeal, application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels within 200 feet of the parcel of land that is subject of the hearing; and to any other persons entitled to receive notice as provided by the development regulations. In the absence of evidence to the contrary, notice will be mailed to the owner reflected in the county tax listing and at the address where county tax notices are sent. The notice must be deposited in the mail at least ten days but not more than 25 days, prior to the date scheduled for the hearing. Within that same time period, staff shall prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

4. The concurring vote of four-fifths of the board of adjustment shall be necessary to grant a variance. A majority vote of the members shall be required for all other quasi-judicial matters or to determine an appeal made in the nature of certiorari.

5. The board of adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and shall keep record of its

examinations and other official action, all of which shall be immediately filed in the office of the zoning administrator and shall be public record.

6. On all appeals, applications, matters, decisions and orders brought before the board of adjustment, the zoning administrator shall deliver by certified mail, return receipt requested, personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The zoning administrator shall certify that proper notice has been made.

E. In the event that the board of adjustment reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the board of adjustment unless an appeal is taken on the board's decision.

F. The applicant is responsible for presenting necessary data in written and verbal form in support of their appeal or variance, including but not limited to, historic information, environmental studies, scaled drawings, plans or photographs, and providing such materials to the town as part of the application package.

1.7.2 Appeals of administrative decisions.

A. The board of adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official charged with the enforcement of the town's development regulations.

1. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.

2. An appeal of an administrative decision must be made within 30 days from receipt of the written notice of the administrative decision, which written notice shall be delivered to the person seeking the determination and the owner of the property that is the subject of the determination. Any other person who has standing under N.C.G.S. § 160D-1402(c) or the town may appeal a decision to the board of adjustment within 30 days from receipt of actual or constructive notice of the determination. In the absence of evidence to the contrary, notice given pursuant to N.C.G.S. § 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

3. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Position of a sign is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided by the official who made the decision.

4. The owner of the property that is the subject of the decision and the party who sought the decision, if different from the owner, shall be entitled to written notice of the appeal. The written notice shall be delivered by certified mail, return receipt requested, personal delivery, electronic mail, or by first-class mail

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

6. An appeal of a notice of violation or other enforcement order stays the enforcement of the action appealed from and accrual of fines assessed unless the official who made the decision certifies to the

board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulations. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that proposed use of property is consistent with the development regulations shall not stay the further review of an application for development approval to use such property; in these situations, the appellant or local government may request, and the board may grant, a stay of a final decision of development approval, including building permits affected by the issue being appealed.

7. Subject to the provisions of subsection 6. of this section, the board of adjustment shall hear and decide the appeal within a reasonable time.

8. The official who made the decision, or the person currently occupying that position if the decision-maker is no longer employed by the local government, shall be present at the hearing as a witness. The appellant shall not be limited at the evidentiary hearing to matters stated in a notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. When hearing an appeal, the board may reverse, affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all of the powers of the official who made the decision.

9. When hearing an appeal pursuant to N.C.G.S. § 160D-9047(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in N.C.G.S. § 160D-1402(k).

10. Any aggrieved party may appeal from the decision of the board of adjustment to the Superior Court of Buncombe County in the nature of certiorari. Any such petition for writ of certiorari shall be filed no later than 30 days after a written copy of the decision of the board of adjustment is delivered as provided in section 1.7.1.D.6.

1.7.3 Variances.

A. The board of adjustment shall authorize upon application in specific cases such variance from the terms of the town's development regulations as will not be contrary to the public interest and were owing to special conditions, a literal enforcement of the provisions of town zoning regulations will, in an individual case, result in practical difficulty or unnecessary hardship. Variances are intended to provide limited relief from regulations in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the development regulations and in a way that the spirit of the town zoning regulations shall be preserved, public safety and welfare secured, and substantial justice done.

B. Variance requests pertaining to property, signs, or structures within the town's designated historic district, or on structures designated on the National Register, must be reviewed by the town's historic preservation commission and a recommendation in the form of a certificate of appropriateness provided prior to the board of adjustment's deliberations

C. The existence of a nonconforming use of neighboring land, building or structures in the same district or of permitted or nonconforming uses in other districts shall not constitute a reason for a requested variance.

D. In no event shall the board of adjustment grant a variance which would:

1. Allow the establishment of a use which is not otherwise allowed in a zoning district or which would change the zoning district classification or the district boundary of the property in question.

2. Vary from the flood protection provisions within the designated floodway district in any way which would result in any increase in the flood levels during the regulatory flood discharge or threaten the public safety (see flood hazard protection ordinance concerning variances).

3. Conflict with the North Carolina State Building Code, the North Carolina Fire Code, or any other state code unless otherwise authorized by laws and regulations.

4. Permit the creation of a nonconforming lot.

5. Deviate from the sign regulations within the sign ordinance unless the requested variance is within the town's historic district and the variance would further the goals of the town's historic preservation commission.

E. A variance may be granted in the individual case of unnecessary hardship upon the board of adjustment being able to establish the following findings:

1. That unnecessary hardship would result from the strict application of the development regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

2. That the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;

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

4. That the requested variance is consistent with the spirit, purpose, and intent of the development regulations, such that public safety is secured, and substantial justice is achieved.

F. After the board of adjustment approves a variance, the applicant shall follow all appropriate procedures set forth in these regulations for the receipt of permits, certificates, and other approvals necessary in order to proceed with development.

SECTION 1.8 CERTIFICATES OF APPROPRIATENESS

1.8.1 Application for certificate of appropriateness.

A. Applications for a certificate of appropriateness shall be obtained from, and when completed, filed with the planning director or his or her designee. The application shall be filed two weeks prior to the next regularly scheduled meeting of the commission. Sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction shall accompany each application. The names and mailing addresses of property owners filing and/or subject to the application, and the addresses of property within 100 feet on all sides of the property, which is subject to the application, must also be filed.

B. Applicants for projects involving new construction or extensive alterations and/or additions to existing structures may request a technical review with staff prior to submitting the application.

1.8.2 Major and minor works.

A. *Major works*—Major work projects involve a change in the appearance of a building or landscape and are more substantial in nature than minor work projects. Certificates of appropriateness for major works may only be approved and issued by the historic preservation commission.

B. *Minor works*—Minor works are those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the landmark or property in the historic district. Certificates of appropriateness for minor works may be approved and issued by the planning director or his or her designee. If an application for a certificate of appropriateness for a minor work is disapproved by the planning director, the application shall be forwarded to the historic preservation commission for consideration. No application may be denied without formal action by the historic preservation commission. All minor works applications approved by the planning director or his/her designee shall be forwarded to the commission for their information in time for its next scheduled meeting.

1.8.3 Criteria to determine appropriateness.

A. No certificate of appropriateness shall be issued unless the commission finds that the application complies with the historic district design standards.

B. The following review criteria, in addition to the design standards, shall be considered, where relevant, to make findings of fact indicating the extent to which the application for a certificate of appropriateness is or is not congruous with the historic aspects of the designated landmark or district:

1. Lot coverage, defined as the percentage of the lot area covered by primary structures.
2. Setback, defined as the distance from the lot lines to the building.
3. Building height.
4. Spacing of buildings, defined as the distance between adjacent buildings.
5. Proportion, shape, positioning, locating, pattern, sizes and style of all elements of fenestration and entry doors.
6. Surface materials and textures.
7. Roof shapes, forms and materials
8. Use of regional or local architectural traditions.
9. General form and proportion of buildings and structures; and the relationship of additions to the main structure.
10. Expression of architectural detailing.
11. Orientation of the building to the street.
12. Scale, determined by the size of the units of construction and architectural details in relation to the human scale, and also by the relationship of the building mass to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale.
13. Proportion of width to height of the total building facade.
14. Archaeological sites and resources associated with standing structures.
15. Effect of trees and other landscape elements.
16. Major landscaping which would impact known archaeological sites.

17. Style, material, size and location of all outdoor advertising signs.
18. Appurtenant features and fixtures, such as lighting.
19. Structural condition and soundness.
20. Walls—Physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses or combinations of these.
21. Ground cover or paving.
22. Significant landscape, archaeological and natural features.

C. The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole standards used in reviewing applications of the State of North Carolina for certificate of appropriateness.

1.8.4 Demolition.

A. An application for a certificate of appropriateness authorizing the relocation, demolition, removal or destruction of a designated landmark or a building, structure or site within the historic district may not be denied except as provided in section subsection C below. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The commission shall reduce the period of delay if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

B. If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the town council, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to 180 days or until the town council takes final action on the designation, whichever comes first.

C. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the state historic preservation officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

D. The town council may enact a regulation to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such regulation shall provide appropriate safeguards to protect property owners from undue hardship.

1.8.5 Hearing procedures.

A. The historic preservation commission shall receive applications for certificates of appropriateness. The commission shall review such application according to the review criteria, the historic district design standards and the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings and shall approve or disapprove such application as provided in paragraph F. of this section.

B. Prior to issuance or denial of a certificate of appropriateness, the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. A written notice of the proposal shall be sent to the applicant and to owners of property (i.e., lots, parcels or tracts of land) within 100 feet of the property for which an application for a certificate of appropriateness has been applied for.

C. Applications for certificates of appropriateness shall be acted upon within 90 days after filing, otherwise the application shall be deemed approved and a certificate shall be issued.

D. Prior to the issuance or denial of a certificate of appropriateness that applicant and other property owners likely to materially affected by the application shall be given an opportunity to be heard.

E. In cases where the commission deems it necessary, it may hold an evidentiary hearing concerning an application for a certificate of appropriateness, which hearing shall follow the procedures set forth for quasi-judicial hearings in N.C.G.S. § 160D-406.

F. The historic preservation commission's final action on an application for a certificate of appropriateness shall be by the passage of a motion to take one of the following actions:

1. Approve the application for a certificate of appropriateness as proposed;

2. Approve the application for a certificate of appropriateness subject to specific conditions and/or modifications of the proposal presented in the application for a certificate of appropriateness;

3. Disapprove the application for a certificate of appropriateness as proposed or modified.

G. An appeal of the commission's action in granting or denying any certificate may be taken to the board of adjustment (a) by any aggrieved party, (b) shall be taken within 30 days of the written decision and (c) shall be in the nature of certiorari.

H. Written notice of the intent to appeal to the board of adjustment from the historic commission must be sent to the town clerk postmarked within 30 days following the filing of the written decision with the town clerk.

I. Appeal from the decision of the board of adjustment shall be made to the Superior Court of Buncombe County in accordance with N.C.G.S. § 160D-1402.

J. In the case of properties owned by the State of North Carolina or its agencies, appeals may be taken to the North Carolina Historical Commission which shall render its decision within 30 days from the date of appeal by the state is received by the historical commission. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the commission.

1.8.6 Certificate issuance; expiration; enforcement.

A. Passage of a motion to approve, with or without modification, an application shall constitute the issuance of a certificate of appropriateness by the historic preservation commission. The application and the duly approved minutes of the commission shall constitute the written documentation of such issuance.

Following the meeting a certificate shall be mailed to the property for which a certificate has been issued. The certificate shall be posted on the premises, in a location visible from the street, while the work is in progress. Minutes of a historic preservation commission meeting shall be approved before the end of the next meeting.

B. A certificate of appropriateness shall be valid for a period of six months from the date of issuance for the purpose of obtaining any development approval. A certificate of appropriateness shall expire six months after the date of issuance if the work authorized by the certificate has not been commenced. If, after commencement, the work is discontinued for a period of six months, the permit shall immediately expire.

C. Compliance with certificates of appropriateness shall be enforced by the planning director or his or her designee. Failure to comply with a certificate of appropriateness shall be a violation of the development

regulations and is punishable according to established procedures and penalties for such violations. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other regulations or laws.

D. In case any building, structure, site, area or object designated as a landmark or located within the historic district is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the regulations, the commission or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building or structure.

1.8.7 Conditions for certain approvals.

A. In the event that the commission, in considering an application for a certificate of appropriateness, shall find that a building or structure for which a development permit is requested is to be an authentic restoration or reconstruction of a building or structure which existed at the same location but does not meet the requirements of the underlying district, said building or structure may be authorized to be restored or reconstructed at the same location where the original building or structure was located, provided the board of adjustment authorizes such as a special exception and no use other than that permitted in the district in which such is located is made of said property. Such conditions as may be attached to the historic preservation commission approval and those conditions as may be set by the board of adjustment shall be included in any certificate of appropriateness related thereto.

B. If the commission finds that an application for a certificate of appropriateness concerning any porches, steps, posts, fences, walls or other items extending over, on or within public rights-of-way to be necessary for the authentic restoration, reconstruction or maintenance thereof, and will not impede or block pedestrian traffic or constitute a hazard to public safety, such findings shall be transmitted to the town council for its consideration in authorizing or denying such encroachments into rights-of-way.

C. If the town council authorizes such encroachment, any items restored, reconstructed or maintained on, over or within a public right-of-way shall be the responsibility of the owner, and the owner shall agree to protect and hold the Town of Black Mountain harmless against any and all liability, cost damage or expense suffered as a result of the restoration, reconstruction or maintenance thereof. The lowest point of any such item projecting over any sidewalk shall be at least nine feet above the sidewalk immediately below.

SECTION 1.9. VESTED RIGHTS AND PERMIT CHOICE.

1.9.1 Generally.

A. A statutory vested right is established when:

1. A site-specific vesting plan is approved;
2. A final plat is approved for the initial phase of a multi-phase development;
3. A development agreement is approved and entered into pursuant to Chapter 160D, Article 10 of the North Carolina General Statutes.
4. For all other types of development, when a development permit has been issued;

B. During the period that a statutory vested right exists, no amendment to this land use code shall be applicable or enforceable without the written consent of the owner, except as specifically provided in this section.

C. The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but do not affect the allowable type or intensity of use, or regulations that are general in nature and are applicable to all property subject to the regulations of the Development Regulations of the Town of Black Mountain, including, but not limited to flood hazard prevention, building, fire, plumbing, electrical and mechanical codes and general regulations of the town.

D. A vested right is not a personal right but shall attach to and run with the land. Successors in title may exercise such right under the same conditions and for the same time that the original applicant could have exercised such right.

E. Nothing in this section shall be construed to preclude the establishment of a vested right under one or more common law principles.

F. A development permit or approval shall expire, and the period of vested rights shall terminate, unless work authorized by the permit has substantially commenced, on the date which is:

1. For a site-specific vesting plan, as specified in section 1.9.2 below;
2. For a multi-phase development of at least 25 acres, seven years from the date the site plan for the initial phase of the development was approved by the planning board;
3. Specified in the approved development agreement;
4. For all other development permits or approvals, the date which is one year from the date the permit was issued or approval was given, whichever is later;
5. For an incomplete development project in which development work is intentionally and voluntarily discontinued, the date which is two years from the date work was last performed on the site.

G. Substantial commencement of work shall be determined by planning director based on any of the following:

1. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than 30 days;
2. The development has installed substantial on-site infrastructure; or
3. The development has received and maintained a valid building permit for the construction and approval of a building foundation.

H. Development permits or approvals, other than site-specific vesting plans, that would otherwise expire according to paragraph F, may be extended for additional periods of one year if the permit-issuing authority determines that:

1. The permit has not yet expired;
2. The permit holder has proceeded with due diligence and in good faith; and
3. Conditions have not changed so substantially as to warrant a new application.

1.9.2 Site-specific vesting plans.

A. The following types of development approvals are site-specific vesting plans for purposes of this section:

1. Any development for which a special use permit is required;
2. Major and minor subdivisions.

B. Approval of a site-specific vesting plan may contain conditions as provided in this code. Conditional approval establishes a vested right for purposes of this section, except that a condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained.

C. Approval of a site-specific vesting plan may be conditioned upon subsequent reviews by the approving authority or administrative staff to ensure compliance with the terms and conditions of the original approval.

D. Approval of a site-specific vesting plan may be revoked for failure to comply with applicable conditions.

E. Once established, a vested right pursuant to a site-specific vesting plan precludes any action by the town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of property allowed by these development regulations, except under one or more of the following conditions:

1. With the written consent of the affected landowner;

2. The town council, by ordinance issued after notice and a public hearing, determines that natural or man- made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan;

3. To the extent the landowner receives compensation for all costs, expenses, and other losses incurred, together with interest as provided in N.C.G.S. § 160D-106;

4. The town council, by ordinance issued after notice and a public hearing, determines that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the approval authority of the site-specific vesting plan; or

5. A state or federal law or regulation precludes development as contemplated, in which case the approval authority may modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.

F. A vested right for a site-specific vesting plan remains vested for a period of two years from the date the first development approval or permit is issued for the site. The period of vested rights may be extended by the approving authority for subsequent periods of one year each up to a total of five years.

(Ord. No. O-21-07, 8-9-2021; Ord. No. O-23-14, 8-14-2023)

1.9.3 Permit choice.

A. If an applicant submits a complete application for a development permit or approval and a development regulation is amended before the permit decision, the applicant may choose which version of the rule or ordinance (the former version or the new version) applies to the application.

B. When a development requires multiple permits, the applicant may choose the version of each of the applicable development regulations upon submittal of the application for the initial development permit. This provision is applicable for subsequent development permit applications filed for the same development project within 18 months of the date following the approval of the initial permit. For purposes of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

1.9.4 Vested rights relative to annexation.

A. A vested right may be established for a single- or multi-tract development outside of the town's jurisdiction but seeking voluntary annexation upon the effective date of the town's action or ordinance relating thereto and as described in a preliminary plat or master plan approved by the town planning board and the town council. In such cases, the following also apply:

1. Approval of a site-specific development plan may contain a variance from the proposed zoning district or other terms and conditions as may reasonably be necessary to protect the health, safety, and welfare of the citizens of the town and of the prospective residents or businesses of the proposed development.

2. A petition for annexation filed with the Town of Black Mountain under N.C.G.S. § 160A-31 or N.C.G.S. § 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under N.C.G.S. § 160D-108.

3. A statement that declares that no zoning vested right has been established under N.C.G.S. § 160D-108, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

B. The applicable zoning district shall be established at the time of annexation.

SECTION 1.10 DEVELOPMENT AGREEMENTS

1.10.1 Authority and purpose.

A. Pursuant to the authority granted by N.C.G.S. § 160D-1001, et seq., which states that a local government may establish procedures and requirements to consider and enter into development agreements with developers for projects involving developable property of any size (including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes), the Town of Black Mountain may, upon approval of an ordinance by the town council, enter into development agreements as provided in this section.

B. The intent of development agreements is to allow the town board flexibility in managing large projects which may have a variety of uses and purposes included in a master plan, or which would otherwise not be appropriate for a traditional neighborhood development or other zoning district designation available at the time of the development plan approval.

C. Development agreements are also intended to provide assurances of vested rights indefinitely, unless a timeframe is otherwise provided in the development agreement itself, in cases where a project may be constructed over time or in phases.

1.10.2 Relationship to zoning, subdivision, and other regulations.

A. In conjunction with this code, all development proposals shall meet any and all local, state, and federal requirements which include but are not limited to the North Carolina Building Code, North Carolina Fire Code, and Americans with Disabilities Act (ADA), and local stormwater and flood hazard prevention ordinances.

B. Development proposals shall conform to all adopted town plans, policies, guidelines and manuals, including the comprehensive plan, pedestrian plan and Greenway Master Plan.

C. To the extent that the development plan does not fall specifically within existing town zoning, the development agreement ordinance will create a new zoning district specifically for the development agreement's planning area. The development agreement may also state that land use intensities, heights, setbacks, floor area, lot sizes and widths, recreation space, parking requirements, impervious surface limitations and other dimensional standards be specified in the agreement. If the above stated criteria are specified in the agreement, the town's land use intensities and dimensional standards are not applicable.

D. An unlawful, nonconforming use, structure, or lot shall not be rendered a lawful nonconforming use, structure, or lot under this ordinance unless specified in the development agreement.

1.10.3 Procedure.

A. Before a development agreement may be approved, a sketch plan must be presented to the town staff for technical review related to existing town policies, infrastructure and facility needs, and the development of a staff recommendation;

B. Following the technical review, the development agreement and a development sketch plan shall be forwarded to the planning board for public input and planning board comment.

C. Before a development agreement is presented to the planning board, staff shall prominently post a notice of the public meeting on the site of the proposed development agreement or on an adjacent public street or highway right-of-way no later than ten days prior to the meeting. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed development agreement and the date scheduled for the public meeting no later than ten days prior to the meeting.

D. The planning board shall consider all of the following:

1. Applicable zoning designation or creation of new zoning;
2. Consistency with adopted town plans and policies; and
3. Recommendations for requirements that the town council should pursue as part of the development agreement.

E. The town council shall review the planning board's and staff's reports and set a public hearing.

F. Notice of the public hearing shall be provided as follows:

1. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published not less than ten days but no more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.
2. Staff shall prominently post a notice of the public hearing on the site of the proposed development agreement or on an adjacent public street or highway right-of-way. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed development agreement and the date of the public hearing. The mailed notice must include the location of the property, the development uses proposed on the site and a place where a copy of the development agreement can be obtained.
3. Notice shall also be posted on the town website indicating the date and time of the hearing.

G. The town council shall consider a development agreement for adoption only after a public hearing.

H. Development agreements shall be accompanied by a master plan and the provisions of the development agreement as specifically enumerated and adopted and shall govern the development of the land in accordance with the master plan.

1.10.4 No use of land or buildings except in conformity with development agreement provisions.

A. No person may use, or occupy any land or buildings or authorize or permit the use, or occupancy, of land or buildings under his control except in accordance with all of the applicable provisions of the development agreement ordinance.

B. For purposes of this section, the use or occupancy of a building or land relates to anything and everything that is done to, on, or in that building or land.

1.10.5 Adopted permit fees shall apply.

Fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, special use permits, subdivision plat approval, zoning amendments, variances, and other administrative relief shall be applied in accordance with the published fee schedule.

SECTION 1.11 ENFORCEMENT AND PENALTIES

1.11.1 Authority and purpose.

A. These development regulations shall be enforced by the town council and administrative staff through their authority to abate violations, and to enjoin, restrain, and prosecute any person violating these development regulations pursuant to North Carolina law.

B. This section establishes the procedures by which the town seeks corrections of violations of these development regulations. It also sets forth the remedies and penalties that apply to violations of these development regulations. The provisions of this section are intended to encourage the voluntary correction of violations.

1.11.2 Unlawful to violate development regulations.

It shall be unlawful for any person to develop or use any building or structure within the town or its ETJ in violation of this land use code. Any failure to comply with a requirement, prohibition, or limitation imposed by the land use code, or the terms or conditions of any permit or other development approval or authorization granted pursuant to this land use code shall constitute a violation of the Town Code of Ordinances.

1.11.3 Responsible party.

For the purposes of this code, the responsible person or party shall include but not be limited to:

A. A person or firm maintaining the condition that results in or constitutes a violation. This could include but not be limited to an architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of these development regulations.

B. The owner of the land on which the violation occurs, any tenant or occupant of the property, or any person, who has control over, or responsibility for, its use or development.

C. The holder of a development approval.

1.11.4 Complaints, investigations and inspections.

A. Whenever a violation of these development regulations occurs or is alleged to have occurred, any person may file a written complaint documenting the alleged violation and submit it to the planning and development department for investigation by the zoning administrator. The planning and development department shall supply complaint forms.

B. Under the powers of this article, the enforcement officers of the planning and development department, including the building inspector, fire marshal, zoning administrator and planning director, shall have the authority to enter onto land within the town's jurisdiction to inspect for violations of this code or to investigate complaints.

1.11.5 Warning of violation.

On determining that a violation exists, the planning and development department staff may issue a written warning, the code creates an imminent risk of harm to persons or property. The written warning shall which shall include a description of the violation and the actions necessary to correct the violation, and invite the person responsible for the violation to meet with the enforcement official to discuss the violation and how it may be corrected. The warning shall be delivered by personal delivery, electronic delivery, or first-class mail to the responsible party. If the violation creates an imminent risk of harm to persons or property, the enforcement official shall not provide a warning, and shall proceed immediately to issue a notice of violation as set out in section 1.11.6.

1.11.6 Notices of violations and right to appeal.

A. When work or activity has been undertaken in violation of state law, this code or the terms of a development approval, a written notice of violation may be issued by the responsible enforcement official. The notice of violation shall be delivered by personal delivery, electronic delivery, or first-class mail to all responsible parties. The notice of violation may be posted on the property.

B. The notice of violation shall include a description of the violation and the actions necessary to correct the violation and shall require such remedial action be taken within a prescribed time period not to exceed 90 days. The enforcement officer may extend the 90-day period at his or her discretion for reasonable mitigating circumstances, but must document the reasons for the extension. Enforcement officers may waive penalties in cases where emergency or temporary repairs have been made out of necessity for the welfare and safety of the public or structure.

If the violation at issue is a violation of the State Building Code, the property owner or party responsible for the violation may appeal the issuance of the citation to the Commissioner of Insurance pursuant to N.C.G.S. § 160D-1127.

For all other violations, the property owner or party responsible for the violation may appeal the issuance of the citation to the board of adjustment within 30 days of the date of the receipt of the written citation by filing an appeal application with the town clerk.

The town may use any combination of the actions and penalties provided in this section to prevent, correct, stop, abate, or penalize a violation of the development regulations.

1.11.7 Stop work orders (orders to cease and desist).

A. Whenever land is disturbed or a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of these development

regulations, the planning director, zoning administrator, fire or building inspector or other enforcement official may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped.

1. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.

2. A copy of the order shall be delivered to all responsible parties by personal delivery, electronic delivery, or first-class mail.

3. The enforcement officer may revoke and require the return of any development permit by written notification to the permit holder when violations of these development regulations have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of these development regulations, or a permit has been mistakenly issued in violation of these development regulations.

B. When a stop work order is issued as the result of a violation of the State Building Code, any responsible party may appeal to the North Carolina Commissioner of Insurance as provided in N.C.G.S. § 160D-1114.

C. When a stop work order is issued as the result of a violation other than a violation of the State Building Code, any responsible party may appeal to the board of adjustment within 30 days of the date the order is issued by filing an appeal application with the town clerk.

D. Failure to correct the violation, appeal, or request an extension of time for correcting the violation, shall constitute a waiver of any objection to said determination and of the right to an administrative hearing and adjudication, and the order shall therefore be final and binding.

1.11.8 Court injunctions or order of abatement.

A. *Injunction.* The planning director, zoning administrator or building inspector, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction to correct a violation of these development regulations. Any person violating these development regulations shall be subject to the full range of equitable remedies provided in chapter 160D of the North Carolina General Statutes.

B. *Order of abatement.* In addition to an injunction, town enforcement agents may apply for and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:

1. Buildings or other structures on the property be closed, demolished, or removed;

2. Fixtures, furniture or other moveable property be moved or removed entirely;

3. Improvements, alterations, modifications or repairs be made; or

4. Other actions necessary to bring the property into compliance with these development regulations.

C. *Execution of court decisions.* If the responsible party fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she may be cited for contempt and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing the order in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance

with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

1.11.9 Permit revocation, disapproval of subsequent permits and repeat violations.

A. *Permit revocation.* If a person fails to comply with the terms of a permit or development approval, the responsible enforcement official may revoke the permit or development approval.

B. *Disapproval of subsequent permits and development approvals.* As long as a violation of these development regulations continues and remains uncorrected, the planning director may withhold, and the planning director and other town boards may disapprove, any request for permit or development approval or authorization provided for by these development regulations for the land on which the violation occurs.

C. *Repeat violations.* After a notice of violation, warning citation or civil citation has been issued, any re-erection or display of the same noncompliant signage or any repeat of the same zoning offense, within a 12-month period, which is in violation of this chapter on the same premises shall be considered a continuance of the original violation.

1.11.10 Civil penalties.

A. Pursuant to N.C.G.S. § 160A-175, the town may impose civil penalties in the form of fines for violation of its development regulations. Subsequent citations for the same violation may be issued by the enforcement official if the offender does not pay the citation (except as otherwise provided in a warning citation) after it has been issued, unless an appeal of the citation is pending.

B. The following penalties are hereby established:

1. *Warning citation:* Correct violation within timeframe established by written citation.
2. *First citation:* Up to $50.00, with each day considered a separate offense and a cumulative fine not to exceed $500.00.
3. *Subsequent citations for same offense:* $500.00. If the offender fails to pay the civil penalties within 30 days after having been cited, the town may recover the penalties in a civil action in the nature of debt collection.

CHAPTER 2. BUILDING REGULATIONS

SECTION 2.1 BUILDING CODES

2.1.1 Building codes adopted.

A. The North Carolina State Building Code is the basis for all building inspections as authorized in N.C.G.S. 106D-1104. The code includes: North Carolina Building Code, North Carolina Residential Code, North Carolina Energy Conservation Code, North Carolina Mechanical Code, North Carolina Plumbing Code, North Carolina Fuel Gas Code, North Carolina Administrative Codes and Policies, Regulations for Manufactured Homes; and all subsequent editions and amendments. The code is hereby adopted by reference as fully as though set forth in this section, to include any and all future amendments thereto that may, from time to time, be adopted and approved by the state.

B. In addition, the town adopts locally the following recommended practices of the International Residential Code the same as if set out at length herein, as the same may be amended from time to time:

1. Appendix AF: Radon Control Methods

2.1.2. Plumbing code addition.

Water line leak prevention. To minimize leaks and conserve water, the Town of Black Mountain requires a test of 100 pounds of pressure on all water supply piping to structures in new construction, and on replacement water lines in existing structures.

(Ord. No. O-24-12, 8-12-2024)

2.1.3 Copies of codes and green building guidelines to be maintained.

Copies of cited codes, the North Carolina Green Builder Program Guidelines and the LEED™ (Leadership in Energy and Environmental Design) Green Building Rating System of the U.S. Green Building Council shall be maintained within the building inspections office for reference.

2.1.4 Permits.

Except as specifically hereinafter modified, permits shall be issued in accordance with Section 204.3 of the North Carolina State Building Code: Administrative Code and Policies.

A. *Zoning, stormwater and fire safety certification required.* No building permit shall be issued until:

1. The zoning administrator has certified that the proposed structure and use is compliant with the zoning district in which it is located;
2. The planning director or subdivision administrator has certified that the project is compliant with the terms or conditions of any existing development approval;
3. The fire marshal has certified that the project is compliant with the fire code;
4. The stormwater administrator has certified that the project is compliant with the stormwater ordinance; and
5. The floodplain administrator has certified that the project is compliant with the flood damage prevention ordinance.

B. *Permits issued for approved developments and lots only.* No building permit shall be issued for construction of infrastructure in a new major or minor subdivision until the preliminary plat is approved. Building permits for construction on new lots created by the subdivision of land shall not be issued until the subdivision plat is approved.

C. *Application for a building permit.* No building permit shall be issued until a complete permit application has been submitted to the building inspector. The building inspector shall make available a list of information which must be submitted with the application.

2.1.5 Certificates of occupancy and compliance.

A. No building used for commercial, institutional or industrial purposes shall be used or occupied, nor shall a change in occupancy occur, nor shall the use of the building or part of a building change, until a certificate of compliance and occupancy, or "C.O." is obtained from the building inspector.

B. No new residential structure shall be occupied until a certificate of compliance and occupancy is obtained from the building inspector.

C. A residence shall not be converted to a non-residential use until a certificate of compliance and occupancy is obtained from the building inspector.

D. Applications for a CO must be submitted to the planning department and shall be accompanied by a site plan, applicable fees, approved final plat, or other such plans and specifications as the building inspector, fire marshal and zoning administrator may require regarding the conformity of the proposed use, reuse, construction or renovation to the applicable development regulations.

E. The CO shall be issued only when the building inspector, fire marshal and zoning administrator certify that the project is in compliance with applicable development regulations and the site and building improvements have been completed in accordance with the previously submitted and approved plans.

F. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specific portions of a building or system that the inspector finds safe for occupancy prior to final completion of the entire building or system.

2.1.6 Reserved.

2.1.7 Public right-of-way to be maintained.

No building or construction material shall be placed or left on any street, alleyway, sidewalk or other public property except with permission from the town manager. Permits for use of town right-of-way may be granted by the town manager only when the request will not endanger public safety, and for renewable periods of no longer than 45 days. In issuing any such permit, the town manager may impose conditions as necessary in the interest of public safety and to minimize restrictions on the free and unobstructed use of streets or sidewalks.

2.1.8 Building permit fees and available incentives.

A. Permit fees are established by the town council and are published in a schedule of building permit and inspection fees available through the planning department.

B. The town provides building and permit fee incentives for construction that meets town goals related to the environment and community development.

1. To encourage energy efficient, high performance and sustainable building practices, the town will provide a rebate of 50 percent or $500.00, whichever is greater, for construction projects certified by the NC Healthy Built Homes Program or a Certified Level in the LEED rating systems. Contact the Western North Carolina Green Building Council website for up-to-date information at www.wncgbc.org.

2. To encourage new home and rental development to be available at median to low-income market prices, the town will provide a rebate equal to 50 percent of the calculated building permit fee for construction projects developed by a housing agency utilizing federal or state CDBG, HOME, HUD or other grant funds designated for the purpose of affordable housing. A 50 percent rebate will also be provided to any developer who provides documentation that the unit on which the fee was paid was sold at a price level consistent with affordable housing guidelines as established by Buncombe County.

3. For new construction that meets the criteria of both paragraphs one and two above, a 50 percent rebate will be provided from the building permit fee and all required mechanical, electrical and plumbing inspections will be conducted for a flat, comprehensive fee of $100.00 per unit.

2.1.9 Unsafe buildings condemned.

A. The building inspector is appointed to exercise the powers of condemnation as provided in Article 11 of Chapter 160D of the North Carolina General Statutes.

B. *Inspection of non-residential buildings.* The inspector may make periodic inspections for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures. The inspector shall have the right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

C. *Inspection of residential buildings.* The inspector may make periodic inspections of residential buildings or structures following the provisions of section 2.2.6.B.

D. *Defects to be corrected.* When the inspector finds any defect in a building or structure or finds that the building or structure has not been constructed in accordance with applicable state and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be the inspector's duty to notify the owner or occupant of the defects, hazardous conditions, or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property. The notice required by this subsection shall be sent by certified mail, return receipt requested, to the owner's or occupant's last known address or by personal service.

E. *Condemnation.* Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

F. *Failure to take corrective action.* If the owner of a building or structure that has been condemned as unsafe shall fail to take prompt corrective action, the inspector shall give written notice by certified mail, return receipt requested, to the owner's last known address or by personal service, of all of the following:

   1. That the building or structure is in a condition that appears to meet one or more of the following:

      a. Constitutes a fire or safety hazard;

      b. Is dangerous to life, health, or other property;

      c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children; or

      d. Has a tendency to attract persons intent on criminal activities or other activities that would constitute a public nuisance;

   2. That an administrative hearing will be held before the inspector at a designated place and time not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

   3. That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

   If the name or whereabouts of the owner cannot, after due diligence, be discovered, the notice shall be considered properly and adequately served if a copy is posted on the outside of the building or structure in question at least ten days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the Town of Black Mountain at least once not later than one week prior to the hearing.

G. If, after a hearing, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the inspector shall issue an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective

conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps within such period as the inspector may prescribe; provided, however that such period shall not be less than 60 days unless the inspector finds that there is imminent danger to life or other property.

H Any owner who has received such an order may appeal to the town council by giving notice of appeal in writing to the town clerk within ten days following issuance of the order. The town council shall hear and render a decision in the appeal within a reasonable time. The council may affirm, modify and affirm, or revoke the order. In the absence of an appeal, the order of the inspector shall be final.

I. If the owner of a building or structure fails to comply with an order issued pursuant to N.C.G.S. § 160D-1120 from which no appeal has been taken, or fails to comply with an order of the town council following an appeal, the owner shall be guilty of a Class 1 misdemeanor. In lieu of civil or criminal penalties, the town council may authorize the initiation of appropriate actions or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

2.1.10 Maintenance standards for nonresidential structures.

A. All non-residential structures shall be maintained in a state of good repair that prevents further decay from wind, rain and external weather and secures the structure from any unauthorized admittance from humans, animals, or birds. All non-residential structures shall be free of nuisances and any hazards to the safety of occupants, customers or other persons utilizing the premises or to pedestrians and/or vehicles passing thereby. Without limiting the foregoing, the existence of any of the following conditions shall be deemed a violation of this section and must be corrected:

1. Such damage by fire, wind or other causes as to render the building unsafe;
2. Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the town;
3. Defects significantly increasing the hazards of fire, accident or other calamities;
4. Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates health and sanitation problems;
5. Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the town fire prevention code;
6. The building and environs surfaces shall be kept clear of broken glass, loose shingles, and similar hazardous conditions;
7. The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets, and other similar objects;
8. Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
9. Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the town;
10. Floors or roofs shall have adequate support members and strength to be reasonably safe;
11. Steps, railings, landing, porches, fire escapes or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse.

SECTION 2.2 MINIMUM HOUSING CODE

2.2.1 Purpose.

In accordance with Article 12 of Chapter 160D of the North Carolina General Statutes, and the North Carolina Rental Agreement Act, this code is adopted to protect the health, safety, and welfare of the residents of the Town of Black Mountain by establishing minimum housing standards for all renter occupied dwellings and to eliminate unsafe housing.

2.2.2 Applicability.

A. The provisions of this minimum housing code are applicable to all existing dwelling units and all dwelling units hereafter constructed, renovated or repaired within the Town of Black Mountain which are used or intended for use as rental property for human habitation.

B. This minimum housing code applies only to renter occupied dwellings. owner occupied dwellings in which a room or portion of the structure in which the owner resides is leased or rented, and owner-occupied manufactured homes on rented lots, such as a manufactured home park, are exempt from this minimum housing code.

C. Definitions relating to this code may be found in chapter 1, section 1.2.3.

2.2.3 Minimum documentation for dwellings and dwelling units.

A. Every renter occupied dwelling or dwelling unit shall comply with all of the minimum housing standards as established by this code. No person shall rent any dwelling or dwelling unit which does not comply will all of the minimum housing standards established by this code.

B. Owners or agents of renter occupied dwellings may voluntarily provide one of the following to the town as documentation to ensure compliance:

1. A certificate of occupancy issued within the previous three years; or
2. Documentation of a photograph of the "red label" indicating compliance with the HUD Manufactured Home Construction and Safety Standards within the previous three years; or
3. Documentation from HUD-Section 8 that the structure is presently in compliance with the rental criteria for safety under Section 8 Guidelines; or
4. Documentation of a third-party inspection (such as that of a real estate transaction, loan, or annual inspection (not an appraisal report but a home inspection)) completed within the previous three years and identified issues corrected in compliance with this minimum housing code; or
5. A safety checklist as completed by the inspector or other qualified building inspector issued within the previous three years.

C. The planning director and his/her designee may waive inspection fees to encourage completion of a safety checklist. Any subsequent inspection required as a result of a failed safety inspection or the investigation of complaints shall require payment of the standard inspection fee as established by the town.

2.2.4 Minimum standards of fitness for dwellings and dwelling units.

A. Notwithstanding any other methods available for determining whether a dwelling is fit for human habitation, the inspector shall apply the minimum standards set forth below:

1. *Street address.* Each dwelling shall bear a street number of a color contrasting with the surface on which the number is mounted. Such number shall be of sufficient size to be visible from the nearest

street but not less than two inches in height. If the dwelling is not visible from the nearest street, a sign or standard bearing the address number shall also be placed on the principal street access point to the dwelling, such number to meet the standards set forth herein.

2. *Light and ventilation.*

    a. *Windows*. Every habitable room shall have at least one window or skylight facing directly to the outdoors. Each window required for ventilation of habitable rooms shall be capable of being easily opened or closed and secured in position by window hardware.

    b. *Mechanical ventilation*. Every habitable room may have a means of mechanical ventilation or the ability to demonstrate alternate means of ventilation.

    c. *Lighting in halls and stairways*. Every hall and stairway of every dwelling shall be lighted including exterior stairways and stairways in halls and public spaces.

3. *Electrical systems.*

    a. *Electrical service*. The minimum capacity of the service supply and the main disconnect switch shall be sufficient to adequately carry the load required in accordance with the state electrical code.

    b. *Lights and outlets*.

        i. Every habitable room or space shall contain at least two separate and remove duplex receptacle outlets.

        ii. Every hall, water closet compartment, bathroom, laundry room or furnace room shall contain at least one ceiling-mounted or wall-mounted fixture outlet. For purposes of this section, a laundry closet shall be considered a laundry room.

        iii. In bathrooms, the lighting outlet shall be controlled by a wall switch or fixture pull-chain. In addition to the lighting outlet in every bathroom and laundry room, there shall be provided at least one receptacle outlet. Any new or replacement bathroom receptacle outlet shall have ground fault circuit interrupter protection.

        iv. All outlets, switches, wiring and light fixtures shall be safe and operable. No extension cords shall be spliced or used as fixed wiring in a dwelling. Electrical odor, flickering lights, visibly frayed wiring, broken switch plates or outlet plates or failure of circuit-tester check shall be evidence of an unsafe electrical system.

4. *Exterior and interior.*

    a. *Foundation*. The building foundation system shall be maintained in a safe manner and capable of supporting the load which normal use may cause to be placed thereon. Beneath the dwelling, there must be firm, reasonably dry ground ("reasonably dry" means no mud, standing water, running water or evidence of same). Manufactured homes shall be set up and secured as required by the state building code's regulations for manufactured housing.

    b. *Roofs*.

        i. Roof shall be structurally sound and maintained in a safe manner and have no defects which might admit rain or cause dampness in the walls or interior portion of the dwelling. The following may constitute evidence of defects:

            (a) Missing shingles;

            (b) Flashing(s) missing;

(c) Roof deflection deeper than one-sixth of the depth of the rafter and/or cracked rafters;

(d) Damage to ceiling (ceiling plaster loose or falling, brown spots, etc.), sheet rock hanging, etc. in rooms below roof; or

(e) Fire damage.

c. *Stairs, porches and appurtenances*.

i. Every inside and outside stair, porch or any appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair. Stairs and steps shall be free of holes, grooves, and/or cracks large enough to constitute accident hazards. Stair coverings shall be securely mounted and shall not interfere.

d. *Structure supports*.

i. Every structural element of the dwelling shall be maintained in a structurally sound condition and show no evidence of deterioration which would render it incapable of carrying normal loads. Termites, termite damage, fire damage, absence of footing or cracked or split wood structure supports are examples of evidence of deterioration.

ii. When additional direct support is required, piers shall be used under girders, at walls or other primary support points. Stiff knees shall not be used under girders, at walls or other primary support points, but may be used for indirect support only.

5. *Space requirements.*

a. *Required space*. Every dwelling shall contain at least the minimum room size in each habitable room as required by the state building code.

b. *Required space in sleeping rooms*. In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes shall contain at least 70 square feet of floor area for each intended occupant.

c. *Ceiling height*. Habitable rooms other than kitchens, storage rooms and laundry rooms shall have a ceiling height of not less than seven feet. Hallways, corridors, bathrooms, water closet rooms, and kitchens shall have a ceiling height of not less than seven feet measured to the lowest projection from the ceiling. If any room in a dwelling has a sloping ceiling, the prescribed ceiling height of the room is required in only one-half of the room area. No portion of the room measuring less than five feet from the finished floor to the finished ceiling shall be included in any computation of the minimum room area.

d. *Occupancy below grade*. No basement or cellar space shall be used as a habitable room or dwelling unless:

i. The floor and walls are resistant to the leakage of underground and surface runoff water and show no evidence of recent water leakage or accumulations;

ii. An easily accessible means of fire escape in addition to the basement or cellar stairs is provided; and

iii. One operable means of emergency escape and rescue opening as prescribed per the state building code.

6. *Heating systems.*

a. Every dwelling shall have heating facilities which are properly installed, are maintained in safe and good working conditions, and are capable of safety and adequately heating all habitable rooms and bathrooms in every dwelling regulated herein to a temperature of at least 68 degrees F (20 degrees C) at a distance of three feet above the floor level, at an outside temperature of 20 degrees Fahrenheit. Each heating system shall have at least one readily adjustable control for regulations of living space temperatures in each dwelling unit. Radiator control knobs in good working order shall be regarded as a readily-adjustable control.

b. Where a central heating system is not provided for a dwelling, the dwelling shall be provided with properly installed baseboard electric heat, properly installed and properly vented wood or fossil fuel(s), or unvented natural gas heaters having oxygen depletion sensors listed for residential use by UL, ETL, or other North Carolina recognized texting laboratories and installed in accordance with the manufacturer's instructions.

c. The following heating devices do not meet the requirements of subsection 6.b. of this section:

i. Portable electric heating units; and

ii. Unvented fuel-burning heaters.

d. The use of unvented fuel-burning heaters is prohibited in any bedroom.

7. *Chimneys.*

a. Chimney inspections shall be conducted by a certified chimney sweep or masonry contractor. All other heating system flue inspections shall be conducted by a licensed mechanical contractor.

b. Unless they are closed off and cannot be used, chimneys must be safe for use as specified and intended with:

i. Flue liner intact;

ii. Chimney mortar and bricks secure;

iii. Flue unobstructed;

iv. Fireplace bricks intact; and

v. Stove piping placed and secured with:

(a) Minimum 18-inch masonry surrounding thimble as clearance separation from combustible; or

(b) Minimum nine-inch air separation for insulated listed stove piping; or

(c) Minimum two-inch air separation for insulated listed stove piping with one-inch of air space between the inner and outer chimney components; and

(d) As otherwise described in the National Fire Protection Association Standards 211: Chimneys, Fireplaces, Vents and Solid Burning Fuel Appliances.

c. Chimneys that do not meet these standards shall be either repaired or sealed.

2.2.5 Unsafe conditions.

A. The inspector shall determine that a dwelling is unsafe and represents a threat to life and property, if any of the following conditions exist:

1. No operating heating facilities that would maintain a minimum room temperature of 68 degrees at a point three feet above the floor in all habitable rooms with an outside temperature of 20 degrees Fahrenheit.
2. No potable water supply.
3. No hot water supply.
4. No electricity.
5. Presence of overloaded, non-isolated electrical circuits, or unsafe or exposed electrical wiring.
6. Lack of properly functioning sanitary facilities.
7. The presence of raw sewage or open sewer inside the dwelling, whether from broken or plugged fixtures or pipes inside the dwelling, or migrating into the dwelling from the outside, or the presence of inadequate ventilation of sewer systems.
8. Presence of unsafe structural conditions:
    a. Foundations, foundation walls, piers or other foundation supports; exterior walls, interior structural walls, joists, rafters, sills, floors, and other structural members which are not capable of supporting the load which normal use would cause to be placed thereon;
    b. Roofs, flashing, exterior walls, basement walls, foundation walls, floors, hatchways, windows, which are not maintained so as to be in good condition;
    c. The ground used as a floor or any wood floors that are placed on the ground;
    d. Outside or inside stairs, steps, porches, landings and other parts or appurtenances which are in such donation as may increase the hazards of collapse, tripping, falling, rodent or pest infestation, fire or otherwise endanger the health or safety of the occupants, including broken windows; or
    e. Floors, interior walls, or partitions, the ceilings of all rooms, closets, and hallways which are not finished or covered with suitable material or which are not maintained free of flaking paint.
9. Presence of uncontained flammable or combustible liquids or gases, poisonous solids, liquids or gases that threaten life or health and that are the property of the owner.
10. Missing portion of roof or ceiling which allows drafts, severe bulging, or large amounts of loose or falling surface materials such as plaster.
11. Chimneys and other heating systems that do not meet minimum standards.
12. The building is a physical threat due to the immediate possibility of collapse.
13. The primary means of exit in the event of emergency is structurally unsafe.
14. Interior wall sheathing or sheeting that is not present or has been removed causing diminished protection from the spread of fire from story to story or from habitable spaces to bedrooms.
15. Insulations and weatherproofing which did not meet the state building code at the time of construction or is not properly maintained.

B. Every dwelling shall be provided with an approved smoke detector on each level of the dwelling and in all stairwells, hallways, and other common areas of multiple unit dwellings. Dwellings that utilize gas shall also be provided with a carbon monoxide detector. Detectors shall be installed in accordance with the manufacturer's recommendations and listing and when activated shall provide an audible alarm. The detector shall be listed in accordance with Underwrites Laboratories Listing 217 ("Single and Multiple Station

Smoke Detectors"). Safety standards for detectors recommend that these should be tested on an annual basis at a minimum.

2.2.6 Enforcement.

A. *Notification in writing of needed repairs.* North Carolina Law requires that tenants request repairs in writing. The Town of Black Mountain will require evidence of written communication from the tenants to the landlord, owner, or agent. The landlord, owner, or agent shall be given 30 days to make repairs to unsafe conditions before enforcement procedures are initiated.

Inspections allowed. The inspector may inspect a residential structure when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist. Reasonable cause includes any one or more of the following:

1. The landlord or owner has a history of more than two verified violations of the building code, fire code, or minimum housing code within a 12-month period;
2. There has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected;
3. The inspection department has actual knowledge of an unsafe condition within the building; or
4. Violations of the local ordinance or codes are visible from the outside of the property.

Inspections shall occur during reasonable hours, upon presentation of proper credentials.

Notice of violation. If it appears to the inspector that the dwelling or dwelling unit does not meet the minimum standards contained in this code, the inspector shall issue a written notice of violation pursuant to the provisions of section 1.10.6. The owner shall perform such work as is necessary to bring the dwelling unit into compliance within 30 calendar days if the building is occupied. The building inspector may grant extensions of time for completion of the required measures, but shall not be obligated to do so.

Waivers.

1. In the event that the building inspector issues a notice of violation as to one or more plumbing, electrical, mechanical, structural, or fire safety components, the inspector may approve such components without further correction upon receipt of a report from an appropriately licensed contractor, architect, or engineer affirming that such components are in compliance with this code. Such report must be provided within 15 days after the notice of violation is served.
2. The inspector may waive any violation of this code when all of the following conditions are met:
    a. The condition for which the waiver is sought is not one of the conditions set forth in (section 2.2.5 (unsafe conditions) of this code; and
    b. The condition for which the waiver is sought is an element of the fundamental and original construction of the dwelling. "Fundamental and original construction" includes foundation dimensions, ceiling height, organization of habitable space, and any other condition governed by the original structure of the dwelling; and
    c. There exists a demonstrable alternate means of meeting the intent of this code.

Appeals. The property owner or other parties in interest may appeal the determination of the inspector to the board of adjustment in accordance with section 1.7.2, provided however that the notice of appeal must be filed within ten days from the rendering of the inspector's determination or service of the order, whichever shall last occur. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and, to that end, has all the powers of the inspector

Violations, remedies and penalty. The owner of any dwelling or dwelling unit or other. The concurring vote of four members is required to reverse or modify the decision of the inspector. The board may also, when unnecessary hardships would result from carrying out the strict letter of this code, adapt the application of the code to the necessities of the case to the end that the spirit of the code is observed, public safety and welfare secured, and substantial justice done.

SECTION 2.3 FLOOD DAMAGE PREVENTION ORDINANCE

Article 1. Statutory Authorization, Findings of Fact, Purpose and Objectives

Section A. Statutory authorization.

The North Carolina General Assembly has in G.S. ch. 143, art. 21, pt. 6; G.S. ch. 160D, art. 9, pt. 2, sect. 923; and G.S. ch. 160A, art. 8, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Section B. Findings of fact.

(1) The flood prone areas within the jurisdiction of the Town of Black Mountain are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

Section C. Statement of purpose.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within floodprone areas by provisions designed to:

(1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

(5) Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or which may increase flood hazards to other lands.

Section D. Objectives.

The objectives of this ordinance are to:

(1) Protect human life, safety, and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business losses and interruptions;

(5) Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in floodprone areas;

(6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas; and

(7) Ensure that potential buyers are aware that property is in a special flood hazard area.

Article 2. Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

Accessory structure (appurtenant structure) means a structure detached from a principal building and located on the same lot and incidental and subordinate to the principal building or use. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

Area of special flood hazard. See "Special flood hazard area (SFHA)".

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means a determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a "special flood hazard area", it may be obtained from engineering studies available from a federal, state, or other source using FEMA-approved engineering methodologies. This elevation, when combined with the "freeboard", establishes the "regulatory flood protection elevation".

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Building. See "Structure".

Chemical storage facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Development means any manmade 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.

Disposal means, as defined in G.S. 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Elevated building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing manufactured home park or *manufactured home subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; and/or

(2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood insurance rate map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

Flood insurance study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), if published.

Floodprone area. See "Floodplain."

Flood zone means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

Floodplain means any land area susceptible to being inundated by water from any source.

Floodplain administrator is the individual appointed to administer and enforce the floodplain management regulations.

Floodplain development permit means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this ordinance and other zoning regulations, subdivision regulations, building codes, health regulations, special purpose regulations, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Freeboard means the height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater that the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The base flood elevation plus the freeboard establishes the "regulatory flood protection elevation."

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hazardous waste management facility means, as defined in G.S. ch. 130A, art. 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest adjacent grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic structure means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a local inventory of historic landmarks in communities with a "Certified local government (CLG) program;" or

(d) Certified as contributing to the historical significance of a historic district designated by a community with a "Certified local government (CLG) program."

Certified local government (CLG) programs are approved by the U.S. Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the state historic preservation officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Lowest adjacent grade (LAG) means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or *subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (actual cash value); or adjusted tax assessed values.

Mean sea level means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on FIRM are referenced. Refer to each FIRM panel to determine datum used.

New construction means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

Non-encroachment area means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated in the flood insurance study report.

Post-FIRM means construction or other development for which the "start of construction" occurred on or after the effective date of the initial flood insurance rate map.

Pre-FIRM means construction or other development for which the "start of construction" occurred before the effective date of the initial flood insurance rate map.

Principally above ground means that at least 51 percent of the actual cash value of the structure is above ground.

Public safety and/or *nuisance* means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawful obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle (RV) means a vehicle, which is:

(a) Built on a single chassis;

(b) Four hundred square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference level is the top of the lowest floor for structures within the special flood hazard area.

Regulatory flood protection elevation means the "base flood elevation" plus the "freeboard." in "special flood hazard areas" where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In "special flood hazard areas" where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

Remedy a violation to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages,

implementing the enforcement provisions of the regulations or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage yard means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Solid waste disposal facility means any facility involved in the disposal of solid waste, as defined in G.S. 130A-290(a)(35).

Solid waste disposal site means, as defined in G.S. 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special flood hazard area (SFHA) means the land in the floodplain subject to a one-percent or greater chance of being flooded in any given year, as determined in article 3, section B. of this ordinance.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Substantial damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement." Also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(a) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

Water surface elevation (WSE) means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Article 3. General Provisions

Section A. Lands to which this ordinance applies.

This ordinance shall apply to all special flood hazard areas within the jurisdiction of the Town of Black Mountain and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

Section B. Basis for establishing the special flood hazard areas.

The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for Buncombe County dated January 6, 2010, are adopted by reference and declared to be a part of this ordinance.

The initial flood insurance rate maps are as follows for the jurisdictional areas at the initial date:

Town of Black Mountain, dated April 15, 1980

Buncombe County, dated August 1, 1980

Section C. Establishment of floodplain development permit.

A floodplain development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of article 3, section B of this ordinance.

Section D. Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

Section E. Abrogation and greater restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section F. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

(a) Considered as minimum requirements;

(b) Liberally construed in favor of the governing body; and

(c) Deemed neither to limit nor repeal any other powers granted under state statutes.

Section G. Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Black Mountain or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Section H. Penalties for violation.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $25,000.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Black Mountain from taking such other lawful action as is necessary to prevent or remedy any violation.

Article 4. Administration

Section A. Designation of floodplain administrator.

The building inspector or his/her designee hereinafter referred to as the "floodplain administrator" is hereby appointed to administer and implement the provisions of this ordinance.

Section B. Floodplain development application, permit and certification requirements.

(1) *Application requirements.* Application for a floodplain development permit shall be made to the floodplain administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:

(a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

(i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

(ii) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in article 3, section B, or a statement that the entire lot is within the special flood hazard area;

(iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in article 3, section B;

(iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in article 3, section B;

(v) The base flood elevation (BFE) where provided as set forth in article 3, section B; article 4, section C; or article 5, section D;

(vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

(vii) The certification of the plot plan by a registered land surveyor or professional engineer.

(b) Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:

(i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

(ii) Elevation in relation to mean sea level to which any non-residential structure in zones AE, A or AO will be floodproofed; and

(iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

(c) If floodproofing, a floodproofing certificate (FEMA form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

(d) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

(i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

(ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with article 5, section B(4)(c) when solid foundation perimeter walls are used in zones A, AE, and A1—30.

(e) Usage details of any enclosed areas below the lowest floor.

(f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

(g) Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.

(h) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of article 5, section B, subsections (6) and (7) of this ordinance are met.

(i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) *Permit requirements.* The floodplain development permit shall include, but not be limited to:

(a) A description of development to be permitted under the floodplain development permit.

(b) The special flood hazard area determination for the proposed development in accordance with available data specified in article 3, section B.

(c) The regulatory flood protection elevation required for the reference level and all attendant utilities.

(d) The regulatory flood protection elevation required for the protection of all public utilities.

(e) All certification submittal requirements with timelines.

(f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

(g) The flood openings requirements, if in zones A, AE or A1—30.

(h) Limitations of below BFE enclosure uses if applicable. (i.e., parking, building access and limited storage only).

(3) *Certification requirements.*

(a) Elevation certificates.

(i) An elevation certificate (FEMA form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(ii) An elevation certificate (FEMA form 81-31) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

(iii) A final as-built elevation certificate (FEMA form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(b) Floodproofing certificate.

If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(c) If a manufactured home is placed within zones A, AE, or A1—30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of article 5, section B(3)(b).

(d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(e) Certification exemptions. The following structures, if located within zones A, AE or A1—30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:

(i) Recreational vehicles meeting requirements of article 5, section B(6)(a);

(ii) Temporary structures meeting requirements of article 5, section B(7); and

(iii) Accessory structures less than 150 square feet meeting requirements of article 5, section B(8).

Section C. Duties and responsibilities of the floodplain administrator.

The floodplain administrator shall perform, but not be limited to, the following duties:

(1) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this ordinance have been satisfied.

(2) Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

(5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of article 5, section F are met.

(6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of article 4, section B(3).

(7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of article 4, section B(3).

(8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of article 4, section B(3).

(9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of article 4, section B(3) and article 5, section B(2).

(10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(11) When base flood elevation (BFE) data has not been provided in accordance with article 3, section B, obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to article 5, section D(2)(b), in order to administer the provisions of this ordinance.

(12) When base flood elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with article 3, section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this ordinance.

(13) When the lowest grade floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a special flood hazard areas is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the letter of map amendment issued by FEMA in the floodplain development permit file.

(14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

(15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

(16) Issue stop work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

(17) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing

stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(18) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(19) Follow through with corrective procedures of article 4, section D.

(20) Review, provide input, and make recommendations for variance requests.

(21) Maintain a current map repository to include, but not limited to, the FIS report, FIRM and other official flood maps and studies adopted in accordance with article 3, section B of this ordinance, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

(22) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

Section D. Corrective procedures.

(1) *Violations to be corrected:* When the floodplain administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(2) *Actions in event of failure to take corrective action:* If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(a) That the building or property is in violation of the floodplain management regulations;

(b) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(c) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

(3) *Order to take corrective action:* If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.

(4) *Appeal:* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(5) *Failure to comply with order:* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

Section E. Variance procedures.

(1) The board of adjustment shall hear and decide requests for variances from the requirements of this ordinance pursuant to the process set forth in section 1.7 of this code.

(2) Variances may be issued for:

(a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(b) Functionally dependent facilities if determined to meet the definition as stated in article 2 of this ordinance, provided provisions of article 4, section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

(c) Any other type of development, provided it meets the requirements of this section.

(3) In passing upon variances, the board of adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

(a) The danger that materials may be swept onto other lands to the injury of others;

(b) The danger to life and property due to flooding or erosion damage;

(c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(d) The importance of the services provided by the proposed facility to the community;

(e) The necessity to the facility of a waterfront location as defined under article 2 of this ordinance as a functionally dependent facility, where applicable;

(f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(g) The compatibility of the proposed use with existing and anticipated development;

(h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(i) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(4) A written report addressing each of the above factors shall be submitted with the application for a variance.

(5) Upon consideration of the factors listed above and the purposes of this ordinance, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.

(6) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(7) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(8) Conditions for variances:

(a) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

(b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall only be issued prior to development permit approval.

(e) Variances shall only be issued upon:

(i) A showing of good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship; and

(iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(9) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.

(a) The use serves a critical need in the community.

(b) No feasible location exists for the use outside the special flood hazard area.

(c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.

(d) The use complies with all other applicable federal, state and local laws.

(e) The Town of Black Mountain has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

Article 5. Provisions for Flood Hazard Reduction

Section A. General standards.

In all special flood hazard areas the following provisions are required:

(1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.

(9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

(10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in article 4, section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of article 4, section B(3).

(11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(15) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

(16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.

Section B. Specific standards.

In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in article 3, section B, or article 5, section D, the following provisions, in addition to the provisions of article 5, section A, are required:

(1) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in article 2 of this ordinance.

(2) *Non-residential construction.* New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in article 2 of this ordinance. Structures located in A, AE, AO, and A1—30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in article 4, section B(3), along with the operational plan and inspection and maintenance plan.

(3) *Manufactured homes.*

(a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in article 2 of this ordinance.

(b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the commissioner of insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

(c) All enclosures or skirting below the lowest floor shall meet the requirements of article 5, section B(4).

(d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within floodprone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.

(4) *Elevated buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

(a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

(b) Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and

(c) Shall include, in zones A, AE, and A1—30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

(i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;

(ii) The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;

(iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

(iv) The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

(v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

(vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) *Additions/improvements.*

(a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.

(ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

(c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

(ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(6) *Recreational vehicles.* Recreational vehicles shall either:

(a) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

(b) Meet all the requirements for new construction.

(7) *Temporary non-residential structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:

(a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;

(b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

(e) Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.

(8) *Accessory structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:

(a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

(b) Accessory structures shall not be temperature-controlled;

(c) Accessory structures shall be designed to have low flood damage potential;

(d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

(e) Accessory structures shall be firmly anchored in accordance with the provisions of article 5, section A(1);

(f) All service facilities such as electrical shall be installed in accordance with the provisions of article 5, section A(4); and

(g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of article 5, section B(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with article 4, section B(3).

Section C. Reserved.

Section D. Standards for floodplains without established base flood elevations.

Within the special flood hazard areas designated as approximate zone A and established in article 3, section B, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of article 5, section A, shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:

(a) When base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in article 5, sections A and B.

(b) When floodway or non-encroachment area data is available from a federal, state, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of article 5, sections B and F.

(c) All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference in accordance with article 3, section B and utilized in implementing this ordinance.

(d) When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the regulatory flood protection elevation, as defined in article 2. All other applicable provisions of article 5, section B shall also apply.

Section E. Standards for riverine floodplains with base flood elevations but without established floodways or non-encroachment areas.

Along rivers and streams where base flood elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards of article 5, sections A and B; and

(2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Section F. Floodways and non-encroachment areas.

Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in article 3, section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in article 5, sections A and B, shall apply to all development within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

(a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of floodplain development permit; or

(b) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.

(2) If article 5, section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

(3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

(a) The anchoring and the elevation standards of article 5, section B(3); and such engineering to be certified.

(b) The no encroachment standard of article 5, section F(1).

(4) No vegetative debris such as wood piles, downed trees or branches which could cause blockage of culverts or bridges or which could otherwise create a hazard during a flood event shall be permitted to accumulate within the floodway areas.

(5) No discarded or store items such as abandoned vehicles, white goods, tires, or miscellaneous debris shall be allowed to accumulate within the floodway areas.

Section G. Prohibition on new town-owned buildings in the regulated floodplain.

(1) Purpose. To reduce the risk of flood-related losses to public infrastructure and align capital investment decisions with best practices in floodplain management and climate adaptation, the Town of Black Mountain establishes a prohibition on the construction of new town-owned buildings within regulated floodplains.

(2) Applicability. This section applies to any new building that will be constructed, owned, and operated by the Town of Black Mountain, including, but not limited to, administrative buildings, public works facilities, parks and recreation buildings, emergency services buildings, and utility structures.

(3) Floodplain restrictions. No new town-owned building shall be constructed within a FEMA-designated special flood hazard area (100-year floodplain) unless the following four conditions are met:

(a) No feasible alternative site exists. The town demonstrates, through site selection analysis, that there is no feasible alternative location outside the 100-year floodplain.

(b) Flood risk assessment. A qualified flood risk assessment is completed by a professional engineer or certified floodplain manager, and the assessment findings are submitted to the town council.

(c) Enhanced resilient design. The proposed building incorporates design elements that exceed the minimum requirements of this ordinance by one additional foot in addition to BFE+2 and the North Carolina Building Code, including, but not limited to, freeboard, floodproofing, and elevated utilities. The proposed improvements will be recommended by the town manager and approved by the town council.

(d) Written justification. A written justification is submitted to and approved by the town council in an open meeting, prior to any final site or construction approvals.

(4) Exemptions.

(a) This section shall not apply to the repair, rehabilitation, or retrofit of existing town-owned buildings, provided such activities do not result in a substantial improvement as defined by this ordinance.

(5) Consistency with state policy.

(a) This policy is intended to align with the principles of North Carolina Executive Order No. 266 and shall be interpreted to promote eligibility for state and federal disaster recovery and mitigation funding.

(Ord. No. O-25-20, 8-11-2025)

Article 6. Legal Status Provisions

Section A. Effect on rights and liabilities under the existing flood damage prevention ordinance.

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted April 15, 1980 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued there under are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Town of Black Mountain enacted on April 15, 1980 as amended, which are not reenacted herein are repealed.

The date of the initial flood damage prevention ordinance for Buncombe County is August 1, 1980.

Section B. Effect upon outstanding floodplain development permits.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

Section C. Severability.

If any section, clause, sentence, or phrase of the ordinance is held to be invalid of unconstitutional by any court or competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

CHAPTER 3. SUBDIVISIONS

SECTION 3.1 PURPOSE AND APPLICABILITY

3.1.1 Purpose and applicability.

A. The purpose of these regulations is to guide the subdivision and development of land for residential, commercial, and industrial purposes in such a manner as to implement the comprehensive plan and to:

1. Promote orderly and harmonious growth;

2. Establish safe development practices without danger to health, flood, erosion, excessive noise, air pollution, or other menace;

3. Facilitate fire protection;
4. Ensure proper provisions for drainage, water supply, sewerage, and other appropriate utility services;
5. Provide a safe, convenient and functional system for vehicular and non-motorized transportation, including transit services;
6. Arrange buildings, lots, blocks, and streets shall so as to afford adequate stormwater management and flood prevention;
7. Protect and enhance native vegetation; and to
8. Develop with sensitivity to the topography and natural beauty of the land.

B. The requirements of this chapter apply to all types of subdivisions of land, except:

1. Combination or recombination of portions of previously subdivided land and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the town's subdivision regulation standards.
2. Land division into parcels of ten acres or greater where no right-of-way dedication is involved.
3. Public acquisition for transportation corridors such as purchase of land for roadway widening or the establishment of rights-of-way.
4. Single ownership tract division where the entire area of the land to be divided is no greater than two acres and is being divided into not more than three lots, where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceed the town's subdivision regulation standards.
5. Division of land pursuant to an order of a court of the general court of justice.
6. The division of land pursuant to the terms of a probated will or in accordance with intestate succession under Chapter 29 of the North Carolina General Statutes.
7. Division of land for cemetery lots or burial plots.
8. Division of land to change boundary lines between adjoining property owners where no new right-of-way dedication is involved and changes in lot size and setbacks do not create a nonconformity with the land use code.
9. Division of land as part of a special use permit. Special use permits are issued by the board of adjustment and governed by an approved master plan in accordance with the regulations provided in chapter 7. In such cases, the special use permit and master plan as approved by the board of adjustment shall be considered as an approved preliminary plat. Special use permits shall otherwise comply with all other town regulations and shall provide such covenants or other legal provisions which will insure conformity to, and achievement of, the plan.
10. Division of land for the purpose of habitat preservation, protection of ridge tops, surface waters, wetland or other natural features, for the protection of an archeological site, or for the purposes of creating a stormwater management facility, without meeting subdivision standards for lot size, access, or road frontage if the following conditions are met:
    a. Maintenance responsibility is established with a recognized land trust, the town or other responsible entity;
    b. The tract is placed in conservation in perpetuity; and
    c. The town may retain access for the purpose of public safety protection.

SECTION 3.2 GENERAL LEGAL PROVISIONS

3.2.1 Conformance with adopted plans.

Subdivision plats shall conform to the adopted plans of the town. For subdivisions in traditional neighborhood development (TND) zoning districts or as part of special use permits (SUP), the plat shall conform to the approved master plan.

3.2.2 No subdivision without approval.

A. No real property, including property declared under the NC Condominium Act (G.S. 47C-1 et seq.), lying within the town's jurisdiction shall be subdivided except in conformance with applicable provisions of this chapter.

B. No land disturbing or construction activity with the exception of utility testing, engineering testing and surveying to be carried out in conjunction with the subdivision of land shall be commenced until the preliminary plat or plan is approved by the town planning board or the town subdivision administrator as appropriate.

C. The register of deeds shall not file or record a plat of a subdivision subject to this article that has not been approved in accordance with these provisions. The clerk of superior court shall not order or direct the recording of a plat if the recording would conflict with this chapter.

D. No street shall be accepted and maintained by the town nor shall any street lighting, water or sewer be extended to or connected with any subdivision of land, nor shall any permit be issued by an administrative agent or department of the town for the construction of any building or other improvement requiring a permit, upon any land concerning which a plat is required to be approved unless and until the requirements set forth in this article and the Town of Black Mountain Standards and Details Manual have been complied with and the same has been approved by the town council.

SECTION 3.3 SUBDIVISION TYPES AND REVIEW PROCEDURES

3.3.1 Minor subdivision.

A. A minor subdivision is defined as the division of a tract or parcel of land where:

   1. No new public streets or roads are proposed (except for private driveway easements with each driveway serving no more than three lots);

   2. No part of the tract or parcel to be divided has been divided under this section in the previous ten years; and

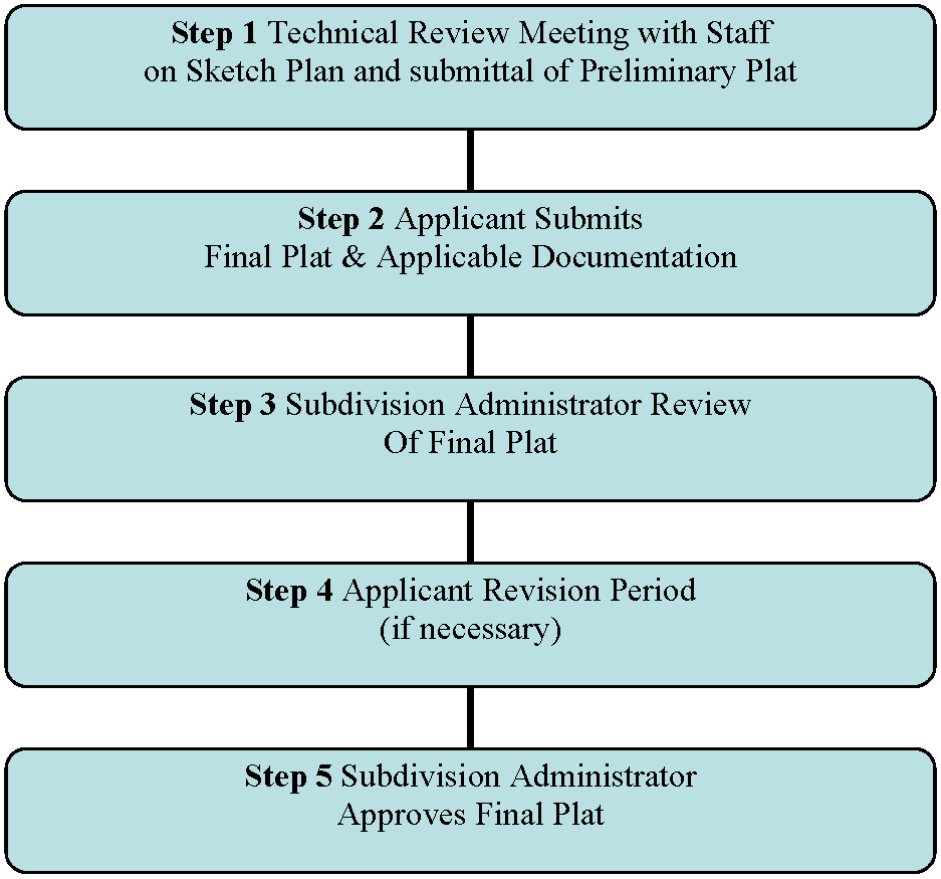
   3. No more than four lots will result from the division.

B. The resultant lots shall conform with all requirements of this land use code.

C. The minor subdivision process shall be used only where the subdivision includes all contiguous land under the ownership of the applicant and where the resultant lots will not constitute a new phase of an existing development.

D. The minor subdivision process is not intended to permit the avoidance of improvements, infrastructure or other standards imposed for major subdivisions. Therefore, when an application for minor subdivision approval is made by an applicant who has previously obtained minor subdivision approval for an adjacent parcel of land in the previous two years, the application shall be treated as an application for, and conform to the requirements of, a major subdivision as set forth below.

E. The following procedures shall be followed for minor subdivisions. The numbers in the boxes below correspond with a detailed description of each step of the process on the following:



Step 1. Pre-application meeting

A. The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a preliminary plat of the proposed development to the meeting that meets the requirements set forth in the land use code.

B. The subdivision administrator shall review the preliminary plat for compliance with this land use code and shall inform the applicant of any deficiencies. Additional information concerning the proposed subdivision may be required at the request of the subdivision administrator.

C. One copy of the preliminary plat shall be retained as a part of the record of the subdivision administrator with one copy being returned to the subdivider or his authorized agent along with comments made by the

subdivision administrator concerning the plat as generated during the review. No improvements shall be made until the preliminary plat is filed with the subdivision administrator.

Step 2. Applicant submits final plat

The subdivider shall submit the final plat in accordance with the requirements of section 3.4.

Step 3. Review of final plat by subdivision administrator

The subdivision administrator shall review the final plat in accordance with the requirements of this code.

Step 4. Applicant revision period (if necessary)

If the proposed plat is not approved, the applicant may revise the plat in accordance with the comments provided by the subdivision administrator and may resubmit the plat for approval.

Step 5. Subdivision administrator approval of final plat

A. The subdivision administrator shall approve or disapprove the plat within 15 days of submission.

B. The subdivider shall bring a recorded copy to the subdivision administrator for the file. No permits shall be issued for individual lots until a recorded copy is provided.

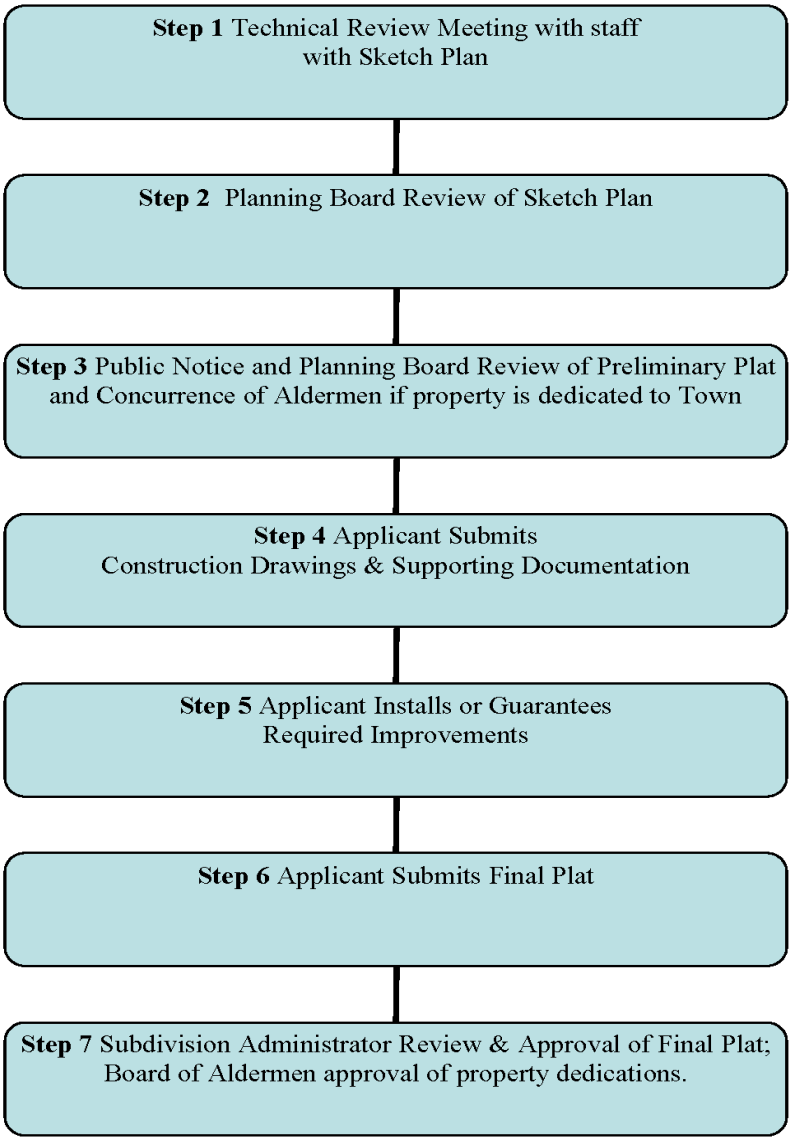
(Ord. No. O-21-11, 8-9-2021)

3.3.2 Reserved.

3.3.3 Major subdivision.

Any subdivision of land, other than an exempt subdivision or minor subdivision, is a major subdivision subject to review and approval as provided below.

The numbers in the boxes below correspond with a detailed description of each step of the process on the following:



Step 1: Pre-application meeting with sketch plan

A. The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a sketch plan of the proposed development to the meeting that meets the requirements set forth in section 1.4.6.

B. The subdivision administrator shall review the sketch plan with the applicant for compliance with this land use code. The public works director, fire marshal, local NCDOT district representative, Metropolitan Sewerage District representative, or other agency representative may be included in the technical review of the sketch plan. The subdivision administrator shall advise the applicant of the regulations pertaining to the proposed subdivision and the procedures to be followed in the preparation and submission of the preliminary and final plats.

C. One copy of the sketch plan shall be retained as a part of the record of the subdivision administrator with one copy being returned to the subdivider or his authorized agent along with comments made by the subdivision administrator concerning the proposed plat.

Step 2: Planning board review of sketch plan

A. The sketch plan shall be forwarded to the planning board for input and comment. The planning board shall review the sketch plan for general compliance with the requirements of this chapter and any other applicable regulations, and set a date, usually the following regularly scheduled planning board meeting, for the applicant to return to the planning board with a preliminary plat.

B. Comments generated from the staff technical review and planning board comments of the sketch plan will be submitted in writing to the applicant.

Step 3: Planning board review and approval of preliminary plat

A. The applicant shall submit preliminary plat to the subdivision administrator who shall place the item on the agenda of the next regularly scheduled planning board meeting along with his or her recommendation as to whether the preliminary plat should be approved.

B. Notice shall be given as provided in section 1.5.4.F.

C. Before the planning board reviews the preliminary plat, the following agencies shall be given an opportunity to make recommendations concerning the proposed subdivision plat:

1. The district highway engineer as to the any proposed state streets, state highways, and related drainage systems;

2. The county health director, public works director, MSD representative, and representatives of any other local public utility, as appropriate, as to proposed water or sewerage systems;

3. The fire marshal; and

4. The stormwater and floodplain administrator(s).

D. The planning board shall review the plat for conformity with the requirements of this land use code and shall either approve, approve with modifications, or deny the application for approval of the preliminary plat.

Step 4: Applicant submits construction drawings and supporting documentation

Following preliminary plat approval, the applicant shall submit engineer sealed construction drawings and supporting documentation for each individual phase or phases of development. The public works director, building inspector and fire marshal shall review and approve the construction drawings for all public roads, private roads and water infrastructure. If the preliminary plat was approved with modifications by the planning board, the applicant shall also submit a revised plat reflecting such changes.

Step 5: Infrastructure/improvements installed or guaranteed

A. Following approval by the public works director, building inspector and fire marshal, the subdivider may proceed with the installation of or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this ordinance.

B. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this ordinance or guaranteed their installation.

C. Following the completion of the improvements and infrastructure, the subdivider shall provide as-built construction drawings to the public works director and the fire marshal.

Step 6: Applicant submits final plat

A. The applicant shall submit a final plat to the subdivision administrator that meets the requirements of section 3.4.

B. The applicant shall submit the final plat within two years after the planning board's approval of the preliminary plat; otherwise, such prior approval of the preliminary plat shall become null and void. In that

event, final plat approval shall not be granted unless and until the applicant resubmits the preliminary plat for approval by the planning board.

C. If required, evidence of formation of a legally constituted homeowner's association and any maintenance agreements with the homeowner's association shall be submitted to the planning department with the final plat.

Step 7: Subdivision administrator review and approval of final plat

A. The subdivision administrator shall:

1. Review the final plat for compliance with the approved preliminary plat;
2. Ensure that the final plat meets the requirements of section 3.4;
3. Verify that all required infrastructure improvements have been completed or that a financial guarantee has been provided as set forth in section 3.5.7.

B. The subdivision administrator shall approve, disapprove, or approve subject to minor modifications within 15 days of submission of the plat.

C. The applicant shall file the plat for recording in the Office of the Register of Deeds for Buncombe County within 90 days from the date of approval and shall bring a recorded copy to the planning and development department for filing with the town clerk. No permits shall be issued for individual lots until a recorded copy is provided.

SECTION 3.4 SUBDIVISION REQUIREMENTS

3.4.1 Sketch plans.

The subdivider shall submit to the planning director or his/her designee seven copies of a sketch plan on 11" × 17" or smaller paper of the proposed subdivision containing the following information at a minimum:

1. The name of the subdivision, the proposed use and the name, address, and phone number of the owner.
2. A vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads, or nearby buildings and their zoning and uses.
3. The boundaries of the tract.
4. Total acreage of the tract and the portion of the tract to be subdivided.
5. Location of significant natural features such as water courses, ponds, rock outcroppings or forest.
6. Topography at five-foot intervals and the location of existing drainages or swales.
7. Location of flood hazard areas from FIRM map.
8. Location of existing or proposed utilities.
9. Existing street and lot layout and dimensions, including rights-of-way.
10. Proposed new lot layout and dimensions and any rights-of-way or driveways to be built. Road specifications are indicated in the Town of Black Mountain Standards and Details Manual.
11. Designated open space, greenway or park space that is a minimum of five percent of the total land area of the original tract. Designation of easements to the town for parks and greenways according to the town's pedestrian plan, greenway master plan or recreation and parks plan can qualify for the

dedicated open space requirement but must be approved by the town council and planning board in consultation with the planning director and the recreation and parks directors.

12. Sidewalks or greenways which serve all occupiable lots and of equal or greater linear feet than the total linear footage of the subdivision road. Linear greenway easements may count toward the five-percent open space requirement.

13. A statement from the town water department and/or MSD that adequate water and sewer service may be provided to the lot(s). If the subdivider intends to use on-site septic, then a statement from the Buncombe County Health Department must be included that indicates that the created lots have septic or are appropriate for septic systems.

3.4.2 Preliminary and final plat submittal requirements.

A. For minor subdivisions, the applicant shall submit one 18" × 24" or larger preliminary plat and one 11" × 17" or smaller copy of the preliminary plat along with a completed checklist to the subdivision administrator in both hard copy and digital format;

B. For major subdivisions, the applicant shall submit eight 18" × 24" or larger plats along with a completed checklist to the planning and development department in both hard copy and digital format;

C. All final plats shall be prepared by a registered land surveyor currently licensed and registered in the state by the state board of registration for professional engineers and land surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in North Carolina General Statutes and in the Manual of Practice for Land Surveying in North Carolina, and Buncombe County. One original and two copies of the final plat shall be submitted.

3.4.3 Permanent reference points.

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. 47-30, as amended.

3.4.4 Specifications for preliminary and final plats.

Preliminary and final plats shall depict or contain the information indicated in the following table. An "X" indicates that information is required. Preliminary and final plats shall be clearly and legibly drawn at a scale of not less than 100 feet to one inch and on sheets acceptable to the register of deeds.

Information	**Preliminary Plat**	**Final Plat**
Title Block Containing:		
Property title, PIN no., subdivision name or designation	X	X
Name of owner of record	X	X
Location (township, county, state)	X	X
Date(s) of survey and plat preparation	X	X
Name, address, registration number and seal of surveyor	X	X
Other Certification Blocks:		X
Drawn Streets:		
Proposed streets and their linear feet	X	X
Connecting streets and platted streets on adjoining properties	X	X

Rights-of-way, location and dimensions	X	X
Approximate or final grades	X	
Street names	X	X
Information and location of Utilities:		
Utility and other easements of record (i.e.):	X	X
Transmission lines	X	
Natural gas lines	X	
Sanitary sewers, location and size	X	
Water lines, location and size	X	
Stormwater facilities either in place or proposed	X	X
Plans for individual water supply and sewerage disposal	X	X
Site Features:		
North point	X	X
Graphic scale	X	X
Vicinity map	X	
Existing buildings or other structure, railroads, bridges	X	
Existing property lines to be subdivided or recombined	X	X
Exact lot lines, bearings, distances, and lot/block nos.	X	X
Minimum building setback lines	X	X
Proposed parks, school sites, or other open spaces	X	X
Topography at 5' intervals, elevations, and slope calculations	X	
The zoning classifications of the tract and adjoining property	X	
Natural features	X	
The exact location of floodplain, flood fringe, and floodway	X	X
Site Calculations:		
Acreage in total tract to be subdivided	X	X
Total number of lots	X	X
Area of each lot in square feet	X	

3.4.5 Certificates for preliminary and final plats.

A. *Certificates and statements for preliminary plats.*

1. *Certificate of survey and accuracy.*

State of North Carolina	
Buncombe County	
I, _____, certify that this plat was (drawn by me/drawn under my supervision) from an actual survey made by me/made under my supervision. Deed description recorded in Book ___, Page ___, etc.; that the boundaries not surveyed are shown as broken lines plotted from information found in Book ___, Page ___; and that this map was prepared in accordance with G.S. 47-30, as amended. Witness my original signature, registration number and seal this ___ day of ___, A.D. ___.	

	_____ Professional Land Surveyor
Official Seal	
	_____ Registered Number

2. *Certificate of approval for preliminary plat*

I hereby certify that the preliminary subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Black Mountain, North Carolina and that this plat was approved by the Planning Board on _____.	
_____ Date	_____ Subdivision Administrator

3. *Private water/sewer statement.*

   The Buncombe County Health Department has expressed no opinion as to the suitability of private septic systems or water systems on this property. Each lot is subject to individual inspection and approval of septic systems.

B. *Certificates and statements for final plats:*

1. *Certificate of survey and accuracy*

State of North Carolina	
Buncombe County	
I, _____, certify that this plat was (drawn by me/drawn under my supervision) from an actual survey made by me/made under my supervision. Deed description recorded in Book ___, Page ___, etc.; that the boundaries not surveyed are shown as broken lines plotted from information found in Book ___, Page ___; and that this map was prepared in accordance with G.S. 47-30, as amended. Witness my original signature, registration number and seal this _____ day of ___, A.D. ___.	
	_____ Professional Land Surveyor
Official Seal	
	_____ Registered Number

2. *Certificate of ownership and dedication.*

I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Black Mountain and that I hereby adopt this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate all walks, parks, and other sites and

easements to public or private use as noted. Furthermore, I hereby dedicate all storm sewer, water lines, and streets to the Town of Black Mountain.	
_____ Date	_____ Owner(s)

3. *Professional engineer certification for subdivisions, streets, and improvements.*

City_____ Date_____

Subdivision or Project Name _____

Phase (if applicable)_____

Entrance from
(US or NC Route, SR# and Road Name)

A final inspection of the streets, storm drainage, sanitary sewer, and water systems for the above referenced subdivision or project has been performed by _____. I have reviewed the inspection data and have determined that the streets have been constructed in accordance with the design drawings approved by the North Carolina Department of Transportation (*or the Town of Black Mountain Public Works Director*) on _____ (date) and all subsequent revisions. My observations and testing indicate the subgrade, base, and pavement have been constructed in accordance with the guidelines established by NCDOT Standard Specifications for Roads and Structures (*or Town Specifications*), as verified by test results.

	Name
	Signature
	NC PE #

4. *Certification of guarantee of improvements.*

I hereby certify that a security bond has been posted with the Town in accordance with Section 3.5.9 of the land use code to insure completion of required improvements in case of default.

_____ Date	_____ Town Finance Officer

5. *Certificate of approval for recording.*

I hereby certify that the final subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Black Mountain, North Carolina and that this plat has been approved by the Subdivision Administrator for recording in the office of the County Register of Deeds.

_____ Date	_____ Subdivision Administrator

6. *Review officer certificate.*

I, (name of Review Officer), Review officer of Buncombe County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

_____ Date	_____ Review Officer

7. *Other notes for deed requirements based on approvals.*

These may include but are not limited to, location of structural stormwater BMPs, and/or conditions required as part of a conditional use or special use permit.

SECTION 3.5 SUBDIVISION DESIGN STANDARDS

3.5.1 Lots.

A. All lots must conform to the minimum lot size, setback and density requirements of the district within which the subdivision is, or will be, located, unless the subdivision is designed as a conservation subdivision plan, in which case only density requirements shall apply.

B. For subdivisions in traditional neighborhood development (TND), institutional campus development (ICD) zoning districts, or projects developed pursuant to a special use permit, the lot lay-out shall conform to the approved master plan.

C. Street right-of-way, setback requirements from North Carolina surface water streams as designated on USGS topography maps, sidewalks and other publicly dedicated areas shall not be included in the calculation of lot size. The location of structures and their setbacks shall be indicated on the preliminary plat. Qualified conservation subdivision plans shall meet district density requirements, but have flexibility in all other lot requirements as long as the proposed subdivision meets the site capacity analysis.

D. Duplexes on a single lot and zero lot line dwellings are allowed within all districts, except heavy industrial (HI-0), provided that requirements are met for minimum lot size for single-family use including density and perimeter setbacks of the district in which they are located. A duplex meeting all the requirements for a single-family lot shall be counted as one residential density unit or RUA for the designated density of the zoning district in which the duplex is located.

E. Duplexes may be subdivided as a two-unit townhome or condominium for the purpose of separate ownership of the two individual units as long as:

1. All fire and building codes are met at the time of the subdivision or division of the structure into a duplex.

2. Two off-street parking spaces are provided for each unit.

3. Required setbacks for the district are maintained on the perimeter of both lots on all sides except where the units adjoin.

4. Common areas and maintenance requirements, such as that for driveways, open space and stormwater management areas are enumerated as part of the subdivision, or provided under common ownership in a townhome or condominium plan.

5. Triplexes or other multi-dwelling units of three or more units must follow guidelines of applicable special use category or multi-family requirements.

3.5.2 Streets.

A. Unless a lot is set aside for conservation in perpetuity, all lots shall have access to a street and all proposed streets shall be installed or financially guaranteed prior to final plat approval. Access roads for both major and minor subdivisions shall traverse a surveyed right-of-way centerline showing calls and distances and its beginning and ending points in relation to adjoining properties.

B. All streets, driveways, and rights-of-way therefore shall be designed and constructed according to the requirements set out in the Town of Black Mountain standards and Details Manua.

C. Any access serving more than three lots shall be considered a road. Roads providing access to more than four lots must be constructed to requirements as indicated in the Town of Black Mountain Standards and Details Manual and may be dedicated to the town upon a written street dedication request.

D. Any access serving more than three lots shall be considered a road. Roads may be dedicated to the town upon approval of a written street dedication request.

E. Reserved.

F. The fire marshal and public works director may authorize a variance up to 20 percent (up to eight feet variation on right-of-way, and up to four-foot variation on total travel surface), based on topography, landscape context, traffic and public safety needs.

G. The town may accept streets for ownership and maintenance one year after the completion date of the final road surfacing. Application for street acceptance must be made in writing approved by the public works director and fire marshal.

H. Final plans for major subdivisions shall include a statement by a licensed professional engineer that all roads are in compliance with the Town of Black Mountain Standards and Details Manual.

I. In a conservation subdivision, rights-of-way that cannot meet the road standards as indicated in the Town of Black Mountain Standards and Details Manual without compromising performance goals of the conservation subdivision requirements (see 7.5.4) and which access more than three lots must meet the approval of the public services director and fire marshal for the purpose of waste collection, snow removal and maintenance, as well as emergency vehicle access.

J. No base course shall be placed on muck, pipe clay, organic matter or other unsuitable matter, and a minimum compaction rate of subgrade prior to paving shall be as indicated in the Town of Black Mountain Standards and Details Manual.

K. Traffic impact studies may be required for subdivision roads connecting to the town or NCDOT system per section 3.5.8 of this code or NCDOT guidelines.

L. Where curbs are provided on streets or where curbs and sidewalks are constructed within a subdivision, any construction shall be in full compliance with the provisions of G.S. 163-44.14 which sets forth standards for providing curb ramps or curb cuts for handicapped persons.

M. Pre-existing roads which do not meet these standards may be incorporated into a subdivision only upon approval of the fire marshal and public works director. Where pre-existing roads do not have a designated right-of-way, right-of-way shall be established to cover at least the maintenance area of the roadway (back of ditch to back of ditch).

N. If an existing street serving the proposed development does not meet minimum town street standards, the developer shall make the necessary improvements to bring the street up to town standards or shall make a payment to the town to cover the cost of such improvements.

3.5.3 Utilities.

A. The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal. The town requires connection to existing public water and sewer lines if any such lines are located within 300 feet of the property boundary, unless topography does not allow such connection or requisite easements cannot be obtained. The installation of all said systems except wells or septic tanks serving only one connection shall be required prior to final plat approval unless financially guaranteed.

B. Well or septic systems owned and operated by a public or private entity must be approved by the Buncombe County Health Department or other applicable state agency.

C. Water, sewer and other utility easements shall be designated on preliminary and final plats.

D. All utilities serving new major subdivisions must be placed underground.

3.5.4 Entryways to subdivisions.

A. Signage and landscaping may be incorporated into entrances to subdivisions in accordance with landscaping and signage requirements of the land use code. In residential zoning districts, signage shall have a monument style base.

B. Entrance signage to a major subdivision may be illuminated in accordance with the town's lighting ordinance.

C. Gates and/or structures that serve to stop traffic such as a staffed gatehouse or guard station, are not permitted.

3.5.5 Pedestrian circulation (major subdivisions only).

A. All major subdivisions shall have a plan for internal pedestrian circulation as well as points of connectivity with exterior transportation corridors.

B. Major subdivisions, other than conservation subdivisions, shall provide a network of sidewalk or greenway trails to serve all lots. The total length of these facilities shall be equal or greater than the total of linear feet of new roadway as measured at the centerline. As part of preliminary plat review, the planning board may require that the applicant:

1. Place a portion of the required linear footage of sidewalk or greenway outside of the subdivision within the public right-of-way where there is opportunity to improve connectivity to the subdivision being developed (such as to link the subdivisions' sidewalk to an existing bus stop, park, sidewalk or greenway) in exchange for equal reduction in linear footage within the subdivision interior.

2. Pay the financial equivalent to the town in order to develop sidewalks on arterial or collector roads that serve that subdivision, or

3. Develop a greenway trail of equivalent cost through the property in order to implement the town's greenway master plan and instead of sidewalks or in combination with required sidewalks.

C. Whenever practicable, the construction of a sidewalk shall be on a line parallel with the edge of the public right-of-way of a street, highway or road, and the edge of a sidewalk will be a minimum of two feet from said roadway's edge of pavement or its curb/gutter. This separation area shall be planted with grass, trees, or other plants consistent with the yards in the subdivision or shall be incorporated into the stormwater plan for the development.

D. Sidewalks shall be a minimum of five feet in width within subdivisions, or a minimum of six feet in width on adjacent arterial roads or NCDOT roadways. Paved trails or greenways shall be a minimum of six feet in width, with ten feet in width being preferred. Trail width may vary to minimize trail impacts on natural features or trees, or to transition to a connection with another trail or sidewalk. Decorative elements such as brick pavers or stamped concrete may be incorporated as long as they do not pose a hazard for users. Sidewalk or trail surface and construction must be approved by the town's public works director prior to dedication to the town.

E. Sidewalks shall be constructed of not less than 4,000 P.S.I. concrete and shall be five feet wide, four inches thick, constructed on an adequately graded base, except that where the sidewalk crosses a driveway it shall be six inches thick. The surface of the sidewalk shall be steel trowel and light broom finished and cured with an acceptable curing compound. Tooled joints shall be provided at intervals of not less than five feet and expansion joints at intervals of not less than 30 feet. The sidewalk shall have a maximum lateral slope of one-fourth-inch per foot.

3.5.6 Open space requirements (major subdivisions only).

A. All major subdivisions must dedicate the equivalent of 15 percent of the total land area of the original parcel or combination of parcels used in the subdivision as dedicated, common open space.

B. Designation of easements to the town for parks or greenways according to the town's pedestrian plan, greenway master plan or recreation and parks plan may qualify for the dedicated open space requirements but must be approved by the planning board.

C. Land designated as open space on a final plat shall be dedicated to a neighborhood association or other entity, or shall be considered to be offered for dedication to the town. The town may accept control of the open space through:

1. Express action by the town council;

2. Approval of the final plat with areas specifically dedicated to the Town of Black Mountain for the purpose of open space, park and/or greenway development as accepted by the town council; or

3. Conveyance of fee simple marketable title (unencumbered financially and environmentally) to the property to the town at the time of final plat recordation, subject to approval by the town council.

4. Until such time as the dedication has been accepted, land so offered may be used for open space purposes and be maintained by the underlying or abutting property owner or similarly by an owners' association. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use.

D. The town council may, prior to approving the final plat or otherwise accepting dedication of land, request review by the recreation and parks commission before making their determination. Dedications should meet the following criteria:

1. Unity. Dedicated area shall form a single parcel of land, except where the town council determines that two or more parcels or a linear easement across multiple parcels would be in the best interest of the

public given the type and distribution of space needed to serve the development. In such cases, the council may require that such parcels be connected by a dedicated strip of land or access easement be at least 20 feet in width.

2. Usability. At least on-half of the total land dedicated shall be located outside of areas of special flood hazard, alluvial soils, lakes or other water bodies, and at least 75 percent of the total land dedicated shall be located outside of wetlands. Land dedicated only for greenways need not follow the requirements of this subsection.

3. Shape. Dedicated land shall be sufficiently shaped and proportional to be usable for proposed recreational facilities and activities, such as greenways, athletic fields, playground area, tennis courts, swimming pools, etc.

4. Access. Public access to dedicated land shall be provided by adjoining street frontage or by a dedicated public easement which connects the dedicated land to a public street or right-of-way, or from adjacent property, as determined by the town council.

5. Greenway dedications shall be a minimum of 15 feet in width.

(Ord. No. O-21-04, 6-14-2021)

3.5.7 Improvement guarantees.

A. Installation and dedication of all improvements shall be made prior to final plat approval unless financially guaranteed.

B. The town may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements as specified on the approved preliminary plat, for that portion of the subdivision to be shown on the final plat, within a reasonable time to be determined in said agreement. To secure this agreement, the subdivider shall provide a guarantee not exceeding 1.25 times (or 125 percent of) the entire cost of the improvements in the form of a performance bond, cash or equivalent security, or a letter of credit.

1. Surety performance bond(s) shall be obtained from a surety bonding company authorized to do business in North Carolina. The bond(s) shall be payable to the Town of Black Mountain and shall be in an amount equal to 1.25 times the entire cost, as estimated by an engineer of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension shall only be for the duration necessary to complete the required improvements.

2. Cash or equivalent security. The subdivider shall deposit cash or other instrument readily convertible into cash at face value, either with the town or in escrow with a financial institution designated as an official depository of the town. The amount of the deposit shall be equal to 1.25 times the cost, as estimated by, an engineer of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. The subdivider shall file with the town an agreement between the financial institution and himself guaranteeing that:

a. An escrow account shall be held in trust until released by the acting subdivision administrator and may not be used or pledged by the subdivider in any other matter during the term of the escrow; and

b. In the case of a failure on the part of the subdivider to complete improvements, the financial institution shall, upon notification and submission by the town board to the institution of the amount needed to complete improvements, either pay to the town the funds needed to complete the improvements, up to the full balance of the escrow account, or deliver to the town any other instruments fully endorsed or otherwise made payable in full to the town.

3. Letter of credit. A satisfactory, irrevocable letter of credit as approved by the town attorney and deposited with the town clerk shall be submitted, containing the following information:

a. Indication that the Town of Black Mountain is the sole beneficiary;

b. The amount (of the letter of credit) as approved;

c. Account number and/or credit number that drafts may be drawn on;

d. List of improvements that shall be built that the letter is guaranteeing;

e. Terms in which the town may make drafts on the account;

f. Expiration date of the letter.

C. Upon default, meaning failure on the part of the subdivider to complete the required improvements in a timely manner as spelled out in the agreement, then the surety, or the financial institution holding the escrow account shall, if requested by the town, pay all or any portion of the bond or escrow fund to the Town of Black Mountain up to the amount needed to complete the improvements based on the estimate. Upon payment, the town board, in its discretion, may expend such portion of said funds as it deems necessary to complete all or any portion of the required improvements. The town shall return to the surety or escrow account any funds not spent in completing the improvements.

D. The town council may release a portion of any security posted as the improvements are completed and recommended for approval by the subdivision administrator. At such time as the town council approves all improvements placed in the subdivision, all security posted shall be immediately released.

3.5.8 Traffic impact analysis.

A. *Purpose.* The purpose of this section is to ensure that applicants for new development and redevelopment consider and mitigate the impact of the development on the existing and/or proposed roadway system. While the town acknowledges responsibility to build and maintain a public transportation system, the project applicants may need to assist in improving transportation facilities in order to maintain the existing level of service by accommodating additional traffic generated by the development. These transportation facilities involve pedestrian, non-motorized vehicular traffic and motorized vehicular traffic.

B. *Applicability.* Traffic impact analysis is required. All proposals for new construction, additions and/or expansions to existing structures, and/or changes of use located on town roads, which will result in trips equal or greater to 798 daily trips, using the trip generation rates from the most recent edition of the Trip General Manual published by the Institute of Transportation Engineers.

C. *Improvements required.* The planning director or his/her designee will review submitted traffic impact analysis, and will finalize the improvements required. In those cases where the Town of Black Mountain requires certain improvements to be constructed in order to accommodate additional traffic generated by the proposed developments, the improvements shall be approved by the town council and shall be funded and/or constructed by the project developer in accordance with the standards and direction provided by the

Town of Black Mountain. The improvements shall be in place or under construction prior to issuance of any certificate of occupancy or certificate of completion required for any phase or portion of the project.

SECTION 3.6 DEDICATION AND CLOSURES OF RIGHTS-OF-WAY OR EASEMENTS TO THE TOWN

3.6.1 Rights-of-way and easements.

A. The approval and recordation of a final plat constitutes an offering to the town and the public of the right-of-way of each public street, alley, greenway or utility or drainage easement shown on such plat.

B. The approval and recordation of a plat does not constitute acceptance of the right-of-way or easement or responsibility for its maintenance by the town, unless the town requires it as part of the development approval, or accepts any such offer of dedication by resolution of the town council at the time of final plat approval, by a separate, express action at a later time, or by actually exercising control over and maintaining such facilities.

C. Rights-of-way which are intended to remain private or which are not accepted by the town at the time of approval of the final plat, must be subject to a road maintenance agreement.

3.6.2 Dedication and closures of rights-of-way or land to the town.

A. Property owners or other parties of interest may petition for the closure of a right-of-way offering through the planning department. The planning board, planning department, or other government or utility agency may also request the closure of a right-of-way. Rights-of-way closures shall follow these procedures:

1. A right-of-way closure petition is filed with the planning department. Owners of property abutting the right-of-way or portion of the right-of-way requested for closure must sign the petition and pay a fee as established by the town council. If all owners of the abutting properties do not sign the petition, notice to abutting property owners shall be given as required by G.S. 160A-299. If the request is generated from town staff or a board or commission, the fee shall not apply.

2. The planning director or his/her designee will prepare a staff report that includes a map that shows the length of the right-of-way from terminus to terminus, an inventory of uses within the right-of-way (if any utilities, etc.), information on possible future uses from any of the town's adopted plans, and comments from the fire department and place the issue on the next planning board agenda, if the petition is filed two weeks before the date of the next meeting, or otherwise at the next meeting.

3. Notice of the request and pursuant review by the planning board shall be sent to all abutting property owners, and the notice may be sent to owners of property adjoining any portion or all of the street affected by a partial right-of-way closure, at the discretion of the planning board or staff.

4. The planning board will review the request and make recommendation to the town council to accept the petition for closure, to accept the right-of-way into town control or maintenance, to close any additional area of right-of-way in addition to the petition, or to not accept the petition and leave the right-of-way as an offering.

5. The planning board shall consider any or all of the following criteria in making their recommendation for closure of a right-of-way:

   (a) Right-of-way identified is not part of adopted town plans.

   (b) Right-of-way is not necessary for current or future utilities.

(c) Right-of-way in its current condition poses a hazard to public health, safety or welfare.

(d) Right-of-way is along a drainage that is part of a stormwater management plan.

(e) Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.

(f) Abutting property owners have signed the petition in favor of the closure.

(g) The planning board shall have 35 days from the date of the first regular meeting of the planning board held after receipt of the request within which to submit a recommendation to the town council. If the planning board fails to act within the required 30-day period, it shall be deemed to support and recommend the requested closure and the petition shall proceed to the town council.

The planning board may also amend the scope or length of the right-of-way closure petition as a complimentary petition to the town council.

6. Planning board recommendation is forwarded to town council who shall establish a date for a public hearing by adopting a resolution of intent to close. The town attorney shall prepare a description of the right-of-way in question for use in setting the public hearing.

7. Staff shall place the resolution of intent stating the date of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for four successive calendar weeks. Staff shall prominently post the area for closure at two locations with a visible sign indicating the scope of the petition, the date for the public hearing and the phone number of the staff person to contact for information. Staff shall also provide notice by first class mail to all abutting property owners, and may, at the discretion and direction of the town council, mail such notice to all owners of property adjoining any portion or all of the street affected by a partial right-of-way closure. Notice shall also be posted to the town website indicating the date and time of the hearing.

8. Town council holds the public hearing and accepts or rejects the petition for closure.

3.6.3 Dedication of streets, right-of-way or land to the town.

A. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMPs, sidewalks or trails may be accepted for maintenance by the town upon approval by the town council.

B. The town council shall not accept as a public street, any street extension, new street or part thereof until preliminary plans have been approved by the planning director, public works director, and fire marshal, and unless the street or part thereof has met the following requirements:

1. A street dedication petition signed by all owners of property over which the street or right-of-way passes is filed with the planning department.

2. The road meets all requirements as indicated in the Town of Black Mountain Standards and Details Manual.

3. Where necessary, property owners must be willing to purchase approved culverts to install under new constructed driveways.

4. The road must be approved by the public works director and the fire marshal upon inspection.

5. The planning department shall forward the street dedication request to the town council for approval.

CHAPTER 4. ZONING REGULATIONS

4.1.1 Purpose and authority.

These zoning regulations are adopted to provide guidelines for the development of land in Black Mountain, pursuant to the authority granted in N.C.G.S. § 160D-702, consistent with the General Statutes of the State of North Carolina, the Town of Black Mountain Code of Ordinances, and the Comprehensive Plan to address the following public purposes:

1. To provide adequate light and air;
2. To prevent the overcrowding of land;
3. To avoid undue concentration of population;
4. To lessen congestion in the streets;
5. To secure safety from fire, panic, and dangers;
6. To facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and
7. To promote the health, safety, morals, or the general welfare of the community.

SECTION 4.2 ZONING MAP

4.2.1 Designation of zoning map.

The map entitled Town of Black Mountain Zoning Map as adopted by the Town of Black Mountain Town Council and certified by the town clerk establishes the official zoning and overlay districts. This map will be maintained and posted at the Town of Black Mountain Planning and Development Department. Digital and paper copy versions of this map shall also be made available through the planning and development department for reference.

4.2.2 Interpretation of the zoning map.

A. Unless otherwise specified, zoning district boundaries run with property lines or the centerline of streets, alleys or other rights-of-way.

B. Boundaries indicated as following railroad lines run along a line midway between the tracks.

C. Boundaries indicated as approximately following the centerline of streams, rivers, channels or lakes follow the centerline of the waterway.

D. Where a zoning district boundary divides a land parcel under a single ownership into two districts, the requirements of the less restrictive zone shall be applied to the entire parcel and the zoning district boundary adjusted accordingly, provided that the zoning district boundary adjustment is a distance of less than 100 feet, otherwise, an application for rezoning must be filed pursuant to the process set forth in Chapter 1 of this Land Use Code.

E. The zoning administrator shall have the authority to interpret the district boundaries. Appeals of the zoning administrator's interpretation may be made to the board of adjustment.

4.2.3 Changes to official zoning district map.

Changes made to zoning district boundaries or other matters portrayed on the official zoning district map shall be made in accordance with the provisions section 1.5 of this Code. Changes shall be entered on the official zoning district map promptly after the amendment has been approved by the town council.

4.2.4 Town of Black Mountain Zoning Map.

This map and its boundaries shall be incorporated and made part of these regulations.

SECTION 4.3 GENERAL ZONING PROCEDURES

4.3.1 Conformance required.

A. No building or land shall be used or occupied and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the town zoning regulations.

B. No building or zoning permit shall be issued on new lots created by the subdivision of land unless:

   1. The subdivision is exempt from the subdivision regulations;

   2. The subdivision is a major subdivision and a preliminary plat has been approved; or

   3. The final plat for the subdivision has been recorded with the Register of Deeds for Buncombe County.

C. Special uses are permitted upon compliance with the additional conditions imposed and as specified by the board of adjustment.

D. Unless otherwise specified by the regulations governing the district within which a project (new development or redevelopment) is located, all development must adhere to all development regulations, including but not limited to flood hazard prevention (see LUC chapter 2), stormwater (see LUC Chapter 8), lighting (see Town of Black Mountain Ordinances Chapter 20, Article VII), signage (see LUC chapter 9), parking (see LUC chapter 10), pedestrian planning and other requirements (see LUC chapter 4).

E. Amusements, solicitors, peddlers and itinerant merchants shall be allowed as provided in Chapter 9 of the Town of Black Mountain Code of Ordinances. Nothing in this chapter shall be construed or interpreted to preempt or supersede the town's adopted business regulations.

4.3.2 Minimum regulations.

Regulations set forth in this chapter shall be minimum regulations. If the district requirements set forth in this section differ with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher standard shall govern.

4.3.3 Zoning permits.

A. *Zoning administrator.* It is the intention of this chapter that all questions arising in connection with compliance with, and enforcement of, zoning regulations shall be the responsibility of the zoning administrator and that such questions shall be presented to the board of adjustment only on appeal from the decision of the zoning administrator.

B. *Zoning permit required.* No building, sign or other structure (except as otherwise provided in these regulations) shall be erected, moved, extended or enlarged or structurally altered, nor shall the use

conducted within the structure change, nor shall any excavation or filling of any lot for the construction of any structure be commenced, nor substantial clearing, grading, or excavation be commenced, nor shall any change in the use of a property be commenced until a zoning permit is issued or the zoning administrator reviews and approves the issuance of permits required for such work. No zoning, building or grading permit shall be issued without first obtaining the approval of the zoning administrator who shall certify that the development described on the application complies with all existing zoning regulations.

C. *Zoning permit not required.* A zoning permit is not required, notwithstanding any other provisions of this ordinance, for the following:

1. Street construction or repair;
2. Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, or supporting poles or structures, located within a public right-of-way;
3. Temporary activities undertaken by local, state or federal governmental agencies related to emergencies, such as the provision of shelter during storms, floods or other civic needs, the use of modular or mobile homes or trailers for emergency management administration, and storm or flood clean-up and repair;
4. Mailboxes, birdhouses, flag poles, pump covers, and doghouses;
5. Signage that meets the exemption requirements of the sign regulations;
6. Interior alterations and renovations which do not alter the footprint or height of an otherwise conforming use and/or structure.

D. *Expiration of permits.* Any zoning permit issued in accordance with this chapter shall expire six months after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured. If the permit recipient has proceeded with due diligence and in good faith and conditions have not changed substantially so as to warrant a new application, the zoning administrator may grant extensions for periods up to six months. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

SECTION 4.4 PROVISIONS GOVERNING ALL LOTS

4.4.1 Lot size and lot reductions.

A. All subdivision of property created after the effective date of this chapter must conform to the lot requirements of the district in which it is located.

B. In areas not served by a public or community sewer system, the minimum lot area shall be that necessary for safe on-site waste disposal system as determined by the county health department, but in no case, shall the lot be smaller than the required area for the zoning district in which it is located.

C. Subdivisions for the purpose of land conservation or for the dedication of open space which are exempt from the subdivision regulations in Chapter 3 of this LUC are exempt from the requirements of this chapter.

4.4.2 Lot access.

A. No building, structure or use of land for other than conservation purposes shall be established on a lot which does not have access to a public street directly or by means of an easement. Access shall meet the

requirements as indicated in the Town of Black Mountain Standards and Details Manual and connect any lot that does not abut a street with the nearest reasonable accessible street to said lot. The strip shall be under the same ownership as the lot to which it provides access, or shall be an easement of record and appurtenant to the lot for which it provides access.

B. Up to three lots may share access by means of a shared right-of-way so long as each lot has off-street parking for two cars, which parking shall not be located within the right-of-way of the private drive. In cases where four or more lots share access through a common right-of-way, the right-of-way shall be considered and designed as a named roadway and meet the requirements of the Town of Black Mountain Standards and Details Manual.

    1. In a conservation subdivision, rights-of-way that cannot meet the road standards for a subdivision without compromising performance goals of the conservation subdivision requirements (see 7.5.4) and which access more than three lots must meet the approval of the public works director and fire marshal for the purpose of waste collection, snow removal and maintenance, and emergency vehicle access.

    2. In a development undertaken pursuant to a special use permit, the design of any shared parking and loading areas that also serve to access more than three residential units must be approved by the fire marshal.

C. Lots which include or are adjacent to perennial or intermittent surface waters as indicated on the most recent version of the 1:24,000 scale quadrangle topographic maps prepared by the USGS are subject to a 30-foot setback from the top of the bank of that surface water in accordance with phase II stormwater regulations. (see section 8.2.10)

4.4.3 Setbacks, corner lots and double frontage lots.

A. Yard and setback requirements shall be met unless variance is granted by the board of adjustment.

B. Minimum setbacks shall be measured horizontally from the origin of the setback as the right-of-way, or property boundary, to the nearest portion of the building or structure.

C. If the property line extends into a roadway or highway, then the setback line shall be measured from the edge of the roadway or back of the curb when computing setback requirements.

D. Wherever right-of-way has not been established, setback shall be measured from the outer edge of the existing drainage ditch running parallel and adjacent to the road, or four feet off the edge of pavement where no ditch exists, or from the edge of the traveled area on an unpaved road.

E. Public rights-of-way or easements for streets and roads shall not be considered a part of a lot or open space, or as front, side, or rear yard for the purpose of meeting yard requirements. Driveways, parking areas, loading zones, sidewalks, or greenways may encroach or be included within a yard setback without affecting the setback requirements (see also 4.4.7).

F. In developed areas where more than three structures already exist, the setback may be determined by the average setback on already built upon lots located wholly or in part within the same block and zoning district and fronting the same street. In such cases, the setback on such a lot may be less than the required setback but not less than the average of the existing setbacks on the developed lots. However, in no case shall setbacks be less than 15 feet, except in the CB, central business district, where the minimum setback is 12 feet.

G. No building or structure shall be placed within a roadway or highway right-of-way, except as otherwise provided in these regulations.

H. Any structure on a corner lot shall comply with the minimum setback (front yard) requirements of the street which it faces, and shall comply with 50 percent of the minimum front yard setback requirements, if applicable, on any other street which the corner lot abuts. In case of doubt as to which street a structure faces, or if a structure is built so as not to face any street, the zoning administrator shall determine which setback, side yard and rear yard requirements apply.

I. For lots having frontage on two or more streets, but not located on a corner, the minimum front yard shall be provided on each street in accordance with the applicable district(s).

J. Allowable encroachments into required setbacks. The following may encroach upon required setbacks as set forth below unless specifically prohibited elsewhere in this chapter.

1. Sills, cornices, and similar ornamental features projecting from the principal building may encroach up to 18 inches into any required setback.

2. Bay windows, balconies, and similar features projecting from the principal building may encroach up to three feet into any required setback.

3. Decks, steps, uncovered porches, patios, and terraces may encroach into a required side or rear setback, but no closer than six feet to the side or rear property line.

4. Fences and walls.

5. If a handicapped accessibility or life safety feature cannot meet this requirement due to the location of an existing structure or other impeding site feature on a residential lot, the setback requirement shall be waived to the extent necessary to accommodate the accessibility or life safety feature.

4.4.4 Steep hillside setback allowance for residential lots.

A. On residential lots where the first 45 feet from the edge of the pavement exceeds 30 percent slope, front yard setbacks are adjusted as follows:

1. In CR-1 and SR-2, minimum front setback requirement is 25 feet.

2. In TR-4 and UR-8, minimum front setback requirement is 15 feet.

4.4.5 Location of buildings on irregularly shaped lots.

Locations of front, side and rear setback lines on irregularly shaped lots shall be determined by the zoning administrator in writing. Such determinations shall be based on the spirit and intent of the district regulations to achieve appropriate spacing and location of building(s) on individual lots. Appeals of such determinations shall be made to the board of adjustment following the procedures set out in section 1.7.2.

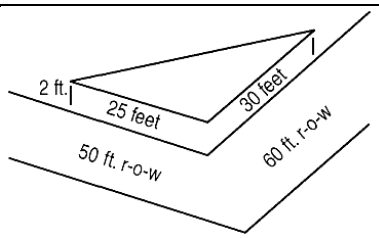
4.4.6 Visibility at intersections.

A. Uses located at a street intersection shall not have a dumpster or service area within 15 feet of the corner at the edge of pavement or the back of curb, whichever is closer.

B. Except for intersections within the central business district (CB), the sight triangle described below in paragraph C. shall be maintained on each corner of property at the intersection of two streets, a street and an alley, a street and a railroad, and also at the point where driveways, private drives, or entrances to common parking areas intersect with a public or private street right-of-way. The sight triangle is a triangular area connecting the intersection of the right-of-way lines and the end points of the sight distance for the intersecting streets as set forth in the latest edition of the NCDOT subdivision roads minimum construction standards.

C. The following are the distances used to establish a sight triangle as measured from an intersecting right-of-way:

Right-of-way width	Distance (feet)
<50′	20′
50′	25′
60′	30′
70′	35′
80′	40′
90′	45′
100′ (or greater)	50′



D. A sight triangle shall contain no fence, structure, earth bank, hedge, planting, wall or other obstruction between a height greater than two feet above the grade of the crown of the adjacent road as established by the zoning administrator. The following are exempted from this provision:

1. Public utility poles and fire hydrants.
2. Trees trimmed (to the trunk) to a height at least nine feet above the level of the intersection.
3. Other plant species of open growth habit that are not planted in the form of a hedge and which are so planted and trimmed as to leave in all seasons a clear and unobstructed cross-view.
4. A supporting member or appurtenance to a permanent building or sign lawfully existing on the effective date of this ordinance.
5. Official warning signs or signals or other appurtenances required for traffic control.
6. Signs which conform to the sign regulations with supports that do not encroach on the clear-vision area.

E. The administrator (or his/her designee) may waive this provision where the natural contour of the ground is such that there can be no cross visibility at the intersection.

SECTION 4.5 PROVISIONS GOVERNING ALL BUILDINGS

4.5.1 Location of building lines.

Locations of front, side and rear building lines as oriented on a lot shall be determined by the zoning administrator. Such determinations shall be based on the intent of the town and district regulations to achieve appropriate spacing and location of buildings within parcels.

4.5.2 Height regulations.

A. No structure shall be erected or altered so as to exceed the height regulations of the district in which it is located.

B. Height shall be measured as the average vertical distance from the highest adjacent grade at the base of a structure at the corners of the structure, or from the grade of the centerline of the nearest adjacent public roadway, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip or gambrel roof.

C. Where buildings are located on slopes, the average height will be calculated for each side of the building at its corners and at no side of the building should the maximum height from the adjacent grade be more than ten feet greater than the allowable building height for the district.

D. Chimneys shall not be included in the measurement of building height.

E. Steeples or towers associated with places of worship or government facilities, and water towers required for fire safety and water supply are exempt from these requirements.

F. Free-standing communications towers constructed pursuant to a special use permit are exempt from building height requirements of this section.

G. This section does not apply to amateur radio antennas affected and controlled by FCC regulations codified in Chapter 47, Section 97, of the Code of Federal Regulations.

H. Maximum building height for free-standing mechanical equipment appurtenant to the use, including chimneys, storage containers, tanks, water towers or chillers shall not exceed the maximum height of the district in which the use is located.

I. Mechanical equipment located on the roof shall not count towards the building height requirement and shall be screened to the greatest extent possible from the edge of the roadway of adjacent public roadways, with the exception of Interstate 40. Structural screening immediately adjacent and surrounding roof-top mechanical equipment is allowed in addition to or instead of a parapet for the purpose of visual screening and protection. Such structural screening for mechanical equipment shall not be at a height not to exceed the highest member of the mechanical equipment itself.

J. Parapets may be used in all districts and shall not count toward the building height requirements, as long as they do not add more than ten percent of footage to the overall building height above the maximum height for the district. Parapets may be used to meet the screening requirement for rooftop mechanical equipment. For example:

Max. Building Height	Max. Parapet (10%)	Max. Ht. with Parapet	District
55	5.5	60.5	LI-8
48	4.8	52.8	HI-0
40	4.0	44.0	CB, HB-8
35	3.5	38.5	CR-1, SR-2, TR-4, UR-8, OI-6, UR-8, ICD, TND

4.5.3 Principal buildings and structures per lot.

A. Every structure erected, moved or structurally altered shall be located on a single lot and in no case shall there be more than one principal building and its customary accessory buildings on the lot unless:

1. As part of an approved industrial operation within either of the industrial districts (LI-8 or HI-0); or
2. As part of an approved special use permit; or
3. As part of a pre-existing nonconforming use; or
4. As a secondary dwelling.

B. Duplexes within a single lot will be treated as a single primary structure for the purposes of compliance with zoning district lot size and setback unless regulated by the minimum lot size and density table for steep slope

lots. For separate units within a zero-lot line structure such as those for some types of townhomes or attached houses, the individual units will be considered the primary structure for each lot.

4.5.4 Accessory structures.

A. In no case shall an accessory structure be located closer than five feet to the nearest property line.

B. For land used for agriculture or as a bona fide farm that is greater than one acre, there is no limit to the number of accessory structures allowed, provided that such structures shall be incidental to the agricultural use and shall not cover more than 30 percent of the total lot area.

C. In industrial districts, there is no limit to the number of accessory structures provided that such structures are incidental to the industrial use.

D. In commercial districts, unless otherwise provided in a special use permit, no more than two accessory structures shall be permitted per lot.

E. In residential and mixed-use districts, no more than two accessory structures shall be permitted per lot, provided that any such structure shall meet the following requirements:

1. Accessory structures shall not be more than two stories.

2. For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards.

3. For lots not adjacent to town or state roadways, accessory structures may be located in what is determined as the front yard by the zoning administrator. The accessory structure may be located no further forward than the primary structure furthest from the road of any adjacent properties never to be less than the existing setback requirements.

4. Accessory buildings shall not cover more than 30 percent of the required side or rear yards. Accessory structures may require screening at the direction of the zoning administrator if the accessory structure may be considered a nuisance under the town's nuisance regulations or if it is being used for commercial purposes while abutting a residential use or district.

4.5.5 Use and location of dumpsters.

Dumpsters are allowed in all districts in accordance with the following standards:

A. All dumpsters must be maintained in good working condition and their exterior shall be kept clean, free of debris, accumulations or effluent.

B. No dumpster shall contain hazardous material unless it is designed to contain such material or is lined, and that such containment is approved by the environmental protection agency.

C. Dumpsters which contain oil and grease shall not leak.

D. Dumpsters must be screened from the public right-of-way and from abutting residential property boundaries. Screening shall be with an opaque wall or fence that is at least one foot higher than the dumpster itself. Vegetative buffers of evergreen of sufficient height and density to meet the opaque screening requirement and which are a minimum of ten feet in width, may be permitted in lieu of a structural screen upon approval of the zoning administrator.

E. Reserved

F. Screening provided to meet town requirements must be maintained in good condition and on a continuous basis.

G. Reserved.

4.5.6 General screening and buffering requirements.

A. Where a lot upon which a commercial or industrial use is occurring abuts a lot upon which a residential or mixed-use is occurring there shall be an opaque wall or fence of at least four feet in height along the property line. A vegetative buffer of at least ten feet in width and six feet in height and of sufficient density may be permitted in lieu of a structural screen upon approval of the zoning administrator.

B. Where a commercial or industrial use within a mixed-use district abuts a residential district, there shall be an opaque wall or fence of at least four feet in height along the property line. A vegetative buffer of at least ten feet in width and six feet in height and of sufficient density may be permitted in lieu of a structural screen upon approval of the zoning administrator.

SECTION 4.6 DISTRICTS ESTABLISHED

4.6.1 Base zoning districts established.

A. Base zoning districts are created to provide comprehensive land use regulations throughout Black Mountain. There are 12 base zoning districts that provide for a variety of uses appropriate to the character of the areas in which they are located. The Town of Black Mountain is hereby divided into the base zoning districts as reflected on the zoning map adopted pursuant to section 4.2.1 of this chapter.

B. The following zoning districts are established:

1. Conservation residential district (CR-1)
2. Suburban residential district (SR-2)
3. Town residential district (TR-4)
4. Urban residential district (UR-8)
5. Office and institutional district (OI-6)
6. Neighborhood mixed use district (UR-8)
7. Central business district (CB)
8. Highway business district (HB-8)
9. Light industrial district (LI-8)
10. Heavy industrial district (HI-0)
11. Traditional neighborhood development (TND)
12. Institutional campus district (ICD)

4.6.2 Conditional zoning districts established.

A. Conditional zoning districts are established to provide flexibility in the development of property while ensuring that proposed development is compatible with neighboring uses. Conditional districts allow for uses or development of land not otherwise permitted in the underlying base district. Conditionally zoned property may be subject to additional conditions, standards and regulations to ensure that the development and use of the property are compatible with the surrounding uses and consistent with the comprehensive plan and

other plans adopted by the town. Conditional zoning should not be used to relieve hardships that could be resolved by issuance of a variance.

B. Conditional zoning districts. the following conditional zoning districts are established:

1. Conservation residential conditional zoning district (CR-1 CZ)
2. Suburban residential conditional zoning district (SR-2 CZ)
3. Town residential conditional zoning district (TR-4 CZ)
4. Urban residential conditional zoning district (UR-8 CZ)
5. Office and institutional conditional zoning district (OI-6 CZ)
6. Neighborhood mixed use conditional zoning district (NMU-8 CZ)
7. Central business conditional zoning district (CB CZ)
8. Highway business conditional zoning district (HB-8 CZ)
9. Light industrial conditional zoning district (LI-8 CZ)
10. Heavy industrial conditional zoning district (HI-0 CZ)
11. Traditional neighborhood development conditional zoning district (TND-CZ)
12. Institutional campus district conditional zoning district (ICD-CZ)

C. General requirements. The following provisions shall apply in the administration of conditional zoning.

1. No property shall be zoned as a conditional district except upon application of the owner or a duly authorized representative of the owner, pursuant to the procedure set out in section 1.5.5.
2. A conditional district shall consist of land that will be planned and developed as a single development or as an approved series of development phases. The owner or owners of the property shall be legally capable of ensuring that development of the property will comply with all documents, plans, standards, and conditions approved by the town.
3. All standards and requirements of the corresponding general use zoning district shall be met, except to the extent that the conditions imposed by the conditional zoning may be more or less restrictive than the development standards.
4. Only those uses permitted in the underlying zoning district, whether by right or specially, shall be permitted in the conditional zoning district. Uses not otherwise permitted within the underlying zoning district shall not be permitted within the conditional district.
5. No variance or special use permit may be issued for developments on property subject to a conditional zoning ordinance.

D. Conditions.

1. Site-specific standards and conditions may be imposed within a conditional district, provided such standards or conditions are approved by the town council and consented to by the petitioner in writing.
2. Standards and conditions may be proposed by the petitioner, by town staff, by recommendation of the planning board, or by the town council.
3. Standards and conditions imposed shall be limited to those that address the conformance of the development and use of the site to town ordinances and plans, or the impacts reasonably expected to be generated by the development or use of the site.

(Ord. No. O-21-07, 8-9-2021; Ord. No. O-23-15, 9-29-2023)

4.6.3 Overlay districts established.

Additionally overlay districts are created to further regulate land use, dimensional requirements, and site design in significant or sensitive areas of town.

1. Wellhead protection overlay
2. Flood damage prevention overlay
3. Historic overlays (historic district and historic conservation district)
4. Fire district overlay
5. Pedestrian master plan overlay
6. U.S. 70 corridor overlay

4.6.4 Other requirements.

A. In addition to zoning district regulations see the following sections for other requirements:

1. See chapter 3 for subdivision requirements.
2. See chapter 5 for additional use standards for certain uses.
3. See chapter 7 for special uses.
4. See chapter 8 for land development and environmental regulations.
5. See chapter 9 for sign regulations.
6. See chapter 10 for parking requirements.
7. See chapter 11 for infrastructure resources, contacts and requirements.

SECTION 4.7 ZONING REGULATIONS BY DISTRICT

See Section 4.7.15 for the permitted use table.

See Section 4.7.16 for the district dimensions standards table.

4.7.1 Conservation residential district (CR-1).

4.7.1.1 Purpose and intent. The conservation residential district is established to protect areas in which the principal use of the land is residential or agricultural and where steep slopes or other environmental features make it more suitable for large lot development, conservation development and the preservation of open space.

4.7.2 Suburban residential district (SR-2).

4.7.2.1 Purpose and intent. The suburban residential district is established to protect areas in which the principal use of the land is single-family residential and where less dense development is preferred for the protection of slopes or environmentally sensitive areas, traditional single-family neighborhoods and the preservation of open space.

4.7.3 Town residential district (TR-4).

4.7.3.1 Purpose and intent. The town residential district is established to allow for a variety of housing types while maintaining an overall residential character with medium density. Any use which, because of its characteristics would interfere with the residential nature of the area is excluded.

4.7.4 Urban residential district (UR-8).

4.7.4.1 Purpose and intent. The mixed residential district is established to provide a variety of housing types, promote density in the more urbanized and developable areas or town, and structure the orderly development of residential neighborhoods.

4.7.5 Office and institutional district (OI-6).

4.7.5.1 Purpose and intent. The office and institutional district is established to provide transition between residential and commercial districts; to accommodate a mixture of residential, office, and institutional uses in conditions of good health and safety; to accommodate planned developments that are institutional in nature and which may have multiple buildings and uses within one property; and to protect property values of residential, institutional and professional uses within the district in a way that is mutually beneficial.

4.7.6 Neighborhood mixed use district (NMU-8).

4.7.6.1 Purpose and intent. The neighborhood mixed use district is established to serve the needs of the surrounding residential neighborhoods by providing compatible goods and services without negatively impacting the residential nature of the adjacent neighborhoods. It is also intended to establish areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhoods.

4.7.6.2 Supplementary district requirements (NMU-8). New construction within this district shall retain the characteristics of a residential neighborhood and shall not include metal buildings or cinder block buildings as the primary structure on a lot. Newly constructed structures, unless part of a special use permit or an accessory structure, shall have a pitched roof and other characteristics of single-family homes within the adjacent residential neighborhoods.

4.7.7 Central business district (CB).

4.7.7.1 Purpose and intent. The central business district includes the area traditionally known as "downtown" and includes the "downtown historic district". This district is established to maintain the village-like community that preserves architectural heritage and small-town character of Black Mountain. It is intended to promote a safe, convenient, and attractive environment for pedestrians; promotes business in buildings of a size and scale appropriate to a small town; encourage locally-owned businesses, entrepreneurs, and artists; provide a wide range of shopping, dining, working, and cultural attractions with storefronts that interact with the sidewalk; promote the beautification of the public rights-of-way; and encourage residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town.

4.7.7.2 Supplementary district requirements (CB).

A. Primary entrances to buildings must connect to sidewalks.

B. Sidewalks may be used for displays or temporary signs as permitted by chapter 9 of this LUC as long as four feet (4′ or 48″), as measured from the back of the curb toward the building, is maintained as free and clear passage for pedestrians and wheelchairs.

C. As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of six feet wide. Sidewalks intended for shared use with outdoor seating or retail displays must be a minimum of 12 feet wide.

(Ord. No. O-25-24, 9-8-2025)

4.7.8 Highway business district (HB-8).

4.7.8.1 Purpose and intent. The highway business district provides orderly growth along the town's major thoroughfares; promotes access management and traffic safety for all modes of transportation, encourages the redevelopment of existing commercial sites; creates economic opportunities ; promotes a safe, convenient and attractive environment for pedestrians to access good and services; creates gateways and entrances into the town along central corridors; and encourages residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town. Because of the objectives and characteristics of this district, it is located contiguous to major streets or within proximity to primary commercial districts.

4.7.8.2 Supplementary district requirements (HB-8).

A. Primary entrances to buildings must connect to sidewalks.

B. As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of five feet wide with a minimum two-foot planted strip between the sidewalk and the roadway.

C. For areas along U.S. 70, additional development requirements may apply. See Section 4.7.7.

4.7.9 Light industrial district (LI-8).

4.7.9.1 Purpose and intent. The light industrial district includes areas in which the principal use of the land is for light manufacturing, materials processing, warehousing, and retail operations incidental thereto. The district promotes moderate-sized, clean industries which provide jobs and career opportunities within the community; permits uses that are conducted so that noise, odor, dust and glare of each operation is completely confined within an enclosed building, insofar as is practical; encourages entrepreneurship and small business development; allows limited residential uses which do not conflict with the ability of industrial enterprises to conduct their businesses within the district area; and allows community facilities and convenience trade establishments which provide needed services to industrial development.

4.7.9.3[2] Supplementary district requirements (LI-8).

A. Documentation of permits required. Applications for a zoning permit for industrial, fabrication or manufacturing uses must include documentation of applicable state and federal permits, including documentation of regulatory compliance for handling and storage of hazardous materials, use of ammonia or other chemicals for heating, cooling or other mechanical operations as appropriate, and the type and maximum amount of any hazardous materials that will be stored on site at any given time.

B. Applications for zoning permits must include copies of NCDOT driveway permit applications for concurrence review. Traffic management and access shall be designed to maximize safety and to channel truck traffic onto major state roads with as little secondary or town road exposure as possible.

A traffic impact analysis may be required in accordance with the town driveway permit requirements when accessing town roads.

C. Operations on site, including free-standing mechanical equipment, chimneys, storage containers or tanks, water towers or chillers cannot cause excessive noise, vibration, smoke, odors, electrical or radio interference.

4.7.10 Heavy industrial district (HI-0).

4.7.10.1 Purpose and Intent. The heavy industrial district is intended to provide areas in which the principal use of the land is for general manufacturing, materials processing, warehousing or outdoor storage of materials, and retail operations incidental thereto; to promote clean industries which provide jobs and career opportunities within the community; permit uses that are conducted so that noise, odor, dust and glare of each operation impacts only other industrial uses; encourage entrepreneurship and business development; and to restrict residential uses which conflict with the ability of industrial enterprises to conduct their businesses within the district area; and to allow community facilities and convenience trade and fleet establishments which provide needed services to industrial development.

4.7.10.2 Supplementary district requirements (HI-0).

A. Documentation of permits required. Industrial, fabrication or manufacturing uses must provide documentation of applicable state and federal permits to the town, including documentation of regulatory compliance for handling and storage of hazardous materials, use of ammonia or other chemicals for heating, cooling or other mechanical operations as appropriate, and the type and maximum amount of any hazardous materials that will be stored on site at any given time.

C. Applications for zoning permits must include copies of NCDOT driveway permit applications for concurrence review. Traffic management and access shall be designed to maximize safety and to channel truck traffic onto major state roads with as little secondary or town road exposure as possible. A traffic impact analysis may be required in accordance with the town driveway permit requirements when accessing town roads.

4.7.11 TND traditional neighborhood development (master planned).

4.7.11.1 Purpose and Intent. The purpose of this district is to allow for the development of fully integrated, mixed-use pedestrian oriented neighborhoods. The intent is to minimize traffic congestion, suburban sprawl, infrastructure costs, and environmental degradation. The provisions of this district are based on urban design and development conventions which were widely used in the United States from colonial times until the 1940's and were based on the following principles:

A. All neighborhoods have identifiable centers and edges.

B. The center of the neighborhood is easily accessed by non-vehicular means from lots on the edges (i.e. approximately one-quarter-mile from center to edge, or a five-minute walk).

C. Uses and housing types are mixed and in close proximity to one another.

D. Street networks are interconnected and blocks are small.

E. Civic buildings are given prominent sites throughout the neighborhood.

4.7.11.2 Master plan required.

A. A master plan in compliance with TND design standards and the general provisions of the subdivision regulations shall be provided with any application to reclassify a property to TND zoning. A rezoning request for TND zoning is contingent upon the approval of a master plan; if a master plan is not

approved for the property, then it reverts to its previous zoning classification(s). No use or development of any property located in a TND district shall be permitted until a master plan, showing the proposed uses and development of the property, has been approved by the town council, upon a recommendation made by the planning board. Once the master plan has been approved, the developer must follow the processes and regulations set forth in the Town of Black Mountain's Subdivision Regulations to proceed with development of the property.

B. All submissions for approval shall include an agreement and approval by the associated TND master association governing the overall development. Specifically each new phase will have appropriate design standards and restrictions agreed upon and submitted to the appropriate county authority in the form of a supplemental master declaration. These additional design standards and restrictions shall be approved and filed prior to the commencement of any construction associated with that phase. The final plat submission and approval shall follow the same guidelines as the above preliminary plan.

C. The master plan shall be certified by a registered architect, registered landscape architect or certified planner.

D. If a developer proposes to construct the subdivision in phases, then the master plan shall be prepared for the entire property, and shall show the proposed phases of development. Each phase of development shall be preceded by the submission and approval of a preliminary plat for that phase, followed by the submission and approval of a final plat. In addition the master plan shall include:

1. An outline of any additional regulatory intentions or design guidelines,
2. Show intended phasing of development, and
3. Include any other information, e.g., conceptual building prototypes, which may be required to evaluate the interior pedestrian environment and conditions at project edges.

E. Approval process:

1. The owner or developer shall submit ten copies of the master plan to the zoning administrator for consideration by the planning board at least ten working days prior to the next scheduled meeting of the planning board.
2. The zoning administrator shall submit to the planning board at its next meeting any master plan that is in compliance with the design standards specified herein.
3. A filing fee shall be paid. Any master plan re-submitted within one year for substantially the same property shall not pay an additional filing fee. (0-99-09, adopted 6-14-99)
4. The planning board shall review a master plan submission or re-submission for no more than 180 days from the first meeting it is presented, in order to make a recommendation to the town council. Failure to make a recommendation accordingly shall cause the master plan to be forwarded to the town council without a recommendation. The applicant may withdraw a master plan by a written request to the zoning administrator. A withdrawn master plan may be re-submitted to the planning board for further reconsideration at a later time.
5. Before approving a master plan and subsequent rezoning, the town council shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

(a) Staff shall prominently post a notice of the public hearing on the site of the proposed master plan and rezoning or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed master plan and rezoning and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

6. Master plans not approved by the town council and subsequently revised shall be re-submitted through the approval process.

7. Approved master plans shall not be revised without re-submission through the approval process. However, minor amendments at the site plan level for specific land uses or developments may be approved by the zoning administrator, provided:

- Building floor areas are not changed by more than 20 percent;
- Building or structure heights are not increased by more than 20 percent;
- Parking areas or spaces are not diminished by more than 20 percent;
- Relocated buildings or uses maintain the same general building relationships, landscaping and utility standards; and
- The amendment preserves compliance with any specific requirements of the TND district and the town's general guidelines;
- Appropriate HOA (master association) has reviewed and approved all revisions and submittals for a new phase commencement. This approval shall be in the form of a supplemental master declaration which is agreed to and approved by the master association.

8. Once a master plan has been approved, the project may proceed through the major subdivision and permitting processes outlined in the subdivision regulations of chapter 3, with the master plan being considered as a preliminary plat.

4.7.11.3 Development Parameters.

A. No minimum development size; however 40 acres is the recommended minimum size.

B. No maximum development size; however 200 acres is the recommended maximum size.

C. Maximum permitted densities and total number of dwelling units shall be established during the master plan review process.

D. Buffer requirements shall be established during the master plan review process. Property located on the perimeter of the TND district shall have setbacks and buffers that are consistent with the setbacks and buffers of the adjoining zoning district, including provisions for accessory buildings, but shall be a minimum of 15 feet.

4.7.11.4 Uses.

A. Permitted uses shall be based on the general category of use that has been established for a lot or group of lots in the TND master plan. The general land use categories are listed below with particular uses allowed and suggested amounts for each, expressed as a percentage of the total gross area of the neighborhood.

Use	Amount	Allowable Uses
Public	At least 5%	Parks, squares, greenbelts, sidewalks/walkways, streets, alleys, civic uses, and emergency housing.

Civic	At least 2%	Community buildings including meeting halls, libraries, post offices, schools, child care centers, clubhouses, religious buildings, recreational facilities, museums, performing arts buildings, municipal buildings, and emergency housing.
Shop front	2% to 20%	Residential and commercial uses; approximately 50% of the building area shall be designated for residential use. *Also, emergency housing.
Attached Homes (Multi-Family)	15% to 30%	Buildings for residential use and limited commercial use, such as a coffee house, home occupation, bed and breakfast inn, and emergency housing.
Detached Homes	30%	Buildings for residential uses, customary home occupational uses, bed and breakfast inns, and emergency housing.
Business	5% to 15%	Office, bar/brewery, restaurant, brew pub/tavern, retail, including eating establishments, mobile retail vendors***, and other commercial uses provided they produce little or no noise, odor, dust or vibration**. Also, emergency housing.

* Residential uses are not permitted on the ground floors of shop front buildings.

** Business uses shall be grouped together as follows: office and retail may be grouped with shop front buildings to form town centers. All other business uses shall be grouped together outside town and neighborhood center.

***Mobile retail vendors shall allow up to six vendors per parcel and there is a limit of ten mobile retail vendors allowed in the district.

B. Special uses:

1. Cemeteries, mausoleums or columbaria.
2. Churches.
3. Electric power and public utility stations or substations and public utility transmission lines.
4. Fairgrounds.
5. Drive-thru restaurants.
6. Automotive services.
7. Community living facilities.
8. Laboratories.
9. Outdoor theaters.
10. Public or non-residential swimming pools.

11. Schools—Public or private.
12. Stalls or merchandise stands for outdoor sale of goods at street front.
13. Veterinarian offices.

C. Prohibited uses:

1. Any commercial use which encourages patrons to remain in their automobiles while receiving goods or services, except service stations.
2. Carting, moving, or hauling terminal or yard.
3. Chemical manufacturing, storage or distribution as a primary use.
4. Enameling, painting or plating, except artist's studios.
5. Kennels.
6. Landfills.
7. Manufacturing, storage or disposal of hazardous waste materials.
8. Mobile homes.
9. Outdoor advertising or billboard as a principle use.
10. Parking lot as principal use.
11. Prisons, detention centers, or half-way houses.
12. Sand, gravel, or other mineral extraction.
13. Scrap yards.
14. Any use which produces the following adverse impacts; noise at a level greater than typical street or traffic noise, offensive vibration, emission of noxious solids, liquids, or gases.

*Large-scale, single-use facilities (e.g., conference centers, theaters, athletic facilities) shall generally occur above or behind smaller scale street front space.

4.7.11.5 Design standards.

A. *Neighborhood form.*

1. Dwellings at the edge of the neighborhood shall be roughly a five-minute walk to the center of the neighborhood.
2. A great variety of housing types and price ranges shall exist in the neighborhood, with the highest density of housing located towards the center of the neighborhood.
3. Within a neighborhood the following land uses shall be arranged to serve the needs of the residents in a convenient walking environment: open space/recreational areas, civic buildings, low and high density residential, retail/commercial, business/workplace, and parking.
4. The area of the TND shall be divided into blocks, streets, lots and open space.
5. Similar land uses shall generally enfront across each street. Dissimilar land uses shall generally abut at rear lot lines. Corner lots which front on streets of dissimilar use shall generally observe the setback established on each fronting street.
6. Along existing streets, new buildings shall be compatible with the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

7. The appearance of the neighborhood should blend in with existing neighborhoods and feature the use of natural materials in construction.

B. *Lots and buildings:*

1. All lots shall share a frontage line with a street or public space; lots fronting on a public space shall have access to a rear alley.
2. Consistent build-to lines shall be established along all streets and public space frontages.
3. All buildings, except accessory structures, shall have their main entrance opening on a street or public space.
4. No structure shall exceed 35 feet in height.

C. *Inclusion of affordable housing:*

1. Ten percent of all units created, whether for rental or purchase, must meet the affordable housing thresholds established by Buncombe County Community Development. Affordable units must blend into the overall development and not be aesthetically distinguishable from the other units, but may be of a higher density or smaller scale than other units within the development. For example, by making one of the buildings into a duplex, or by building a smaller sized unit of similar style, a developer can decrease their per unit cost and maintain the architectural integrity of their design.
2. Instead of constructing affordable units, developers may opt to convey an undeveloped lot or lots within the development for construction by a town approved affordable housing agency to meet the ten-percent requirement as long as the lot(s) conveyed can accommodate an equal or greater number of units to ten percent of the overall development.
3. A developer may also pay a fee-in-lieu of development or conveyance of a lot of equal value to ten percent of the overall estimated construction cost of the built-out master plan to the Town of Black Mountain for the purpose of creating new and affordable housing opportunities.

D. *Streets, alleys and pathways:*

1. Public streets shall provide access to all lots. Designs shall permit comfortable use of the street by motorists, pedestrians and bicyclists. Pavement widths, design speeds, and number of motor travel lanes should be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the building types which front on the street and the relationship of the street to the overall town street network. All roads shall be in compliance with the requirements as indicated in the Town of Black Mountain Standards and Detail Manual.
2. Streets and alleys shall, wherever practical, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Cul-de-sac and dead-end streets are discouraged and should only occur where absolutely necessary due to natural conditions.
3. No block face should have a length greater than 500 feet without dedicated alley or pathway providing through access.
4. To prevent the build-up of vehicular speed, disperse traffic flow, and create a sense of visual enclosure, long uninterrupted segments of straight streets should be avoided.
5. A continuous network of rear alleys is recommended for all lots in a TND.
6. Utilities shall be underground and shall run along alleys wherever possible.

7. Streets shall be organized according to a hierarchy based on function, size, capacity and design speed. Streets and rights-of-ways are therefore expected to differ in dimension. The proposed hierarchy of streets shall be indicated on the submitted master plan and each street type shall be separately detailed in the master plan.

8. Every street, except alleys, shall have a sidewalk on at least one side that is at least five feet wide. In shop front areas, sidewalks shall be at least ten feet wide.

E. *Parking:*

1. On-street parking should be provided on all streets. Occasional on-street parking can be accommodated without additional pavement width. For streets which serve workplace and storefront buildings, on-street parking is required and should be marked as such. On-street parking should be parallel to street unless the street lends itself to other parking layouts.

2. Parking lots shall generally be located at the rear or at the side of buildings and shall be screened from public rights-of-way and adjoining properties by land forms or evergreen vegetation so as to provide a barrier that will be at least three feet high and provide a 75 percent visual barrier within two years.

3. To the extent practicable, adjacent parking lots shall be interconnected.

4. Small and strategically placed parking areas are recommended.

5. Parking areas shall be paved as required in chapter 10 and all parking areas and traffic lanes shall be clearly marked.

6. The number, width and location of curb cuts shall be such as to minimize traffic hazards, inconvenience and congestion.

7. Off-street parking and loading requirements as outlined in the town's parking regulations may be used as guidance.

8. The developer shall demonstrate the provision of adequate parking and off-street loading areas for different areas of the development, based on the uses allowed and the density of development.

9. In addition to landscaping provided for screening above, trees should be planted around the perimeter and interior of parking lots to provide shade.

F. *Landscaping:*

1. Trees shall be planted within rights-of-way parallel to the street along all streets except alleys.

2. Tree spacing shall be determined by species type. Large maturing trees shall be planted a minimum of 40 feet and a maximum of 50 feet on center. Small and medium maturing trees shall be planted a minimum of ten feet and a maximum of 30 feet on center.

3. Large maturing trees shall generally be planted along residential streets and along the street frontages and perimeter areas of parks, squares, greenbelts and civic structures.

4. Small maturing trees shall generally be planted along non-residential streets, interior portions of parks, squares, greenbelts and civic lots. Storefronts shall not be obstructed by the planting pattern.

5. The natural features of the landscape shall be incorporated into the landscaping plan.

6. All plantings shall be with native or appropriate species (refer to list in appendix).

G. *Requirements concerning sidewalks and greenways:*

1. Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan or shall connect to pedestrian facilities shown on the comprehensive pedestrian master plan. A fee-in-lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town planning board.
2. Existing sidewalks at the time of development or re-development must be improved, repaired, or replaced as necessary in order to be compliant with town and ADA regulations as part of new projects.

(Ord. No. O-24-14, 9-9-2024; Ord. No. O-24-16, 12-9-2024; Ord. No. O-25-01, 1-13-2025)

4.7.12 ICD institutional campus development (master planned).

4.7.12.1 Purpose and Intent. This district is intended to allow for the continued and future use, expansion, and new development of academic, religious, government, and similar type uses where such campus or facilities qualify for location. The purpose of this district is to maintain the overall design integrity of the campus or facility setting while minimizing any adverse impacts on the neighboring areas.

4.7.12.2 Uses.

A. *Permitted uses.* The following uses include all accompanying facilities and accessory uses associated with their development that do not significantly impact the existing infrastructure (i.e., street capacity, water and sewer capacity, police or fire protection, or other service related town functions as described in the master plan).

1. Academic institutions. This will include, but is not limited to, primary, secondary, college, or specialized education organizations including technical schools.
2. Art galleries and museums.
3. Assembly facilities, including totally enclosed meeting rooms, chapels, sanctuaries, and auditoriums, but not including sports stadiums or coliseums. Facilities are not to exceed size required to seat two times the student or institutional enrollment.
4. Campus services. These may include a bookstore or retail store generally intended for, but not limited to the sale of school or institution related books and supplies; CD's, videos, gifts, greeting cards, flowers, candy, packaged snacks, soft drinks, toys, items with school logos, shirts, jackets, caps, sporting equipment, and small electronic equipment (i.e., clocks, radios, and stereos). Other such uses under this general definition could include a cafeteria, coffee shop, snack bar, laundry, etc., as long as they are located in such a manner and sign is such as to emphasize that they are for the prime benefit of users and employees and not the general public, although they may be open to the public. Such facility shall be limited to 500 square feet or no more than five percent of the total campus or institutional building area, which ever is greater. Note: Any facility listed which will be over 500 square feet shall become a special use.
5. Classrooms, laboratories, observatories, and other associated facilities.
6. Conference facilities. A facility developed for use in conjunction with other support facilities including but not limited to, bookstores, cafes or other allowed uses.
7. Golf courses or driving ranges. These shall be developed primarily for internal use by school or institutional membership.

8. Government facilities. Areas, buildings, and other support services required for use by federal, state, and local governments. (NOTE: Federal and state facilities will dictate their own use, and therefore, compliance with these regulations would be voluntary.)
9. Libraries.
10. Parks. This shall include, but is not limited to, non-enclosed athletic fields and associated seating.
11. Recreational facilities. This shall include a health club or spa facilities. Such facilities could include, but would not be limited to, organizations or associations such as the YMCA or YWCA.
12. Religious institutions and places of worship. These shall include facilities built for religious or academic study as well as other associated religious activities.
13. Residential: For use by user or staff population only.
    - Dormitories.
    - Duplexes, triplexes, quadraplexes.
    - Single-family residences.
    - Single-family residences with an accessory apartment.
14. Teller machines.
15. Wellness facilities. Facilities including, but not limited to, areas, buildings, and support facilities used for limited immediate care (infirmaries), long term residential care, or long term nursing care facilities. This may include a health care provider's office serving campus users only.

B. *Special uses.*

1. Campus services. As described under permitted uses, but over 500 square feet in area.
2. Enclosed gymnasiums. Such facilities shall be limited to enclosed buildings because of concerns for lights and noise.
3. Parking decks.
4. Recreational facilities. Those facilities not otherwise listed, such as swimming pools, playgrounds, bowling alleys, miniature golf, tennis courts, recreation center, etc. All uses shall be of a scale suitable for the internal needs of the institution or school and its population only.
5. Residential. Multi-family housing for user and staff use only with no more than four units per building.
6. Stadiums, coliseums, amphitheaters. Architectural plans shall show lighting, seating, and acoustics. Such facilities shall accommodate no more than twice the enrollment of the institution or school.
7. Temporary housing. This will include guest houses and conference centers when owned or operated by the primary institution for the convenience of visitors.

4.7.12.3 General requirements.

A. Minimum institutional development size: Two acres

B. Minimum institutional development width: 200 feet

C. Maximum density allowed for multiple-family dwellings: Ten units per acre

D. For calculating units per acre, lines shall be drawn and shown on a site plan indicating the acreage used for the housing development, including residential buildings, accessory buildings, yards, drives, parking,

playgrounds, picnic and park areas designated for the residents, and other adjacent open space for the use only of the residents and their guests.

Minimum Building Separation by type (in feet):

1	2	3	4	5	
40	40	40	40	40	1
-	30	30	40	40	2
-	-	30	40	40	3
-	-	-	40	40	4
-	-	-	-	40	5

1. Non-residential primary use building
2. Single-family
3. Duplex
4. Dormitory
5. Multifamily (C.5. above)

E. Minimum required depth of front, side, and rear yard shall depend on the type of building but in no case shall there be less than a 30-foot separation.

F. In order to develop within this district, the following minimum criteria must be met:

1. A master plan shall be required (the master plan process is out lined in part E).
2. The total campus or facility land area will be two or more contiguous acres whether in one parcel or not.
3. The land area of an existing campus may be expanded by the addition of contiguous property, and/or properties having at least one boundary within 100 feet of the original core campus property.

G. Buffering. All campus or institutional uses shall be screened from adjacent residential, vacant, or commercial properties within 100 feet, so as to shield these properties from lights and noise, by the use of landscaping, natural vegetation, landscaped berm, topography, fence, or wall. The only such uses allowed within this 100-foot buffer area are:

1. Single-family dwellings.
2. Single-family dwellings with accessory apartments.
3. Duplex, triplexes and quadraplexes (two-, three-, and four-family) dwellings.
4. Parks (except spectator seating, which shall not encroach into the 100-foot buffer).

Trash containers, outdoor storage areas, loading areas, facility vehicle yards, and similar equipment yards shall be required to be screened from other interior uses as provided by landscaping, natural vegetation, landscaped berm, topography, fence or wall. Such buffering shall be a minimum of six feet in height and completely opaque. Vegetative buffering, if used in part or whole as the buffering of choice, shall be at least four feet at time of planting and grow to the required six-foot height within a three-year period. All plantings shall be maintained in a manner that will provide an opaque buffer.

H. Existing structures. When a property is rezoned to institutional campus development (ICD), existing structures on the property shall not be subject to the buffering or sign requirements of this chapter. Expansion of or changes to existing structures shall conform to all provisions of the ICD, except where

impractical due to safety considerations or the Americans with Disabilities Act. When an existing structure is located within a buffer area, any changes to the structure shall be made so as to minimize the impact on the side(s) of the structure nearest to the property line.

I. Parking. All parking required by the uses in this district shall be provided on-site and in sufficient number not to require on-street parking off-campus, adjacent to campus, or encroachment on adjacent property. Parking shall be classified in the following manner:

1. Minimum required parking. Land reserved to meet parking demands for an institution, school, or other facility operations on a regular basis (daily operations, etc.). Minimum requirements shall be one space for each three students and three-quarters (0.75) space for each employee. These areas shall be shown on the master plan and may be paved or not at the option of the institution, school, or other facility for which such parking is being developed. These areas shall be shown with the type of surface treatment to be used on such land (gravel, brick dust, paved, etc.) which is subject to approval by the town staff.

2. Maximum required parking. Land reserved to meet parking demands for an institution, school, or other facility operations on a non-regular basis. These areas shall be shown on the master plan as areas which will be used to meet these requirements for parking (example: graduations, ball games). These maximum requirements are as follows: one space for each two students, and one space for each full time employee. These areas shall be noted on the master plan but may remain in a natural or undisturbed state.

J. Rooftop equipment. All rooftop equipment shall be enclosed in building materials that match the structure or are visually compatible with the structure.

K. Street design standard. All campuses or institutions shall have two points of connection to a town maintained street. If the street accessing the campus or institution shall be private, the street shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual. However, such streets may, at the discretion of the planning staff in consultation with public works staff, be allowed to remain unpaved with use of an approved surface treatment (gravel or other).

L. Requirements concerning sidewalks and greenways.

1. Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan. A fee-in-lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town council.

2. Existing sidewalks at the time of development or re-development must be improved, repaired, or replaced as necessary in order to be compliant with town and ADA regulations as part of new projects.

4.7.12.4 Plan review procedure and required steps.

A. Meeting with planning, and development staff. Developer shall be required to meet with planning, and development staff for technical review prior to submitting a concept plan of the proposed development. The purpose of this meeting will be to acquaint the developer with the entire planning and developmental process for an ICD development.

B. Submittal of concept plan. A concept plan outlining the general elements of the overall development, including, but not limited to, building footprints, street layout (with roadway widths), natural areas, floodway areas, floodplain areas, and proposed recreation areas.

C. Submittal of master plan. The master plan shall be submitted no less than 30 days after the submittal of the concept plan. This time frame shall also be at least 30 days before the next regularly scheduled planning board meeting. The application for rezoning and rezoning fee should be submitted at this

time. Such a plan shall be developed by a professional architect or civil engineer licensed to practice in the State of North Carolina. The applicant shall submit 12 complete copies of the master plan. To ensure clarity of the master plan presentation, utilities, landscaping, topography, and other specific categories of information may be required to be presented on separate layers, if, and as determined necessary, by the town staff. The master plan may be submitted and approved in separate phases in order to facilitate the long term development of the overall campus.

D. Planning board considers rezoning request and the master plan. The planning board shall consider rezoning request and the master plan for the institutional campus development district at the next regularly scheduled planning board or a special called meeting. A recommendation is made by the planning board to the town council.

E. Rezoning request and master plan review by town council. Recommendation for rezoning is submitted to town council and, if approved, the town council can then review the master plan.

F. Before approving a master plan and subsequent rezoning, the town council shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

   (a) Staff shall prominently post a notice of the public hearing on the site of the proposed master plan and rezoning or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed master plan and rezoning and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

G. Changes to the master plan. If the project represents a substantial change from the approved master plan, a new master plan must be submitted for planning board and the town council approval. A "substantial change" means a change that, in the opinion of the planning, and development staff, substantially affects existing traffic circulation, drainage, relationship of buildings to each other, landscaping, buffering, or outdoor lighting; or significantly impacts existing infrastructure or town services (i.e., street capacity, water and sewer capacity, police or fire protection, or other service related town functions) or any change that may result in impact on neighboring properties and residents. Such changes shall include, but are not limited to:

   1. Addition or relocation of a building;
   2. Addition or relocation of a parking lot for over ten vehicles;
   3. Addition or relocation of parking or outdoor storage for service vehicles or equipment;
   4. Addition or relocation of any other major development (i.e., ball fields, tennis courts, golf courses, amphitheaters, or any other facility to be used by numerous people at one time);
   5. Relocation of a public street or private street connecting with the public street system.

   Any changes to areas such as small picnic areas, playgrounds, walking trails, gardens, patios, terraces, courtyards, walkways, and parking areas for ten or fewer vehicles, which do not constitute a "substantial change" may be approved by the planning director or his/her designee.

H. The town council may deny the master plan, approve the master plan, or approve the master plan with conditions. The conditions upon the installation and operation of the proposed use(s) shall address the accumulated potential impact of the proposed use, including lighting, glare, noise, etc. in order that the use shall:

1. Not interfere with the use of the other properties or alter the existing character of the immediate vicinity;
2. Provide potential pedestrian or vehicular traffic that could be generated by the use(s) with adequate and safe connections to adjoining streets and pedestrian paths; and
3. Provide adequate parking and access controls to the benefit of the property itself and the adjoining properties.

4.7.12.5 Supplementary district regulations.

A. All permitted uses and special uses in this district are subject to approval of installation and materials by the public works director as designated, of curbs, gutters, storm drainage structures, sidewalks, entrances and exits, street paving, water and sewer facilities, and garbage collection procedures.

B. Awning and canopy signs, marquee and time and temperature signs are not permitted.

C. Banners, flags and pennants may only be used temporarily for special events and with the approval of the town zoning administrator. A plan showing diagrams of each type of banner, flag, or pennant and their method of installation must be submitted to the planning department for approval at least 30 days prior to the special event making use of these banners, flags, or pennants. The total amount of display time during which such banner, flag, or pennant shall be allowed to be used shall be a total of 30 days. The installation cannot be initiated until appropriate approval is received and not more than one week prior to the event. Banners, flags, or pennants must not obstruct any fire escape, window, or door, or be placed in such a manner so as to interfere with any openings required for ventilation, nor offer hindrance to fire department equipment or personnel. Banners, flags, or pennants may be placed in or along the right-of-way of public streets immediately adjacent to the campus, providing a letter of permission from the proper utility company and/or property owner, holding the town harmless, is submitted if the banner, flag, or pennant is to be attached to any utility pole or to any tree or other object located on private property. Nothing in these requirements shall be construed to imply any restriction or prohibition on the appropriate display of any official flag of the United States, the State of North Carolina or any other government entity.

1. Manner of installation must be based on the established safety standards.
2. The banners, etc., must be made of fire-retardant material or treated to be fire retardant.
3. Maximum. The size of any banner, flag, etc. shall be 32 square feet.
4. Minimum. For safety reasons, a required seven-foot clearance above the sidewalk, if overhanging any sidewalk.
5. Minimum. For safety reasons, a required ten-foot clearance above the sidewalk, if above any street, driveway, alley, or any other vehicular travel way. More clearance may be required if the street involved warrants it.

D. Building identification (I. D.) signs may be building or ground-mounted. They must be a maximum of seven feet above the ground with a maximum surface area of 24 square feet. Only one sign per building is allowed for identification purposes.

E. Campus entrance signs shall be a maximum of seven feet above ground with a maximum surface area of 32 square feet. Only one sign per entrance to the campus at a public street, and at a major walkway considered to be the main entrance shall be allowed.

4.7.13 Uses.

4.7.13.1 Generally.

A. Uses, for purposes of this chapter, are divided into three types: principal uses, accessory uses, and temporary uses.

B. Uses, whether principal or accessory, are permitted by right, permitted with additional requirements, permitted upon issuance of a special use permit, or prohibited in each zoning district as listed in the permitted use table found in Section 4.6.15. Uses in the table are grouped into categories based on common function, product or physical characteristics. Use categories provide a systematic basis for assigning principal uses to appropriate zoning districts.

C. Special use permits are required for certain uses to ensure the goals of the comprehensive plan or other adopted plans are considered and to minimize negative impacts on neighboring properties. Special use permits are issued by the board of adjustment which shall hear and consider requests in accordance with guidelines set forth in Chapter 7 of this code.

4.7.13.2 Uses not specifically listed. A use that is defined in Chapter 1 of this Land Use Code, but not listed in the permitted uses table, is prohibited. A proposed use that is not defined in Chapter 1 and not listed in the permitted uses table shall be allowed or prohibited in the same manner as that use appearing in the permitted uses table which is most similar to the proposed use based upon the type and amount of activity, the likely impact on surrounding property, and the conditions of the site upon which the use will take place, as determined by the zoning administrator. The zoning permit issued for the proposed use shall state the proposed use, the next most similar use as determined by the zoning administrator, and the reasons for so categorizing the proposed use.

4.7.13.3 Temporary uses.

A. *Purpose.* This section is intended to permit certain temporary uses of property while ensuring public safety, health and welfare.

B. *Requirements. for storage units or "PODS".*

This section applies to temporary, self-contained storage units, not including trailers for office use or temporary shelter, which are intended to be picked up and moved to various locations on demand.

The maximum time a temporary storage until shall be placed on a parcel is 120 days.

PODS shall be placed so as not to interfere with traffic or as to create a traffic hazard.

C. *Requirements for outdoor religious meetings.*

1. Religious meetings in a tent or other temporary structure shall not exceed a period of 60 days, unless approved by the zoning administrator related to on-going construction.

D. *Requirements for open lot sales.*

1. Temporary open lot retail sales shall be permitted in all industrial or commercial districts only.
2. Such use shall not exceed a 60-day period.

4.7.14 Table of uses by zoning district.

Table of Uses for Zoning Districts

Category	Uses	CR-1	SR-2	TR-4	UR-8	NMU-8	OI-6	CBD	HB-8	LI-8	HI-0
Special Uses	Conservation Subdivision	S	S	S	S	S	S	S			
Special Uses	Cottage Housing Development (CHD)	S	S	S	S	S	S	S	S		
Special Uses	Industrial Park Development								S	S	S
Special Uses	Planned Unit Development (PUD) - Commercial					S	S	S	S	S	S
Special Uses	Planned Unit Development (PUD) - Residential	S	S	S	S	S	S	S	S	S	
Residential	Emergency Housing	A	A	A	A	A	A	A	A	A	
Residential	Manufactured Home Parks			S	S				S	S	
Residential	Manufactured Homes on individual lots	A	A	A	A						
Residential	Multi-family residential all levels	S	S	S	S	S	S		S	S	
Residential	Mixed-used residential second floor and above and below street level							P			
Residential	Secondary Dwellings	A	A	A	A	A					
Residential	Shared housing/Community living facilities				P	P	P		P	P	P
Residential	Single-Family Residences	P	P	P	P	P	P		P		
Residential	Two-family Residences (duplex)	P	P	P	P	P	P		P		
Public/Institutional	Government facilities	P	P	P	P	P	P	P	P	P	P
Public/Institutional	Group home					P	P		P	P	P
Public/Institutional	Hospitals								P	P	P
Public/Institutional	Meeting halls for civic, social, and fraternal uses							P	P	P	P
Public/Institutional	Places of worship	P	P	P	P	P	P	P	P	P	P
Public/Institutional	Boarding House	A	A	A	A	A	A	A			
Public/Institutional	Conference Centers					P		P	P	P	
Public/Institutional	Cultural, Community Facilities							P	P	P	P
Public/Institutional	Educational facilities						P		P	P	P
Public/Institutional	Family Care Homes	A	A	A	A	A	A	A	A	A	

Public/Institutional	Public utilities	P	P	P	P	P	P	P	P	P	P
Other	Accessory Structures	P	P	P	P	P	P	P	P	P	P
Other	Agriculture	A	A	A	A	A	A		A		
Other	Automobile parking (principal use)										P
Other	Campgrounds						A		A	A	A
Other	Camps, summer	P	P	P	P		P				
Other	Communications towers								S	S	S
Other	Laboratories and research facilities									P	P
Other	Outdoor Theater									P	P
Other	RV, camper hook-up						A				
Industrial	Breweries/Distilleries/Wineries/ Cideries						P	P	P	P	P
Industrial	Chemical treatment									P	P
Industrial	Crematories										P
Industrial	Distribution									P	P
Industrial	Freight handling facilities								P	P	P
Industrial	Junkyards and salvage yards										S
Industrial	Manufacturing										P
Industrial	Manufacturing, light (indoor)								P	P	P
Industrial	Recycling sorting, processing, or storage									P	P
Industrial	Warehousing								P	P	P
Industrial	Wood and Yard Waste Facility										P
Commercial	Adult Establishments								S		
Commercial	Agriculture	A	A	A	A	A	A		A		
Commercial	Amusements and entertainment uses								P	P	P
Commercial	Animal services							P	P	P	P
Commercial	Art studio and galleries					P	P	P	P	P	P
Commercial	Automotive sales, rental and service								P	P	P
Commercial	Bank and financial services							P	P	P	P
Commercial	Bar						P	P	P	P	P
Commercial	Bed and Breakfast Homes	P	P	P	P	P	P	P	P		

Commercial	Bed and Breakfast Inns	A	A	A	A	A	A	A	A		
Commercial	Building material sales								P	P	P
Commercial	Business services							P	P	P	P
Commercial	Construction or contractor services									P	P
Commercial	Convenience Store					P		P	P	P	P
Commercial	Day care centers				A	A	A	A	A	A	A
Commercial	Farm supply stores								P	P	P
Commercial	Funeral homes								P	P	P
Commercial	Garden Markets	A	A	A	A	A	A	A	A		
Commercial	Health and fitness facilities					P	P	P	P	P	P
Commercial	Heavy equipment sales, rental and service								P	P	P
Commercial	Heritage crafts							P	P	P	P
Commercial	Home Occupations	P	P	P	P		P	P	P		
Commercial	Hotels and motels							P	P	P	P
Commercial	Industrial cleaning services							P	P	P	P
Commercial	Instruction services and studios								P	P	P
Commercial	Laundromat					P	P		P	P	P
Commercial	Laundry and dry cleaning							P	P	P	P
Commercial	Lumber yards										P
Commercial	Manufactured home sales and service								P		
Commercial	Medical offices and clinics					P	P	P	P	P	P
Commercial	Micro-breweries/distilleries/wineries/cideries							P	P	P	P
Commercial	Mini-storage									P	P
Commercial	Mini-storage or self-storage								P	P	P
Commercial	Mixed use buildings							P	P	P	P
Commercial	Mobile food vendors					P	P	P	P	P	P
Commercial	Mobile food vendor courts					P	P	P	P	P	P
Commercial	Mobile retail vendor					P		P	P	P	P
Commercial	Neighborhood fueling facility					A	A				
Commercial	Professional offices and services					P	P	P	P	P	P

Commercial	Restaurant (sit down)					P			P	P	P
Commercial	Restaurant brew pub/tavern						P	P	P	P	P
Commercial	Restaurants and taverns (walk-up, drive-thru, sit down)						P	P	P	P	P
Commercial	Retail							P	P	P	P
Commercial	Retail (Up to 2,500 sf)						P		P	P	P
Commercial	Sidewalk Seating							A			
Commercial	Taxi and Transportation Services					P	P	P	P	P	P
Commercial	Warehousing (accessory to retail)							P	P	P	P
Commercial	Wholesale								P	P	P
Commercial	Wholesale and retail bakery							P	P	P	P
		P = Permitted by Right					C = Special Use				
** See Land Use Code Section 1.2.3 for definitions of uses		A = Additional Requirements									

(Ord. No. O-21-20, 1-10-2022; Ord. No. O-22-07, 9-12-2022; Ord. No. O-24-14, 9-9-2024; Ord. No. O-25-01, 1-13-2025; Ord. No. O-25-24, 9-8-2025)

4.7.15 Dimensional requirements by zoning district.

Dimensional Requirements by Zoning District

Zoning District*	Use	Density and Lot Size			Minimum Yard Requirements			Max. Height
		Min. Lot Size/ Max. Density	Min. Width (ft.)	Min. Depth (ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Structure Height (ft.)
CR-1	All Uses	1 acre, 1 DUA	80, 15 at street	100	30, 25 steep hillside	10	30**	35
SR-2	All Uses	½ acre, 2 DUA	60, 15 at street	100	30, 25 steep hillside	10	30	35
TR-4	All Uses	¼ acre, 4 DUA	40, 15 at street	80	20, 15 steep hillside	10	15	35
UR-8	Major Subdivision	⅛ acre, 8 DUA	15	None	20, 15 steep hillside	10	15	35
	Other Residential	5,000 sq. ft.	15	None	20, 15 steep hillside	10	15	35
	Non-Residential	⅛ acre	40, 15 at street	None	20, 15 steep hillside	10	15	35
OI-6	Residential	⅛ acre, 6 DUA	60	100	30	10	20	35
	Non-Residential	⅛ acre	100	100	40	30	30, 40 abutting residential district	35
NMU-8	Residential	⅛ acre, 8 DUA	50	100	25	10	10	35
	Non-Residential	⅛ acre	75	100	25	20	10, 20 abutting residential district	35
CBD	All Uses	None	None	None	12 from curb	none, comply with fire and building code	none, comply with fire and building code	40
HB-8	Residential	⅛ acre, 8 DUA	50 ft.	None	15	10	30	40
	Non-Residential	None	50	None	15	10, 20 abutting residential district	20, 30 abutting residential district	40
LI-8	Residential	⅛ acre, 8 DUA	50 ft.	None	15	10	30	55
	Non-Residential	None	None	None	0 on private street, 30 on public street, 50 across from residential district	10, 20 abutting residential district	20, 30 abutting residential district	55

HI-0	All Uses	None	None	None	15	10, 20 abutting residential district	20, 30 abutting residential district	48
*See Land Use Code Section 5 for requirements related to accessory structures and secondary dwellings								

4.7.16 Campus master plan notes and conditions.

4.7.16.1 Plan notes.

A. To assist Montreat College's ("College") nationally recognized cybersecurity training program, the North Carolina General Assembly appropriated $30 million for the design and construction of a Cybersecurity Facility on the college's campus. As a consequence of the general assembly's appropriation, the college engaged in an extensive master planning process to provide guidance as to where on its Black Mountain Campus ("Campus") the cybersecurity facility would be best located, along with guidance to establish and maintain overall design integrity on the campus while maximizing positive impacts on neighboring areas and minimizing possible adverse impacts.

B. In Section 1.2.3 of the Land Use Code of the Town of Black Mountain ("town"), the town defines a master plan as "a comprehensive, long-range plan guiding the development of a tract of land or subdivision." The hereinafter defined master plan satisfies the town's definition of master plan as a long-range plan guiding development of the campus. The master plan depicts uses and improvements envisioned by the college at the campus arising from the college's master planning process which included an extensive review of its Montreat Campus and the campus, both the advantages and opportunities of each campus as well as their specific constraints. The town participated in the college's master planning process.

C. The guiding principles of the college's master plan are to (1) reinforce revenue sustainability, (2) protect and maintain facilities, (3) strengthen academic offerings, (4) enhance a vibrant student culture and (5) connection of the two campuses. It is foreseeable during the development of the campus that many changes in higher education, technology, transportation, and skills needed for the 21st century will occur.

D. These plan notes provide background and context relevant to understanding the master plan design. The plan notes are not rezoning conditions. The rezoning conditions for the campus are stated below.

4.7.16.2 Rezoning conditions.

1. The master plan dated _____ and entitled "MONTREAT COLLEGE: BLACK MOUNTAIN CAMPUS, Montreat, NC" ("master plan") shows the property on which the campus will be developed and the campus shall be developed and used in accordance with the master plan, including the conditions identified as rezoning conditions ("rezoning conditions") as part of the Conditional Rezoning Ordinance No. O-23-22 (text) and Z-O-23-23 (map). As required by Section 1.5.5B.3, the master plan provides a full list of the proposed uses consistent in character with the Institutional Campus District in effect on August 28, 2023 (the "ICD"). All uses described on the master plan shall be generally permitted and allowed on the campus as a matter of right in the locations shown on the master plan. The campus will be developed in phases and completion of one phase is not necessary for the beginning of any development and construction of another phase except the cybersecurity facility (identified as one of the "academic buildings, number 1, on the master plan) shall be the building first constructed of the new buildings shown on the master plan. Phases and phase lines may be adjusted by the college as needed. Development of the campus will be approved through town land development approvals of subdivision plats or zoning site plans. The campus may be subdivided, or lots recombined in compliance with the Town's Land Use Code in effect on August 28, 2023, but lots on the campus shall be exempt from any internal separation or other dimensional standards when adjacent to existing lot lines within the campus.

2. Except as shown on the master plan or identified in the rezoning conditions, the standards of ICD shall remain in effect unless one or more different standards are consented to by the college in writing signed by the college. Should any unambiguous and irreconcilable conflict between the master plan and ICD arise, the master plan shall control. Should any unambiguous and irreconcilable conflict between the master plan and the rezoning conditions arise, the rezoning conditions shall control.

3. Any proposed change to the master plan shall be governed by section 4.7.12.4G of the ICD in effect on August 28, 2023, which is entitled, "Changes to the master plan". Section 4.7.12.4G shall be interpreted to mean that any change which (1) substantially affects existing traffic circulation, drainage, relationship of buildings to each other, landscaping, buffering or outdoor lighting or (2) significantly impacts existing infrastructure or town services (i.e., street capacity, water and sewer capacity, police and fire protection, or other service related town functions) or any change that may result in an adverse impact on neighboring properties and residents (collectively (1) and (2) above are "substantial change") requires the college to submit a new master plan to the town for approval. However, notwithstanding section 4.7.12.4G items 1-5, the following will not be considered a substantial change triggering an amendment to the master plan and conditional zoning: (A) any change of location of the buildings or relocation of a building, all of which are the buildings shown on the master plan of no more than 200 feet as depicted on the master plan; or (B) addition or relocation of accessory structures, parking lots or areas, addition or relocation of parking or outdoor storage for service vehicles or equipment, relocation of any major recreation development (i.e., ball fields, tennis courts), relocation of a private street connecting with the public street system are minor modifications that may be approved by town staff administratively. Notwithstanding the above and subject to existing conditions and structures, the layout of internal streets shown on the master plan, and bicycle and pedestrian access, stormwater management and signage approved by the town, no relocation shall violate or negatively impact the 100' institutional zoning buffer or other buffer requirements identified in paragraph 16 below or the access standards in paragraph 4 below.

4. The college shall develop and maintain a principal and secondary access to and from the campus as depicted on the master plan. As shown on the master plan, the primary access to the campus will be from Blue Ridge Road. The Blue Ridge Road entrance will be traffic-ready and opened to College traffic prior to the issuance of a building permit for vertical construction of the cybersecurity facility, which building shall be the first one constructed of the new buildings shown on the master plan. For all construction-related work on the campus, vehicles will always use Blue Ridge Road for construction traffic or construction vehicles and equipment. The college will provide in its construction contracts that contractors will only use the primary access private street from Blue Ridge Road for access to the campus. Upon completion of the primary access road as noted above, the secondary access points from Vance Avenue and Terry Estates Drive (both being public streets) shown on the master plan will be limited to secondary access for official college vehicles (maintenance vehicles and student shuttles of no more than 15 passenger seats) driven by licensed and approved drivers for college purposes only, and emergency fire and police. All secondary access points will either be gated or have knockdown barricades that are installed within the buffer identified in rezoning condition 16 near the property line of the campus prior to issuance of the building permit for vertical construction of the cybersecurity facility. Additionally, the college will install and maintain restrictive signage within the buffer identified in rezoning condition 16 near the property line of the campus denoting the limits of vehicular use on Vance Avenue and Terry Estates Drive. Bicycle and pedestrian facilities shall be included at the time the residence halls are constructed and the facilities shall not be required to follow the path of new private streets.

5. In order to achieve the benefit of locating the primary access to the campus as being from Blue Ridge Road, the master plan shows the primary private access street along the narrow western neck of the campus where there is minimal separation between the existing active railroad corridor and the Swannanoa River. If necessary, the private access street may be located within the town regulated stream buffer or stormwater management area. Generally, campus private streets will be paved at a minimum width of 20 feet. On-street parking is not contemplated within the master plan but if it is added, it will meet all town requirements in effect on August 28, 2023. Notwithstanding, all streets, parking lots or other access ways on the campus shall meet fire code requirements of state law in effect on August 28, 2023, and the Town Code of Ordinances in effect on August 28, 2023, unless agreed to in writing signed by the college. Access Point 9 from U.S. Highway 70 as shown on the master plan may be developed by the college in its sole discretion.

6. The location, size, and type of stormwater management systems depicted on the master plan are subject to review and approval as part of review of applications for permits as provided by Section 2.1.4 of the Town's Land Use Code in effect on August 28, 2023. Adjustments may be necessary to accommodate actual stormwater treatment requirements, natural site discharge points and private streets of the campus; provided, however, the college shall comply with the town's post-construction stormwater ordinance in effect on August 28, 2023.

7. Streams, wetlands, open spaces and trails and regional greenways are provided on the master plan based on preliminary information available to the college when it submitted the master plan to the town. The actual location of streams, wetlands, the Tomahawk Branch Loop Trail, the existing pedestrian and non-motorized bicycle greenway and other open spaces will be shown on applications prepared by the college for permits issued pursuant to Section 2.1.4. of the Town's Land Use Code in effect on August 28, 2023. The greenways depicted on the master plan shall be open to the public from the daylight hours of dawn to dusk once completed with appropriate security, such as gates and protective features, to protect the campus during the hours after dusk and before dawn.

8. The intention is to preserve and renovate the Manor House, subject to renovation, maintenance, and operating costs, the availability of financial resources, and future ownership. The Manor House, originally known as "intheoaks" and also known as "In the Oaks," is a 24,400 square foot, 67 room English Tudor styled mansion built in the 1920s containing a large formal hall, large kitchen, gymnasium, guest bedrooms, meeting areas and a classroom. In addition to established prior uses, the Manor House may be used for all uses set forth in Section 4.7.12.2A. and all of the special uses set forth in Section 4.7.12.2B of the Town's Land Use Code in effect on August 28, 2023, as a matter of right except as parking decks, stadium or coliseum, which shall be special uses. Nothing herein shall waive or modify the college's right to any lawfully existing uses or nonconforming uses of the Manor House.

9. Open space may include passive and active features such as parks, pedestrian and bike trails, regional trails, amenitized stormwater facilities (internal or external to the facility), existing streams and buffer yards, landscape areas, greens, plazas, sidewalk areas where seating is available, greenhouses, orchards, community gardens, tree save areas, and similar areas, including without limitation the existing pedestrian and non-motorized bicycle greenway along the southern border of the campus and the new Tomahawk Branch Loop Trail. Open space for the overall campus is cumulative and will be calculated by the college and provided to the town for each permit application submitted to the town for review and approval under Section 2.1.4 of the Town's Land Use Code in effect on August 28, 2023.

10. Principal buildings should be placed to present a front or side facade to all public and private streets when feasible. All buildings adjacent to public or private streets shall face upon the street

with an entrance and have architectural features such as, but not limited to, windows, banding, medallions, or design features or materials that will be provided to avoid a sterile, unarticulated blank treatment of such walls. Solid waste containers (at the cost of the college) shall be located to the rear or side of such buildings and appropriately screened from streets.

11. Building and other site elements will be located and arranged to promote pedestrian scale, enhance the streetscape realm, and provide walkability within the campus for students, faculty, and staff. To this end, resident halls (maximum of 4) on the campus shall not exceed four stories at a maximum height of 65 feet, and the gymnasium building and the two academic buildings, one of which is the cybersecurity facility shall not exceed 55 feet maximum height. All other buildings depicted on the master plan shall not exceed the height regulations of the ICD. Height measurements are to be performed in accordance with Section 4.5.2 [of] the Town's Land Use Code in effect on August 28, 2023, with any rooftop mechanical equipment to be screened from ground level view.
12. Signage, as allowed by the Town's Land Use Code in effect on August 28, 2023, may be provided.
13. All exterior wall and pole lighting in vehicular and loading areas will be semi cut-off or full cut-off type lighting fixtures pedestrian-scale, lower, decorative lighting and should be installed along sidewalks and at building entryways.
14. The primary vehicular access from Blue Ridge Road should be enhanced with elements such as ornamental landscaping, low-level decorative walls, monument-type signs, and decorative paving to emphasize site access locations.
15. The 2- acre parcel at the northwestern corner of the campus adjacent to Blue Ridge Road and existing light industrial uses may be developed and used for any use which is accessory (customary, incidental and subordinate) to the college, or any of the uses permitted in the ICD in effect on August 28, 2023, district. By way of illustration (and not limitation) this parcel may be developed and be used as a welcome center or other facility for the benefit of the college and convenient for students, parents of students, faculty, and other college employees. The use will be customary, accessory and subordinate to the college or the campus when it furthers the college's mission or enhances the live, work, learn, play function of the campus. The use shall not be required to exclude members of the general public.
16. Subject to existing conditions and structures and the layout of internal private streets as shown on the master plan, where the campus adjoins existing residential development, the buffer shown on the master plan shall be maintained of a minimum of 100 feet and include screening by existing or enhanced landscaping, natural vegetation, landscaped berm, topography, fence or wall. Bicycle and pedestrian access, stormwater management, and signage, all as approved by the town, may be located within the buffer.
17. Except as provided on the master plan or these rezoning conditions, the college shall comply with all other applicable ordinances or regulations within the Town's Code of Ordinances, including Appendix A Land Use Code, that are in effect as of August 28, 2023, unless otherwise agreed to by the town and college or as otherwise provided in N.C.G.S. § 160D-108(c) or (d). This includes, but is not limited to, the town's storm water ordinance regulations, the Town's Flood Damage Prevention Ordinance and the Town's Fire Code.
18. Recognizing the master plan is a long-range plan guiding and controlling development of the campus, the town and college may in the future negotiate and agree on a development agreement in accordance with the requirements of the North Carolina General Statutes. In the event the town approves a development agreement with the college, the college will have a vested right to complete the Campus for the period specified in the development agreement. Should the parties not enter into a development agreement, the master plan including the

rezoning conditions is a site-specific vesting plan and multi-phase development of at least 25 acres under Section 1.9.1 of the Town's Land Use Code in effect on August 28, 2023. Pursuant to section 1.9.1F, the master plan vests a right to complete the campus pursuant to the town's ordinances in effect on August 28, 2023 for no less than five years from approval of the master plan by the town or no less than seven years from the date the site plan for the initial phase of the development is approved by the planning board, whichever is longer (the "vesting period") and the college, if necessary, may seek extension of development permits or approvals as provided under section 1.9.1H. Provided, however, nothing herein shall restrict or limit vesting protections afforded incomplete developments or nonconforming uses in N.C.G.S. § 160D-108 or under common law. The vesting rights provided by the Town's Land Use Code in effect on August 28, 2023, are in addition to common law vesting, statutory vesting and permit choice statutes adopted by the North Carolina General Assembly, including without limitation Article 10 of Chapter 160D of the North Carolina General Statutes authorizing formation of development agreements. To the extent vesting rights provided by the Town's Land Use Code, in effect on August 28, 2023, are different than vesting and permit choice rights under North Carolina law, the law that provides the longer vesting right shall apply.

(Ord. No. O-23-22, (Att. App. A), 5-13-2024)

SECTION 4.8 OVERLAY DISTRICTS

4.8.1 Wellhead protection overlay.

4.8.1.1 Purpose and intent. The wellhead protection overlay district promotes the health, safety and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of Black Mountain; preserves and protects the public, municipal water supply for the Town of Black Mountain; conserves the natural resources of the town; and prevents temporary and permanent contamination of the environment.

4.8.1.2 Scope. The wellhead protection overlay district consists of aquifers or recharge areas which are delineated on a map entitled "Wellhead Protection Districts, Town of Black Mountain," dated 8-9-99, as the same may be amended from time to time. This map is hereby made a part of the town zoning regulations and is on file in the office of the zoning administrator.

4.8.1.3 District boundary disputes.

A. If the location of the district boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the board of adjustment. Any application for a special permit for this purpose shall be accompanied by adequate documentation.

B. The burden of proof shall be upon the owner(s) of the land in question to show where the bounds should properly be located. At the request of the owner(s), the town may engage a professional engineer (civil or sanitary), hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner for all or part of the cost of the investigation.

4.8.1.6 Use regulations.

A. *Permitted uses.* The permitted uses, bulk and yard requirements within the wellhead protection overlay shall be those of the underlying zoning district, except as modified in subsection B.

B. *Special use permit required.* The following uses and structures which pose known groundwater contamination threats are permitted only upon issuance of a special use permit pursuant to the requirements of section 7.12:

1. Use or production of hazardous substances in industrial, processing, manufacturing or commercial operations;
2. Any waste treatment or disposal activity requiring a permit under any of the following state regulations:
    a. 15A NCAC 1E, Oil Refining Facility Permits;
    b. 15A NCAC 2H.0100, Point Source Discharges to Surface Waters;
    c. 15A NCAC 2H.0202, Waste Not Discharged to Surface Waters, including waste lagoons, spray and infiltration systems, and the land application and subsurface disposal of wastes, but excluding sewer system extension lines.
    d. 15A NCAC 5B, Mining: Mineral Resources;
    e. 15A NCAC 5D, Oil and Gas Conservation;
    f. 15A NCAC 13A, Hazardous Waste Management Permits;
    g. 15A NCAC 13B, Solid Waste Management Permits, primarily landfills;
3. Animal feed lots;
4. Automobile junkyards;
5. Battery recycling and reprocessing;
6. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within six feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the U.S. Geological Survey, except for excavations for building foundations, roads, or utility works;
7. Impervious surfaces covering more than 15 percent of the lot;
8. Industrial and commercial uses which discharge processed wastewater on-site;
9. Manufacturing and production of paving, roofing, and other construction materials, using asphalt- and petroleum-based coating and preserving materials;
10. Primary and secondary metal industries that manufacture, produce, smelt, or refine ferrous and non-ferrous metals;
11. Retail gas stations and truck stops;
12. Septic tanks, unless used only for domestic waste and pumped out at least once every five years and are 1,200 gallons or less in size;
13. Storage of animal manure unless covered or contained in accordance with the specifications of the United States Natural Resources Conservation Service;
14. Storage or application of restricted use pesticides;
15. Wood-preserving operations using formulations of Chrome-Copper-Arsenate (CCC), penthachlorophenol (PENTA), creosote and related chemicals;
16. Underground storage tanks, unless equipped with secondary containment structures.

C. *Use list not exhaustive.* The uses prohibited pursuant to subsection B. represent commonly occurring uses that pose known risks of contamination to groundwater. If a proposed use is known to pose similar risks of groundwater contamination.

D. *Changing technology.* The uses prohibited by this district are prohibited based upon the combined pollution experience of many individual uses, and the technology generally employed by that class of uses, that causes the uses as a class to be groundwater pollution risks. As the technology of identified uses classes changes to non-risk materials or methods, upon petition from such a use, and after conferring with expert geological and other opinion, it is the intention to delete uses from the prohibited list, or allow them conditionally, those which demonstrate convincingly that they no longer pose a pollution hazard.

E. *Limited exemptions.* The following activities or uses are exempt from the provisions of this section:

1. The transportation of any hazardous substance through a wellhead protection overlay district, provided the transporting vehicle is in transit;
2. The use of any hazardous substance solely as fuel in a vehicle fuel tank or as lubricant in a vehicle;
3. Retail sales establishments that store and handle hazardous substances for resale in their original unopened containers.
4. Office supplies that are used solely for the operation of on-site administrative offices, provided such supplies are prepackaged in a form ready for use.
5. Hazardous substances which are packaged for personal or household use and present in the same form and concentration as packaged for use by the general public. The aggregate inventory of such substances shall not exceed 100 gallons or 800 pounds at any time.

F. *Requirements for existing prohibited uses.* All uses and structures specifically prohibited in subsection 4.1.7.6.B. may continue beyond the effective date of this ordinance only if, within 90 days after the effective date of this ordinance, the mayor and town council approve an operating and monitoring plan for each prohibited use or structure.

4.8.1.7 Plan submission and approval.

A. *Site plan requirements.* The following materials or information shall be provided on the site plan when it is submitted to the zoning administrator for review:

1. The location of public water supply wells within 1,000 feet of the site.
2. The location of adjacent (within 200 feet of a property line) private drinking water supply wells.
3. A complete list of the types and volumes of all hazardous substances (including fuels) used, stored, processed, handled or disposed, other than those volumes and types associated with normal household use.
4. Description of types of wastes generated and method of disposal including: solid wastes, hazardous wastes, sewage and non-sewage wastewater discharges.
5. Provisions for management of stormwater runoff.

B. *Operating and monitoring plan requirements.* At a minimum, an operating and monitoring plan (or "plan") shall contain the following elements, for approval by the town council:

1. General information.
2. Name, title and address of owner of the land on which the prohibited use or structure is located.

3. Name, title and address of the operator, authorized agent or other responsible person if different from the owner of the land.
4. Name of the business.
5. Address of the prohibited use or structure.
6. Type of facility, operation or site.
7. Size of the prohibited use or structure, including, where applicable, lot acreage, square footage of any buildings, number of employees, etc.
8. Operating or performance standards.
9. The plan must specify under what standards the prohibited operation, facility or site will be operated or performed. These standards must ensure that all possible efforts are made to reduce the likelihood of contamination of the groundwater supply.
10. If any state or federally promulgated environmental protection standards exist for a particular site, industry, business, facility or operation, then the plan must specify what those standards are, and how they will be implemented.
11. If no state or federally promulgated standards exist, or in addition to such standards, the plan must indicate what the most current best management practices (BMP) are for that particular site, industry, business, facility or operation and how those best management practices will be implemented.
12. Monitoring provisions.
13. If state or federal laws, rules or regulations require groundwater monitoring by a particular site, industry, business, facility or operation then the plan must specify what those requirements are and how they will be implemented.
14. If no state or federal laws, rules or regulations require groundwater monitoring by a particular site, industry, business, facility, or operation, then the plan must specify by whom, by what method, where and how frequently the groundwater under the property will be monitored.
15. Reporting schedule.
16. The owner/operator of any prohibited use or structure shall submit a report to the zoning administrator annually summarizing the monitoring results for the year, including any contamination that may have occurred and the remedies that were undertaken to protect the groundwater.
17. No annual report is required for septic tanks or impervious surfaces located within wellhead protection overlay districts. These uses will be allowed to continue indefinitely, although no future expansion will be allowed, provided that the other requirements of this section are met.
18. Performance bond. The owner/operator of any prohibited use or structure is required to engage an accredited performance bondsman to ensure complete compliance with the terms of the approved operation, monitoring and amortization plan. The plan must specify the name and address of the bondsman, as well as the amount of the insurance obtained.
19. Other requirements. Additional requirements may be imposed if further protection of the town's groundwater supply to the public well system is warranted, including groundwater monitoring beyond the amortization period specified in the plan. Factors which shall be considered include but are not limited to the toxicity of the substance, the amount of the substance, proximity of the condition to the well, soil conditions, topography and other factors pointing to the degree of risk posed to the public water supply.

C. *Approval process for operating and monitoring plans.*

1. Plan submission. The owner or developer shall submit ten copies of the operating and monitoring plan to the public works director for consideration by the town council.
2. Plan review. The public works director shall review the operating and monitoring plan and prepare a recommendation for the town council, based on the plan's compliance to the regulations specified in this ordinance and the potential threat to the town's public water supply. The recommendation shall be made within 30 calendar days of the plan's submission date.
3. Before approving an operating and monitoring plan, the town council shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

   (a) Staff shall prominently post a notice of the public hearing on the site of the proposed area or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed area and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

4.8.2 Flood damage prevention overlay (flood insurance rate maps).

This overlay district is established to prevent hazards within the floodplain as designated on the flood insurance rate maps (FIRM) as the same may be amended from time to time, which are hereby adopted by reference and incorporated herein. Regulations for this district are found in chapter 2.3 of this LUC.

4.8.3 Historic district and historic district overlay.

4.8.3.1 Purpose and intent. The historical heritage of our town is one of our most valued and important assets. The preservation of historic districts and landmarks stabilize and increase property values in their areas and strengthen the overall economy of the town. The purpose of establishing local historic districts and landmarks is to encourage the restoration, preservation, and rehabilitation of historically, architecturally, and archaeologically significant areas, structures, buildings, sites, objects and their surroundings, and to review new construction design to ensure compatibility with the character of the district and to safeguard against any potentially adverse influences which may cause the decline, decay, or total destruction of these important assets. In addition, the preservation of the historic districts and landmarks provides for the education, pleasure and enrichment of the residents of Black Mountain and the state as a whole.

4.8.3.3 Designation of historic districts. All locally designated Historic Districts and Historic Landmarks shall be a part of the Historic Overlay District. The town council may adopt, amend, reject or repeal ordinances designating historic districts when adoption or amendment is pursuant to the following procedure:

A. An investigation and report describing the historical, architectural, or archaeological significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and the description of the boundaries of such district has been prepared; and

B. The North Carolina Department of Cultural Resources, acting through the state historic preservation officer or his or her designee, shall make an analysis of and recommendations concerning such report and description of proposed boundaries Failure of the department to submit its written analysis and recommendations to the town council within 30 calendar days after a written

request for such analysis has been received by the department of cultural resources shall relieve the town of any responsibility for awaiting such analysis, and the town council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

C. Historic districts shall consist of areas, which are deemed to be of special significance in terms of their history, prehistory, architecture and/or culture, and to possess integrity of design, setting, materials, feeling, and association. The area, buildings, structures, sites, or objects shall be significant elements of cultural, social, economic, political, or architectural history of the town or of the archaeological history or prehistory of the town. The preservation of such a district will provide for the education, pleasure and enhancement of the quality of life of all residents of the town.

D. The town council shall designate the boundaries of an historic district in accordance with the procedures set forth in the Town Code of Ordinances, amendments of the Black Mountain Zoning Ordinance and N.C.G.S. §§ 160D-601 and 160D-944.

E. Following the town council designation and approval an historic district, the area so designated shall be labeled "HD" on the official zoning map.

4.8.3.4 Certificates of appropriateness required.

A. No exterior portion of any building or structure in the historic district (including masonry, walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the historic preservation commission. Such a certificate is required to be issued by the commission prior to the issuance of a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purpose and intent for which this district is established. A certificate of appropriateness shall be required whether or not a building or other permit is required.

B. Application for and consideration of certificates of appropriateness shall be made pursuant to the requirements of section 1.8 of this Land Use Code.

C. For purposes of the application for and issuance of a certificate of appropriateness, "exterior features" shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. Exterior features may also include historic signs, color and significant landscape, archaeological and natural features of the area. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size and location of all such signs.

D. Jurisdiction of the commission over interior spaces is limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks and of privately owned historic landmarks for which consent for interior review has been given by the owner.

E. The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town of Black Mountain and all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating any changes in the character of street paving, sidewalks, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the State of North Carolina, the Town of Black Mountain or public utility companies or for construction, alteration, moving or demolition within the historic district; provided, however, that no certificate of appropriateness shall be required for ordinary maintenance or repair, including the following:

1. Underground utilities, except where archaeological finds or sites are uncovered;
2. Extension or upgrading of service to customers for equipment such as meters, valves and cleanouts;
3. Changes in type or amount of mechanical equipment such as interfaces, transformers or traffic-control devices on existing overhead lines, poles or ground-mounted installations;
4. Deletion or replacement of poles of standard material and height, not to exceed 37 feet;
5. Addition or deletion of fire hydrants;
6. Routine replacement of street signs;
7. Any upgrading of facilities to comply with National Electrical Safety Code (NESC) requirements;
8. Addition of equipment on existing lines or poles;
9. Replacement of existing overhead lines, poles or ground-mounted installation.

4.8.3.5 Land use, interior arrangement, maintenance, emergency repairs not considered.

A. Regulations governing the historic district overlay shall not be construed to prevent a property owner from making any lawful use of his or her property.

B. The ordinary maintenance or repair of any exterior architectural feature of a landmark, or in the historic district (HD) which does not involve a change in design, material, or outer appearance thereof, shall not be prevented by the requirements pertaining to the designated landmark or historic district.

C. Nothing in this article shall be construed to prevent (a) the maintenance or (b) in the event of an emergency, the immediate restoration of any existing above-ground utility structure without approval by the commission or the ordinary repair of streets, sidewalks, pavement markings, street signs, or traffic signs.

D. The construction, reconstruction, alteration, restoration, moving or demolition of any exterior architectural features, which the town building inspector or similar official shall certify is required for public safety because of an unsafe or dangerous condition, shall not be prevented by the requirements pertaining to the landmark, or the historic district.

4.8.4 Reserved.

4.8.5 Fire district overlay.

4.8.5.1 Statutory authorization and enactment. In accordance with the requirements of N.C.G.S. § 160D-1128(B), the Town of Black Mountain hereby establishes a primary fire district.

A. Primary fire district defined. The primary fire district shall be as defined within the legal description set forth herein below. In addition, a map of the affected property, based upon the aforementioned legal description, is available for inspection in the office of the Town Clerk in the Black Mountain Town Hall and in the Black Mountain Planning and Development Department.

B. For the purposes of this section, the primary fire district shall be described as follows. Primary fire district. Beginning at the intersection of the centerlines of East State Street and Richardson Boulevard; thence running southeasterly along the centerline of Richardson Boulevard to a point where it intersects with the centerline of Sutton Avenue; thence southwesterly along the centerline of Sutton Avenue to the intersection of the centerlines of Sutton Avenue and N.C. Highway 9; continuing southwesterly along the centerline of Sutton Avenue to where it becomes the centerline of South Dougherty Street; thence northwesterly along the centerline of South Dougherty Street to its intersection with the centerline of

West State Street; thence northeasterly along the centerline of West State Street to its intersection with the centerline of Church Street; thence northwesterly along the centerline of Church Street to a point in the centerline of Church Street at the location where it would intersect with the extended southern boundary line of property being identified with Parcel ID# 061936020000000 and described in Deed Book 5703 at Page 1047 in the Office of the Register of Deeds for Buncombe County, thence northeasterly to the northeastern corner of said property; thence westerly with the northern boundary of said property and the southern boundary of property identified with Parcel ID# 061936039000000 and described in Deed Book 5665 at Page 1604 (a ½ undivided interest) and in Deed Book 5670 at Page 1426 (a ½ undivided interest) in the Office of the Register of Deeds for Buncombe County; thence northwesterly with the western boundaries boundary of said property and the property identified with Parcel ID# 061936033900000 described in Deed Book 5597 at Page 777 in the Officer of the Register of Deeds for Buncombe County to the northwest corner of the last identified property; thence northeasterly with the northern boundary of said property to the centerline of Montreat Road; thence southeasterly along the centerline of Montreat Road to a point where it intersects with the centerline of East State Street; thence northeasterly along the centerline of East State Street to its intersection with the centerline of Richardson Boulevard, being the point and place of beginning.

4.8.5.2 Purpose and intent. This primary fire district overlay is established to provide standards for the construction, alteration, and repair of buildings and structures located within, erected within, or moved within or into the primary fire district from another location. The construction and maintenance requirements set forth herein are consistent with North Carolina General Statutes; the latest North Carolina Edition of the International Building Code, as currently enforced within the State of North Carolina and the Town of Black Mountain; and, professionally recognized practices designed to produce a reasonable level of life safety and property protection from fire hazards in premises that are located, or capable of being located, within close proximity to one another.

4.8.5.3 Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Additional required protection features. Fire suppression equipment that is installed in a structure that is designed to lessen the exposure to potential fire damage. Such equipment shall include, but shall not be limited to, automatic fire protection systems and automatic alarm systems, or other properly engineered and approved features that provide increased levels of protection equal to or exceeding automatic fire protection.

Heavy timber construction. A type of construction in which the exterior walls are made of noncombustible materials and the interior structural building elements are of solid or laminated wood. To be considered to be heavy timber construction, supporting wood columns and roof framing shall not be less than six inches in width and eight inches in depth while floor framing members shall not be less than six inches in width and ten inches in depth.

Increased fire hazard. An increase in the volume of combustible material contained in the erected, repaired, altered, or moved structure that is not otherwise offset by the installation of additional required protection features; or, changes in the building features that allow increased communication of fire from one building to another (such as increasing the number of openings in exterior walls).

Reasonable routine maintenance. Replacement of existing portions of the structure with like materials so as to avoid deterioration, or further deterioration, of the structure.

Repair or *alteration.* Repairs or alterations to a building that exceed reasonable routine maintenance; that exceed 50 percent of the current value of the building; or, that change the exterior finish, exterior configuration, number of openings in exterior walls, or the footprint of the building. This does not include emergency repairs needed to secure the building from water, storms, or unauthorized access. For the purposes of this definition the current value of the structure shall be interpreted to be the assessed tax value

of the structure as listed by the Buncombe County Tax Office or, as determined by a certified appraisal, before the improvement is started. If the structure has been damaged and is being repaired, the value of the structure shall be interpreted to mean the value before the damage or destruction occurred.

Wood or *frame structure.* A type of construction whose primary structural elements are formed by a system of repetitive wood framing members. For the purposes of this ordinance wood or frame structures shall not include heavy timber, metal frame, or masonry construction where the exterior walls are composed of noncombustible materials that support the roof load. Noncombustible veneer facades attached to exterior walls are not considered to be noncombustible exterior walls.

4.8.5.4 Permit required. No activity regulated by the provisions of this section shall commence until such time as a permit is issued by the building inspector.

4.8.5.5 Primary fire district regulations.

A. *Enforcement of building and fire codes.* All buildings and structures erected, repaired, altered, or moved within or into the primary fire district shall comply with the provisions of the North Carolina edition of the most current International Building and Fire Code, as currently enforced within the State of North Carolina and duly adopted and enforced within the Town of Black Mountain.

B. *Wood or frame structures allowed.* In accordance with G.S. 160D-1128(C), no wood or frame building or structure may be erected, repaired or altered, or moved into or within the limits of the primary fire district except in accordance with the procedure set forth below.

1. The proposed construction activity will not contribute to an increased fire hazard.
2. Permit approval process. Upon receipt of the required application, the building inspector shall circulate a copy of all application materials to the fire marshal for review and comment.
3. Following receipt of written comments from the fire marshal, the building inspector shall approve or deny said application. If the application is approved, it shall be transmitted to the town council for review. If the building inspector denies the issuance of a permit, the reasons for such denial shall be set forth in writing, a copy of which shall be transmitted to the applicant.
4. If the town council approves the application, it shall be then forwarded to the office of the insurance commissioner for the State of North Carolina for review. If the town council denies the issuance of a permit, the council shall instruct the town clerk to prepare, for the signature of the mayor, an order specifying the reasons for the denial. A copy of the order of denial shall be forwarded to the applicant. Upon notification of denial, the applicant may appeal the decision of the town council in accordance with the regulations set forth below.
5. Once both the building inspector and the town council have approved the application locally, said application is forwarded to the North Carolina Commissioner of Insurance (or designee) for review.

C. *Appeals procedure.* Appeals from any adverse decision made on the part of either the building inspector or the town council with regard to the enforcement of the primary fire district regulations may be taken to the commissioner of insurance (or designee). Said appeal may be made by filing a written notice concurrently with the office of the commissioner of insurance for the State of North Carolina and with the Town of Black Mountain Building Inspector within a period of ten days following the issuance of any order, decision, or determination.

(Ord. No. O-23-16, 9-29-2023)

4.8.6 Pedestrian master plan overlay.

4.8.6.1 Purpose and intent. The pedestrian master plan overlay district is established to: fulfill the comprehensive plan goal of making Black Mountain "one of the most walkable communities in the region;" implement the adopted pedestrian master plan; provide safe and convenient pedestrian and wheelchair access throughout town and in particular to connect residential areas with commercial and employment areas; promote inter-modal transportation and support transit; and maintain the small-town feel and traditional character of the town.

4.8.6.2 Establishment of the overlay. This overlay district is established with adoption and any subsequent updates of the town's pedestrian master plan map.

4.8.6.3 Regulations.

A. Sidewalks are required for all development projects which fall in the following categories:

1. Construction of new commercial, office, institutional, and mixed-use structures that abut existing or proposed public roadways;
2. Renovation or expansion of any existing commercial, office, or institutional structure that abuts a public roadway where the renovation or expansion results in an increase of more than 50 percent of the value of the structure;
3. All new residential major subdivisions of ten or more single-family homes;
4. All new multi-family residential subdivisions of ten units or more;
5. All new development pursuant to a special use permit;
6. All new streets, improved streets or extension of streets required by the town subdivision ordinances, or special use permit.
7. As a requirement of the district in which the project is located.

B. Wherever a property abuts a proposed greenway alignment, the development plan for that property must allocate right-of-way for future construction, or may utilize greenway construction to meet pedestrian access requirements or to offset fees required in lieu of sidewalk construction (see paragraph C. below). Allocated right-of-way for the purpose of greenways may be used to fulfill open space requirements for major subdivisions and special use permits (see also chapters 3, 5, and 7).

C. Notwithstanding the conditions of a special use permit, a developer may choose to request a waiver for construction of sidewalk and pay a fee in lieu of actual construction as long as the following conditions are met:

1. The applicable project area, including the street frontage, is not identified as a needed pedestrian linkage within the pedestrian plan or other adopted transportation or corridor plan, including but not limited to the transportation improvement program (TIP), or greenway master plan, or are granted approval for a waiver by the town council.
2. To grant a waiver for sidewalk construction, the town council must find that:
    a. Such facilities are not in harmony with surrounding uses; or
    b. That a sidewalk in that location is unfeasible due to special circumstances, including but not limited to impending, road widening or improvements, significant street trees, or severe roadside conditions or slope which would prohibit sidewalk construction.

3. The developer must provide a recorded easement, if necessary, for the future development of the sidewalk or greenway in accordance with the adopted master plan. The developer wherever practical shall grade for the future development of a sidewalk.

4. Fees shall be based on the construction cost for a five-foot concrete sidewalk surface for the linear footage of property adjacent to the public roadway.

D. All sidewalks shall be constructed in accordance with the standards of the Town of Black Mountain and shall be reviewed by the public works director.

4.8.6.4 Use of fees collected in lieu of construction. All fees collected by the town pursuant to these provisions shall be accounted for separately from other monies, and shall be expended only for the construction or rehabilitation of sidewalks or other pedestrian improvements in the same general area as the development is located as determined by the town council at the time of the request.

4.8.7 US70 corridor overlay.

4.8.7.1 Purpose and intent. US Highway 70 serves as the primary entrance, or "gateway," and thoroughfare through town. The US70 corridor overlay preserves and encourages the beautification of this corridor to promote economic development and investment along the US70 corridor; promote automobile, bicycle and pedestrian safety along the US70 corridor; implement selected recommendations from the US70 corridor study; promote inter-modal transportation and support transit; and maintain the small-town feel and traditional character of the town.

4.8.7.2 Establishment of the overlay. This overlay district is established over properties and uses immediately adjacent to the US70 corridor through the jurisdiction of Black Mountain, with the exception of the central business district and the industrial districts (HI-0 and LI-8). Unless explicitly stated otherwise within the regulations of the overlay, all other regulations of the underlying zoning district shall apply.

4.8.7.3 Regulations.

A. *Building orientation, form and setback in relation to US70.*

1. Buildings adjoining the US70 right-of-way shall be no more than 50 feet from the curb and gutter of US70 as a maximum setback unless part of a special use permit.
2. Buildings adjoining the US70 right-of-way shall be designed so that the building is oriented to the roadway. Buildings must have a minimum of one primary entrance opening directly toward the street and connect to the public sidewalk either directly or by a walkway or other facility such as an arcade, patio, or stairs and ramp that accommodates pedestrians and wheelchairs.
3. Doors, glazed openings or windows, and porches are considered openings on the facade of a building. All ground level exterior walls directly facing US70, intersections, and/or other public streets shall have a minimum of 50% openings the length of the wall.
4. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes longer than 100 feet on their facades that are visible from the US70 thoroughfare. Building wall offsets, such as changes in materials, use of projections or awnings, recesses, and changes in floor level, shall be used in order to add architectural interest and variety and relieve the visual effect of a single, long wall.
5. Changes to the roofline (such as a staggered parapet or other articulation on the roofline facing the street) shall be provided every 100 feet to meet this requirement and to lend architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof. Structural signage of similar material to the building and attached to the building may be used to meet this requirement.
6. Unless as part of a special use permit, parking areas shall be in the side or rear of the primary structure on the lot to the greatest extent practicable. The exemption to this requirement is handicapped parking spaces or parking areas providing less than 20 spaces which may be located in the front buildings.
7. All site plans shall design landscaping along the front of the building or parking lot adjacent to the right- of-way and in accordance with the town's landscaping regulations.

B. *Access management and property ingress and egress.*

1. All sites shall be developed in accordance with "access management" principles. Access management is the implementation of design practices intended to address organized and controlled traffic movement to minimize traffic conflict, provide efficient traffic flow, and to provide a more pedestrian-friendly development pattern. Access management should address the location and design of public street and driveway connections to the primary roadway, as

well as promote site design that minimizes the total number of connections needed throughout the corridor.

2. In order to minimize traffic conflicts at intersections, property ingress/egress shall be a minimum of 100 feet from intersections of US70 and public roads. If the property frontage is situated in such a way or is not long enough to accommodate this requirement, then the driveway shall be as far from the intersection as possible.

3. Along US70, parcels may have a maximum of one curbcut for two-way traffic or two curbcuts for one-way traffic onto the US70 corridor. Curbcuts shall be a maximum of 25 feet for a two-way driveway, or 30 feet if driveway is to be used for truck traffic of more than two axels, or a maximum of 20 feet for one-way driveways.

One-way driveways shall be separated by a curbed median or planted area of minimum ten feet in width and include pavement markings with directional arrows to indicate traffic direction. Signage may be placed within this median as long as it does not interfere with the line of sight of motorists or the NCDOT right-of-way.

4. Adjacent properties with parking lots greater than 15 spaces shall be connected and share driveways and establish joint-access agreements. Joint parking can be utilized to meet minimum parking requirements of the town. Adjacent parking lots of greater than 15 spaces are required to have interior connections to allow traffic flow within parking areas.

5. Service entrances and alleys may be developed in addition to other driveways. Shared use and joint access to service entrances and alley ways is encouraged among multiple businesses and developments. Such alleys shall be located in the rear of buildings and should connect to side roads wherever possible.

6. Where possible, driveways on corner lots should utilize side streets to funnel traffic toward three and four-way intersections that may be governed by stoplights.

7. In addition to other pedestrian requirements provided in the pedestrian overlay, sidewalks are required along US70 the length of property frontage and must be a minimum of five feet in width with a minimum two-foot buffer between the sidewalk and the back of curb.

8. All curb-cuts and driveways shall include pedestrian markings of zebra stripes, textured asphalt stamping, or brick pavers or other material that visually designate the pedestrian thoroughfare and connects to the sidewalk.

C. *Loading and storage areas.*

1. All loading and storage areas shall be located to the side and/or rear of all principle structures, except single-family or duplex residential structures, fronting the highway corridor. For corner lots, the side of the lot facing the more major thoroughfare shall be considered the front yard for the purpose of this requirement.

2. All dumpsters shall be screened from any adjacent roadways and shall be located in the side or rear of buildings and comply with screening requirements (see section 4.4.6).

3. Mechanical equipment, utility meters, storage areas, trash enclosures, transformers, generators or other utility hardware attached to or on the building or ground shall be screened from the US70 roadway with materials similar to the structure, or be located so as not to be visible from public view from US70.

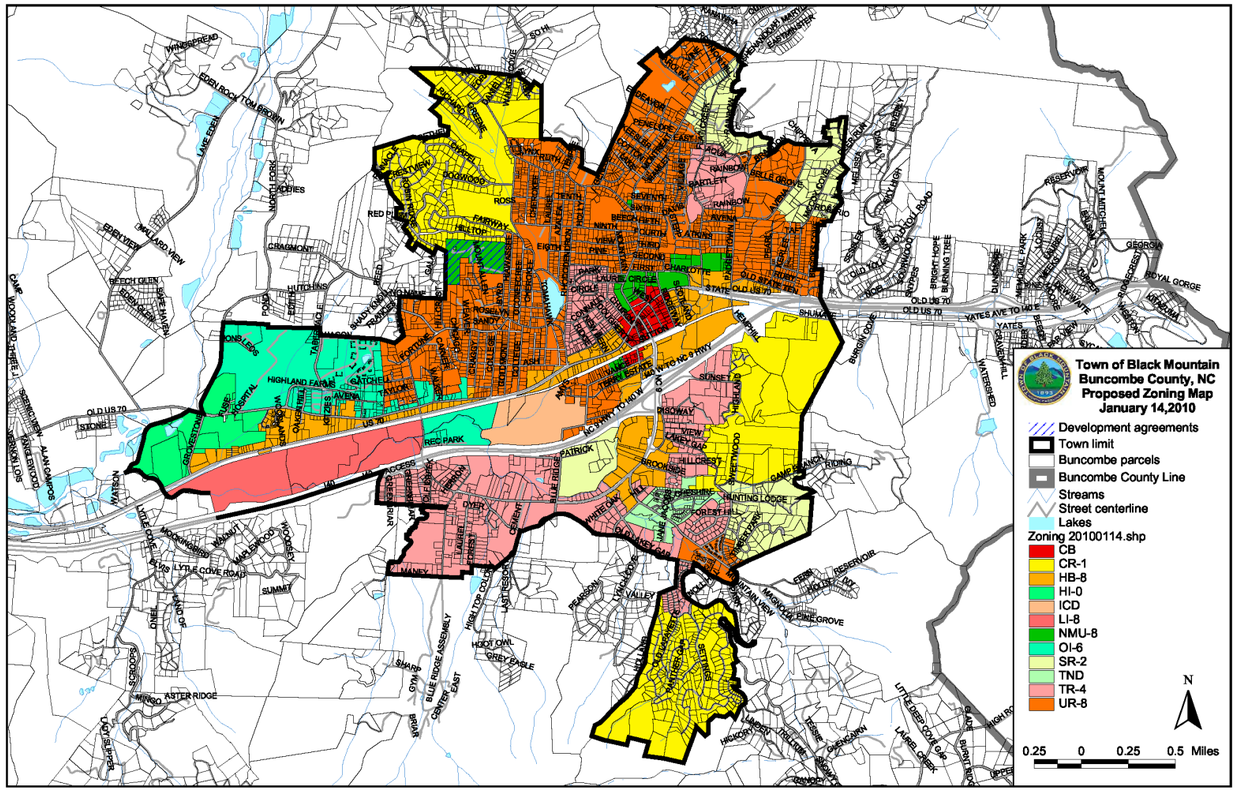
D. *Signage.*

1. All free-standing signage as allowed in the town's sign regulations, must be of monument style and incorporate some non-metal materials such as wood, brick or stone into the structure. Such signs

may be lit through the use of external or internal sources only in accordance with the town lighting regulations (see chapter 9) and shall not exceed 12 feet in height.

E. *Parking areas and requirement reduction incentives for tree preservation and bicycles.*

1. When parking lots abut the sidewalk adjacent to US70, a planted buffer area of average of six-feet-wide, and a minimum of three-feet-wide is required to separate the sidewalk from the parking lot. The buffer shall contain continuous landscaping of shrubbery and/or flower beds, or plantings. Where a parking lot abuts the sidewalk along US70 for a length of more than 200 linear feet, then a break in the landscaping and a pedestrian connection to the parking area is required.
2. Town parking requirements may be decreased according to one or more of the following criteria within the overlay district:
    a. Two to four parking spaces may be waived in exchange for the preservation of one established tree of 24 inches diameter or greater within a parking lot, up to 20 spaces in exchange for established trees per acre. The "Tree Protection Zone" is a minimum area equal to the area of a circle having a radius in feet equal to the tree diameter in inches (24-inch diameter of tree would require a 24-foot radius area). A tree protection zone must be incorporated into the site plan and preserved throughout construction. This area may serve more than one tree as long as the protection zone is adequately designated and maintained. These protected areas for larger trees can count toward the landscaping and parking lot island requirement of the town.
    b. A developer may choose the option of replacing one automobile space with four bicycle parking spaces, (or two spaces for eight bicycle parking spots, or three for 12) up to a maximum of 16 bicycle parking spaces in place of four automobile spaces.
    c. A developer may share parking through a joint-use agreement with another business or entity or group of businesses/entities. The number of spaces required for that business shall be determined by zoning administrator based on a negotiated joint-use agreement among businesses and the projected combined parking needs of the businesses involved.


Town of Black Mountain
Buncombe County, NC
Proposed Zoning Map
January 14,2010
Development agreements
Town limit
Buncombe parcels
Buncombe County Line
Streams
Street centerline
Lakes
Zoning 20100114.shp
CB
CR-1
HB-8
HI-0
ICD
LI-8
NMU-8
OI-6
SR-2
TND
TR-4
UR-8
N
0.25 0 0.25 0.5 Miles

CHAPTER 5. ADDITIONAL USE STANDARDS FOR SPECIFIED USES

SECTION 5.1 PURPOSE

5.1.1 Purpose.

The Town of Black Mountain finds that there are certain uses that require specific additional standards to ensure compatibility with other uses and conformance to the town's comprehensive plan or other adopted plans. This chapter specifies requirements that must be met by each use listed as a "use permitted with additional requirements" in chapter 4 of this land use code.

SECTION 5.2 AGRICULTURE AND ANIMALS

5.2.1 Agriculture and animals.

A. The regulations of the land use code may affect property for agricultural purposes only as provided for in this section. This section does not limit regulation under this part with respect to the use of a farm property for non-farm purposes.

B. Agricultural purposes include the production and activities as defined in these regulations and by North Carolina State Statutes as "bona fide farms" and related or incidental to the production of crops, fruits, honey, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market, excluding hog products, whether or not the use is conducted on owned or leased property, and irregardless if agricultural products are used for personal consumption or sale.

C. Animal livestock and poultry operations, including horses, sheep, cows, goats, or llamas, must comply with the Buncombe County Animal Control Ordinance and meet the following requirements:

1. Maintain enclosures (corrals, fencing, paddocks) in good condition so that animals stay on property;
2. Protect perennial and intermittent streams from erosion and animal waste with stream exclusion systems, water delivery devices or other grazing management practices; and
3. Locate compost and feed storage areas at least 30 feet from property boundaries abutting residential uses and from perennial streams.
4. Maintain a 30-foot setback from the property line of an abutting residential use, for any structure, such as barns or stables but not including fencing.
5. Any lot used to maintain livestock shall be two acres or more. Livestock does not include fowl, such as chickens.
6. Not more than one animal unit shall be kept, maintained or stabled per 5,445 square feet (⅛ acre). For the purposes, of this section, one animal unit shall mean a goat, sheep, horse, cow, llama, alpaca, ostrich, or similar animal. Six chickens or similar poultry shall count as one animal unit.

7. The keeping of hogs is not permitted.

8. All livestock introduced onto a property where there is no pre-existing containment area (such as a fence, paddock, or enclosed pasture), except for chickens, shall be fenced so that they are no closer than 150 feet from an adjacent living unit. This shall not apply to residences constructed after the establishment of such livestock containment area. However, the containment area may not encroach further towards the newly established residence.

9. In residential and mixed-use districts, chickens are allowed but must be in an enclosed area in the side or rear yard, and any structures associated with the housing of chickens shall meet the accessory building requirements of this chapter. Roosters are only permitted in the industrial districts (HI-0 and LI-8) and CR-1 district.

10. This section shall not apply to cats, dogs, rabbits, or similar household pets.

D. In the CB, NMU-8, and UR-8 districts agricultural uses related to livestock and animal husbandry of any type, with the exemption of household pets or chickens, are prohibited. Properties with allowable agricultural uses not related to animals, must comply to setbacks, driveway standards, and other guidelines that are applicable within those districts.

E. Structures for storage of farm or maintenance equipment and supplies, and similar items associated with agricultural uses are permitted subject to the accessory structure setbacks for their respective zoning districts and shall not cover more than 30 percent of the total lot area.

F. Any greenhouse in any district other than the industrial (HI-0. LI-8) or highway-business (HB-8) districts shall be treated as an accessory building and shall meet the towns' zoning guidelines, setback and building requirements of the district in which it is located. Within the central business district a greenhouse may serve as an accessory structure and must be constructed of rigid materials. A greenhouse is only allowed as a primary structure in the HI-0, LI-8, or HB-8 districts and must comply with all other district requirements. All commercial greenhouses must receive a certificate of compliance and occupancy.

G. In all districts, regulations regarding flood hazard prevention, stormwater management, signage and lighting of the town shall apply to all agricultural uses.

SECTION 5.3 BOARDING AND ROOMING HOUSES

5.3.1 Boarding and rooming houses.

A. There shall be only one kitchen, a common dining room or study area, and no dining facilities or kitchens in the lodger's rooms where meals may be prepared and served.

B. Boarding or rooming houses exclude hotels, motels, group homes, bed and breakfast homes and bed and breakfast inns.

SECTION 5.4 DAY CARE CENTERS

5.4.1 Day care centers.

These requirements apply only to child and adult day care services providing care for more than six clients at a time.

A. Each day care shall be licensed or certified by the North Carolina Department of Health and Human Services required by state law.

B. Child day care centers shall provide a fenced outdoor play area. The fence shall not be less than four feet in height.

C. Day care centers shall provide locations for pick-up/drop off areas which do not impede traffic on town or state roads.

SECTION 5.5 FAMILY CARE HOMES

5.5.1 Family care homes.

In accordance with G.S. chs. 122C, 131D, and 160D, family care homes are deemed residential uses for zoning purposes subject to the following additional requirements:

A. Each family care home shall be licensed by the North Carolina Department of Health and Human Services as required by State law.

B. No family care home may be located within a one-half-mile radius of any other residential care home.

C. No exterior signage is permitted.

SECTION 5.6 HOME OCCUPATIONS

5.6.1 Home occupations.

A. Home occupations are permitted in all districts except in HI-0 where residential uses are considered a nonconforming use. However, within the HI-0 district, a home occupation may be integrated into a pre-existing residential structure in compliance with this chapter.

B. The home occupation must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling or the immediate neighborhood.

C. The intent of these regulations is to allow for home occupations throughout Black Mountain while minimizing the impact on neighbors and maintaining the same levels of noise, traffic, parking and other characteristics of the surrounding residential properties.

D. In no case shall any nonresidential use or home occupation consist of operations or conditions resulting in noise, odors, smoke, glare, dust, gases, excessive traffic, electrical or other radiation, or other characteristics of a type or to an extent which create a nuisance or hazard to adjacent or neighboring residential properties.

E. A home occupation conducted in an accessory structure shall be housed only in a garage or other accessory structure that meets the requirements of the building inspector.

F. No display of stock in trade which is sold on the premises shall be visible from outside the building. Catalog and internet products may be received and shipped from the premises to fulfill orders as long as goods, products or commodities are stored within the home or an accessory structure customarily found in a residential district.

G. There shall be no outdoor storage or visible evidence of equipment or materials used in the home occupation, unless the equipment or materials are of a type and quantity that could reasonably be associated with the principal residential use.

H. In residential districts, business identification or advertising signs are only permitted if they are attached to the primary or secondary structure and shall not exceed four square feet. All other signage must conform to the town sign and district regulations.

I. Off-street parking needed to accommodate the home occupation shall be provided onsite but shall not exceed four spaces.

J. In residential districts, delivery vehicles serving the home occupation shall be restricted to the hours of 9:00 a.m. and 5:00 p.m.

K. Adult day care homes and child care homes shall provide care to no more than five unrelated persons and shall require an annual certificate of occupancy or safety inspection to ensure adequate structure and fire safety as well as documentation certifying compliance with all state and federal standards.

L. No one who resides outside of the residence may work in the home.

M. Only vehicles used primarily as passenger vehicles will be permitted in connection with the conduct of the home occupation.

N. A home occupation housed within the dwelling shall occupy no more than 25 percent of the total floor area of the dwelling, not to exceed 500 square feet.

O. Home occupations shall complete a home occupation application that includes zoning verification.

SECTION 5.7 MANUFACTURED HOMES ON INDIVIDUAL LOTS AND EMERGENCY HOUSING

5.7.1 Purpose.

Because manufactured homes are built in the controlled environment of a manufacturing plant, are transported in one or more sections on a permanent chassis, and are built to the "HUD Code" which is a different standard that a module or stick-built home, these guidelines are established locally to ensure that manufactured homes will meter certain specifications that protect the health, safety and welfare of residents and to protect land values of adjacent properties.

5.7.2 General provisions.

A. The zoning administrator shall permit the temporary use of travel trailers, manufactured housing, building-code compliant structures for habitation, or other FEMA-approved shelters on individual lots under the following circumstances:

1. When fire, flood, other natural catastrophe, or a declared federal, state, or local disaster, makes an existing dwelling uninhabitable, as emergency housing for a period not to exceed one year.

    a. Upon submission of documentation from an aid agency, a unit of government, or a North Carolina-licensed contractor, that the repair or reconstruction of the dwelling will take more than one year, the zoning administrator may extend the time period for up to two additional years, with extension approval required at each one-year interval and with approval contingent on the submission of documentation from an aid agency, a unit of government, or a North Carolina-licensed contractor that the repair or reconstruction of the dwelling is ongoing and not complete.

2. During the active construction period of any single-family dwelling, as a temporary residence on the same lot by the owner of the lot for a period not to exceed 24 months or the active construction period, whichever is less.

3. During the active period of construction/installation of a manufactured home, as a temporary residence on the same lot for a period not to exceed six months or the active construction period, whichever is less.

4. During the active promotion of any residential subdivision or planned unit development, the zoning administrator may permit a manufactured home within the development to be used solely for the purpose of a temporary sales office for a period of up to 12 months. The manufactured home may not serve as a residence.

5. As part of a manufactured housing or "park home" sales or manufacturing business.

6. Building permit. Electrical, plumbing, driveway and/or utility permits may be required for emergency housing.

B. Manufactured homes used as residences on individual lots shall be considered principal uses for the purposes of the land use code and shall conform to the requirements of the district in which it is located.

C. Singlewide manufactured homes are permitted only if located within a manufactured home park as part of an approved special use permit or pre-existing park, or as a primary residence on a single-family lot, provided that the guidelines provided in subparagraph G [D] of this section are met

D. Manufactured homes shall adhere to the following guidelines:

1. Replacement units of existing manufactured housing must be of a newer model than the manufactured home it is replacing and must comply with the HUD Home Construction and Safety Standards.

2. The home must be a doublewide manufactured home or, if a singlewide, must be at least 16 feet in width and not exceed a length to width ratio of three to one (3:1).

3. The home shall have wheels, axles, transporting lights and towing apparatus removed within 15 days of placement.

4. The home must be placed on a permanent foundation or utilize skirting and underpinning that is constructed of materials that meet all existing requirements for manufactured homes as set forth in the state building code. All materials must be approved by the building inspector prior to installation.

5. The unit must have a shingled roof with a minimum pitch of one to three (1:3) and an overhang.

6. The exterior materials shall be of a color, material, and scale comparable with those existing in residential construction and in no case shall the degree of reflectivity of exterior finishes exceed that of gloss white paint. Siding, trim, and features should be compatible with adjoining properties.

7. The front door of the unit must face the street on which it is located if the shape of the lot allows.

8. The unit must have a wooden, brick or concrete stoop or decking of at least nine square feet in addition to steps as needed on any exterior door.

9. The unit must be replaced in such a way as to conform to district setbacks and yard requirements to the greatest extent possible.

10. The unit must connect to water and sewer services or have an approved septic system in place.

(Ord. No. O-25-01, 1-13-2025)

Ord. No. O-25-01, adopted Jan. 13, 2025, amended § 5.7 and in doing so changed the title of said section from "manufactured homes on individual lots" to "manufactured homes on individual lots and emergency housing," as set out herein.

SECTION 5.8 FARM STANDS, TAILGATE SALES OR "GARDEN MARKETS"

5.8.1 Farm stands, tailgate sales or "garden markets."

A. Farm stands associated with garden markets shall be allowed as an accessory use in all districts.

B. Tailgate sales are permitted as long as they do inhibit traffic flow or safety, and with the permission of the property owner.

C. Off-premises produce stands shall be allowed as long as the use is for less than four continuous months.

D. All farm stands shall not be located closer than ten feet to any side lot line unless a greater setback is required for the zoning district in which it is located or as directed by the zoning administrator for the purpose of traffic safety.

E. Signs for a farm stand or tailgate sales shall not be illuminated, nor have flashing lights, nor shall they exceed four square feet in area. Off-premises signs are not permitted.

SECTION 5.9 NEIGHBORHOOD FUELING FACILITIES

5.9.1 Neighborhood fueling facilities.

Neighborhood fueling facilities are provided to provide fueling services be it gas, electric, or other fuel, within mixed-use districts. These types of business operations must be compatible with a residential area in terms of design, lighting and hours of operation, and regulations of the district in which it is located and shall also comply with the following requirements:

A. Must cease operations between the hours of 11:00 p.m. and 7:00 a.m.

B. Must provide adequate two points of ingress/egress for vehicles, and adequate space for fueling.

C. Must be of a design and building material that is in character with the surrounding neighborhood.

D. Signage must be of a monument style and be less than ten feet tall.

SECTION 5.10 NEWSPAPER AND PERIODICAL DISTRIBUTION BOXES

5.10.1 Newspaper and periodical distribution boxes.

The regulations of this section apply only to newspaper and periodical distribution boxes in the central business (CB) district.

A. Distribution boxes shall be identified by a sign indicating: material to be deposited, the name of the owner, and the contact information of the person responsible for the box.

B. Boxes shall be located away from the curb or roadway as much as possible and shall allow at least a 48-inch clearance area from the back of the curb to the box itself.

C. Boxes shall be constructed of weatherproof, or exterior grade, materials and shall be kept clean and in good repair and appearance and shall be kept free of rubbish.

D. Newspaper box or periodical distribution owners will furnish a schedule of delivery services for the box to the zoning administrator. Boxes empty for periods exceeding 30 days will be removed after the box owner is notified and lack of use confirmed with distributor.

E. No more than six boxes may be clustered together on a first come first placement basis.

F. Owners of distribution boxes not in compliance with these regulations shall be issued a notice of violation which shall allow 30 days for the owner or interested party responsible to comply. If 30 days elapse after the notice of violation and no action is taken, the zoning administrator shall remove the box and notify the owner.

G. Boxes removed by the zoning administrator for lack of compliance may be claimed within 45 days through the planning and development department. After 45 days, the department may dispose of unclaimed newspaper or magazine boxes.

SECTION 5.11 SECONDARY DWELLINGS

5.11.1 Secondary dwellings.

Secondary dwellings may be located in a building separate from the principal dwelling subject to the following requirements:

A. Secondary dwellings shall meet the setbacks of the principal structure as set forth for the zoning district in which it is located.

B. Secondary dwellings shall be built to North Carolina Residential Building Code Standards.

C. The secondary dwelling size shall not exceed 50 percent of the square footage of the livable area of the primary structure or 1,100 square feet, whichever is less.

D. No secondary dwelling will be sited between the principal building and an adjacent public roadway, not including a private alleyway or driveway.

E. Only one secondary dwelling unit shall be permitted per zoning lot.

F. The exterior of the secondary dwelling will be of same style as the principal residence in terms of exterior material, siding, roof pitch, window detailing, roofing materials, and foundation or skirting appearance.

G. If a manufactured home, the secondary dwelling shall not be pulled up to or attached to the primary residence, and must meet the requirements for manufactured housing in section 5.16 of this chapter.

H. Adequate off-street parking shall be provided at a ratio of two cars per dwelling unit on the same lot.

I. If there will be no public sanitary sewer service to the secondary dwelling, the county health department shall approve a septic system prior to construction.

J. Lots with duplexes shall not be allowed a secondary dwelling.

SECTION 5.12 WIRELESS COMMUNICATIONS

5.12.1 Wireless facilities not associated with a communications tower.

A. Wireless antennas and satellite dishes are permitted in all districts as long as:

1. They are not associated with a free-standing tower;

2. Are less than 3.28 feet (39.37" or one meter) in diameter; and

3. Are securely mounted.

B. This section does not apply to amateur radio antennas affected and controlled by FCC regulations codified in Chapter 47, Section 97, of the Code of Federal Regulations.

C. In residential districts, wireless antennas and satellite dishes greater than one meter in diameter must be located in the rear or side yard of the primary structure so as to be as unobtrusive from the right-of-way adjacent to the front yard as possible.

D. Wireless facilities associated with a tower are considered communications towers for purposes of these regulations and are allowed in certain zoning districts only upon issuance of a special use permit.

5.12.2 Wireless communication towers.

A. Freestanding, communication towers or attached wireless communication facilities shall only be permitted by approval of a conditional use permit.

B. All new wireless communication facilities shall be engineered, designed and constructed to be capable of sharing the facility with other providers, to collocate with other existing wireless communication facilities and to accommodate the future collocation of other wireless communication facilities. A permit shall not be issued until the applicant proposing a new wireless communications facility shall demonstrate that it has made a reasonable good faith attempt to locate its wireless communication facility onto an existing structure. Competitive conflict and financial burden alone are not deemed to be adequate reasons against collocation.

C. This section does not apply to amateur radio antennas affected and controlled by FCC regulations codified in Chapter 47, Section 97, of the Code of Federal Regulations.

D. In addition to general CUP requirements, the following shall apply:

1. No person, firm or corporation shall install or construct any wireless communication facility unless and until a tower antenna use application (TAA) has been issued pursuant to the communication tower requirements of this ordinance.

2. Applicant shall provide the town with adequate information to establish that a new facility is needed rather than co-locating on an existing tower or structure.

3. All applicants for wireless communications facilities are required to submit a statement with the application agreeing to allow and reasonably market collocation opportunities to other wireless communications facility users and to design facilities to allow for additional attachments. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged other providers. The collocation agreement shall be considered a condition of issuance.

4. Construction of all wireless communication facilities shall comply with the requirements of the Town of Black Mountain Building Codes and permitting process in addition to the requirements of this ordinance.

5. Attached wireless communication facilities shall not add more than 20 feet to the height of the existing building or structure to which it is attached. Antenna attachments to existing communication towers shall not increase the height of tower above the maximum permitted height of that tower. In no instance shall a new tower exceeding 20 feet in height be allowed on a building.

6. Height for wireless communication facilities with support structures shall be reviewed on a case by case basis as part of the conditional use permit process. The height of the proposed facility should consider ground elevations, topographical conditions and other site development criteria within this ordinance.

7. Attached wireless communications facilities shall meet the setback provisions of the underlying zoning district in which they are located. An attached wireless communication facility antenna array may extend up to 30 inches horizontally beyond the edge of the attachment structure so long as the antenna array does not encroach upon an adjoining parcel. Wireless communications facilities and towers with support structures shall fall within the setback requirements in their entirety.
8. Wireless communications facilities with support structures shall be enclosed by an opaque fence (excluding slatted chain link) not less than six feet in height. Security features may be incorporated into the buffer and landscaping requirements for the site. Nothing herein shall prevent fencing that is necessary to meet requirements of state or federal agencies.
9. Existing mature tree growth and natural land form on the site shall be preserved to the extent feasible; provided however, that vegetation that causes interference with the antennas or inhibits access to the equipment facility may be trimmed or removed.
10. Grading for the new wireless communication facility shall be minimized and limited only to the area necessary for the new facility.
11. Wireless communications facilities shall be designed so as to be compatible with the existing structures and surroundings to the extent feasible, including placement in a location which is consistent with proper functioning of the wireless communications facility and the use of compatible or neutral colors, or camouflage technology.
12. Wireless communications facilities shall not be artificially illuminated, directly or indirectly, except for:
    - Security and safety lighting of equipment buildings if such lighting is appropriately down shielded to keep light within the boundaries of the site; and
    - Such illumination of the wireless communications facility as may be required by the FAA or other applicable authority installed in a manner to minimize impacts on adjacent residences.
    - Unless otherwise required by the FAA or other applicable authority, the required light shall be red and a type of lens used to reduce ground lighting when the site is within 100 feet of a residential dwelling.
13. Wireless communications facilities shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers and such other information as may be required by local, state or federal regulations governing wireless communications facilities.
14. Wireless facilities must provide documentation that proposed facility will meet all current, applicable FCC and Electronics Industries Association and Telecommunications Industries Association (EIA/TIA) standards.
15. Sound prohibited. No unusual sound emissions such as alarms, bells, buzzers or the like are permitted.
16. All utility lines for wireless communications facilities shall be installed underground to the wireless communications facility.
17. Access to the tower site must be graded and stoned in a manner that will allow access by police and fire/rescue units.

SECTION 5.13 TATTOO PARLOR/BODY PIERCING STUDIO

5.13.1 Tattoo parlor/body piercing studio.

A. No tattoo parlor or body piercing studio shall be located within 500 feet, as measured in a straight line from property line to property line, of:

1. Any other tattoo parlor or body piercing studio,
2. A church,
3. A public or private elementary or secondary school, child day care or nursery school,
4. A public park,
5. Residentially zoned or residentially used property, or
6. Any establishment with an on-premises ABC license.

B. Ear piercing, as a principal or accessory use, shall not be subject to this classification and these provisions.

C. Tattoo and/or body piercing operations shall not be considered as customary home occupations.

SECTION 5.14 RECREATION SERVICES

5.14.1 Recreation services (outdoor).

A. Service areas will be separated by an opaque screen from the view of any street and from abutting properties.

B. Chain link and similar fencing materials, if used, shall be painted on exterior side with evergreen shrubs a minimum of three feet in height at maturity and six feet on center at installation.

C. Outdoor lighting associated with outdoor recreational facilities shall comply with the current lighting ordinance.

SECTION 5.15 MOBILE FOOD VENDORS[2]

5.15.1 Mobile Food vendors.

A. Temporary use permit required.

1. Any mobile food vendor operating in the Town of Black Mountain must obtain a permit issued by the zoning administrator.
2. The vendor shall submit an application to planning department, which shall include a site plan showing the location or locations where the mobile food vendor will operate and demonstrate that all requirements of this ordinance can be met while operating at each location.
3. The vendor shall only operate at those locations specified in the permit.

[2]Ord. No. O-21-20, adopted January 10, 2022, set out provisions intended for use as section 5.24. For purposes of classification to preserve the numbering style of this Code, and at the editor's discretion, these provisions have been included as section 5.15.

4. A permit shall be valid for a period of one year from the date of issuance.

B. A valid health department inspection grade card from the Buncombe County Health Department shall be visually displayed on the mobile food truck or cart in clear view of all patrons.

C. Mobile food vendors shall operate only on private property with permission of the owner. No mobile food vendor shall operate on a public street, sidewalk or right-of-way.

D. Mobile food vendors shall comply with the setback requirements for the zoning district in which the truck or cart is operating and, for purposes of setback regulations, shall be treated as a building or structure. No mobile food vendor shall be parked closer than ten feet from a structure or other mobile food vendor.

E. Each mobile food vendor shall have sufficient space to maneuver onto the lot and to allow for safe access by pedestrians and emergency response vehicles.

F. At least one onsite parking space per mobile food vendor is required, except that no onsite parking shall be required for a mobile food vendor operating in the central business district. Allocation of parking spaces to the mobile food vendor must not reduce available parking for other uses such that those uses would no longer meet minimum parking requirements.

G. Mobile food vendors shall remove trash and litter from the site each day and as needed. Mobile food vendors must maintain cleanliness of the site.

H. No temporary toilet facilities are allowed.

I. No seating may be provided.

J. No permanent water or sewer connections.

K. Propane tanks shall be inspected by the NC Department of Agriculture.

L. These regulations do not apply to mobile food vendors operating solely as part of a special event for which a permit has been issued by the Town of Black Mountain, or as part of a non-commercial, private event on private property when that event is non-recurring and of a temporary duration.

(Ord. No. O-21-20, 1-10-2022; Ord. No. O-22-02, 4-11-2022)

SECTION 5.16 MOBILE FOOD VENDOR COURTS[3]

5.16.1 Mobile food vendor courts.

A. Site requirements.

a. Before obtaining a zoning permit, the owner shall submit a site plan showing the location of spaces to be used by mobile food vendors, kitchen or restroom facilities, seating for patrons, site maneuvering, and parking.

b. There shall be at least one trash can per vendor or one dumpster for the entire court (see screening requirements).

c. Outdoor seating is allowed.

[3]Ord. No. O-21-20, adopted January 10, 2022, set out provisions intended for use as section 5.25. For purposes of classification to preserve the numbering style of this Code, and at the editor's discretion, these provisions have been included as section 5.16.

d. Permanent restroom facilities are allowed.

e. A permanent, on-site commissary kitchen is allowed.

f. Permanent power is recommended.

(Ord. No. O-21-20, 1-10-2022; Ord. No. O-22-02, 4-11-2022)

SECTION 5.17 MOBILE RETAIL VENDORS

5.17.1 Mobile retail vendors.

A. *Temporary use permit required.*

1. Any mobile retail vendor operating in the Town of Black Mountain must obtain a permit issued by the zoning administrator.
2. The vendor will submit an application to the planning and development department, which shall include a site plan showing the location or locations where the mobile retail vendor will operate and demonstrate that all requirements of this ordinance can be met while operating at each location.
3. The vendor will only operate at those locations specified in the permit.
4. A permit will be valid for a period of one year from the date of issuance.

B. *Operating location and requirements.*

1. Mobile retail vendors will operate only on private non-residential property with permission of the owner. No mobile retail vendors will operate on a public street, sidewalk, or right-of-way.
2. Mobile retail vendors will be allowed as a primary use or secondary use.
3. Reserved.
4. Each mobile retail vendor will have sufficient space to maneuver onto the lot and to allow for safe access by pedestrians and emergency response vehicles.
5. Sight triangles must be maintained to ensure visibility (see section 4.4.6).
6. At least one onsite parking space per mobile retail vendor is required, except that no onsite parking will be required for a mobile retail vendor operating in the central business district. Allocation of parking spaces to the mobile retail vendor must not reduce available parking for other uses such that those uses would no longer meet minimum parking requirements.
7. Signage.
    a. Cantilevered ground sign that has a pole with a maximum height of six feet, and with a sign that has a maximum square footage of five square feet will be allowed.
8. Number of mobile retail vendors.
    a. In the central business, highway business, and neighborhood mixed use districts, mobile retail vendors will be limited to one per parcel.
    b. In the light industrial, heavy industrial, and traditional neighborhood districts, mobile retail vendors will be limited to six per parcel.
    c. In the central business, neighborhood mixed use, light industrial, and light industrial districts, there will be a maximum of five mobile retail vendors per district.

d. In the highway business and traditional neighborhood district, there will be a maximum of ten mobile retail vendors per district.

9. Use of generators by mobile retail vendors is prohibited.

10. Hours of operation.

a. Mobile retail vendors may operate between the hours of 6:00 a.m. and 10:00 p.m. daily.

C. *Site maintenance.*

1. Mobile retail vendors will remove trash and litter from the site each day and as needed. Mobile retail vendors must maintain the cleanliness of the site.

2. No temporary toilet facilities will be allowed.

3. No permanent water or sewer connections will be allowed.

4. All temporary signs, seating, and merchandise must be removed and/or brought into the mobile unit during non-operating hours.

D. *Special events.*

1. These regulations do not apply to mobile retail vendors operating solely as part of a special event for which a permit has been issued by the Town of Black Mountain, or as part of a non-commercial, private event on private property when the event is non-recurring and of a temporary duration.

(Ord. No. O-24-14, 9-9-2024; Ord. No. O-24-16, 12-9-2024; Ord. No. O-25-26, 10-13-2025)

SECTION 5.18 EMERGENCY HOUSING

5.18.1 Purpose.

To permit the use of travel trailers, manufactured housing, building-code compliant structures for habitation, or other FEMA-approved shelters as a temporary use related to a declared federal, state, or local disaster.

5.18.2 General provisions.

A. Eligibility. Applicant must provide proof they:

1. Own, occupy or occupied, as their primary residence, a structure damaged or made inaccessible by the declared disaster; or,

2. Are assisting with disaster recovery efforts through a unit of government, agency, nonprofit, or company.

B. Siting.

1. Emergency housing may only be on a site other than a damaged or inaccessible home if said housing is operated by FEMA or other federal agency, by a unit of state government, or a unit of local government.

2. Debris removal. Emergency housing shall not obstruct or prevent recovery and debris removal operations.

3. Floodways and floodplains. Emergency housing shall be prohibited within regulated floodways and floodplains.

4. Landslide and heavily damaged flood areas. Emergency housing applicants located within landslide or heavily damaged flood areas is strongly recommended to confer with a geotechnical engineer to evaluate site stability prior to placement of the emergency housing on a site, and during reconstruction and redevelopment of a site.

C. Temporary use. Emergency housing shall be permitted for up to two years from the date of the declared disaster and may be extended by the Zoning Administrator for up to one additional year.

D. Number of units. No more than one emergency housing unit may be placed on an individual lot, except where the site is operated by FEMA or other federal agency, by a unit of state government, or a unit of local government.

E. Utilities. Emergency housing shall be immediately connected to an approved public or private wastewater system, potable water source, and public electrical service, except where the unit is a travel trailer in which case it shall be connected within the following time limits:

1. Electrical service and potable water. Within three months from the date of placement.

2. Wastewater. Within six months from the date of placement, with the option of the zoning administrator extending for an additional six months with proof of contract to remove waste.

F. Addressing. Emergency housing shall meet the E-911 addressing requirements which may differ dependent upon emergency housing unit type.

G. Setbacks. Setbacks shall apply to emergency housing regardless of type.

H. Spacing. Emergency housing units shall be separated from each other by a distance of at least ten feet.

I. Access. Where three or more emergency housing units are placed on a single lot, those units shall be accessed by a vehicular drive aisle on at least one side of the trailer, which is a minimum of 20 feet in widths for two-direction traffic, or a minimum of 12 feet in width for single-direction traffic, or a minimum of 30 feet for two-direction traffic that contains on-street parking. No parking shall be allowed within the vehicular drive aisle. A site plan that shows uniformity with this access requirement must be submitted.

J. Parking. The minimum required parking for emergency housing shall be one space per emergency housing temporary dwelling unit. The zoning administrator may reduce the required parking if the applicant can demonstrate that less than one space per temporary dwelling unit is sufficient. Parking spaces will be of an all-weather surface.

K. Waste management. The property owner or operator of group sites shall provide capacity for a weekly accumulation of solid waste and recycling on site through the provision of dumpsters or acceptable containers. Waste containers must be serviced at least once a week unless the group site has been vacant for the entirety of the week. Dumpsters shall not be located within any required setbacks.

L. Steep slope. The provisions of the Erosion Prevention and Slope Protection Ordinance apply to emergency housing.

M. Building permit. Electrical, plumbing, driveway, and/or utility permits may be required for emergency housing.

(Ord. No. O-25-01, 1-13-2025)

SECTION 5.19 SIDEWALK SEATING

Sidewalk seating will comply with the following:

A. A free-and-clear passage area on the sidewalk that is a minimum of four feet wide between the outermost edge of the seating area barrier and the closest point of all fixtures, planter boxes, poles, etc., on the street side of the sidewalk.

B. A removable post-and-rope type stanchion barrier only when table service is offered or alcohol service is being served by the establishment. There will be a 60-day grace period for permit applications to be received and barriers to be purchased.

C. An annually renewed sidewalk seating permit that includes:

   a. If alcoholic beverages are to be served on any day of the week, or at any time of the day, in the sidewalk seating area, a copy of the relevant ABC permit will be attached to the application.

   b. A site plan.

   c. Acknowledgement that the entire post-and-rope barrier system will be removed by the permit holder at the end of business hours on any day during which outdoor seating is set up.

   d. Acknowledgement that the area will be used exclusively for dining, drinking, and circulation of customers.

   If there is sufficient room to establish outdoor seating, a parking space (or spaces) in a parking lot can be converted to a parklet through a joint agreement among property and business owners. A parklet is a cordoned-off area for seating and dining, and it typically includes significant landscaping or hardscaping to enhance the cordoning to make it noticeably clear that the area is not for vehicles.

(Ord. No. O-25-24, 9-8-2025)

CHAPTER 6. RESERVED

CHAPTER 7. SPECIAL USE PERMITS

SECTION 7.1 PURPOSE

7.1.1 Purpose.

This land use code provides for certain uses to be located by right in districts where the uses are compatible with the purpose of the district and with other uses located in the district. This land use code also provides for certain uses to be located in districts only by complying with additional development standards to insure that same compatibility. This section provides additional requirements for certain uses that are in keeping with the intent and purposes of the district, but which may have substantial impacts on the surrounding area and should therefore only be allowed after a review of the specific proposal.

To ensure that these uses are compatible with surrounding development and in keeping with the purposes of the district in which they are proposed to be placed, they may be established only after issuance of a special use permit as required by this section.

SECTION 7.2 PROCEDURES

7.2.1 Pre-application technical review.

The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a sketch plan of the proposed development to the meeting that meets the requirements set forth in section 1.4.6.

7.2.2 Application requirements.

A. All applications for a special use permit must be accompanied by a site plan (drawn to scale) that includes all of the following information as applicable:

1. A boundary survey showing the total acreage, zoning classification(s), date, and north arrow (with the north arrow oriented up, i.e., to the top of the map);
2. All existing easements, reservations and rights-of-way and all setbacks required for the zoning district;
3. Proposed location of all structures, their approximate square area and general exterior dimensions;
4. Proposed use of all land and structures;
5. Traffic, parking, and circulation plan, showing proposed locate and arrangement of parking spaces and ingress and egress to adjacent streets;
6. Proposed screening, including walls, fences, or planting areas, as well as treatment of any existing natural features;
7. The name of the development, if applicable, and the name, address, and phone number of the owner;
8. Approximate total acreage of the proposed development;
9. Tentative street and lot arrangement, including designations of driveways, parking lots, open space, greenways, and stormwater management areas;
10. Topography at five-foot intervals and the location of existing drainages or swales;
11. A vicinity map showing the location of the development in relation to neighboring tracts, subdivisions, roads, or nearby buildings and their zoning and uses;
12. Location of flood hazard areas from FIRM map;
13. Location of existing or proposed utilities;
14. Proposed signs and their locations;
15. Proposed phasing, if any, and approximate completion time of the project.

B. Whenever an application for a special use permit involves the subdivision of land, the following agencies or individuals shall be given an opportunity to make recommendations concerning the proposed development plan before consideration by the board of adjustment:

1. The district highway engineer as to the any proposed state streets, state highways, and related drainage systems;

2. The county health director, public works director, MSD representative, and representatives of any other local public utility, as appropriate, as to proposed water or sewerage systems;

3. The fire marshal; and

4. The stormwater and floodplain administrator(s)

7.2.3 Hearing required.

The board of adjustment shall hold a quasi-judicial hearing to consider the special use permit application and shall, by majority vote, either approve, approve with modifications, or deny the permit application.

7.2.4 Notice of hearing.

Notice of the hearing before the board of adjustment shall be provided as follows:

A. Staff shall prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way within the same period specified for mailed notices of the hearing. When multiple parcels are included, a posting on each individual parcel is not required but notices shall be placed in strategically visible locations so as to provide reasonable notice to interested persons.

B. Staff shall place notification of the evidentiary hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

C. Staff shall mail notice of the hearing to the applicant; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels within 200 feet of the parcel of land that is subject of the hearing; and to any other persons entitled to receive notice as provided by the development regulations. In the absence of evidence to the contrary, notice will be mailed to the owner reflected in the county tax listing at the address where county tax notices are sent. The notice must be deposited in the mail at least ten days but not more than 25 days prior to the date scheduled for the hearing.

D. Staff shall place a notice of the hearing on the town's website.

7.2.5 Materials provided.

Staff shall transmit to the board, in written or electronic form, all applications, reports, and written materials relevant to the application. Such materials may be distributed prior to the hearing if, at the same time they are distributed to the board, a copy is also provided to the applicant and to the landowner if that person is not the applicant. The administrative materials shall become a part of the hearing record.

Objection to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

7.2.6 Hearing procedure.

A. The applicant has the burden of producing competent material and substantial evidence tending to establish the existence of the facts and conditions which this ordinance requires for the issuance of the special use permit.

B. The applicant, the Town of Black Mountain, and any person who would have standing to appeal the issuance or denial of the special use permit shall have the right to participate as a party at the hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections shall be ruled upon by the board chair and the chair's ruling may be appealed to the full board.

C. In considering an application for a special use permit, the board of adjustment will consider and may attach reasonable and appropriate conditions to the location, nature, and extent of the proposed use or uses, structures and other improvements, and the relation of such uses, structures, or improvements to surrounding property. Any such conditions may relate to parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, and other matters the board of adjustment may find appropriate or that the applicant may propose.

7.2.7 Standards.

A. No special use permit shall be issued or amended unless the board of adjustment shall find that:

1. The special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity.
3. The special use will not substantially diminish or impair property values within the immediate vicinity.
4. The special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
5. The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and character of the neighborhood or district in which the use will be located.
6. Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being, or will be provided.
7. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets.
8. If the special use involves the subdivision of land, it conforms to all applicable regulations of Chapter 3 of this Land Use Code.
9. The special use, in all other respects, conforms to the applicable regulations of the district in which it is located, except as such regulations have, in each instance been modified by the board of adjustment in approving the issuance of the special use permit.

7.2.8 Effect of approval.

A special use permit, once approved, attaches to and runs with the land and no subsequent development or use of the property may be undertaken except in conformity with the permit and all plans, specifications, and conditions.

7.2.9 Reapplication for a special use permit.

If an application for a special use permit is denied by the board of adjustment, a reapplication for that special use on that property may not be filed, unless, upon request of the property owner, the board of adjustment

determines that there have been sufficient changes in conditions or circumstances bearing on the proposed project to warrant a reapplication.

7.2.10 Modification of an approved special use permit.

A. The owner of property that is subject to an approved special use permit may apply for a modification of the special use permit by following the same procedure as if applying for a new special use permit. Applications for a modification must include a new site plan that identifies the proposed changes. Evidence presented at the hearing on the proposed modification will be limited to the effect of the proposal on the original special use permit, any plans or conditions that were a part of the original special use permit, and the standards and requirements of the ordinance under which the original special use permit approved.

B. Changes to the plans and conditions of development that were the basis of the approval of the special use permit require board of adjustment approval; provided, however, that certain minor changes may be approved by the zoning administrator without board of adjustment approval, if:

1. Building floor areas are not changed by more than 20 percent;
2. Building or structure heights are not increased by more than 20 percent;
3. Density is not increased;
4. Relocated buildings, roads or uses maintain the same general relationships, landscaping, road, and utility standards; and
5. The amendment preserves compliance with any specific requirement of this chapter and the zoning district requirements at the time of the amendment request.

If the zoning administrator determines that a proposal is not a minor change, the application for changes shall be forwarded to the board of adjustment for consideration.

7.2.11 Revocation or termination.

A special use permit may be revoked as provided in Section 1.10.8. After revocation, the special use must cease, and use or development of the property must comply with the standards of the district where the property is located.

SECTION 7.3 SPECIAL USE: ADULT ESTABLISHMENTS

7.3.1 Purpose.

Adult establishments, because of their nature, are recognized as having characteristics which may be out of character with and detrimental to the general health, welfare, and safety of nearby residential districts and certain other uses. The town council determines that regulation of these uses is necessary to ensure that these adverse effects do not contribute to the blighting or downgrading of nearby residential districts and to protect the integrity of those districts.

7.3.2 Requirements.

A. No printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the establishment.

B. No live or recorded voices, music, or sounds shall be heard from outside the establishment.

C. There shall not be more than one adult business use (either the same use or another use) located on the same property, building, or structure.

D. No adult establishment may have sleeping quarters.

SECTION 7.4 SPECIAL USE: JUNKYARDS

[7.4.1 Special use: Junkyards.]

A. In addition to general SUP application requirements, a site plan must show the distance from the nearest edge of the right-of-way of any interstate or primary highway, or a North Carolina route.

B. Requirements:

1. The proposed site shall be not less than one nor more than five acres;
2. The proposed site shall not be located nearer than 30 feet to any residence nor within one-half mile of another junkyard, measured from the boundary of the junkyard as shown in the approved site plan to the nearest residential structure.
3. Screening of a minimum eight-foot-high fence and evergreen barrier shall be required along any boundary abutting a residential lot or residentially zoned lot or public right-of-way.

SECTION 7.5 SPECIAL USE: CONSERVATION SUBDIVISIONS

7.5.1 Purpose.

The purpose of a conservation subdivision is to provide flexibility in subdivision design in order to protect the natural landscape, mountain ecology, and view-shed of the Town of Black Mountain.

7.5.2 Applicability.

This subdivision option may be applied in any subdivision and in any zoning district in which conservation subdivisions are permitted, which the original tract or total of assembled tracts is one acre or more.

7.5.3 Density, lot sizes, and setbacks.

A. Conservation subdivision plans meeting the requirements of this chapter shall be allowed twice the density permitted per acre under the density table for steep slopes in the erosion prevention and slope protection ordinance (applicable to lots of 25 percent slope or greater) and shall be exempt from the minimum lot size. Under no circumstances however shall the gross density of a conservation subdivision exceed the density for the district in which it is located or as allowed by the inclusionary housing allowance.

B. Yard setbacks are not required within the development but must be maintained on the perimeter of the project boundary.

C. Building sites, including accessory buildings, must be established based on the site capacity analysis which identifies the areas for construction with the most stability and the least amount of land disturbance, while preserving environmentally sensitive areas.

D. Lot sizes may vary from the minimum lot size of the district in which the subdivision is located so long as the overall density of the district is maintained and any reduction in the area of individual lots is provided in a

minimum of equal area dedicated as common open space as part of the master plan. This allowance shall apply to single-family and zero-lot-line construction.

E. Within and adjoining established residential districts, a ten-foot setback from the side and rear property lines must be preserved.

7.5.4 Performance goals.

A conservation subdivision plan is a "performance-based" development plan that is flexible in its requirements as long as the following goals are achieved:

A. Environmentally sensitive areas are left undisturbed, including:

1. Any slope greater than 45 degrees, exceeding a 1:1 slope or 100 percent slope.

2. Wetlands, bogs and natural drainages.

3. Perennial and intermittent streams with a 30-foot protective buffer on both sides.

4. Significant landscape features. Significant landscape features may include rock outcroppings, trees with diameter at breast height (DBH) of two feet or more, or other landscape characteristics which are unique to the site, rare in the area, or which are visually or biologically unusual.

B. Stormwater run-off is managed in such a way as to conform to the natural hydrology of the site and resulting in run-off that is equal to or less than the pre-development conditions. Low impact development ("LID") is the preferred stormwater design strategy that seeks to maintain or replicate the pre-development hydrology of a site by using design techniques to create a functionally equivalent hydrologic landscape. The strategy seeks to maintain the functions of storage, infiltration, and groundwater recharge, as well as the volume and frequency of discharges by the use of integrated and distributed micro-scale stormwater retention and detention areas, reduction of impervious surfaces, and the lengthening of flow paths and runoff time.

C. Colluvial soils are avoided.

D. No more than 33 percent of total land area is disturbed in the development process,

E. Buildings, driveways and roads are located in the most stable areas for construction and along contours that require the least amount of land disturbance and cut-and-fill.

F. Native plants existing on the site pre-development are minimally disturbed and native plants occurring naturally on the site are also incorporated into post-construction landscaping.

G. When adjoining or located within established residential districts, a ten-foot setback from the side and rear property lines must be preserved.

H. A site analysis which indicates how the master plan addresses the six goals above and documents the pre-development and post-development stormwater run-off conditions.

7.5.5 General design requirements.

In addition the requirements for a master plan required by this chapter, the following design requirements shall be conservation developments:

A. An LID analysis of the natural hydrology and how the stormwater management plan is consistent with that hydrology. This analysis should include calculations for run-off based on the amount of impervious surface proposed, and how the run-off will be managed on-site.

B. The disturbed area does not exceed 33 percent of the total tract area, and the location and footprint of buildings and roads are located in such a way as to minimize impact for the particular site.

C. The plan meets or exceeds the overall density requirements of the district in which it is located.

D. Buildings may not be more than 35 feet in height from the highest adjacent grade. A building may not exceed 45 feet in height on any one side.

E. The subdivision development, including roads and buildings, shall be designed to meet the standards of the town's insurance rating as determined by the town's fire marshal.

F. All roads must follow pre-disturbance land contours in order to minimize cut and fill to the greatest extent possible. Designs with bifurcated, one-way, or variable travel widths may be included within the plan if periodic turnouts, one-way loops, bifurcations, or other designs are applied that allow for staging and passing of public vehicles.

G. Dead-end streets or culs-de-sac are allowed as long as turn-around areas are provided and meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.

H. All rights-of-way must be established to allow for adequate drainage of road surface run-off as indicated in the Town of Black Mountain Standards and Details Manual.

I. Predominant native species located on the site are identified and lawns and grassed areas are minimized in favor of maintaining or replacing native vegetation existing on the site pre-development.

J. Stormwater, ridge top, and conservation easements or maintenance areas are established and designated.

K. Pedestrian facility requirements may be met with hiking trails and/or reduced or waived at the discretion of the board of adjustment if the inclusion of these facilities would negatively impact the land or site hydrology. Greenway or other trails may be used to meet open space requirements.

L. Areas identified for potential well head locations, or if necessary, for required drainage fields, are included in the master plan.

For more information on **Low Impact Development,** including fact sheets and reference materials, see the Environmental Protection Agency website at:
http://www.epa.gov/owow/nps/lid/

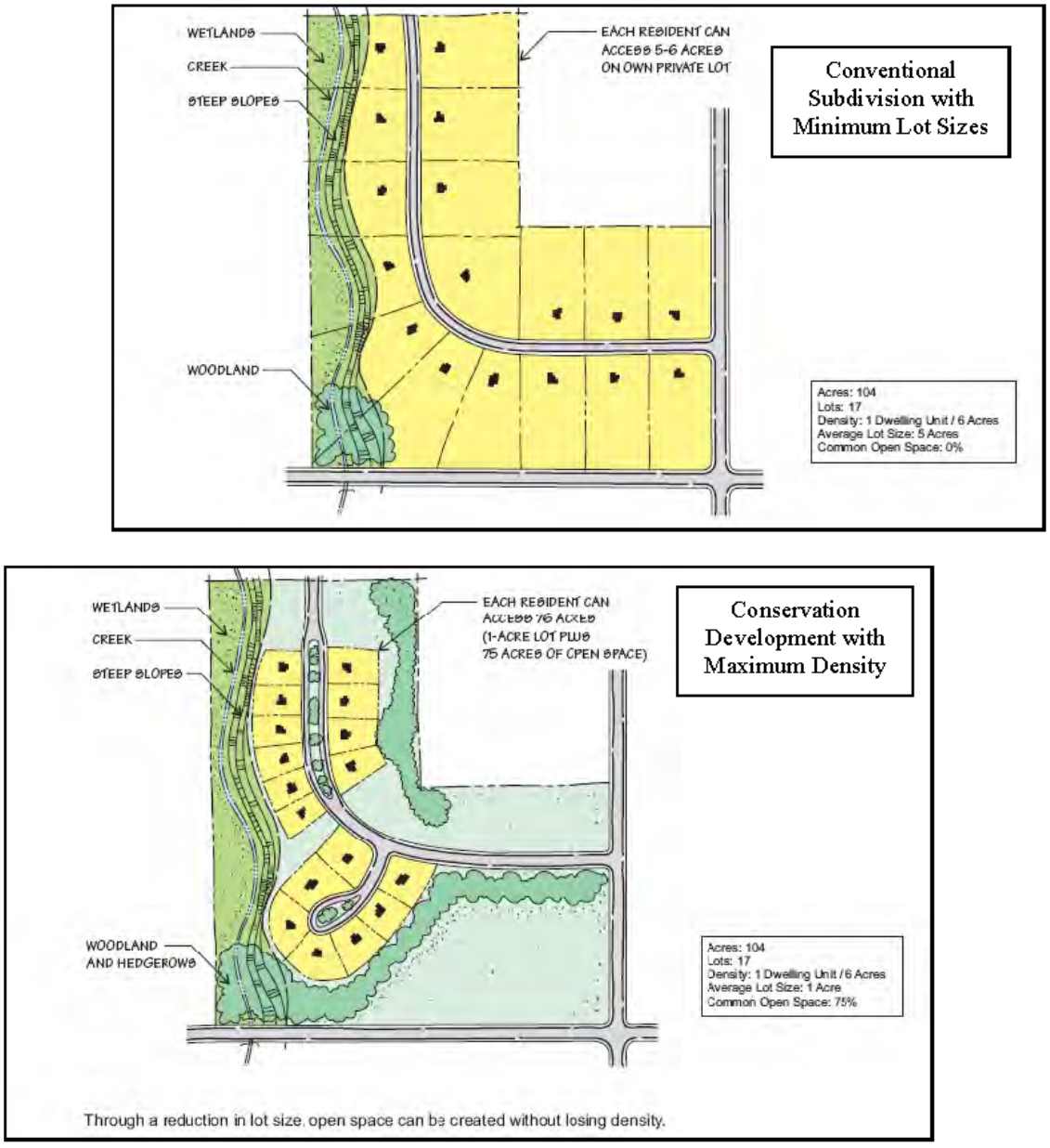


FIG. 7.1 CONSERVATION DEVELOPMENT EXAMPLE*

SECTION 7.6 SPECIAL USE: COTTAGE HOUSING DEVELOPMENT (CHDS)

7.6.1 Purpose.

The purposes of this type of development and these accompanying guidelines are to:

1. Provide a housing type that responds to changing household sizes and ages (e.g., retirees, small families, single person households);

2. Provide opportunities for ownership of small, detached dwelling units;
3. Encourage creation of more usable open space for residents of the development through flexibility in density and lot standards;
4. Preserve a housing type of small, free-standing cabins and cottages, a housing style that has historically existed in Black Mountain since its development as a retreat and vacation destination and to provide guidelines to ensure compatibility with surrounding land uses; and
5. To accommodate and encourage new types of housing options such as "Katrina Cottages," and free-standing structures of small footprint that are generally more affordable, energy efficient and sensitive to the land.

7.6.2 Applicability.

A cottage is a small, detached dwelling unit, not greater than 1,100 square feet in total floor area that may be developed at a density greater than the underlying zone. More than two cottages may occupy a single lot and may be owned separately. A cottage development may be developed in any zoning district except for HI-0.

7.6.3 Density.

Cottage housing developments shall contain a minimum of two free-standing structures located in a cluster to encourage a sense of community among the residents.

7.6.4 General design requirements.

In addition to the general SUP application requirements, the following guidelines shall be met:

A. Setbacks for all structures from the adjacent property lines along the perimeter of the site shall comply with all setback requirements of the district in which the development is located.
B. The minimum distance between structures, including accessory buildings, shall be ten feet, and must have off-set windows and all fire safety codes related to building proximity and fire rated walls shall be met.
C. The maximum built-upon area, including parking, driveways and buildings, shall be equal to or less than 66 percent of the total land area for the lot.
D. Maximum height for cottages shall be 35 feet and the maximum height for accessory structures shall be 18 feet. All parts of the cottage roof above 18 feet shall be pitched.
E. Cottages must have a stoop or front porch that shall have a roofed porch at least 80 square feet in size with a minimum dimension of eight feet on any side.
F. A pitched roof design is required for all parking structures.
G. Cottages must not exceed 1,100 square feet of enclosed, habitable space. Cottage areas that do not count toward the total floor area calculation are:
    1. Unheated storage space located under the main floor of the cottage.
    2. Architectural projections such as bay windows, fireplaces or utility closets not greater than 18 inches in depth or six feet in width.
    3. Attached roofed porches.
    4. Detached garages or carports.

5. Spaces with a ceiling height of six feet or less measured to the exterior walls, such as in a second floor area under the slope of the roof.

H. Accessory buildings and detached or attached garages or carports shall not exceed 200 square feet in size, shall match the architecture of the cottages in style and material, and shall not be used for residential purposes.

I. Parking spaces may be spread out through the development connected to each cottage, clustered in a shared parking lot or some combination thereof at a minimum ratio of two spaces per unit; clustered parking for more than six vehicles must be screened from public streets and adjacent residential uses by landscaping or architectural screening.

J. Driveways, parking areas, and any common open space, parks, or stormwater management facilities, shall be considered common areas and must be maintained by a homeowners' association.

K. The total square foot area of a cottage dwelling unit may not be increased. A note shall be placed on the title to the property for the purpose of notifying future property owners that any increase in the total square footage of a cottage is prohibited for the life of the cottage or duration of cottage regulations.

L. Common area shall be outside of wet stormwater ponds, wetlands, streams, lakes, and sensitive areas and maintained. Private open space shall provide a private area around the individual dwellings to enable diversity in landscape design. Requirements:

1. Common open space shall be a minimum of 400 square feet per cottage, abut at least 50 percent of the cottages in a cottage housing development, and have cottages abutting on at least two sides.

2. Private open space shall be a minimum of 300 square feet of private, contiguous, usable space adjacent to each dwelling unit, for the exclusive use of the cottage resident. It shall be oriented toward the common open space as much as possible or in the rear or side yard areas with no dimension less than ten feet.

M. An existing detached or attached single-family dwelling that is incorporated into a cottage housing development as a residence and is nonconforming with respect to the standards of this section shall be permitted to remain on a site used for a cottage housing development. However, the extent of the non-compliance may not be increased unless the proposed change is determined by the zoning administrator to be consistent in character, scale and design with the cottage housing development. If the existing dwelling meets the requirements of this section with regard to size and is able to conform to other site standards, it may be counted as a cottage in the density calculation for the site. If the existing dwelling does not meet the size limitation for a cottage, then it shall count as one standard size dwelling.

SECTION 7.7 SPECIAL USE: MANUFACTURED HOME PARKS (MHP)

7.7.1 Special use: Manufactured home parks (MHP).

A. Manufactured home parks may include singlewide and doublewide manufactured housing and other types of residential structures.

B. The location of three or more manufactured homes or park models on a single parcel of land, or the location of three or more manufactured homes or park models on multiple, contiguous parcels under the same ownership, shall constitute a manufactured home park.

C. Manufactured home parks must meet the following requirements:

1. Must have a minimum lot area of one acre.
2. Must have a minimum front, side and rear yard, or perimeter setback, of 30 feet between the property boundary and the nearest structure.
3. Must have an evergreen or fenced screen along the property boundary separating the park and adjacent uses except where the property abuts a public park or right-of-way, such as a road, greenway, or other designated public space, or where it abuts a stream or other surface water.
4. Must provide a minimum of 20 feet between structures. Driveways, parking areas, and open decks and patios may be provided within this space.
5. All structures attached to a manufactured home or other residential structure, including storage buildings, carports, and covered decks or porches, shall be considered part of a manufactured home for purposes of determining separation requirements.
6. Must provide vehicle access that will accommodate emergency vehicle to all units within the park. Internal road system must be paved according to the standards and details manual.
7. Parking shall be provided at a minimum of two parking spaces for each home. In addition one or more common parking areas shall be provided in the park primarily to provide for parking spaces for visitors' automobiles or additional resident parking needs at a ratio of one parking space for every six homes. Each parking space shall have a minimum width of nine feet and a minimum length of 18 feet and shall, at a minimum, be constructed using four inches of crushed stone of a well-compacted sub-base.
8. Five percent of the lot must be dedicated open space, not to include, and in addition to, the lot yard requirements. Designation of easements to the town for parks and greenways according to the town's pedestrian plan, greenway master plan or recreation and parks plan can qualify for the dedicated open space requirement.
9. Detached accessory structures must be at least five feet from any manufactured home and must be less than 150 square feet in dimension.
10. Facilities for waste collection must be provided. Common waste collection facilities such as dumpsters must be screened or individual containers provided in accordance with town specifications.
11. Covered space, including a community building, shall be permitted in the recreation area as long as it does not occupy more than half of the total set aside recreation area. If a swimming pool is provided, it shall be separated from other uses by a fence having a gate which is capable of remaining closed and being locked.
12. Water mains properly connected with the municipal water supply system or with an alternate supply approved by the Department of Environmental Health Services shall be constructed in such a manner as to serve all spaces adequately, for both domestic use and fire protection, on the plan.
13. Sanitary sewer:

a. When the manufactured home park is located within the service area of a public sewerage system, sanitary sewer shall be installed in such a manner as to adequately serve all lots with connection to the public system.

b. Where lots cannot be economically connected with a sewerage system they must contain adequate area for the installation of approved septic tank and disposal fields and must be approved in writing by the Buncombe County Department of Environmental Health.

c. Whenever an extension of a water and sewer line is necessary, the developer shall be responsible for the cost of labor, materials, and appurtenances to install the water or sewer extensions in accordance with the specifications of the town (for water systems) or the Metropolitan Sewerage District (for

sewer systems). The developer shall be responsible for the operation and maintenance of the water system for at least one year following the acceptance of the system by the town. The town will not accept or maintain any water system which does not contain a pressure of 30 P.S.I. based upon the existing main tank level.

14. Skirting and underpinning shall be required on manufactured homes before a certificate of occupancy can be issued. The skirting and underpinning shall be constructed of materials that meet all existing requirements for manufactured homes as set forth in the N. C. Building Code. All materials must be approved by the building inspector prior to installation.

SECTION 7.8 SPECIAL USE: PLANNED UNIT DEVELOPMENTS (PUD)

7.8.1 Purpose.

Planned unit developments (PUDs) are planned residential, commercial, or mixed-use communities that encourage high-quality design, innovative arrangements of buildings and open space throughout the project site by allowing for flexibility in lot configuration and design. Units within a PUD may be leased or sold separately. A residential PUD may be an apartment complex, a condominium complex, or a town-home development. The requirements of this section are intended to:

1. Facilitate more affordable housing by providing possibilities for savings in infrastructure, installation costs, and energy costs through clustering of dwellings;
2. Retain natural features and encourage developments that will be compatible with environmentally sensitive areas;
3. Encourage pedestrian circulation within and adjacent to the PUD;
4. Encourage mixed-use development;
5. Encourage quality design and management of open space.
6. Establish criteria and guidelines for housing developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot not subdivided into the customary streets and lots, but in which dwelling units, are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis or by an established homeowners' association;
7. Establish additional criteria for developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot to be subdivided at the same time or in phases for the purpose of commercial or industrial uses and which may not meet the customary street and lot layouts.
8. Provide for a cohesive approach to multi-family development that is sensitive to the surrounding properties and which protects the health, safety and welfare of its residents and neighbors.

7.8.2 Density.

PUDs with residential units shall contain a minimum of four dwelling units per acre and no PUD shall have greater than eight units per acre. The site shall be configured to allow for shared common areas, buildings, or parking.

7.8.3 Uses.

Proposed uses shall be generally compatible with the uses allowed in the underlying zoning district.

7.8.4 Dimensional requirements.

A. Lot size, buffer, and yard regulations for the zoning district in which the proposed PUD is to be located must be met on the perimeter of the project.

B. The maximum building height of any structure in the PUD shall not exceed the building height requirement of the district in which it is located.

7.8.5 PUD design.

7.8.5.1 Architectural features.

A. The architectural style, surface treatment and placement on the lot of the proposed structures shall be in harmony and in character with the surrounding properties and the neighborhood as a whole.

B. Proposed structures shall, at a minimum, comport with the following requirements:

1. Buildings shall front the street or a parking lot, which shall have access to existing or planned pedestrian facilities or greenways as reflected in the pedestrian transportation plan or greenway master plan;
2. Buildings shall be designed to the topography and contours of the property to minimize impact for the site;
3. Fenestration, porches, stoops, or other architectural articulations are encouraged in order to visually break up the wall.
4. Roof design, including pitch and/or parapet shall be compatible with the surrounding neighborhood.
5. Building facades that front a street must extend parallel to that street.

7.8.5.2 Access and streets.

A. Points of ingress and egress shall be located to maximize safety and minimize traffic hazards, inconvenience and congestion and may require additional traffic control devices if recommended in a traffic impact analysis.

B. Streets and parking areas must be designed to the requirements in the standards and details manual.

C. Streets and alleys shall, wherever practical, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Culs-de-sac and dead-end streets should only occur where absolutely necessary due to natural conditions.

D. Designs shall permit comfortable use of the street by motorists, pedestrians, and bicyclists. Pavement widths, design speeds and the number of motor travel lanes should be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the relationship of the street to the overall project and town street network.

E. If the street or road serving the proposed development does not meet the town street standards or the recommendations of the traffic impact analysis, the developer shall make the necessary improvements to the street or road, or shall make a payment to the town to cover the cost of such improvements. The town may waive this requirement for street or road improvements if the town determines that the

improvement will cause more community disruption than justified by the increased traffic from the proposed development.

F. Traffic and truck egress/ingress must be designed so as to minimize traffic hazards on public streets. All requirements for traffic safety improvements as identified in a traffic impact study or as recommended by staff as part of technical review shall be met. The proposed pattern of internal circulation and parking areas shall be provided.

G. The plan shall provide for internal pedestrian circulation with sidewalks or greenway trails. Sidewalks shall form a logical, safe and convenient system for pedestrian access to all dwelling units, appropriate project facilities and connections to off-site pedestrian destinations such as sidewalks, greenways, or bus-stops external to the development. PUDs adjacent to transit routes must provide a pedestrian connection to, and a provision for, a public bus stop.

H. In addition to internal pedestrian consideration, the plan shall allow for the provision that the developer will provide the town with a minimum eight-foot sidewalk right-of-way along any adjoining or abutting town dedicated street.

7.8.5.3 Parking.

A. Parking shall be provided based on the uses that make up the PUD, using the parking requirements specified in chapter 10 of the land use code.

B. Hedges, garden walls, or fences of a minimum three feet in height, or a planted area of ten feet in width shall be required along any street frontage adjacent to parking areas.

C. An evergreen or fenced screen shall be established in the rear yard of residential uses where the property abuts a commercial or industrial zone as determined within the site as a whole, but not including areas that abut on a town or state road.

D. The space within the required yard may be used as maneuvering space for vehicles and as driveways providing ingress or egress to the parking area.

E. Truck parking and delivery areas must be in the side or rear of buildings and otherwise hidden or screened from the primary, exterior thoroughfare.

7.8.5.4 Landscaping and open space.

A. The landscaping requirements in chapter 8 shall be met.

B. Each planned unit development shall dedicate a minimum of 15-percent open, permeable space in addition to perimeter yard setbacks as required in the district. For PUDS containing residential units, the open space designation shall be established for the purpose of passive or active recreational purposes. Covered space, including a community building, gazebo, or picnic shelter shall be permitted in the recreation area as long as it does not occupy more than half of the total recreation area. Land dedicated as public greenway may count toward the open space requirements.

C. Vegetative screening or a combination of garden walls, or fences must be installed and maintained along the perimeter of a commercial development where it abuts a residential zone. If the property adjoins a residential district, then a fence, hedge or other natural planting of comparable opacity shall be provided along the side or rear lines where the property adjoins said residential district. Such fence, wall or hedge shall be at least six feet in height measured from the ground along the common line of the adjoining lot in the residential district. Hedges or comparable natural evergreen plantings shall be planted at an initial height of at least three feet. Barriers shall be in place before beginning construction on any structure.

7.8.5.5 Utilities and services.

A. Stormwater management facilities shall be provided, as approved by the town and in accordance with the town stormwater regulations.

B. A plan for the collection, removal, and disposal of waste and recyclable materials shall be provided. Solid waste storage facilities shall be provided either in the form of screened and accessible bulk, shared containers or in individual containers for each dwelling unit. When used, individual containers shall be provided with locking lids. Shared dumpster or trash and recycling areas shall be located at the rear of buildings or shall be otherwise screened or located away from the perimeter of the PUD.

C. Heating and cooling units or other mechanical equipment shall be located at the rear of buildings or shall be otherwise screened or located away from the perimeter of the PUD to minimize noise and visual impact of mechanical equipment.

SECTION 7.9 SPECIAL USE: INDUSTRIAL PARK DEVELOPMENT (IPD)

7.9.1 Purpose.

To encourage economic development and redevelopment of industrial areas in a cohesive and safe fashion that attracts investment and growth, while encouraging entrepreneurship.

7.9.2 Density.

No density requirements apply.

7.9.3 Requirements.

In addition to the general SUP application requirements, the following guidelines shall be met unless the industrial park involves the redevelopment of an existing commercial, industrial, or manufacturing site or "Brownfield" where pre-existing conditions may require a variance from these requirements:

A. Industrial park developments must maintain the required setbacks for the district at their perimeter boundary. Driveways or parking may encroach into the setback, however a ten-foot landscaped or grassed buffer must be maintained along public roadways at all times. Sidewalks or greenways may be included in this ten-foot-wide area as indicated on the pedestrian master plan.

B. Sites are required to finish all grades and sites with grass and other approved landscaping and landscaping is approved as part of the site plan review and a condition of a final occupancy permit. Landscaped areas may contribute to the stormwater management plan in accordance with the town's phase II stormwater ordinance as applicable.

C. All parking must be improved with hard surface materials and incorporate stormwater management that retains and treats a 24-hour, one-year storm unless otherwise approved under the town's phase II stormwater ordinance requirements.

D. Lots must be designed to maximize access and safety. Adjacent developments shall share access points to the public roadway and parking wherever practicable and shall be designed so as to take advantage of existing traffic lights.

E. All sites are required to provide screening for outdoor storage areas and dumpsters which are visible from the public roadway. Outdoor storage must be identified on the industrial park plan and the screening to be used shall be specified. Screening requirements may be met with a minimum of a six-foot opaque fence or wall, or with a ten-foot buffer of evergreen trees which shall meet or exceed six feet in height within one year of the certificate of occupancy being granted.

F. Loading docks are required to be placed in side or rear yards or within the interior of the property. No loading docks shall face the street unless screened by other parts of the building, screening and landscaping.

G. Out-buildings or future expansion areas shall be designated on the plan with building envelopes. Provided that construction takes place within the approved building envelope, construction may proceed upon issuance of a building permit. Otherwise, expansion or amendment to the original plan shall require approval of the board of adjustment as an amendment to the SUP.

H. A building permit and certificate of occupancy is required whenever a unit of the park changes ownership, tenancy, or use, to ensure that all building and fire safety codes are met.

I. All other requirements of the zoning district in which the development is located shall be met, including stormwater management and lighting requirements of the town.

SECTION 7.10 SPECIAL USE: DOWNTOWN DEVELOPMENT (DD)

7.10.1 Purpose.

The purpose of this planning option is to encourage mixed uses within single structures or a cohesive series of structures in the central business district (CB) that provide a wide range of shopping, dining, working, cultural attractions, and living spaces that promote activity downtown during both the day and evening hours. These provisions are also intended to preserve the architectural heritage of the downtown area by limiting the mass and scale of buildings relative to existing structures within the downtown.

7.10.2 Applicability.

All new construction or renovation within the CB district that creates more than three commercial and/or residential units.

7.10.3 Density.

There are no density limitations within the CB district.

7.10.4 Requirements.

In addition to the general SUP application requirements, the following shall be required:

A. Buildings shall address thoroughfares with doorways and windows that front the sidewalk.

B. New construction shall conform to the historic district guidelines in their design and a certificate of appropriateness from the historic preservation commission shall be issued prior to application for a special use permit.

C. Off-street parking must be provided for residential units at a minimum ratio of one space per unit. Parking may be provided or contracted in a lot or lots separate from the lot that holds the building. Parking may also be incorporated as part of the structure. Parking areas shared with businesses, the town or other entities may count toward this requirement with documentation of a shared parking agreement.

D. Buildings that include a level of parking within the structure that is at street level or higher shall incorporate a facade that screens parking structure at or above street level so as to integrate the building with the architecture of adjacent or proximate buildings.

E. Buildings shall be designed to enhance the pedestrian environment with improvements or expansions to sidewalks and crosswalks, the inclusion of outdoor seating areas, benches or other pedestrian amenities. Sidewalks shall be a minimum of eight feet in width.

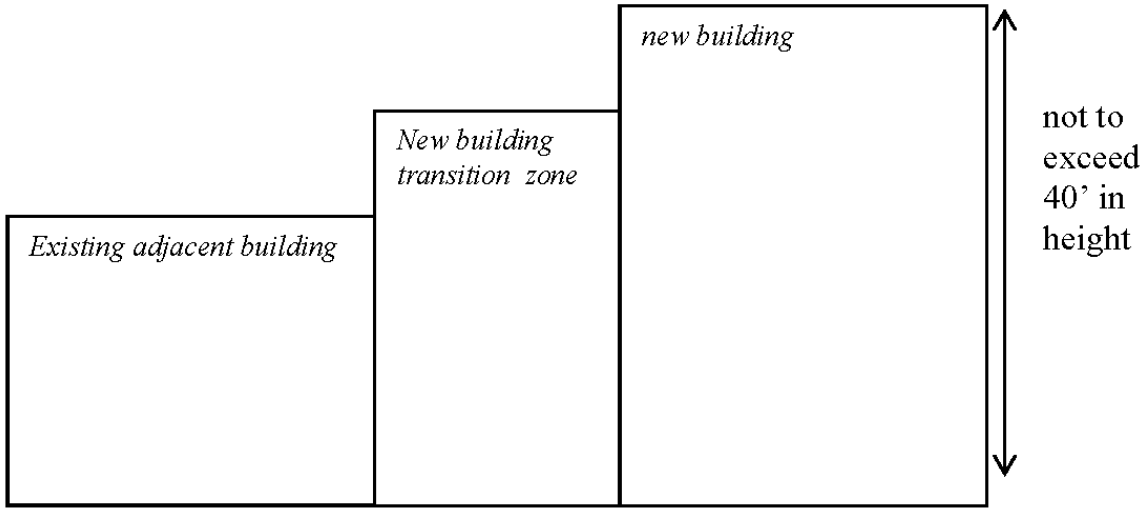
F. Minimum setbacks shall be ten feet in width from the back of curb to the edge of building or the average setback of existing built upon lots on the same street frontage of the block., whichever is greater. Maximum setbacks shall not be more than ten additional feet from the determined minimum setback unless approved by the board of adjustment.

G. A stormwater management plan shall be incorporated into the building design so that gutter systems and parking lot drainage may be handled by the municipal storm sewer system. Connections or improvements to the municipal storm sewer system to accommodate the development must be approved by the town's public works director and stormwater administrator.

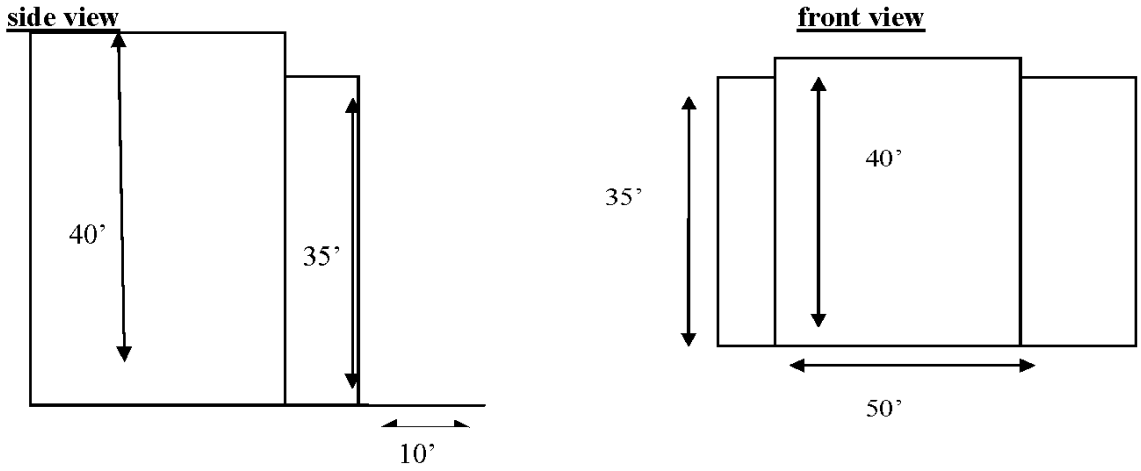
H. The building mass from street to highest point of building shall be broken up to provide a transition from the height and scale of existing adjacent buildings, or from the nearest, existing building considered to be a contributing property of the historic district.

I. Top floors of buildings exceeding 35 feet in height and which are greater than 50 feet in length, must be stepped back or varied in height along the vertical plane of the building in order that there is never more than a 40-foot building height longer than 50 linear feet without a break or variation in the roof line.

Use of transitional height as part of new construction.



Vary or recede the top edge of building face when it exceeds height greater than 35 feet and length greater than 50 feet.



SECTION 7.11 SPECIAL USE: MULTI-FAMILY RESIDENTIAL

A. Where two or more multi-family residential buildings are constructed under single ownership, whether simultaneously or at different times, the entire parcel of land occupied by such multi-family residential buildings shall be considered one lot and parking spaces and usable open space will continue to be available in the same proportions to all occupants of the buildings on the lot.

B. Minimum horizontal distance between any buildings or between any building and any lot line (other than a street right-of-way), shall be 25 feet.

C. Solid waste storage facilities shall be provided either in the form of a screened and accessible bulk container or individual containers for each dwelling unit. When used, individual containers shall be screened, uniform in appearance, marked with the number of the dwelling unit they serve, and provided with locking lids.

D. Structure(s) must meet all general requirements for the district except that the board of adjustment may require a lesser or greater front setback to harmonize with surrounding structures.

E. Landscaping consisting of grass, trees and ornamental shrubs shall occupy no less than five percent of the total lot area. The landscaping shall be done in addition to any required screening or buffer. The location and type of landscaping shall be shown on the site plan.

F. The architectural style, surface treatment and placement on the lot of the proposed structure shall be done in a way that is in harmony and in character with the surrounding properties and the neighborhood as a whole.

G. The plan shall provide for internal pedestrian circulation and connections to public rights-of-way, existing sidewalks, transit stops or greenways consistent with town construction specifications.

H. A clearly defined entrance to the parking area shall be provided of no more than 24 feet in width. Direct access to individual parking spaces from public rights-of-way shall not be allowed.

Parking shall be provided at a minimum rate of two spaces per dwelling unit. No grade within the parking area or access lanes shall exceed 14 percent.

SECTION 7.12 SPECIAL USE: WIRELESS COMMUNICATION TOWERS

A. All new wireless communication facilities shall be engineered, designed, and constructed to be capable of sharing the facility with other providers, to collocate with other existing wireless communication facilities and to accommodate the future collocation of other wireless communication facilities.

B. These regulations do not apply to amateur radio antennas affected and controlled by FCC regulations codified in Chapter 47, Section 97, of the Code of Federal Regulations.

C. In additional to the general SUP application requirements, the following shall apply:

1. No person, firm or corporation shall install or construct any wireless communication facility unless and until a tower antenna use application (TAA) has been issued pursuant to the communication tower requirements of these regulations.

2. A permit shall not be issued until the applicant proposing a new wireless communications facility shall demonstrate that it has made reasonable good faith attempt to locate its wireless communication facility onto an existing structure. Competitive conflict and financial burden alone are not deemed to be adequate reasons against collocation.

3. All applicants for wireless communications facilities are required to submit a statement with the application agreeing to allow and reasonably market collocation opportunities to other wireless communications facility users and to design facilities to allow for additional attachments. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged other providers. The collocation agreement shall be considered a condition of issuance.

4. Construction of all wireless communication facilities shall comply with the requirements of the N.C. Building Codes and permitting process in addition to the requirements of these regulations.

5. Attached wireless communication facilities shall not add more than 20 feet to the height of the existing building or structure to which it is attached. Antenna attachments to existing communication towers shall not increase the height of the tower above the maximum permitted height of that tower. In no instance shall a new tower exceeding 20 feet in height be allowed on a building.

6. Height for wireless communication facilities with support structures shall be reviewed on a case- by-case basis as part of the special use permit process. The height of the proposed facility should consider ground elevations, topographical and other site development criteria within these regulations.

7. Attached wireless communications facilities shall meet the setback provisions of the underlying zoning district in which they are located. An attached wireless communication facility antenna array may extend up to 30 inches horizontally beyond the edge of the attachment structure so long as the antenna array does not encroach upon an adjoining parcel. Wireless communications facilities and towers with support structures shall fall within the setback requirements in their entirety.

8. Wireless communications facilities with support structures shall be enclosed by an opaque fence (excluding slatted chain link) not less than six feet in height. Security features may be incorporated into the buffer and landscaping requirements for the site. Nothing herein shall prevent fencing that is necessary to meet requirements of state or federal agencies.

9. Existing mature tree growth and natural land formed on the site shall be preserved to the extent feasible; however, that vegetation that cause interference with the antennas or inhibits access to the equipment facility may be trimmed or removed.
10. Grading for the new wireless communication facility shall be minimized and limited only to the area necessary for the new facility.
11. Wireless communications facilities shall be designed to be compatible with the existing structures and surroundings to the extent feasible, including placement in a location which is consistent with proper functioning of the wireless communications facility and the use of compatible or neutral colors, or camouflage technology.
12. Wireless communications facilities shall not be artificially illuminated, directly or indirectly, except for:
    a. Security and safety lighting of equipment buildings if such lighting is appropriately down shielded to keep light within the boundaries of the site;
    b. Such illumination of the wireless communications facility as may be required by the FAA or other applicable authority installed in a manner to minimize impacts on adjacent residents; and
    c. Unless otherwise required by the FAA or other applicable authority, the required light shall be red and type of lens used to reduce ground lighting when the site is within 100 feet of a residential dwelling.
13. Wireless communications facilities shall not display any signage, logos, decals, symbols, or any messages of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers and such other information as may be required by local, state, or federal regulations governing wireless communications facilities.
14. Wireless communications facilities must provide documentation that the proposed facility will meet all current applicable FCC and Electronics Industries Association and Telecommunications Industries Association (EIA/TIA) standards.
15. Sound prohibited. No unusual sound emissions such as alarms, bells, buzzers, or the like are permitted.
16. All utility lines for wireless communications facilities shall be installed underground to the wireless communications facility.
17. Access to the tower site must be graded and stoned in a manner that will allow access by police and fire/rescue units.

SECTION 7.13 SPECIAL USE: CAMPGROUNDS

7.13.1 Application and purpose.

A. All campgrounds, regardless of whether the campsites are offered for sale, developed as rental sites, or let on assignment, are subject to the additional requirements contained herein.

B. The purpose of these regulations is to ensure that campgrounds and campground related facilities are developed in a safe and orderly fashion which supports the goals of the comprehensive plan and minimizes the impact on surrounding properties.

7.13.2 Definitions.

Dependent recreational vehicle (RV). A recreational vehicle which is dependent upon a service building for toilet and lavatory facilities.

Independent recreational vehicle (RV). A recreational vehicle which can operate independently of connections to sewer, water and electric systems. It may contain water flushed toilet, lavatory, shower and kitchen sink, all of which are connected to water storage, greywater storage, and sewage holding tanks located within the RV.

Tent campground. A campground designed for use of tents by persons in vehicles. This shall not include the camping of persons in vehicles not designed for camping purposes. Such campgrounds are dependent upon a service building for toilet and lavatory facilities.

Walk-in campground. A camping area designed exclusively for those persons which walk, bicycle, or use some other non-motorized means of access. Such areas shall contain only service roads for maintenance of campground facilities and shall not be used for parking associated with camping. (This shall be a tent use area only.) Such campgrounds are dependent upon a service building for toilet and lavatory facilities.

7.13.3 Campground standards for all campgrounds.

The following standards shall apply to all campgrounds containing two or more campsites or lots, including sites for tents, accommodations for backpackers and recreational vehicles (RVs).

A. All plans shall be submitted to the planning board for review. The planning board may review all developments in two phases. A preliminary development plan shall be required and shall be received at least 14 days before the next planning board meeting. When this preliminary development plan is approved or approved with conditions, construction of the campground may begin. When the construction is complete, the planning board may request a review approval of final or as-built plan of the campsite. This review shall be mandatory if the preliminary development plan was approved with conditions, or if the final or as-built plan has had significant changes since the submittal of the preliminary development plan. After all approvals have been completed, a certificate of compliance shall be issued.

B. All proposed campgrounds shall be a minimum of three acres in size.

C. Certificate of compliance required. Any proposed campground shall not be allowed to open until such campground has met all planning and building requirements of this ordinance for the Town of Black Mountain and the State of North Carolina.

D. Water-sewer line extensions. All proposed and required water sources and sanitary facilities serving campgrounds shall conform to the requirements of the Town of Black Mountain and/or the Metropolitan Sewer District. Any applicant shall further be responsible for development and submittal of all water and sewer plans necessary for submittal to above-mentioned agencies for approval as extensions to systems operated by these agencies.

E. Other permanent structures. Permanent structures other than camp platforms and recreational support and sanitary facilities shall be prohibited unless the developer or owner can prove to the planning board the necessity or desirability for such a structure. Structures commonly considered to fall under the three above categories could include a gatehouse, office, laundry area, video/amusement area, common area shelters, or picnic table shelters for campsites. Camping cabins shall be an allowed in an established campground at the discretion of the planning board and by approval of the building inspector.

F. Building types. Conventional, industrialized (modular) and manufactured houses are prohibited on all campsites. Such structures shall only be allowed for the purpose of housing the owner or caretaker of the campground or as used for camping cabins in the campground.

G. Storage of RVs. Storage of all types of recreational vehicles within campgrounds shall be limited to no more than one stored RV per ten RV sites. Such storage area shall be buffered and screened, preferably by vegetation, from the campground or outside areas.

H. Number of days permitted to camp. Continuous camping shall be restricted to a period of no more than 180 consecutive days within a one-year period. Tent camping shall be limited to a period of 30 consecutive days within 60-day period.

I. Access to water for all campsites/RV utility islands. Each campground shall have access to a source of potable water approved by the applicable health authority and building codes. It is preferable to provide one water outlet per non-RV camping unit; however a minimum of one outlet for every two non-RV units shall be provided with two hose bibs equipped with vacuum breakers. As an alternative to on-site water outlets for non-RV camping sites, a centralized location of potable water not more than 200 feet from any non-RV site could also be used as an alternative. Each site intended for use as a RV camping site shall have access to water within the RV's utility island. All water outlets, sanitary sewer line taps, and electrical outlets for RVs shall be located on an approved RV utility island. All water taps or outlets serving all campsites shall be of a type compatible with garden hose connections. All water facilities serving campsites of any type shall be required to have backflow prevention devices as required by the Black Mountain Department of Public Works.

J. Campfires shall be contained and controlled. Stoves or grills are recommended for all campsites. Fire rings shall be required at those locations where fires are permitted. Facilities provided for above activities shall either be provided at campsites or restricted to designated locations. No fire shall be allowed within ten feet of a bottled gas container or other combustible source of fuel, and no open fire shall be left unattended. No fires outside of structures intended for the containment and control of fires shall be permitted.

K. Refuse disposal. All campgrounds shall provide fly-proof, watertight, containers for the disposal of refuse. These containers shall also be constructed and located such that they are not subject to rodent infestation or dog and bear invasion. Containers shall be provided in sufficient number and capacity to properly store all refuse. Refuse for camping areas shall be collected at least once a day.

L. Overflow parking area. All campsites shall be limited to a total of one non-RV parking space. An additional area for parking of such vehicles shall be provided equal to one parking place for every ten campsites. Such parking area can be surfaced with gravel. At no time shall parking be permitted on access roads to the campground.

M. Insect control. Owners of such parks shall be responsible for adequate insect control in the camping area such as the periodic spraying for mosquitoes.

N. Cut-off, overnight lighting for all bathhouses and centralized water sources shall be required. Reflectors denoting paths to above mentioned structures are recommended. Other minimal lighting should be installed as needed for the safety and comfort of campground residents.

7.13.4 Campsites for accommodation of independent RVs.

A. RVs shall not be permitted to hook up to electricity or water for occupation on individual lots unless as part of an approved campground or ICD, or O-I master plan.

B. Density of sites. To prevent intensive site use, and to maintain an aesthetic camping atmosphere, density shall not exceed 15 sites per acre.

C. RV parking sites material/slope. Each recreational vehicle site with individual parking shall contain at least five inches of crushed gravel leveled to not more than three percent slope.

D. RV utility islands. Each RV site shall contain, within the utility island, hookups to water, sewer, and electrical service. Utility islands shall be located to the left center of the RV and at the discretion of the campground owner/developer based on the topography of the land.

E. RV utility islands water/sewer plumbing requirements. Campgrounds with access to a sewage system shall provide that each campsite contain a sewer connection with suitable fittings to permit a watertight junction with the RV outlet. Each sewer connection shall be constructed so that it can be closed, and when not in use shall be capped to prevent escape of odors. All water taps or outlets serving RV campsites shall be of a type compatible with garden hose connections. Sewer and water piping and installation shall be constructed as specified in the North Carolina Building Code.

F. Electrical outlets. Each RV site shall have access to electrical power. Configuration of power supply needed shall be the decision of the campground owner. However, a recommended one in ten RV sites should have access to 50 amp service. All electrical outlets shall be located in a properly constructed utility island.

G. Parking dimensions RV sites. Parking dimensions may vary from single auto trailer attached vehicle back-in of 10 × 60 feet to side-by-side arrangements of trailer and auto of 29 feet long and 30 feet wide. Various combinations may be used to accommodate the recreational vehicle and one additional parking place, but dimensions to accommodate trailer width with extended outside awning shall be at least 14 feet. Parking spurs shall be located so that trailer doors face away from interior roads and into the site. Parking for all recreational vehicles and any additional vehicle shall be of a minimum five-inch gravel base.

H. RV campsite spacing. RV parking sites shall be at least 20 feet apart (this 20-foot area will include any yard, cooking areas, dining areas, and utility island for next RV site), edge-to-edge, and the center of all camping units should be at least ten feet from the edge of the campground road.

I. Other RV site requirements. Each RV site should have a picnic table or grill within the campsite area. There shall be a total area for both uses, including general yard area, of not less than 400 square feet with a width of not less than 20 feet.

J. RV dump station. A sanitary dump station built to the requirements of the local health department shall be provided at the entrance to the campground or other location convenient to all campsites. The dump station shall be located so that the left rear of vehicles will slope slightly toward the dump station when connected for emptying.

7.13.5 Sanitary facilities for accommodation of dependent RVs and tent campsites.

A. All campgrounds for the accommodation of dependent RVs and tents shall provide sanitary facilities connected to a sewerage system. Whenever possible, these facilities shall be connected to a public sewerage system.

B. Toilets, lavatories, and bathing facilities shall be provided as required by the North Carolina State Building Code.

C. Toilet facilities shall be plainly marked, separate for each sex, lighted at night, and shall be located no farther than 200 feet from any camp pad.

D. Toilet facilities may be located in a central building or in two or more buildings according to the size of the campground and location of the campsites in relation to the facilities.

E. Adequate provisions shall be made for the disposal of dishwater according to the size of the campground. A suggested ratio is one disposal unit per ten campsites.

7.13.6 Campsites for tents.

Construction of tent pads is not required for pup tents or other small shelters used by backpackers. Provisions for walk-in campgrounds are contained below.

A. Each tent site should contain a minimum space of 30 × 30 feet. Density shall not exceed ten sites per acre. Tent sites with individual parking arrangements shall contain one automobile parking space at least 20 feet × 10 feet.

B. Each site should contain a reinforced, fairly level tent pad. The pads shall be approximately 16 × 16 feet to provide maximum flexibility of use, but shall not contain less than an area of 12 × 12 feet. The tent pad shall be a minimum of six inches high and constructed of gravel, crushed aggregate, or equivalent material that will allow run-off from precipitation to flow through the pad. Pads constructed of tamped earth, asphalt or other impervious materials are prohibited. Tent pads in excess of ten percent slope should be leveled. A three-percent slope is preferable.

C. Provisions for sanitary facilities are the same as for dependent RVs set out hereinabove.

7.13.7 Walk-in campgrounds.

A. Camping is prohibited in areas where a source of potable water and access to sanitary facilities is not provided.

B. Walk-in campgrounds shall have access to potable water within 75 feet of all sleeping areas. In locations where a water supply system is not possible, potable water may be supplied by an approved well with a hand pump or by water from pickup stations.

C. All walk-in campgrounds shall have access to the use of a toilet facility to be located within 300 feet of each camping space.

7.13.8 Campsites for mixed uses.

Campgrounds may be developed to provide more than one type of camping site in the same area. When uses are mixed, the highest or most strict standards shall apply to development of the entire campground with the exception of walk-in camping areas in a campground designed for mixed uses. In such a development, walk-in camping shall be separated from other types of campsites so that campfire smoke or noise will not constitute a nuisance to other campers.

7.13.9 Campground design.

The ideal design for campgrounds is one which will be compatible with the natural features and topography of the tract undergoing development; and one which provides safe, healthful and convenient camping facilities for campground users with minimum land disturbance.

A. A complete master plan of any new, expanded or altered park shall be submitted to the Town of Black Mountain for approval before construction.

B. Density shall not exceed 15 sites per acre.

C. Campgrounds shall be developed to minimize noise, campfire smoke, or trespassing so as not to create a nuisance to abutting properties.

D. Sanitary and bathing facilities shall be provided per the state building code. Sanitary dump stations built to the requirements of the local health department shall be provided at the entrance to the

campground or other location convenient to all campsites. The dump station shall be located so that the left rear of vehicles will slope slightly toward the dump station when connected for emptying.

E. All campsites shall be limited to a total of one non-RV parking space per site or RV parking space. An additional area for parking of such vehicles shall be provided equal to one parking place for every ten campsites in a common location or spread throughout the campground.

CHAPTER 8. LAND DEVELOPMENT AND ENVIRONMENTAL REGULATIONS

SECTION 8.1 EROSION PREVENTION AND SLOPE PROTECTION ORDINANCE

8.1.1 Purpose.

The purpose of this chapter is to protect, maintain and enhance the environment of the Town of Black Mountain and the health, safety and public welfare of its citizens by establishing minimum requirements concerning land disturbance and to control the potential adverse effects of erosion and sedimentation.

8.1.2 Applicability.

A. Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and land disturbance projects within the Town of Black Mountain's jurisdiction.

B. Land disturbance permits shall be required whenever 1,000 square feet or more, up to one acre, of land or is disturbed and not associated with a building permit as well as land disturbing activity of any size associated with a building permit.

C. Land disturbance shall mean any manipulation of the ground forms including, but not limited to cutting of trees with excavation of stumps or any other earth-disturbing activities; provided, (a) that installation of utilities in an area with a topographical change of not more than five percent where the area disturbed is not wider than 18 inches (including ditch and spill areas); and (b) that creation of stormwater drainage and erosion control ditches except when the ditch is located in an existing natural drainage channel and the only improvement is the lining of the channel with rock, shall not be considered grading.

D. For any area designated as a "steep slope", land disturbance shall mean any use of, or operations on, the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. However, the cutting of scattered individual trees, the removal of fallen trees and the removal of undesirable non-native or invasive vines, shrubs and plants will be allowed.

E. Any grading or other land disturbing activity within the floodplain shall be reviewed by the floodplain administrator to determine applicability of floodplain regulations and associated permits.

(Ord. No. O-22-04, 6-13-2022)

8.1.3 Cut and fill slopes.

A. Property being developed within the Town of Black Mountain shall not exceed the following specifications for cut and fill:

1. Cut slopes shall not exceed a ratio of greater than 1:1 (horizontal distance to vertical distance, or a 45 degree slope angle, or 100 percent grade); and

2. Fill slopes shall not exceed a ratio of greater than 1.5:1 (horizontal distance to vertical distance, or a 33 degree slope angle, or 66 percent grade).

B. Roads exceeding 15 percent grade and proposed for dedication to the town as public streets shall include roadway design and engineering with benching or other stabilization techniques as part of the site plan and shall include a town maintenance easement to the toe of the slope.

C. All cut and fill slopes shall be hydro-seeded or landscaped within 30 days of achievement of final grade and all temporary roads and slopes shall not be left exposed for more than a 45-day period.

D. Retaining walls greater than five feet in height must be designed and sealed by an engineer and approved by the town's building inspector.

Notes on Slope:		
Slope is the measurement of "rise" in vertical distance in relation to horizontal distance, or "run." Slope ratio is expressed as horizontal distance (to): vertical distance		
% slope is calculated as:	Vertical Distance / Horizontal Distance	× 100
1:1 slope (or 45 degree slope angle) = 100%		
1.5:1 slope (or 33 degree slope angle) = 66% slope*		
2:1 slope (or 26.6 degree slope angle) = 50% slope		
3:1 slope (or 18 degree slope angle) = 33.5% slope		
4:1 slope (or 14 degree slope angle) = 25%		
6.5:1 slope (or 8.7 degree slope angle) = 15% slope		
Without using more advanced stabilization techniques, the maximum slope to be considered for vegetative stabilization is 1.5:1.		

Table 8.1.03

8.1.4 Sedimentation and erosion control.

A. Any land disturbance permitted under Buncombe County's Soil Erosion and Sedimentation Control Office must be documented before any grading activity may take place. Buncombe County enforces the state "Sedimentation Pollution Control Act of 1973" for the Town of Black Mountain and regulates certain land disturbing activities for the purpose of controlling accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, water courses and other public and private property by sedimentation.

B. Minimum Plan Requirements:

1. A written or graphic concept plan of the proposed soil and sedimentation controls during construction shall be submitted with the land disturbance permit. Concept plan shall include identification of areas of land disturbance within the site and the location of proposed temporary and permanent soil erosion and sedimentation control measures designed to retain sediment on-site. Minimum requirements include protection of stormwater inlets and ditches with silt fences, mitigation of sediment created by construction entrances following the construction and installation standards published by North Carolina Department of Environmental Quality.
2. Land disturbing activity shall not take place within the stream buffer of watercourses depicted as a solid blue line on the most recent USGS seven and one-half minute quadrangle topographic maps that cover the Town of Black Mountain.
3. Reserved.
4. Erosion control measures in compliance with the approved plan and/or building permit shall be in place before construction may begin. Failure to comply will result in a stop work order.
5. Any required permanent erosion control measures or landscaping shall be in place before land disturbance permit is issued or shall be bonded at 125 percent of the estimated cost for implementation of the landscaping plan. Final seeding and/or landscaping shall be in place within 45 days of final grade.
6. Onsite vehicle or equipment washing is not allowed.

(Ord. No. O-22-04, 6-13-2022)

8.1.5 Designation of steep slopes and hillside requirements.

A. Steep slope and hillside regulations apply to any subdivision or development that meets the following criteria:
   1. A development or redevelopment project or subdivision located on a parcel greater than one acre and in which the average of the natural slope for the entire parcel is 16 percent or greater; or
   2. A development or redevelopment project or subdivision of a parcel less than one acre in which the average natural slope of 25 percent or greater; or
   3. A development or redevelopment project or subdivision, where 50 percent or more of the subdivision lies at or above elevations of 2,600 feet above mean sea level or greater.

B. Any portion of the lot, parcel, or tract of land which has been approved by the planning department or planning board as a minor or major subdivision or special use permit prior to the adoption of this section, or developed prior to the adoption of this section, or any lot pre-existing before the adoption of this section, shall not be subject to the minimum lot size requirement as stated in this chapter. Subsequent phases of, or additions to, a minor or major subdivision or special use permit, as well as approved subdivision projects where the site plan has been changed, or approved subdivisions where the lot design has changed, shall indicate the proposed contours, limit and area of grading, and percentage of the site to be graded and shall comply with the requirements of these regulations.

C. Slope calculations shall use the smallest contour interval for which maps are available or at a minimum of five-foot intervals, and shall be determined based on the tract to be subdivided, irrespective of proposed subdivision boundaries if part of a minor or major subdivision. The average slope is calculated using the following formula:

$$S\% = \frac{0.0023 \times I \times L}{A}$$

Where:

S = Average natural slope of parcel or lot in percent

I = Contour interval of map in feet, with contour intervals to be five feet or less

L = Total length of the contour lines within the parcel or lot in feet

A = Area of the parcel or lot in acres

0.0023 = Constant which converts square feet into acres

Property owners may submit an alternate method of slope calculation for consideration based on the peculiarities of the site and prepared by a member of the American Society of Landscape Architects (ASLA), Professional Engineer (P.E.), Professional Land Surveyor or be a qualified environmental scientist. These methods may include, but are not limited to, weighted average, slope mapping, or other field-based techniques, etc.

Once "S" or the average natural percent slope of the tract is calculated, it shall be rounded off to the nearest whole number on the density and lot size table, as set forth hereinafter, which shall be used to determine the maximum number of lots or units allowed.

D. In addition to the application requirements submitted for review, proposed projects which meet the standards of the hillside area definition must include the following information:

1. Average natural slope calculations which include the average natural slope in percent, contour intervals of five feet or less, individual and total length of contour lines in feet and area of the parcel in acres;
2. Subdivision for the purpose of conservation in perpetuity may allow developers to subtract areas for conservation from the total acreage used to calculate average slope of the original lot.
3. Areas exceeding 16 percent slope shall be indicated on all site plans, development plans, preliminary plats, and special use permit plan applications.
4. Soils maps shall be submitted if available from the natural resource conservation service (NRCS) and deposits of known colluvial soils shall be located on the site plan.
5. Consultation with a geotechnical engineer shall be required for road, driveway, or home construction in areas of a tract in excess of 36 percent natural slope and an investigation for colluvial deposits shall be made. Recommendations of the geotechnical engineer shall be submitted with the application for review by staff or by the planning board if part of a major subdivision or special use permit application.
6. Homesites on a 36-percent or greater slope shall include a global stability analysis with the building permit.
7. Homesites on a 25-percent or greater slope must conform to the following density table in addition to the minimum zoning requirements. Conservation subdivision plans shall be allowed twice the density permitted per acre under the Density Table for Steep Slopes in the erosion prevention and slope protection ordinance (applicable to lots of 25 percent slope or greater) and shall be exempt from the minimum lot size. Under no circumstances however shall the gross density of a conservation subdivision exceed the density for the district in which it is located.
8. Wherever the minimum lot size for the district and the density table are in conflict, the regulation of the greatest lot size shall apply:

DENSITY TABLE FOR STEEP SLOPES (8.1.05)		
SLOPE %	**UNITS PER ACRE**	**MINIMUM LOT IN ACRES**
25	1.250	0.80
26	1.064	0.94
27	0.926	1.08
28	0.820	1.22
29	0.735	1.36
30	0.667	1.5
31	0.625	1.6
32	0.588	1.7
33	0.556	1.8
34	0.526	1.9
35	0.500	2.0
36	0.476	2.1
37	0.455	2.2
38	0.435	2.3
39	0.417	2.4
40	0.400	2.5
41	0.385	2.6
42	0.370	2.7
43	0.357	2.8
44	0.345	2.9
45	0.333	3.0
46	0.323	3.1
47	0.313	3.2
48	0.303	3.3
49	0.294	3.4
50	0.286	3.5
51	0.278	3.6
52	0.270	3.7
53	0.263	3.8
54	0.256	3.9
55	0.250	4.0
56	0.217	4.6
57	0.192	5.2
58	0.172	5.8
59	0.156	6.4
60	0.143	7.0
61	0.132	7.6
62	0.122	8.2
63	0.114	8.8
64	0.106	9.4
65	0.100	10

9. Development and subdivision plans shall be designed to minimize disturbance to the natural landform and demonstrate terrain-adaptive design and construction techniques. Extensive grading shall be avoided and low impact development ("LID") techniques which meet the town's stormwater requirements are required.

10. On any tract greater than one acre proposed for subdivision or construction, no more than 50 percent of the tract shall be graded or disturbed.

11. Streets, rights-of-way, pedestrian facilities and setbacks shall be designed to minimize impact on steep slope areas of the particular site without compromising the town's ability to provide connectivity, street maintenance, waste management, or fire protection, and must be designed to the approval of the town's fire marshal and public works director. Street standards may be allowed a staff variance of up to 20 percent (up to eight feet variation on right-of-way requirements, and up to 4.8 feet variation on total travel surface requirements), based on topography, traffic and public safety needs. Subdivisions complying with the conservation subdivision plan requirements (chapter 13) do not have to meet the setback requirements for the zoning district. However, the location and lay-out of streets, lots buildings, and pedestrian facilities should minimize environmental impact.

12. Whenever a major subdivision of ten acres or more must comply with steep slope and hillside regulations, the subdivider must apply for a conservation subdivision special use permit as provided in chapter 7.

13. Reserved.

14. No land disturbing permit shall be issued for a site plan or a subdivision which meets the standards set forth in the definition of hillside area until the site plan review and subdivision plat review have been completed.

SECTION 8.2 THE PHASE II STORMWATER ORDINANCE

8.2.1 Purpose.

A. General. The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment. It has been determined that proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

The ordinance seeks to meet the requirements for the town's National Pollutant Discharge Elimination System (NPDES) Permit.

(Ord. No. O-25-08, 5-12-2025)

8.2.2 Applicability and jurisdiction of this ordinance.

A. General. Beginning with and subsequent to its effective date, this ordinance will be applicable to all development and redevelopment occurring within the corporate limits of the Town of Black Mountain, unless exempt pursuant to section 8.2.2(C) of this section, exemptions.

B. Activity threshold requiring a stormwater permit. A stormwater permit is required for any development and redevelopment which disturbs one-half acre of land or more in all zoning districts, with the exception of the Central Business District where a stormwater permit is required for one acre or greater of disturbance.

All phased developments will achieve post-construction requirements at the completion of each phase unless otherwise approved by the stormwater administrator.

C. Exemptions.

(1) Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

(2) Development which disturbs less than one-half acre of land.

(3) Pre-existing development or development activities that do not remove or decrease existing stormwater controls will not be required to install new or increased stormwater controls.

(4) When a pre-existing development is redeveloped, either in whole or in part, increased stormwater controls will only be required according to the amount of disturbance proposed with the development.

D. Reserved.

E. Map. The stormwater map will be kept on file by the stormwater administrator and will be updated to take into account changes in the land area covered by this ordinance and the geographic location of all structural SCMs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or SCM will be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

(Amd. of 2-14-2022; Ord. No. O-23-21, 11-13-2023; Ord. No. O-25-08, 5-12-2025)

8.2.3 Interpretation.

A. Meaning and intent. All provisions, terms, phrases, and expressions contained in this ordinance will be construed according to the general and specific purposes set forth in section 8.2.1, purpose and also defined in section 8.2.28. If a different or more specific meaning is given for a term defined elsewhere in Town of Black Mountain Code of Ordinance, the meaning and application of the term in this ordinance will control for purposes of application of this ordinance.

B. Text controls in event of conflict. In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text will control

C. Authority for interpretation. The stormwater administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the stormwater administrator, who will respond in writing within 30 days. The stormwater administrator will keep on file a record of all written interpretations of this ordinance.

D. References to statutes, regulations, and documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the design manual), or document, it will be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

E. Computation of time. The time in which an act is to be done will be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Black Mountain, the deadline or required date of action will be the next day that is not a Saturday, Sunday or holiday observed by the Town of Black Mountain. References to days are calendar days unless otherwise stated.

F. Delegation of authority. Any act authorized by this Ordinance to be carried out by the Assistant Town Manager of Town of Black Mountain may be carried out by his or her designee as Stormwater Administrator.

(Ord. No. O-25-08, 5-12-2025)

8.2.4 Design manual.

A. Reference to North Carolina Department of Environmental Quality Stormwater Design Manual. The stormwater administrator will use the policy, criteria, and information, including technical specifications and standards, in the NC DEQ design manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater SCMs.

The design manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

B. Relationship of design manual to other laws and regulations. The North Carolina Department of Environmental Quality Stormwater Design Manual is hereby adopted by reference.

(Ord. No. O-25-08, 5-12-2025)

8.2.5 Relationship to other laws, regulations and private agreements.

A. Conflict of laws. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare will control.

B. Private agreements. This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance will govern. Nothing in this ordinance will modify or repeal any private covenant or deed restriction, but such covenant or restriction will not legitimize any failure to comply with this ordinance. In no case shall Town of Black Mountain be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. No. O-25-08, 5-12-2025)

8.2.6 Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance will be adjudged invalid by a court of competent jurisdiction, such judgement will not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

(Ord. No. O-25-08, 5-12-2025)

8.2.7 Effective date and transitional provisions.

A. Effective date. This ordinance will take effect on May 12, 2025.

B. Final approvals, complete applications. All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Black Mountain prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment will be exempt from complying with all provisions of this ordinance dealing with management of post-construction runoff, but will be required to comply with all other applicable provisions, including, but not limited to, illicit discharge provisions. If previously approved SCMs are not maintained as approved and regulated by the stormwater ordinance in effect at the time of their approval, such SCMs shall be made to comply with this ordinance to the greatest extent possible when repaired or brought into compliance.

A phased development plan will be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

(1) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.

(2) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

C. Violations continue. Any violation of provisions existing on the effective date of this ordinance for development that has disturbed one-half acre or more will continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

(Ord. No. O-25-08, 5-12-2025)

SECTION 2: ADMINISTRATION AND PROCEDURES

8.2.8 Review and decision-making entities.

A. Stormwater administrator.

(1) Designation. A stormwater administrator will be designated by the assistant town manager to administer and enforce this ordinance in whole or in part, at the assistant town manager's discretion.

B. Powers and duties. In addition to the powers and duties that may be conferred by other provisions of the Town of Black Mountain Code of Ordinances and other laws, the stormwater administrator will have the following powers and duties under this ordinance:

(1) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.

(2) To make determinations and render interpretations of this ordinance.

(3) To enforce the provisions of this ordinance in accordance with its enforcement provisions.

(4) To maintain records, maps, forms and other official materials as related to the adoption, amendment, enforcement, and administration of this ordinance.

(5) To provide expertise and technical assistance to the Town of Black Mountain Town Council, upon request.

(6) Reserved.

(7) To take any other action necessary to administer the provisions of this ordinance.

(Ord. No. O-25-08, 5-12-2025)

8.2.9 Review procedures.

A. Permit required. A stormwater permit is required for all development and redevelopment disturbing one-half acre or more of land unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section. A stormwater permit will govern the design, installation, and construction of stormwater management and control practices on the site, including structural SCMs and elements of site design for stormwater management other than structural SCMs.

B. Authority to file applications. All applications required pursuant to this Code will be submitted to the stormwater administrator by the land owner or the land owner's duly authorized agent.

C. Establishment of application requirements, schedule, and fees.

(1) Before submitting a stormwater permit application the applicant will hold a concept plan and consultation meeting with the stormwater administrator.

(2) Application contents and form. The stormwater administrator will establish requirements for the content and form of all applications and will amend and update those requirements from time to time. At a minimum, the stormwater permit application will describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

(3) Submission schedule. The stormwater administrator will establish a submission schedule for applications. The schedule will establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

(4) Permit review fees. Are set forth in the town's schedule of fees.

D. Submittal of complete application. Applications will be submitted to the stormwater administrator pursuant to the application submittal schedule in the form established by the stormwater administrator, along with the fee set forth in the town's schedule of fees If the stormwater administrator finds that an application is incomplete, the applicant will be notified of the deficient elements and will be provided with an opportunity to submit a complete application.

E. Review. Within 15 working days after a complete application is submitted, the stormwater administrator will review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval. If the stormwater administrator finds that the application complies with the standards of this ordinance, the stormwater administrator will approve the application. The stormwater administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) Fails to comply. If the stormwater administrator finds that the application fails to comply with the standards of this ordinance, the stormwater administrator will notify the applicant and shall indicate how the application fails to comply.

(3) Reserved.

(4) Revision and subsequent review. A complete revised application will be reviewed by the stormwater administrator within 15 working days after its re-submittal and will be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within 30 calendar days from the date the applicant was notified, the application will be considered withdrawn, and a new submittal for the same or substantially the same project will be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted within 30 calendar days without payment of an additional permit review fee. Any re-submittal after the first re-submittal will be accompanied by a permit review fee additional fee, as established by the adopted fee schedule.

(Ord. No. O-25-08, 5-12-2025)

8.2.10 Applications.

A. Concept plan and consultation meeting required. Before a stormwater management permit application is deemed complete, the stormwater administrator or developer will request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the requirements of the post-construction stormwater ordinance.

The following information should be included in the concept plan, which should be submitted in advance of the meeting:

(1) Existing conditions/proposed site plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(2) Natural resources inventory. A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide opportunities or constraints for development and stormwater management.

(3) Stormwater management system concept plan. A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

B. Stormwater management permit application. The stormwater management permit application will detail how post development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including section 8.2.13, standards. All such plans will be prepared by a qualified registered North Carolina professional engineer or landscape architect, and the engineer or landscape architect will perform services only in their area of competence, and will verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the design manual, and that the designs and plans ensure compliance with this ordinance.

The submittal will include all of the information required in the submittal checklist established by the stormwater administrator. Incomplete submittals will be treated pursuant to section 8.2.9.D.

C. As-built plans and final approval. Upon completion of a project, and before a certificate of occupancy will be granted, the applicant will certify that the completed project is in accordance with the approved stormwater management plans and designs, and will submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

The plans will show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans will certify, under seal, that the as built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the stormwater administrator will occur before the release of any performance securities.

D. Other permits. No certificate of compliance or occupancy will be issued by the building inspector without final as-built plans and a final inspection and approval by the stormwater administrator, except where multiple units are served by the stormwater practice or facilities, in which case the building inspector may elect to withhold 50 percent of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

(Ord. No. O-25-08, 5-12-2025)

8.2.11 Approvals.

A. Effect of approval. Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval will not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

B. Time limit/expiration. An approved plan will become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The stormwater administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

C. Permit renewal required for high-density projects. Post construction stormwater permits determined to be high-density are required to be renewed every eight years.

In granting an extension, the stormwater administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

(Ord. No. O-25-08, 5-12-2025)

8.2.12 Appeals.

A. *Right of appeal.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the stormwater administrator, may file an appeal to the board of adjustment within 30 days.

SECTION 3: STANDARDS FOR POST-CONSTRUCTION STORMWATER MANAGEMENT

8.2.13 General standards.

All proposed stormwater management design and methods submitted with a post-construction stormwater permit will meet the general standards of this section.

(Ord. No. O-25-08, 5-12-2025)

8.2.14 Development standards for all permitted projects.

High- and low-density projects will comply with each of the following standards requiring a stormwater permit:

A. Stormwater runoff from the development will be transported from the development by vegetated conveyances to the maximum extent practicable.

B. Project sites must employ low impact development (LID) practices to analyze the infiltration capacity of natural drainage of the site and develop a system of controls which mimic the existing, natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall. LID practice may include any combination of site design techniques, and SCMs to store, infiltrate, evaporate, retain and detain runoff on the site to more closely replicate the pre-development runoff thereby limiting the increase in pollutant loads caused by development.

C. All built-upon area will be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water will be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology. Encroachment allowances may be made as described in 4.3.2.

D. The approval of the stormwater permit will require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

E. The measures will control and treat runoff from the first inch of rain. Runoff volume drawdown time will be a minimum of 48 hours, but not more than 120 hours.

All structural stormwater treatment systems used to meet these requirements will be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS);

F. General engineering design criteria for all projects will be in accordance with 15A NCAC 2H.1008(c), as explained in the design manual;

(Ord. No. O-25-08, 5-12-2025)

8.2.15 Standards for stormwater control measures.

Owners of property subject to this ordinance and required to install structural stormwater control measures will implement those measures in compliance with each of the following standards:

A. Evaluation according to contents of design manual. All stormwater control measures and stormwater treatment practices (also referred to as Stormwater Control Measures, or SCMs) required under this

ordinance will be evaluated by the stormwater administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the design manual. The stormwater administrator shall determine whether proposed SCMs will be adequate to meet the requirements of this ordinance. It is presumed that all standards in the design manual will result in a minimum of 85 percent average annual removal of total suspended solids.

B. Determination of adequacy; presumptions and alternatives. Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the design manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the design manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The stormwater administrator may require the applicant to provide the documentation, calculations, and examples necessary for the stormwater administrator to determine whether such an affirmative showing is made.

C. Whenever LID practices are not achievable, or have not been demonstrated, the measures controlling the final runoff from the site shall control and treat the difference in stormwater runoff volume leaving the project site between pre- and post-development conditions for a minimum rate of ten year, 24-hour storm as determined by NOAA.

D. Peak stormwater runoff rates will be controlled for all development at or exceeding 24 percent built upon area or high-density projects as defined by this ordinance, for both LID and conventional approaches. The peak stormwater runoff release rates leaving the site during post-construction conditions will be equal to or less than the pre-development peak stormwater runoff release rates for the one-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater SCM will be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity will be restored within 72 hours. Requirements of the Dam Safety Act will be met when applicable.

E. No single SCM will receive runoff from an area greater than three acres, however the total drainage area from SCMs used in a series may exceed this maximum.

F. In addition to the standards for handling stormwater set out in the design manual, development and redevelopment that drains in whole or part to trout waters (class TR) waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this ordinance.

G. In addition to the standards for stormwater handling set out in the design manual, development and redevelopment that drains in whole or part to nutrient sensitive waters (class NSW) will design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.

H. Separation from seasonal high-water table. For SCMs that require a separation from the seasonal high-water table, the separation will be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

(Ord. No. O-25-08, 5-12-2025)

8.2.16 Variances.

A. Any person may petition the Town of Black Mountain for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. The Town of Black Mountain may impose reasonable and appropriate conditions and safeguards upon any variance it grants. To qualify for a variance, the petitioner will show all of the following:

(1) Unnecessary hardships would result from strict application of this ordinance.

(2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

(3) The hardships did not result from actions taken by the petitioner.

(4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

B. Statutory exceptions. Notwithstanding subsection (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements will be granted in any of the following instances:

(1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.

(2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.

1. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

2. The stormwater runoff from the entire impervious area of the development is collected, treated and discharged so that it pass through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable state and federal stormwater management requirements.

(Ord. No. O-25-08, 5-12-2025)

8.2.17 Reserved.

Ord. No. O-25-08, adopted May 12, 2025, repealed § 8.2.17, which pertained to onsite wastewater and derived from Ord. No. O-21-05, §§ 1—83, adopted June 14, 2021.

SECTION 4: MAINTENANCE

8.2.18 General standards for maintenance of SCMS.

A. Function of SCMs as intended. The owner of each structural SCM installed pursuant to this ordinance will maintain and operate the device(s) in accordance with the approved Operation and Maintenance Plan to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural SCM was designed.

B. Required inspections. Post-construction permit holders will annually inspect their SCM(s) based on the minimum criteria for the SCM type, which is outlined in their Operations and Maintenance (O&M) Agreement. These inspections can be conducted by the property owner, if they are a qualified professional, or any other qualified professional they choose to retain. For the purposes of this text, a qualified professional is defined as a NC State University (NCSU) Cooperative Extension Certified Stormwater SCM Inspection and Maintenance Inspector, NC professional engineer or landscape architect. The inspection will be kept on site and made available for inspection by the town. These inspections maintain compliance between the property owner and the town's post-construction stormwater ordinance.

C. Town inspection of private SCMs. The town will inspect low-density permit SCMs once per NPDES permit cycle. The town will inspect high-density permit SCMs twice per NPDES permit cycle. These inspections will be conducted by town staff or a contractor on behalf of the town to maintain the town's compliance with the town's NPDES Small MS4 permit.

D. (1) If the town finds issues with the SCM, the town will require maintenance/improvements to be made following the O&M agreement.

(2) If the town finds issues and no O M is recorded for the property, the conditions can be deemed a public nuisance, and the town can require abatement following the nuisance ordinance.

(Ord. No. O-21-19, 12-13-2021; Ord. No. O-23-21, 11-13-2023; Ord. No. O-25-08, 5-12-2025)

8.2.19 Operation and maintenance agreement.

A. In general. Prior to the conveyance or transfer of any lot or building site to be served by a structural SCM pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural SCM pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that will be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural SCM. Until the transference of all property, sites, or lots served by the structural SCM, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement will require the owner or owners to maintain, repair and, if necessary, reconstruct the structural SCM, and will state the terms, conditions, and schedule of maintenance for the structural SCM. In addition, it will grant to Town of Black Mountain a right of entry in the event that the stormwater administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural SCM; however, in no case will the right of entry, of itself, confer an obligation on Town of Black Mountain to assume responsibility for the structural SCM. The operation and maintenance agreement must be approved by the stormwater administrator prior to plan approval, and it will be referenced on the final plat and will be recorded with the county register of deeds upon final plat approval. A copy of the recorded maintenance agreement will be given to the stormwater administrator within 14 days following its recordation.

The Operation and Maintenance Agreement must be recorded with the Buncombe County Register of Deeds prior to issuance of Certificate of Occupancy.

B. Special requirement for homeowners' and other associations. For all structural SCMs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement will include all of the following provisions:

(1) Acknowledgment that the association will continuously operate and maintain the stormwater control and management facilities.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural SCMs. If structural SCMs are not performing adequately or as intended or are not properly maintained, the Town of Black Mountain, in its sole discretion, may remedy the situation, and in such instances the Town of Black Mountain will be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural SCMs, provided that the Town of Black Mountain will first consent to the expenditure.

(3) Both developer contribution and annual sinking funds will fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever will first occur, the developer will pay into the escrow account an amount equal to 15 percent of the initial construction cost of the structural SCMs.

Two-thirds of the total amount of sinking fund budget will be deposited into the escrow account within the first five years and the full amount will be deposited within ten years following initial construction of the structural SCMs. Funds will be deposited each year into the escrow account. A portion of the annual assessments of the association will include an allocation into the escrow account. Any funds drawn down from the escrow account will be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Black Mountain depending on the design and materials of the stormwater control and management facility.

(5) Granting to the Town of Black Mountain a right of entry to inspect, monitor, maintain, repair, and reconstruct structural SCMs.

(6) Allowing the Town of Black Mountain to recover from the association and its member's any and all costs the Town of Black Mountain expends to maintain or repair the structural SCMs or to correct any operational deficiencies. Failure to pay the Town of Black Mountain all of its expended costs, after 45 days written notice, will constitute a breach of the agreement. In case of a deficiency, the Town of Black Mountain will thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees will be added to the recovery.

(7) A statement that this agreement will not obligate the Town of Black Mountain to maintain or repair any structural SCMs, and the Town of Black Mountain will not be liable to any person for the condition or operation of structural SCMs.

(8) A statement that this agreement will not in any way diminish, limit, or restrict the right of the Town of Black Mountain to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the Town of Black Mountain for any costs and injuries arising from or related to the structural SCM, unless the Town of Black Mountain has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. No. O-23-21, 11-13-2023; Ord. No. O-25-08, 5-12-2025)

8.2.20 Inspection program.

Inspections and inspection programs by Town of Black Mountain may be conducted or established on any reasonable basis, including, but not limited to, routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in SCMs; and evaluating the condition of SCMs.

If the owner or occupant of any property refuses to permit such inspection, the stormwater administrator will proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person will obstruct, hamper or interfere with the stormwater administrator while carrying out his or her official duties.

(Ord. No. O-25-08, 5-12-2025)

8.2.21 Performance security for installation and maintenance.

A. May be required. The Town of Black Mountain may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural SCMs are:

   (1) Installed by the permit holder as required by the approved stormwater management plan, and/or

   (2) Maintained by the owner as required by the operation and maintenance agreement.

B. Amount.

   (1) Installation. The amount of an installation performance security will be the total estimated construction cost of the SCMs approved under the permit, plus 25 percent.

   (2) Maintenance. The amount of a maintenance performance security will be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the SCMs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

C. Uses of performance security.

   (1) Forfeiture provisions. The performance security will contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

   (2) Default. Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structure SCM in accordance with the applicable permit or operation and maintenance agreement, the stormwater administrator will obtain and use all or any portion of the security to make the necessary improvements based on an engineering estimate. Such expenditure of funds will only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Black Mountain will not return any of the unused deposited cash funds or other security, which will be retained for maintenance.

   (3) Costs in excess of performance security. If Town of Black Mountain takes action upon such failure by the applicant or owner, the Town of Black Mountain may collect from the applicant or owner the

difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) Refund. Within 60 days of the final approval, the installation performance security will be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the SCMs covered by the security unless a separate landscaping and ongoing maintenance security has been provided. Any such landscaping will be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping will be released.

(Ord. No. O-25-08, 5-12-2025)

8.2.22 Notice to owners.

A. Deed recordation and indications on plat. The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable), pertaining to every structural SCM will be referenced on the final plat and will be recorded with the county register of deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, will be recorded with the county register of deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

The Operation and Maintenance Agreement must be recorded with the Buncombe County Register of Deeds prior to issuance of Certificate of Occupancy.

B. Signage. Where appropriate in the determination of the stormwater administrator to assure compliance with this ordinance, structural SCMs will be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign will be maintained so as to remain visible and legible.

(Ord. No. O-23-21, 11-13-2023; Ord. No. O-25-08, 5-12-2025)

8.2.23 Records of installation and maintenance activities.

The owner of each structural SCM will keep records of inspections, maintenance, and repairs and will submit the same upon reasonable request to the stormwater administrator.

(Ord. No. O-25-08, 5-12-2025)

8.2.24 Nuisance.

The owner of each stormwater SCM, whether structural or non-structural SCM, will maintain it so as not to create or result in a nuisance condition.

(Ord. No. O-25-08, 5-12-2025)

8.2.25 Maintenance easement.

Every structural SCM installed pursuant to this ordinance will be made accessible for adequate maintenance and repair by a maintenance easement. The easement will be recorded and its terms will specify who may make use of the easement and for what purpose.

(Ord. No. O-25-08, 5-12-2025)

SECTION 5: ENFORCEMENT AND VIOLATIONS FOR COMPLIANCE AND PERMITS

8.2.26 General.

A. Authority to enforce. The provisions of this ordinance will be enforced by the stormwater administrator, or any authorized agent of Town of Black Mountain. Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of Town of Black Mountain.

B. Violation unlawful. Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and will constitute a violation of this ordinance.

C. Each day a separate offense. Each day that a violation continues will constitute a separate and distinct violation or offense.

D. Responsible persons/entities. Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, practice, or condition in violation of this ordinance will be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

   For the purposes of this article, responsible person(s) will include but not be limited to:

   (1) Person maintaining condition resulting in or constituting violation. An architect, engineer, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

   (2) Responsibility for land or use of land. The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(Ord. No. O-25-08, 5-12-2025)

8.2.27 Remedies and penalties.

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, will be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

A. Remedies.

   (1) Withholding of certificate of occupancy. The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) Disapproval of subsequent permits and development approvals. As long as a violation of this ordinance continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the planning board may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the subdivision for the land on which the violation occurs.

(3) Injunction, abatements, etc. The stormwater administrator, with the written authorization of the town manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance will be subject to the full range of equitable remedies provided in the General Statutes or at common law.

(4) Correction as public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits of the Town of Black Mountain G.S. 160A-193, the stormwater administrator, with the written authorization of the town manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) Stop work order. The stormwater administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order will remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

B. Civil penalties. Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Black Mountain is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

(Ord. No. O-25-08, 5-12-2025)

8.2.28 Procedures.

A. Initiation/complaint. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint will state fully the alleged violation and the basis thereof, and will be filed with the stormwater administrator, who will record the complaint. The complaint will be investigated promptly by the stormwater administrator.

B. Inspection. The stormwater administrator will have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

C. Notice of violation and order to correct. When the stormwater administrator finds that any building, structure, or land is in violation of this ordinance, the stormwater administrator will notify, in writing, the property owner or other person violating this ordinance. The notification will indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation will also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The stormwater administrator may deliver the notice of violation and correction order personally, by the Code Enforcement staff, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure. If a violation is not corrected

within a reasonable period of time, as provided in the notification, the stormwater administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

D. Extension of time. A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the stormwater administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the stormwater administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The stormwater administrator may grant 60-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The stormwater administrator may grant an extension only by written notice of extension. The notice of extension will state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

E. Enforcement after time to correct. After the time has expired to correct a violation, including any extension(s) if authorized by the stormwater administrator, the stormwater administrator will determine if the violation is corrected. If the violation is not corrected, the stormwater administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

F. Emergency enforcement. If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the stormwater administrator may order the immediate cessation of a violation. Any person so ordered will cease any violation immediately. The stormwater administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

(Ord. No. O-25-08, 5-12-2025)

SECTION 6: DEFINITIONS

8.2.29 Terms Defined.

When used in this ordinance, the following words and terms will have the meaning set forth in this section, unless other provisions of this ordinance specifically indicate otherwise.

Built-upon area (BUA): That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department: The North Carolina Department of Environment and Natural Resources.

Design manual: All references herein to the Design Manual are to the latest published edition or revision as published by the North Carolina Department of Environmental Quality.

Development: Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

Disturbance of land: Any man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics including construction activity such as clearing, grading, excavation, or the filling of land.

Division: The Division of Water Quality in the Department.

High-density project: High-density projects shall comply with the requirements set forth in Rule .1003(3). See 15A NCAC 02H.1003 for calculation of project density and requirements for high-density projects.

Impervious: Not allowing fluid to pass through.

Larger common plan of development or sale: Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including, but not limited to, a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including, but not limited to, boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Low-density project: A project shall be considered a low-density project if it meets the low-density criteria set forth in Rule .1003(2) and contains no more than 24 percent built-upon area or no more than two dwelling units per acre. See 15A NCAC 02H.1003 for calculation of project density and requirements for low-density projects.

Low-impact development: The term low-impact development (LID) refers to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bio retention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavements.

25-year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 25 years and with a duration of 24 hours as defined by the National Weather Service.

Owner: The legal or beneficial owner of land, including, but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

Post-construction: The point in which construction activity has been concluded prior to issuing a certificate of occupancy or otherwise putting the property into use.

Redevelopment: Any development on previously-developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater storm water control than the previous development.

Stormwater control measure (formally known as best management practice): An alternation of land or physical device engineered and/or designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural SCM includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural SCM" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

Substantial progress: For the purposes of determining whether substantial progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision

plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than 30 days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

(Ord. No. O-25-08, 5-12-2025)

SECTION 8.3 LANDSCAPING REQUIREMENTS

8.3.1 Purpose and applicability.

A. The purpose of this chapter is to improve the appearance, quality and quantity of landscaping as part of new development and to regulate the protection, installation, and long-term management of trees and shrubs and to minimize potential nuisances, such as visual impacts, noise, dust, odor, litter, and glare of lights, from adjacent properties. The appropriate use of existing and supplemental landscaping enhances the appearance of the built environment and blends new development with our natural, mountain landscape. Existing vegetation should be retained where possible to ensure cohesive landscaping. This chapter is also intended to:

   1. Provide visual buffering and enhance the beautification of the town;
   2. Safeguard and enhance property values and protect public and private investment;
   3. Preserve, protect and restore the unique identity and environment of the Town of Black Mountain and to preserve the economic base for tourism and visitors to the town;
   4. Encourage the preservation of existing trees and vegetation;
   5. Aid in stabilizing the environment by contributing to the process of air purification, groundwater recharge, and stormwater runoff retardation, while at the same time aiding in noise, glare, and heat reduction;
   6. Conserve energy; and
   7. Protect the public health, safety and general welfare of the town.

B. All new developments (except for infill single-family detached residential uses and duplexes) shall be designed in accordance with the requirements of this chapter. A change of use or expansion of an existing building or parking area also requires compliance with the requirements of this chapter. Where necessary to accommodate creativity in site design, or where conformance with the strict requirements of this chapter are not feasible, the board of adjustment may modify these requirements by granting a variance or as part of a special use permit, provided that the type and amount of landscaping or other features are equivalent in effectiveness.

C. The landscape plan required by this chapter shall accompany any request for a building permit or plat approval by the Town of Black Mountain for commercial or multi-family and major subdivision development. No building permit shall be issued, nor plat approved until the landscape plan is approved by the zoning administrator. The zoning administrator may request any additional information needed to determine compliance with this subchapter.

D. Landscaping requirements may be met as part of an approved stormwater administrator plan and as incorporated into stormwater management practices such as planted swales or rain gardens.

8.3.2 General provisions.

A. *Landscaping in the central business district.* The zoning administrator shall review the landscaping requirements of this article with each development proponent or applicant for a building permit in the central business district. Where meeting the requirements of this subchapter is clearly impractical, the town council may authorize the use of portions of the public rights-of-way for permanent or container plantings. The zoning administrator is authorized to waive specific landscape requirements, or portions thereof, if meeting the requirements will cause insurmountable difficulties for a development proposal in the central business district.

B. *Landscape plan contents.* The landscape plan shall contain the following elements, per zoning district or SUP requirements:

1. Existing and proposed landscaping;
2. Any buffers required;
3. Any screening required;
4. Existing vegetation intended to be saved;
5. Any barriers proposed to protect vegetation during or after construction;
6. Topographic contours at intervals of not more than five feet, indication of the direction of stormwater flow, and a description of all stormwater control facilities;
7. Type and location of plantings.

C. *Landscaping required for all sites.* No less than five percent of the lot or parcel which is the subject of the required landscape plan shall be landscaped. This requirement shall be met in addition to any area required for street trees, buffers, or screens; provided that the total area of the site devoted to landscaping shall not be required to exceed 40 percent of the site in accordance with the guidelines provided in 8.3.2.1—10 below.

D. *Landscaped buffers required for some sites.* Where a commercial or industrial use abuts a residential district and the perimeter of parking lots require buffers (see below).

E. *Off-street parking and loading areas.* Landscaping shall be required in and around all new or redesigned off-street parking and loading areas. Landscaping shall be provided in these areas as follows:

1. For parking lots less than 2,500 square feet in parking area, no landscaping is required by this subsection. Above 2,500 square feet the following provisions apply:

Total area of parking lot parking lot (square feet)	Percent of parking lot area that lot area that must be landscaped
2,500—9,999	3%
10,000—49,999	5%
50,000—149,999	8%
150,000 or larger	10%

2. At least 50 percent of required parking lot landscaping shall be provided as islands within the parking lot. One planting island is recommended for every ten to 15 spaces.
3. One tree of at least 1½ inch caliper and an initial height of at least four feet shall be provided for each 15 parking spaces. The expected height at maturity of these trees shall be at least eight feet.

4. No parking space shall be more than 50 feet from a tree or 75 feet from plantings of more than one tree.

5. Shrubs and other types of plant materials shall be used which will complement the tree plantings subject to approval by the zoning administrator.

Type A Landscaping (opaque buffer)

8.3.2.1 Location and width required Buffers shall be located entirely on the property of the new development along the property boundary line, but not including where roadways separate districts, where a commercial or industrial use abuts a non-commercial residential district are required. Buffers shall be made of an opaque fence or wall that is at least eight feet high or evergreen vegetation to provide a buffer growing to a minimum height of eight feet high to within three years according to the following chart.

New development adjacent to residentially zoned property (CR-1, SR-2, TR-4, UR-8):

New or Expanding Development	**Minimum Buffer Width**
Civic	10 feet
Commercial	15 feet
Industrial	30 feet
Mixed Use	10 feet
Multi-family Residential	10 feet

8.3.2.2 Composition. Composition of the type A buffer area may include a wall, solid fence, landscaped berm, planted vegetation, existing vegetation, or any appropriate combination of these elements. Intermittent planting of deciduous and evergreen trees shall obtain a height at maturity of no less than 20 feet and have no unobstructed openings wider than ten feet between tree canopies upon maturity. Shrub plantings shall have a minimum height of three feet at installation and have no unobstructed openings wider than four feet. At least 50 percent of the required trees, and at least 75 percent of the required shrubs, shall be evergreen species. The use of existing vegetation to satisfy this requirement is encouraged but supplemental planting may be required in addition to existing materials.

Type B Landscaping (parking lot perimeter)

8.3.2.3 Location and width required. Type B landscaping is required around the perimeter of all parking lots. The minimum buffer width is five feet. The CB district is exempt from this requirement.

8.3.2.4 Composition for parking lot perimeters ("Type B"). Type B landscaping functions to provide a vegetative area between parking lots and adjacent uses and may be used as part of stormwater management planning. Composition of the Type B landscaping may include a planted swale, wall, fence, planted vegetation, existing vegetation, or any appropriate combination of landscaping. Shrub plantings shall have no unobstructed openings wider than four feet. The use of existing vegetation to satisfy this requirement is encouraged but supplemental planting may be required in addition to existing materials.

Type C Landscaping (parking lot canopy)

8.3.2.5 Location and number required. Type C landscaping is required within all parking lots. A minimum of one canopy tree shall be located within 75 feet of every parking space. The measurement shall be taken from the base of the tree.

8.3.2.6 Composition. Large maturing canopy trees shall be planted in a manner that provides shade for parking area at maturity. Ornamental trees shall be used in lieu of canopy trees under overhead utility lines. The use of differing species around the parking area is encouraged to promote diversity in the overall tree canopy. The use of existing vegetation to satisfy this requirement is encouraged. Each planting area shall adequately sized to sustain the tree at maturity. The use of existing vegetation to satisfy this requirement is encouraged but supplemental planting may be required in addition to existing materials.

Type D Landscaping (residential street trees)

8.3.2.7 Location and number required. Yard trees are required for every residential major subdivision. Trees shall be planted parallel to the public right-of-way at a distance of one every 50 feet. Maintenance of the trees shall be the responsibility of the individual property owner. Each lot shall also provide canopy trees in accordance with the following schedule:

Lot Size	Street Trees
Less than 10,000 square feet	1
10,000—20,000 square feet	2
More than 20,000 square feet	3

8.3.2.8 Composition. The use of existing vegetation to satisfy this requirement is encouraged. Existing canopy trees over six inches in caliper may be counted towards fulfilling this requirement. All trees required under this section shall be planted within the private lot and not within the street right-of-way.

Type E Screening

8.3.2.9 Screening requirements for non-residential storage and unenclosed structures. A minimum five-foot Type A buffer shall be provided to screen any outdoor storage or unenclosed structure, consisting of a roof but no walls used for storage of materials, products, wastes or equipment associated with commercial or industrial uses that is visible from a street right-of-way in any zoning district.

8.3.2.10 Screening requirements for all zoning districts. The following uses must be screened from abutting residential property and from a public street by an opaque screen consisting of a fence, wall, landscaping, or appropriate combination thereof in accordance with chapter 4, unless they are within the heavy industrial district (HI-0):

- Dumpsters or trash handling areas;
- Where automobiles are stored before and after repairs, manufacturing parts, or scrap materials or equipment that are being stored.

8.3.3 General installation provisions.

A. To the extent that existing natural vegetation located on the same parcel of land as the proposed development can meet the required screening levels of this section, the use of such materials is encouraged. In such case, the owner shall designate the land on which such materials are rooted, which shall contain at least the minimum width required.

B. No structure other than a wall, fence, sidewalk, mailbox, sign or driveway shall be permitted within a required landscaping area. No off-street parking may take place in any required landscaping area. Where plant materials are required, the required amount of plant materials shall be installed on the side of any wall or fence opposite the new development.

8.3.4 Wall, fence, and berm standards.

Whenever a landscaping alternative specified is selected which includes a wall, fence, or berm, such wall, fence, or berm shall meet the following requirements:

A. Any wall shall be constructed in a durable fashion of wood, metal, brick, stone or other masonry material, with no greater than 25 percent of the wall left open, and any fence shall be constructed in a durable fashion of wood, metal, brick, stone or other masonry materials. All walls and fences, except those constructed of stone, shall be of a consistent pattern. All walls and fences shall comply with the town fence and wall regulations below.

B. Berms shall be grassed and/or planted with other plant materials sufficient to prevent soil erosion. If grassed alone, any berm shall be no less than four feet nor greater than eight feet in height. No slope of a berm shall exceed a slope greater than one foot of rise for every three feet in plane. No part of the berm shall be left as bare soil and any plantings accompanying berm may be planted on and/or along either side of the berm.

C. Where a fence, wall or berm is used as part of a required screen area, any required plantings accompanying the fence or wall shall be located on the side opposite the new development.

D. Fencing and walls. Except as otherwise noted in this chapter, fences or yard walls are permitted subject to the following regulations:

(1) *General fence and wall requirements.*

a. Obstruction of view. No fence or wall shall be placed or retained in such a manner as to obstruct vision at any intersection of public or private streets as specified in section 4.3.6.

b. Fences and walls prohibited in right-of-way. No fence or wall shall be erected or maintained within or on any state or town right-of-way.

c. Obstruction of drainage way. Fence or wall construction shall not alter or impede the natural flow of water in any stream, creek, drainage swale or ditch.

d. Historic district. Fences or walls in historic districts shall meet the standards for the particular historic district in which it is located.

e. Razor wire fencing or walls shall be prohibited in the CR-1, SR-2, TR-4 and UR-8 zoning districts.

(2) *Maintenance required.* Any fence or wall which, through neglect, lack of repair, state of despair, type or manner of construction, method of placement or otherwise, constitutes a hazard or endangers any person, animal or property is hereby deemed a nuisance. If such conditions exist, the zoning administrator shall require the owner of the property upon which the fence or wall is located to repair, replace or demolish the fence or wall causing the nuisance, in accordance with the regulations found in chapter 1.

(3) *Agricultural uses and bona fide farms.* Agricultural uses and bona fide farms are not subject to these regulations. All fencing and walls for agricultural uses and bona fide farms shall meet requirements found in section 5.4.1.

8.3.5 Plant standards and plant installation standards.

The following standards shall apply to all new plant material installed as part of a screen required under these regulations:

A. Trees to be planted shall be selected from the approved species listed in the appendix, or be a native species to western North Carolina.

B. Minimum tree caliper measured six inches above ground on all trees shall be 2½ inches and the minimum height shall be eight feet. No trees identified as large maturing trees shall be planted within 20 feet of an electrical distribution line. This does not include low-voltage insulated or covered lines of 240 volts or less or telephone or cablevision lines.

C. Large shrubs used in any landscaping must be at least two feet tall when planted and shall be selected from the approved species listed in the appendix or be native species to our area. They must be of a variety and adequately maintained so that an average height of five to six feet could be expected as normal growth within three years of planting.

D. All plant material installed shall be free from disease.

E. Plant materials shall be planted in accordance with generally accepted and recommended planting and growing practices.

F. All plant material shall be installed in a fashion that ensures the availability of sufficient soil and water to sustain health growth.

G. All plant material shall be planted in a manner which is not intrusive to utilities or pavement.

8.3.6 Landscaping maintenance.

The plantings, fences, walls, or berms that constitute a required landscaping shall be properly maintained in order for the landscaping to fulfill the purpose for which it is established. The owner of the property and any tenant on the property where landscaping is required shall be jointly and severally responsible for the maintenance of all landscaping materials. Such maintenance shall include all actions necessary to keep the landscaped area free of litter and debris; to keep plantings healthy; to keep plant growth from interfering with safe vehicular and pedestrian travel, or use of parking areas, or from creating nuisances to adjoining properties; and to keep walls, fences and berms in good repair and neat appearance. Any vegetation that constitutes part of a required landscaping area shall be replaced in the event that it dies.

8.3.7 Variance from landscaping requirements.

A. In the event that the unusual topography or elevation of a development site or the location or size of the parcel to be developed would make strict adherence to the requirements of this section serve no meaningful purpose or would make it physically impossible to install and maintain the required landscaping, the board of adjustment may alter the requirements of this section provided the spirit and intent of the section are maintained. Such an alteration may occur only at the request of the developer, who shall submit a plan to the zoning administrator showing existing site features that would screen the proposed use and any additional screen materials the developer may propose to have installed.

B. The vacancy or non-use of an adjoining parcel shall not constitute grounds for providing a variance to the landscaping requirements. Neither shall the desire of an owner to make a more intensive use or greater economic use of the property be grounds for reducing the landscaping requirements.

8.3.8 Existing landscaped areas.

In cases where an existing, landscaped or vegetated area is located on the same property as the proposed development, further plantings and or improvements shall not be required so long as said screened area is of sufficient width and depth and contains adequate and sufficient materials to meet the requirements of this

ordinance. If the landscaped or vegetated area is deficient, the developer shall make needed improvements and/or additions to satisfy the landscaping requirements and intent of this ordinance.

8.3.9 Visibility at intersections.

On a corner lot in any district, no hedge, shrubbery, tree, natural growth, sign, fence, wall, or other obstruction of any kind to vision which obstructs cross-visibility in accordance with section 4.3.5.

8.3.10 Installation of landscaping required prior to occupancy.

Landscaping materials required in this chapter shall be installed prior to occupancy.

A. A temporary certificate of occupancy may be issued to a developer/owner if the landscaping cannot be planted at the time the use opens or is re-established due to inappropriate timing for the growing season. A temporary CO shall specify the date that the landscaping will be planted. The building inspector shall have the authority to revoke the temporary certificate of occupancy if the landscaping is not planted by the date specified. The developer/owner shall also guarantee in writing that he/she or his/her successors, shall provide the required landscaping within the time period specified in the temporary certificate of occupancy.

B. The zoning administrator may require a financial guarantee in lieu of requiring the completion and installation of these improvements prior to occupancy.

SECTION 8.4 RESERVED[4]

CHAPTER 9. SIGNS

9.1 Intent.

Signs are a necessary and beneficial use of property that contributes to our community's economic vitality and appearance. Reasonable sign regulations are necessary to protect public property and community aesthetics, encourage economic activity, and contribute to the overall appeal of the community. It is the intent of this section to regulate the use, size, layout, style, typography, legibility, and arrangement of signs to ensure that signs are compatible with their surroundings, appropriate to identify individual properties, occupants, and/or the community, and facilitate the safe and orderly flow of pedestrian and vehicular traffic. Specifically, this section is intended to:

A. Promote the public health, safety, and welfare of residents and visitors;

B. Provide an environment which fosters growth and development of a vibrant business community;

C. Protect commercial and industrial districts from visual clutter;

D. Protect property values;

E. Eliminate distractions which are hazardous to motorists and pedestrians;

[4]Ord. No. O-23-13, adopted July 10, 2023, repealed Section 8.4, §§ 8.4.1—8.4-8, which pertained to illicit discharge and derived from R-09-32, December 14, 2009, eff. March 14, 2010; Ord. No. O-22-01, March 14, 2022. The user's attention is directed to Chapter 20, §§ 20-390—20-397, for similar provisions.

F. Protect and enhance the natural beauty, cultural attributes, distinctive character, and visual environment of the Town of Black Mountain;

G. Protect the public's ability to identify establishments and premises in an orderly, readable and safe manner;

H. Protect the public's investment in public buildings, streets, roads, highways, and open spaces; and

I. Balance the individual rights of property owners to communicate their message with the public's right to be free of unreasonable distractions and aesthetic intrusions.

(Ord. No. O-21-17, 12-13-2021)

9.2 Applicability.

A. No sign visible from the public right-of-way, whether exterior to or interior to a structure, shall be erected, displayed, or substantially altered on any lot zoned or used for non-residential use, except in accord with the provisions of this chapter and until a zoning compliance permit has been issued for the sign.

B. Pursuant to N.C.G.S. 160D-908, fence wraps displaying signage affixed to perimeter fencing at a construction site are exemption from the requirements of this chapter for up to 24 months or until the certificate of occupancy is issued for the final portion of construction, whichever is shorter. This exemption will not apply to fence wrap that displays advertising other than by a person or company directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required.

C. Recognizing that certain signs and messages are required to be displayed by federal or state law or regulation, and further recognizing the many benefits of certain commonly occurring signage that promote local economic activity, civic events and political discourse, many of which are of a temporary nature, the following types of signage are allowed in any district without need for obtaining a permit, provided that the specific requirements listed below, if any, are met:

1. Any sign required by law, including emergency, safety, warning or traffic signs or any sign installed by, at the direction of, or with the approval of a governmental authority.

2. Signs bearing only property identification numbers and names, post office box numbers, names of occupants of the premises on which the sign is located, provided that:

    a. The sign is not illuminated and does not exceed two square feet in area per display surface, and

    b. No more than two such signs are displayed on the zoning lot.

3. Flags having a total area of less than 24 square feet.

4. Signs erected and maintained by public agencies and governmental bodies.

5. Historical markers erected or placed by a historical nonprofit corporation or governmental authority.

6. Signs directing and guiding traffic and parking on private property on which the signs are located, provided that such signs:

    a. Are not illuminated,

    b. Bear no advertising, and

    c. Do not exceed four square feet in area per display surface.

7. Construction site identification signs whose message is limited to the project or building name, identification of architects, engineers, contractors, lenders and other individuals or firms involved with the construction, the intended purpose of the building and the expected completion date, provided that such signs:

a. May not exceed four square feet in area per display surface and six feet in height for single-family or duplex construction;

b. May not exceed 32 square feet in area per display surface and eight feet in height for multifamily or non-residential construction;

c. Such signs shall not be illuminated;

d. No more than one such sign shall be allowed per construction site;

e. No such sign shall be erected prior to issuance of a building permit for the site; and

f. Such sign must be removed within seven days of the issuance of a certificate of occupancy.

8. Real estate signs advertising the sale, rental, or lease of the premises, provided that such signs:

a. Do not exceed one sign per street frontage and four square feet in area per display surface for property zoned residential; and

b. Do not exceed one sign per street frontage and 16 square feet per display surface for property zoned non-residential or located within an approved planned development; and

c. Such signs shall not be illuminated.

9. Residential property management sign permanently affixed to the building façade, which includes contact information for the management company, provided that such signs:

a. Do not exceed one sign per building façade and four square feet in area per display surface; and

b. Are attached to a residential structure with seven or fewer dwelling units.

10. Temporary political signs, provided that such signs:

a. Do not exceed four square feet in area per display surface;

b. Are located on private property or within a public right of way;

c. When placed within a public right-of-way, must comply with the following additional requirements:

i. May not be placed more than 30 days before the beginning of early voting pursuant to N.C. Gen. Stat. § 163-227.2;

ii. The candidate must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where the sign would be placed;

iii. No sign is permitted within the right-of-way of a fully controlled access highway;

iv. No sign may obscure motorist visibility at an intersection;

v. No sign may be greater than 42 inches in height above the edge of the pavement of the road;

vi. No sign may be larger than 18 by 24 inches;

vii. No sign may obscure or replace another sign.

d. Are removed within ten days following the primary or general election, as applicable;

11. Signs announcing ales, provided that such signs:

a. Do not exceed one sign per site of the sale;

b. Do not exceed four square feet in area per display surface; and

c. Are removed within seven days of posting.

12. Announcements by public or nonprofit organizations of special events or activities of interest to the general public, provided such signs:

    a. Do not exceed one sign per site of such events or activities; and

    b. Do not exceed 12 square feet in area per display surface; and

    c. Are removed within 14 days of posting.

13. Information kiosks or bulletin boards erected by or on behalf of a governmental body on public property or rights-of-way in the town business districts for the display of handbills or posters of community interest, provided such kiosks or bulletin boards:

    a. Contain no more than six square feet in area per sign display surface and a maximum of 72 square feet per kiosk or bulletin board.

14. A sign held by or attached to a human, located in front of the business, during business hours, for the purposes of advertising or otherwise drawing attention to an individual, business, commodity, service or product. This may also include a person dressed in costume for the purpose of advertising or drawing attention to an individual, business, commodity, service or product.

15. Signs on registered, licensed vehicles that are parked in a manner that serves the purpose of advertising a business, is generally located in front of the business, and is parked in a standard size parking space.

16. Signs stating that a business (other than a home occupation) is open, provided that there is no more than one such sign per business establishment, any illumination is steady (does not blink or flash), and the sign does not exceed two square feet in display area.

(Ord. No. O-21-17, 12-13-2021)

9.3 Prohibited signs.

The following types of signs are prohibited:

A. *Moving signs.* Animated, rotating, or other moving or apparently moving signs, including vehicular billboards.

B. *Digital changeable copy.* Digital changeable copy that scrolls, blinks, or flashes, including but not limited to LCD, LED and any similar technology, except as used to display time and temperature or gas price.

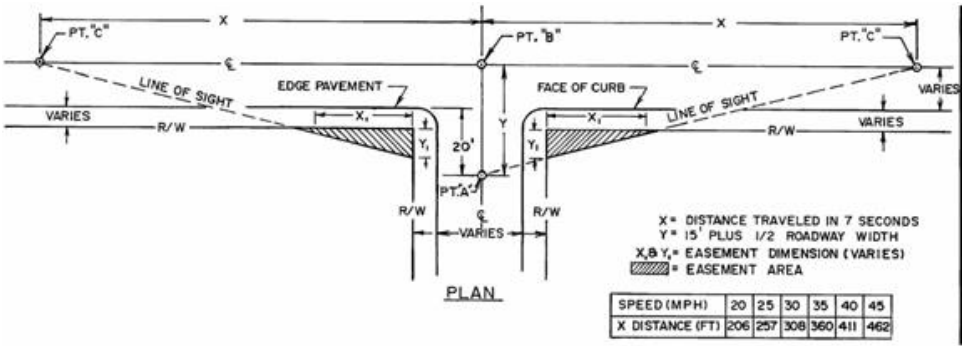
C. *Traffic safety precautions.* Notwithstanding any other provision in this Chapter, the following restrictions shall apply to signs in order to preserve the safety of pedestrian, bicycle, and vehicular movement:

    1. No sign may make use of the words "STOP", "SLOW", "CAUTION", "DANGER", or any other word, phrase, symbol or character in such manner as is reasonably likely to be confused with traffic directional and regulatory signs.

    2. Except as used to display time and temperature, no sign may contain flashing lights.

    3. No sign, or part of a sign, may be located within a sight distance area established below.

    4. No sign may be erected so that by its location, color, nature or message it is likely to be confused with or obstruct the view of traffic signals or signs, or is likely to be confused with the warning lights of an emergency or public safety vehicle.



(Ord. No. O-21-17, 12-13-2021)

9.4 General standards.

A. *Location.* Except where expressly exempted in this Section, all signs must be located on the same lot as the permitted use and be clearly incidental, customary and commonly associated with the operation of the permitted use.

B. *Cessation or vacation of use.* When the use or establishment to which a sign is related ceases or is vacated, any sign, including all of its supports, frames and hardware, must be removed within four months of the cessation or vacating of the use or establishment unless the sign is used by a new use or establishment on the premises in conformance with all current regulations of this chapter.

C. *Signs in the right-of-way.*

1. Signs must not encroach into the public right-of-way unless expressly allowed in this Chapter.

2. Wall signs, awning signs, canopy signs, projecting signs, crown signs and shingle signs may encroach over the public sidewalk but must not encroach on or over any streets or alleys. All signs must be a minimum of 24 inches inside the curb line or edge of pavement, whichever is greater.

3. No sign may be attached, affixed, or painted on any utility pole, light fixture, tree, rock or other natural object within the right-of-way.

D. *Unified sign plan.*

1. Where a zoning lot contains more than three principal uses or establishments, the provisions of this Section apply to the zoning lot as a whole, and the owners of the zoning lot are responsible for allocating permitted signs and display surface area among the individual uses or establishments.

2. A unified sign plan is an overall plan for placement and design of multiple signs for a building or group of buildings on a zoning lot.

3. The unified sign plan submitted for a zoning lot must show all signs located or proposed on the zoning lot.

4. The unified sign plan must display harmony and consistency with regard to number and size of signs, placement of signs, materials and color, size and style of lettering, and type of sign illumination.

5. Unified sign plans are not required in central business or mixed-use zoning districts.

E. *Address on ground signs.* The street address number must be included on all ground signs. Numerals must be at least nine inches in height. The area of the address is not included in any calculation of total sign area.

F. *Pre-existing, nonconforming signage.* Any sign in place prior to adoption of this ordinance that does not comply with the standards of this chapter for size, location, height or sign type is considered a pre-existing, nonconforming sign that may be continued, maintained, repaired, or replaced if damaged or destroyed, provided that the nonconformity is not in any way enlarged or intensified.

1. Any advertising sign or business identification sign which is not specifically prohibited and is permanently affixed to a building, structure or the ground, which is nonconforming because of its height, size, setback or location shall be allowed to continue and shall be maintained as provided for in the preceding sections, but shall not be:

   a. Replaced with another nonconforming sign;

   b. Structurally altered (except to meet safety requirements);

   c. Altered so as to increase the degree of non-conformity of the sign;

   d. Expanded;

   e. Re-established after its discontinuance for 60 days;

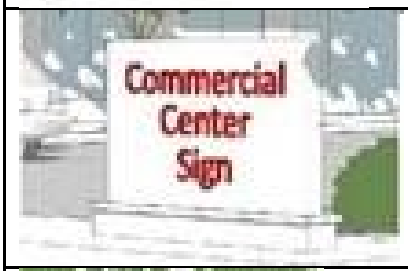
   f. Continued in use after cessation or change of the business or activity to which the sign pertains; or

   g. Re-established after deterioration, damage, destruction or voluntary demolition if the cost of reconstruction exceeds 60 percent of the replacement cost of a sign of comparable quality.

(Ord. No. O-21-17, 12-13-2021)

9.5. Permitted signs.

Sign Type	UR-8, TR-4, CR-1, SR- 2, NMU- 8	CB, HB-8, TND	HI0, OI- 6, LI-8, ICD	Sign Area Allocation (max)
	P*	P	P	Maximum 5% of the building facade up to and including the fourth floor, for all of these sign types combined. No individual sign shall exceed 250 sq. ft. in area
	P*	P	P	

	P*	P	P	
	P*	P	P	
	P*	P	P	Based on sign area
	—	P	P	Maximum 2.5% of the building facade (in addition to other building signs)
	—	P*	P	Based on sign area
	P*	P	P	

	P*	P	P	
	P	P**	P	
KEY: P = Sign type permitted P* = For allowed nonresidential uses only P** = For residential identification sign only — = Not Permitted A.				



A. *Wall sign.*

Description
A wall sign is a sign attached to or painted on a wall or building, with the exposed display surface of the sign in a plane parallel to the plane of the wall to which it is attached or painted, including signs affixed to or otherwise displayed on or through a facade window.

Standards
1. No portion of a wall sign may extend above the roof line or above a parapet wall of a building with a flat roof. No portion may extend above the lower eave line of a building with a pitched roof. The sign must not cover windows or architectural details. 2. Wall sign area includes signs visible from the outside that are located inside the building within five feet of the window. 3. For a cinema or theater, may be constructed as a marquee that extends less than ten feet from the building and is at least ten feet above the sidewalk (or finished grade where there is no sidewalk). 4. May be externally or internally illuminated in accordance with section 9.9.



Dimensions				
		CB, HB-8, TND	UR-8, TR-4, CR-1, SR2, NMU-8	HI-0, OI-6, LI-8, ICD
Ⓐ	Display surface, building identification (max)	16 SF	limited by 5.14.7	40 SF
Ⓑ	Display surface, each establishment (max)	—	—	15 SF
Ⓒ	Projection from building facade (max)	12"	12"	12"
Ⓓ	Raceway (max % of letter height)	35%	35%	35%
Ⓔ	Height (max)	54'	54'	54'

Ⓕ	% of each window area (max)	15%	15%	15%

Number of signs

1. In the UR-8, TR-4, CR-1, SR-2, NMU-8 districts, maximum one wall sign per street frontage.
2. In all other districts, maximum of three wall signs per individual establishment per street frontage. Window signage shall not be counted towards the maximum number of wall signs.

B. *Awning sign.*





Description
A sign where graphics or symbols are painted, sewn, or otherwise adhered to the awning material as an integrated part of the awning itself.
Standards
1. Sign must not extend outside the awning. 2. Signs are permitted on the sloping face of the awning. 3. Not allowed above the ground story. 4. May only be externally illuminated in accordance with section 9.9.



Dimensions		
Ⓐ	Display surface (max)	Limited by 5.14.7
Ⓑ	Width (max % of awning width/depth)	75%
Ⓒ	Height of message (max. on front or side; no limit on height on sloping valance)	12"
Ⓓ	Clearance height above sidewalk (min)	10'
Number of signs		
1. A maximum of one sign per front, side, or sloping valance. 2. Awning sign may be on either: a) the front side; or b) sloping valance.		





C. *Canopy sign.*

Description
A sign placed at the front edge of a canopy so that the display surface is parallel to the plane of the front building facade or parallel to the plane of the canopy.
Standards
1. Must not extend outside the overall length or width of the canopy, however, may extend above or below the canopy, provided the clear height is met. 2. Raceways are permitted for signs extending below or above the canopy. Otherwise, raceways are not permitted and the sign must be flush with the canopy face. 3. May be externally or internally illuminated in accordance with section 9.9.



Dimensions		
Ⓐ	Width (max % of canopy width)	75%
Ⓑ	Height of text and graphics (max)	2'
Ⓒ	Depth (max)	1'
Ⓓ	Raceway (max % of letter height)	35%
Ⓔ	Clear height above sidewalk, canopy and sign (min)	10'
Number of signs		
1. A maximum of one sign is permitted per canopy.		

D. *Projecting sign.*



Description
A sign applied to or mounted to the wall or surface of a building or structure, with a display surface that projects 12 inches or more from the outside wall of the building or structure.
Standards
1. May be erected on a building corner when the building corner adjoins the intersection of two streets. Allocation allowed per section 5.14.7, of sign area from both frontages may be used for a corner projecting sign, provided it does not exceed the allowed height and width. 2. No portion may extend above the roof line or above a parapet wall of a building with a flat roof. No portion may extend above the lower eave line of a building with a pitched roof. 3. May be externally or internally illuminated in accordance with section 9.9.



Dimensions		
Ⓐ	Height (max)	
	Mounted below 2nd floor	4'

	Mounted between 2nd and 3rd floor	8'
	Mounted between 3rd and 4th floor	12'
Ⓑ	Distance from building facade (max)	2'
©	Projection width (max)	4'
Ⓓ	Depth (max)	12"
Ⓔ	Clearance height above sidewalk (min)	10'

Number of Signs

1. Maximum one projecting sign per individual establishment per street frontage.
2. Must be located at least 25 feet from any other projecting sign or shingle sign.
3. Not allowed on a zoning lot with a commercial center or ground sign, unless signs are located on different street frontages.

E. *Shingle sign.*





Description

A small projecting sign that hangs from a bracket or support and is located over or near a building entrance.

Standards

1. Must be located within five feet of an accessible building entrance.
2. Hanging bracket must be an integral part of design.
3. Must be located below the window sills of the 2nd story on a multi-story building or below the roof line on a one-story building.
4. May be externally or internally illuminated in accordance with section 9.9.



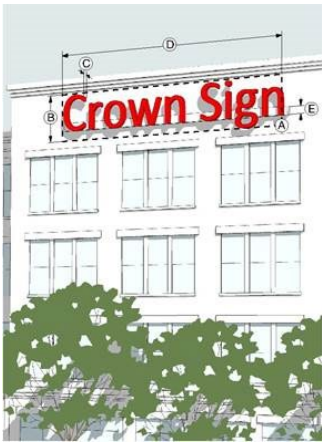
Dimensions		
Ⓐ	Display surface (max)	9 SF
Ⓑ	Height (max)	3'
Ⓒ	Spacing from building facade (min/max)	6"/12"
Ⓓ	Projection width (max)	3'
Ⓔ	Depth (max)	6"
Ⓕ	Clear height above sidewalk (min)	10'
Number of signs		
1. Maximum ofone1 shingle sign or projecting sign per individual establishment per street frontage. 2. A shingle sign must be located at least 25 feet from any other shingle sign or projecting sign.		

F. *Crown sign.*





Description
A wall sign extending not more than 3 feet from the building facade located on the upper horizontal band of a building at least 55 feet and 4 stories in height.
Standards
1. Only permitted on buildings at least 55 feet and four stories in height. 2. Must not be placed below the start of highest floor or extend above the roof line. 3. Must not cover windows or architectural details. 4. May only be internally illuminated in accordance with section 9.9.



Dimensions		
Ⓐ	Display surface (max)	250 SF
Ⓑ	Height (max)	6'
Ⓒ	Projection - measured from building facade (max)	3'
Ⓓ	Width (max % of facade width)	75%
Ⓔ	Raceway (max % of letter height)	25%
Number of signs		
1. No more than one sign per building facade and no more than two signs per building. 2. No more than one tenant or building may be identified on the sign per building facade.		

G. *Development identification sign.*





Description
A permanently affixed sign which is wholly independent of a building for support attached along its entire width to a continuous pedestal that is used to identify entry to a development.
General provisions
1. Signs taller than six feet must be set back at least ten feet from the front property line and 15 feet from a side property line.

2. Must not conflict with any clear sight triangle.
3. Must be constructed of brick, stone, wood, metal or glass.
4. May contain the name and logo of the development and one anchor tenant.
5. May be externally or internally illuminated in accordance with section 9.9.



Dimensions				
		CB, HB-8, TND	*UR-8, TR-4, CR-1, SR2, NMU-8*	*HI-0, OI-6, LI-8, ICD*
Ⓐ	Sign area (max, single side only)	16 SF	20 SF	40 SF
Ⓑ	Sign area (max each, if two sides)	8 SF	—	20 SF
©	Sign area (max, for development with a cinema, single side only)	—	—	80 SF
Ⓓ	Height (max)	6'	6'	8'
Number of Signs				
1. In all other districts, two development identification signs are allowed per primary entrance, one on each side.				

H. *Commercial center sign.*



Description
A commercial center sign is a free-standing sign attached to a contiguous structural base or planter box permanently affixed to the ground. Commercial center signs do not include free-standing signs supported by poles.
Standards
1. Allowed for commercial centers, defined as a center with a minimum of four retail business tenants and 8,000 SF of retail business floor area. 2. The commercial center must have 100 feet of street frontage minimum. Street frontage for a zoning lot includes frontage on streets that are part of an approved master land use plan or special use permit and have speed limits of 35 mph or greater. 3. Sign must be located at least 250 feet from any other commercial center ground sign. 4. Minimum 9" letter height for all text. 5. The display surface area of the sign must be divided into individual tenant name panels. The panels within the display area may be of two different sizes and must be of a similar shape. 6. May be externally or internally illuminated in accordance with section 9.9. Illumination of the sign is not permitted during nonbusiness hours.
Dimensional deviations
1. A dimensional deviation of 12 inches or less may be applied to the commercial center sign dimensional standards, provided the resulting sign does not exceed the maximum height and maximum display area standards. 2. For signs located at the edge of the right-of-way, the overall height of the base of a sign located along a roadway with a speed limit of 45 mph may be increased by one inch for every two feet the sign is set back from the edge of the closest travel lane. The overall height of the sign may not be increased beyond the maximum height limit by more than three feet.



Dimensions			
		CB, HB-8,TND, HI-0,OI-6, LI-8, ICD	
		Street up to 35 MPH	*Street 35 MPH +*
Ⓐ	Sign structure plus display surface (max)	120 SF	144 SF
Ⓑ	Display surface only (max)	50 SF	72 SF
Ⓒ	Height (max)	12'	14'
Ⓓ	Width (max)	10'	10'
Ⓔ	Thickness (max)	12"	12"
Number of signs			
1. Maximum one commercial center sign per street frontage per commercial center.			

I. *Ground sign.*



Description

A ground sign is a free-standing sign attached to a contiguous structural base or planter box the same width or greater than the message portion of the sign, permanently affixed to the ground. Ground signs do not include free-standing signs supported by poles.

Standards

1. The commercial developments must have a minimum 100 feet of street frontage to qualify for a ground sign (for smaller lots, see cantilevered ground sign). Lot must be accessible by automobile and contain off-street parking for the principal use.
2. Buildings housing principal uses must be located at least 20 feet back from abutting right-of-way.
3. Sign must be set back at least ten feet from the front property line and 15 feet from a side property line.
4. Sign must be located at least 100 feet from any other ground sign.
5. Minimum 9" letter height for all text.
6. May be externally or internally illuminated in accordance with section 9.9.



Dimensions

		UR-8, TR-4, CR-1, SR-2, NMU-8	*CB*	*All Other Districts*
Ⓐ	Display surface (max)*	16 SF	8 SF	15 to 30 SF**
Ⓑ	Height (max)	6'	8'	8'
Ⓒ	Width (max)	10'	10'	10'
Ⓓ	Thickness (max)	12"	12"	12"

* Area associated with the text of a building name or address is exempt from maximum display surface calculation.

* Display surface max. is per display area.

Number of signs

1. In the UR-8, TR-4, CR-1, SR-2, NMU-8 Districts, maximum one ground sign per lot.
2. In all other districts, maximum one ground sign per street frontage.
3. No ground sign is permitted on the same zoning lot with a projecting sign, unless signs are located on different street frontages.

J. *Cantilevered ground sign.*



Description
A permanently affixed sign which is wholly independent of a building for support where the primary support is supplied by a post and the sign hangs from a bracket or support.
Standards
1. No minimum street frontage required. 2. Buildings housing principal uses must be located at least 20 feet back from abutting right-of-way. 3. Must be set back at least five feet from the front lot line and five feet from a side lot line. 4. Hanging bracket must be an integral part of design. 5. Sign must be located at least 25 feet from any other ground sign. 6. May be externally or internally illuminated in accordance with section 9.9.



Dimensions		
Ⓐ	Display surface (max)	9 SF
Ⓑ	Support height (max)	10'
Ⓒ	Sign height (max)	6'
Ⓓ	Display surface height, width (max)	3'
Number of signs		
1. One cantilevered ground sign per street frontage. 2. No cantilevered ground sign permitted on same zoning lot as a projecting sign.		

(Ord. No. O-21-17, 12-13-2021)

9.6 Specialty sign types.

A. *Sidewalk sign.* A sidewalk sign is a movable sign not secured or attached to the ground or surface upon which it is located. This sign type is typically an A-frame or spring-mounted sign.

1. A sidewalk sign is permitted in the central business district and highway business.
2. A sidewalk sign must be no more than 42" tall and 36" wide. The sign face must be no more than six square feet in area.
3. There may be no more than one sidewalk sign per tenant, generally located adjacent to the primary facade in front of the business.
4. A sidewalk sign must not obstruct vehicular, bicycle or pedestrian traffic, and must comply with ADA clearance and accessibility requirements.
5. The sign must be removed and placed indoors at the close of each business day.
6. No illumination is permitted.



B. *Parking lot identification banners.*

1. Each parking lot identification banner must not exceed four square feet in display area, and must be limited to the name of the building or development.
2. One or two banners may be approved for display from each streetlight.
3. The colors, shape, materials, appearance and duration of display for such banners must be approved by the town manager.

C. *Gas stations.*

1. *Pumps.* Signs located on the top of gas pumps (pump toppers) must comply with the following standards:
   a. Gas stations may install one pump topper per pump.

b. Pump toppers are limited to a maximum of six square feet per side and no more than two sides per pump.

c. The base of the pump must be a neutral color, and must not contain any signage.

d. No internal illumination of the pump or pump topper is allowed.

2. *Canopies.* Gas station canopy signs must comply with the following standards:

a. The sign must be an integral component of the pump canopy (composed of lettering mounted, painted or otherwise affixed to the pump canopy, and not located on the top or bottom of the canopy).

b. The features, materials, colors and designs used in the pump canopy must be similar to the principal structure. Such features are considered similar where the materials and colors of the canopy are the same as the predominant materials and colors of the principal structure.

c. Each canopy sign may not exceed four square feet of display area. The maximum letter height or trademark height must not exceed 18 inches.

d. Additional canopy sign area may be permitted by transferring building sign display area. If building sign display area is transferred, one canopy sign is permitted on each side of a canopy, up to a maximum of three sides.

e. The canopy must not encroach upon any publicly dedicated rights-of-way.

f. No internal canopy illumination is permitted.

3. *Digital gas price display.* Gas prices may be displayed as digital (electronic) changeable copy.

(Ord. No. O-21-17, 12-13-2021)

9.7 Sign measurements.

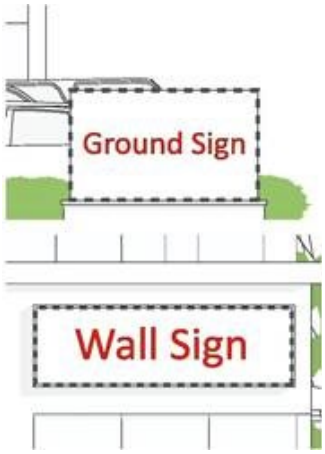
A. *Computation of sign area.* The area of all signs is determined as follows:

1. For wall signs, awning signs, canopy signs and crown signs consisting of freestanding letters or logos, sign area is calculated as the total area of the rectangle, circle or square that fully encloses all the letters or logo.

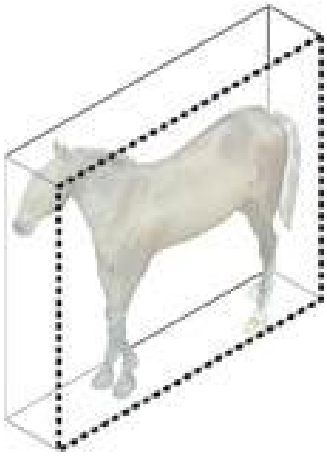


2. For signs on a background, the entire area of the background is calculated as sign area, including any material or color forming the sign face and the background used to differentiate the sign from the

structure on which it is mounted. Display surface includes the face of the structure that the message is affixed to. Display surface does not include any structural members not bearing advertisement.



3. The sign area of a three-dimensional sign is calculated as total area of the smallest rectangle, circle or square that fully encloses the largest profile of the three-dimensional sign.

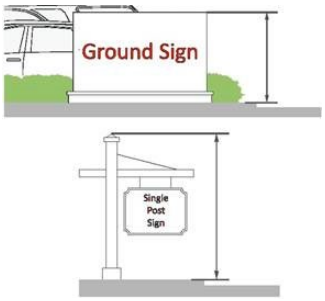


4. The area for a sign with more than one face is calculated by adding the area of all sign faces that are 45 degrees or greater; where the sign face angle is less than 45 degrees only the area of the largest sign face is computed as part of the sign area.



B. *Measurement of sign height.*

1. The total height of a sign is measured from the highest point of the sign or supporting structure to the top of the abutting sidewalk (or the crown of the adjacent roadway where no sidewalk exists).



C. *Measurement of sign height: Commercial center sign.*

1. The height of a commercial center sign is measured from the mean natural grade.
2. Mean natural grade is measured along a line parallel to the street frontage for a distance of 100 feet on either side of the base of the sign, and along a line perpendicular to the street starting at the right-of-way for a distance equal to the width of the proposed sign.
3. Where the proposed location of the sign is below the natural grade of the adjacent street frontage, the overall height of the base of the sign may be increased by up to ten feet in order to achieve the maximum permitted height, as measured from the natural grade of the adjacent street frontage.
4. Landscaping around the base of a sign must be shown on a landscape plan. The landscaping must buffer and screen that portion of the base of the sign located below the natural grade of the adjacent street frontage.
5. The design of the base of the sign must complement the features and frame of the sign.
6. In those situations where compliance with Federal Emergency Management Agency (FEMA) floodplain regulations prohibits the installation of a contiguous structural base, the town manager may approve an alternate base design. Landscaping and screening must be incorporated into the alternate base design.

D. *Sign setback.* Signs required to be set back are typically measured from the property line. However, in instances where the property line is adjacent to a drainage area or other right-of-way that may reasonably be anticipated to exist in the future, the town manager may allow the sign to be placed at the property line without any setback.

E. *Sign maintenance.* All signs must be maintained in good condition and present a neat and orderly appearance. Failure by the owner or tenant to remove poorly maintained signs may result in enforcement action by the town. The town manager may cause to be removed (after due notice) any sign which shows gross neglect, becomes dilapidated, or if the ground area around it is not well maintained.

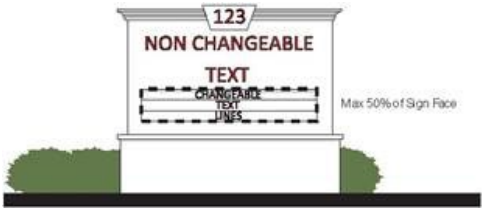
(Ord. No. O-21-17, 12-13-2021)

9.8 Changeable copy.

A. *Defined.* A sign or portion of a sign that has a reader board for the display of text information in which each alphanumeric character, graphic or symbol is defined by objects (not consisting of an illumination device) that may be changed or re-arranged manually or mechanically without altering the face or the surface of the sign.

1. Manual changeable copy is allowed in conjunction with a permitted commercial center sign, ground sign or marquee wall sign only.

2. The manual changeable copy portion of the sign may be no greater than 50 percent of the total sign area on each display face.



3. No electronic or digital changeable copy is allowed, except for digital time and temperature signs and gas price signs at gas stations.

(Ord. No. O-21-17, 12-13-2021)

9.9 Sign illumination.

A. *Prohibited light sources.* The following light sources are not permitted:

1. Blinking, flashing, chasing or scrolling.

2. Bare bulb illumination that exceed 0.3 foot candles at the property line.

3. Colored lights used in any manner so as to be confused with or construed as traffic control devices.

4. Direct reflected light that creates a hazard to operators of motor vehicles.

B. *Brightness.* The light from any illuminated sign must not be of an intensity or brightness that will interfere with the comfort, convenience and general welfare of residents or occupants of adjacent properties. Brightness must not exceed town maximum foot-candle standards.

C. *Internal illumination.*

1. Internal illumination is not allowed in the CR-1, NMU, SR-2, UR-8, TR-4 Districts.

2. Channel letters may be internally lit, halo lit or back-lit.

3. For internally illuminated signs, the background must be opaque or a substantially darker color than the sign message.

4. Light emitting diodes (LED)'s are permitted as a light source only where the LED is behind an acrylic, metal or similar sign face and returns in such a manner that the LED modules are not visible from the exterior of the sign.

5. Internal illumination for shingle and cantilever signs is limited to the text, letter or logo. The background may not be internally or externally illuminated.

6. The letter or message of internally illuminated signs must consist of non-reflective materials.



External light sources



Internally lit channel letters



Back lit channel letters



Internally lit cabinet signs with darker background

D. *External illumination.*

1. Lighting directed toward a sign must be shielded so that it illuminates only the face of the sign and does not shine directly onto public right-of-way or adjacent properties.

2. Flood lights or spotlights near the top of a sign must be focused downward onto the sign. Floodlights or spotlights must be aimed such that the entire beam falls within the intended area of the sign to be lit.

E. *Raceways and transformers.*

1. If a raceway is necessary, it must not extend in width or height beyond the area of the sign.

2. Raceways must be finished to match the background wall or canopy, or integrated into the overall design of the sign.

3. Visible transformers are not permitted.

(Ord. No. O-21-17, 12-13-2021)

9.10 Guidelines for administrative adjustment of signage regulations.

Intent: It is the intent of the Town of Black Mountain to allow the administrative adjustment of the sign ordinance standards to provide for flexibility that is compatible with the town's character; to acknowledge the artistic creativity of sign makers, business owners, and individuals; to create visual harmony between the sign, structure, and site where the sign is located; and to enhance retail areas consistent with the Elevate Black Mountain Comprehensive Plan and subsequent small area plans, development agreements, and form-based district codes.

A. *Adjustment applications:* Adjustment applications shall be made on forms available from the planning and development services office. An application shall consist of a completed application form; any necessary supporting documentation such as plot plans, building elevations, photographs or other information; and an application fee.

B. *Review:* Adjustment applications shall be reviewed by the director of planning and development services and planning staff. Applications are available for public review and comment.

C. *Approval criteria:* The standards in this chapter may be adjusted administratively when the director of planning and development services determines all the following criteria are met:

1. The intent of the sign ordinance is better achieved with the administrative adjustment than by other alternatives allowed by this section;

2. Sufficient reason is shown for the adjustment in order to address exceptional or extraordinary circumstances or conditions applicable to the property (including topographical issues), or intended use of the property, that are not contemplated or provided for by this chapter;

3. The modification is compatible with the scale, character, and design of the building in which the use is located;

4. The modification is compatible with the scale, character, design and lighting of the adjacent neighborhood or focus area;

5. The modification is consistent with the purpose of this chapter and would not adversely affect the neighborhood in which the business is located; and

6. The modification is within the standards identified in the table below.

Allowable Administrative Adjustments
(up to the limits set forth in the table for the type of standard). If the modification exceeds these standards, the applicant may seek a variance form the board of adjustment

	Standard	Standard Sign Type	Allowable Max. Administrative Adjustment (up to)
a	Distance from building facade	Wall, Projecting, Shingle Crown	10%
b	Sign, height, display, area or dimensions	All	10%
c	Sign display area for building greater than 4 stories	Wall	10%

d	Height above sidewalk	Wall, Awning, Canopy, Projecting, Shingle	5%
e	Raceway - % of letter height	Wall, Canopy, Crown	5%
f	Sign depth	Awning, Canopy, Projecting, Shingle	10%
g	Distance from façade, entrances	Projecting, Shingle	20%
h	Distance between signs	Projecting, Shingle, Ground	20%

(Ord. No. O-21-17, 12-13-2021)

9.11 Enforcement and penalties.

In addition to the remedies provided in chapter 1 of this land use code for violations of the terms of a permit or development approval, the planning director, or the director's designee, may remove any illegally posted sign. Any such removed sign will be retained for seven days, during which period the sign may be retrieved by the owner upon payment of a $25.00 storage fee. After those seven days and for a second or repeat offense, illegal signs removed by town staff shall be disposed of or destroyed.

(Ord. No. O-21-17, 12-13-2021)

CHAPTER 10. OFF-STREET PARKING AND LOADING REGULATIONS

SECTION 10.1 SUITABLE AREAS REQUIRED FOR PARKING VEHICLES

10.1.1 Suitable areas required for parking vehicles.

A. Areas suitable for parking automobiles in off-street locations shall be required in all zoning districts, except in the central business district (CB), at the time of initial construction of any principal building producing an increase in dwelling units, guest rooms, floor area, seating or bed capacity, or when a conversion in use occurs.

B. The off-street parking areas shall have direct vehicular access to a street and shall be provided and maintained in accordance with the requirements set forth herein.

C. Parking lots shall generally be located at the rear or at the side of buildings to the extent practicable and shall be screened from public rights-of-way and sidewalks by land forms, landscaping, fencing or evergreen vegetation so as to provide a barrier that will be at least three feet wide. Parking lots abutting residential zoning districts must be screened by an opaque fence or vegetative buffer of at least ten feet in width and a minimum of six feet in height of sufficient density to act as a screen as determined by the zoning administrator.

SECTION 10.2 PARKING SPACE AREA

10.2.1 Parking space area.

A. For the purposes of this chapter, a standard car off-street parking space shall be no less than nine feet wide and 18 feet long.

B. Two-way entrances or aisles to a parking lot with parking on both sides of the aisle shall be no less than 24 feet wide.

C. Two-way entrances or aisles where parking is only provided on one side of the aisle shall be no less than 22 feet wide.

D. One-way entrances or aisles where parking is only provided on one side of the aisle shall be no less than 14 feet wide.

E. In all districts except for the central business district and the industrial districts, two-way entrances should be no greater than 24 feet wide, or 30 feet wide if used by trucks with more than two axels, in order to calm the speed of entering traffic and protect pedestrian safety. One-way entrances should be no less than 12 feet and no greater than 14 feet for one-way traffic.

F. No parking space shall be closer than eight feet to the paved portion of any street or located on any street right-of-way.

G. Parking areas shall be constructed with proper drainage and stormwater management practices and a well maintained traffic directional system.

H. No grade within the parking area or access lanes shall exceed 14 percent.

SECTION 10.3 PARKING SURFACES

10.3.1 Parking surfaces.

A. All vehicular parking areas in commercial and industrial districts and parking areas of more than four spaces in all other districts shall be constructed of a durable and dustless surface. This section shall not apply to parking areas at private dwellings in single and duplex dwelling structures or to areas where the use is strictly for display or parking of vehicles for sale.

B. Any person may petition the town for a variance from parking surfaces in accordance with the procedures outlined in section 1.7.3.

C. Terrain, configuration of the lot, and the anticipated amount of vehicle activity shall be considered in making this permitting decision.

D. Use of permeable pavements or other surface technologies are welcome as long as they are maintained in good condition and function, and documentation is provided as to the maintenance program for the parking lot. Use of permeable surfaces may result in a reduction of stormwater SCMs in accordance with section 8.2.11.

SECTION 10.4 LOCATION ON OTHER PROPERTY AND SHARED PARKING

10.4.1 Location on other property and shared parking.

A. If the required automobile parking space cannot reasonably be provided on the same lot with the principal use, the spaces may be provided on other off-street property under the same ownership or on other property rented or leased, provided such property lies within 300 feet walking distance of the main entrance to the principal use. The automobile parking spaces shall be associated with the principal use and shall not be reduced or encroached upon in any manner which would reduce the number of parking spaces below the required minimum.

B. Shared parking.

1. The zoning administrator may approve the joint use of up to 100 percent of the required parking spaces for two or more uses located on the same parcel or adjacent parcels, provided that the developer can demonstrate that the uses will not overlap in hours of operation or in demand for the shared spaces.
2. Any sharing of required parking spaces located on different parcels shall be documented by written agreement between the owner of the parking area and the party seeking to use the shared parking area., and such agreement shall be recorded in the Office of the Register of Deeds for Buncombe County.
3. The owner of said lot will relinquish his development rights over the property until such time as parking space is provided elsewhere or the shared parking agreement expires or is amended.
4. Should the uses change such that the new uses overlap in hours of operation or increase demand for the shared spaces, the shared parking approval shall be amended accordingly or shall become void. Parking meeting the requirements of this chapter shall then be provided for each use.

SECTION 10.5 USE OF PUBLIC RIGHTS-OF-WAY FOR MANEUVERING

10.5.1 Use of public rights-of-way for maneuvering.

When determining parking area requirements for individual uses, portions of the public rights-of-way for streets may not be considered as permissible for maneuvering incidental to parking. Direct access to individual parking spaces from public rights-of-way shall not be allowed.

SECTION 10.6 CURB CUTS AND ACCESS POINTS

10.6.1 Curb cuts and access points.

A. All site plans shall be reviewed for "access management." Access management is the implementation of design intended to address organized and controlled traffic movement to minimize traffic conflict, provide efficient traffic flow, and to provide a more pedestrian-friendly development pattern. Access management should address the location and design of public street and driveway connections to the primary roadway, as well as promote site design that minimizes the total number of connections needed throughout the corridor.

B. Points of ingress and egress shall be via openings in concrete, asphalt, rock or other curbing provisions, commonly referred to as curb cuts in accordance with the town driveway requirements and the approval of the N.C. Department of Transportation when involving a state road.

C. Wherever feasible, access points to town or state roads shall be designed to provide shared access to parking lots by abutting properties, and shall be designed to channel traffic onto side streets, preferably those with traffic signalization, thereby reducing the number of curb cuts.

D. In no case shall a curb cut or other access point be less than ten feet nor more than 30 feet in width. No more than two curb cuts per lot shall be permitted except in commercial or industrial districts where two shall be permitted on each street upon which the lot fronts or as allowed as part of a special use permit.

1. The distance measured along the right-of-way line between the edges of adjacent access points shall be at least 25 feet.
2. Unless the access point will be shared between two or more adjoining properties, all access points shall be located at least five feet from all property lines perpendicular to the street.

3. The number, width and location of curb cuts shall be such as to minimize traffic and pedestrian hazards.

E. No curb or other access point shall be located closer than:

1. Twenty feet from the intersection point of the street's rights-of-way or property lines involved.

2. Thirty feet from the access point to any street intersection.

F. All curb-cuts and driveways that intersect sidewalks shall include pedestrian markings of zebra stripes, textured asphalt stamping such as streetprint, or brick pavers or other material that visually designate the pedestrian thoroughfare and connects to the sidewalk.

SECTION 10.7 OFF-STREET PARKING SPACE REQUIREMENTS

10.7.1 Off-street parking space requirements.

Off-street parking spaces shall be provided for uses listed below as specified. Any use not specifically listed below shall be required to meet the off-street parking space requirements of that use which most closely resembles the proposed use in character and intensity, as determined by the zoning administrator. All parking requirements set forth by this subchapter include provisions for parking for handicapped individuals as stated by any state or federal regulations.

Use	**Off-Street Parking Requirements**
Automobile service stations	Two parking spaces for a grease rack or wash rack and one space for each gas pump.
Banks, savings and loans, credit unions and business and professional offices	One space for each 300 square feet gross floor space plus one space for each two employees and loading spaces.
Convenience rental and retail stores	One space for each 300 square feet gross floor space plus one space for each two employees and loading spaces.
Cultural and community facilities	One space per 200 square feet gross floor space.
Doctor and dentist offices	Six spaces per doctor and dentist plus one space for each employee and loading spaces.
Golf courses	Four spaces per hole in addition to parking required for any related activities such as restaurants.
Educational facilities—Primary, elementary or junior high school	One space for each employee and one space for each 400 square feet of area for public assembly and loading spaces. See also requirements for religious complexes.
Educational facilities—Senior high school or college	Two spaces for each classroom and administrative office plus one space for each employee and sufficient space for parking school vehicles and loading spaces. See also requirements for religious complexes.
Group care facility or hospital	One space for each four patient beds, plus one space for each staff or visiting doctor, plus one space for each three employees.
Hotels, motels, bed and breakfast homes and inns	One space for each guest room plus one space for each two employees.
Industrial district (for uses not otherwise specified)	One space for each employee at maximum employment on a single shift, plus one space for each company vehicle operating from the premises, plus one space for each 200 square feet of sales and office area, and loading spaces.

Mobile home park	Refer to § 7.7.1 [appendix A] for mobile home park requirements.
Mortuary or funeral home	One space for each two seats in the assembly room or chapel.
Newspaper publishing plant	One space for each two employees at maximum employment, plus sufficient space for parking vehicles, plus one space for each 200 square feet of sales and service area, plus loading spaces.
Nursery school	One space for each employee and each school vehicle, plus one space for every five children.
Places of public assembly (including private clubs and uses, auditoriums, dance halls, theaters, stadiums, amusement parks and similar places of public assembly)	One space for each four seats provided for patron use plus one space for each 100 square feet of floor or ground area used for amusement or assembly but not containing fixed seats.
Rooming and boarding house	One space for each guest room.
Recreation areas—Ball fields	One space for each four seats in the stands.
Recreation areas—Tennis courts	Two spaces per court.
Religious complex	One space for each three seats in the principal assembly room (one-half of such parking may be available for another use which is closed on Sunday morning).
Residential	Two spaces per dwelling unit.
Restaurant	One space for each four seats (booths and tables included), plus one space for each employee working the shift of greatest employment.
Service and repair establishments	One space for each 300 square feet of floor space plus one space for each two employees and loading spaces.
Unified business developments	The development as a whole shall have sufficient parking spaces, the sum total of which shall satisfy the requirements of this subchapter for each and every establishment located within the development.

SECTION 10.8 REDUCTIONS IN PARKING REQUIREMENTS

10.8.1 Reductions in parking requirements.

Parking requirements may be decreased according to one or more of the following criteria:

A. Two to four parking spaces may be waived in exchange for the preservation of one established tree of 24 inches diameter or greater within a parking lot and including the "tree protection zone," up to 20 spaces in exchange for established trees per acre of a site and depending on use requirements. The "tree protection zone" is a minimum area equal to the area of a circle having a radius in feet equal to the tree diameter in inches (24-inch diameter of tree would require a 24-foot radius area). A tree protection zone must be incorporated into the site plan and preserved throughout construction. This area may serve more than one tree as long as the protection zone is adequately designated and maintained. These protected areas for larger trees can count toward the landscaping and parking lot island requirement of this chapter.

B. A developer may choose the option of replacing one automobile space with four bicycle parking spaces, (or two spaces for eight bicycle parking spots, or three for 12) up to a maximum of 16 bicycle parking spaces in place of four automobile spaces.

C. A developer may share parking through a joint-use agreement with another business or entity or group of businesses/entities based on a negotiated joint-use agreement among businesses and the projected combined parking needs of the businesses involved per section 10.4.

SECTION 10.9 OFF-STREET LOADING

10.9.1 Off-street loading.

A. Every lot on which a retail or wholesale business, trade, industry or multi-family housing is hereafter established, shall provide space indicated herein for the loading and unloading of vehicles off of the street. Such space shall have access to an alley or, if there is no alley, to a street. For the purpose of this section, an off-street loading space shall have minimum dimensions of 12 feet by 40 feet and be clear and free of obstruction at all times. However, the minimum loading requirements shall meet the needs of each individual case. Required space shall be considered as follows.

1. Retail businesses. One space per business location or as approved as part of a special use permit.

2. Wholesale, industrial, governmental and institutional uses (including public assembly places, hospitals, and educational institutions) shall provide adequate off-street loading spaces as approved as part of a special use permit, or shall provide one space for the first 25,000 square feet and follow the loading space schedule below:

25,000—99,999	2
100,000—159,000	3
160,000—239,999	4
240,000—349,999	5
Additional 100,000 or fraction thereof	1 (additional)

3. Multi-family dwellings shall have one loading space for ten or more units.

B. Where a loading space is adjacent to a public sidewalk or other public pedestrian way, it shall be so located, arranged, and improved with curbs or other barriers, as to provide adequate protection for pedestrians.

C. Maneuvering areas. All off-street loading spaces must be provided with adequate off-street maneuvering areas so that vehicles do not obstruct traffic during maneuvering.

SECTION 10.10 PARKING AND LOADING IN MIXED-USE DISTRICTS

10.10.1 Parking and loading in mixed-use districts.

A. Parking for non-residential buildings shall be:

1. In compliance with the required amount of parking spaces for the proposed use as outlined in, but in no case more than 12 percent of total lot area or more than 20 spaces for any lot in the mixed use zoning, whichever results in fewer total parking spaces. Such spaces shall comply with specific parking space size requirements as outlined in subsection C.3. below.

2. Limited to the side and rear yard.

3. Required to have accessible handicapped parking spaces built according to the North Carolina Accessibility Code.

B. Parking for residential, including multifamily, buildings shall provide two spaces per residential unit unless as otherwise provided as part of a special use permit.

C. Other—Residential and non-residential.

1. On-street parking shall not be used to accommodate required parking unless specifically allowed by a special use permit or unless within the central business district.

2. Parking spaces shall be required to have sufficient area for maneuverability such that all spaces are accessible when all required spaces are full.

D. All loading shall be done off street. Exceptions for moving vehicles and other one-time or infrequent (less than once a month) use shall be allowed.

CHAPTER 11. INFRASTRUCTURE

SECTION 11.1 STREETS, DRIVEWAYS AND ALLEYS

11.1.1 Streets, driveways and alleys.

A. Streets proposed for construction as part of new development must meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual and be approved by the town public works director and fire marshal.

B. Streets and driveways connecting to town roads must be designed and constructed in conformance with the Town of Black Mountain Standards and Details Manual.

1. Consideration of allowing narrower residential streets as part of new development shall be contingent upon special conditions which are beneficial to traffic flow and connectivity, minimize cut and fill slopes, or which preserve natural features, while still meeting the access needs for town emergency service vehicles. (See chapter 3 subdivision regulations and chapter 7 for information on conservation subdivisions).

2. As a condition for variation from the Town of Black Mountain Standards and Details Manual, the town may require additional shoulder, or paved staging locations for traffic management and emergency vehicle maneuvering.

C. No private drive, street, or driveway shall be constructed to connect to an NCDOT maintained road until NCDOT has issued a driveway permit.

District 2, Highways Division 13, Operations, Division of Highways

11 Old Charlotte Highway

Asheville, NC 28803

(828)298-2741

D. Arrangement of driveways should be related to adjacent driveways and street intersections. Driveways close to street intersections shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.

E. Alleys may be utilized in commercial and residential zoning districts. The purpose of an alley is to provide utility and vehicular access to developments that cannot be adequately served by existing streets or as a means of reducing or eliminating individual driveway accesses. All alleys are to be privately maintained with measures to ensure the travel-way is not obstructed in any manner, including parking, and should connect on both ends to public roads. Only three homes or less may also use an alleyway as a shared driveway.

F. See chapter 3.6 for information regarding the dedication or closure of streets, easements, alleys and driveways.

SECTION 11.2 SIDEWALKS

11.2.1 Sidewalks.

A. Sidewalks are required to be built in conjunction with certain development or redevelopment of properties as set out in section 4.8.7.6 of the Land Use Code.

B. Sidewalks shall be constructed within the street right-of-way in accordance with town or NCDOT Standards. Any location in which sidewalk is not within the dedicated street right-of-way must be privately maintained unless a sidewalk easement dedicated to the Town of Black Mountain is provided of sufficient width to maintain the sidewalk.

C. No sidewalk may be constructed within the NCDOT right-of-way until an encroachment agreement has been approved by the NCDOT district engineer.

D. An eight-foot-wide greenway trail may be placed instead of sidewalk if consistent with the comprehensive pedestrian master plan.

E. Sidewalks and greenways must be planned in compliance with the town's comprehensive pedestrian master plan, and should be designed to promote traffic safety.

SECTION 11.3 RESERVED.

CHAPTER 12. RESERVED

TOWN OF BLACK MOUNTAIN
STAFF REPORT
September 28, 2026

REQUEST

Applicant:
Planning and Development staff are suggesting this text amendment.

Proposal:
Revise wording in two locations in Chapter 4 (Zoning) of the Land Use Code so it's clear that streets are to be publicly accessible whether they are private streets, Town roadways, or State roadways: Section 4.4.2 (Lot Access) and the *Streets, Alleys and Pathways* subsection of the design standards in Section 4.7.11 (Traditional Neighborhood Development - Master Planned).

Affected Ordinance Sections:
Item ***A*** in Section 4.4.2 (Lot Access)

Item ***(D) (1)*** in subsection 4.7.11.5 (Design Standards) of Section 4.7.11 (Traditional Neighborhood Development - Master Planned)

DETAILS OF PROPOSAL

The following is a summary of proposed amendments:
Chapter 4 is the zoning chapter of the Land Use Code. The Land Use Code should not implicitly or explicitly commit the Town of Black Mountain or the North Carolina Department of Transportation to the building of roadways. Item ***A*** in Section 4.4.2 and item ***(D) (1)*** in subsection 4.7.11.5 (Design Standards) are the only places in Chapter 4 where the phrase "public street" exists in a way that could indicate 'a Town or State roadway.'

Lot Access
The Town does not permit use of land on a lot where the lot doesn't have access to a street (directly or by means of an access easement). The Town has many private streets, many Town roadways, and a significant number of State roadways. Item ***A*** in Section 4.4.2 (Lot Access) is:

> No building, structure or use of land for other than conservation purposes shall be established on a lot which does not have access to a public street directly or by means of an easement. Access shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual and connect any lot that does not abut a street with the nearest reasonable accessible street to said lot. The strip shall be under the same ownership as the lot to which it provides access, or shall be an easement of record and appurtenant to the lot for which it provides access.

The first sentence uses the phrase "public street," but the second sentence uses "nearest reasonable accessible street." The many lot owners whose lots are on a private street (directly or by means of an access easement) are permitted to establish buildings, structures or uses, just as lot owners whose lots are on a Town or State roadway are permitted.

The proposed amendment is:

> No building, structure or use of land for other than conservation purposes shall be established on a lot which does not have access to a ~~public street~~ **public roadway or a private street** directly or by means of an easement. Access shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual and connect any lot that does not abut a street with the nearest reasonable accessible street to said lot. The strip shall be under the same ownership as the lot to which it provides access, or shall be an easement of record and appurtenant to the lot for which it provides access.

TND Design Standards

Mirroring the Town's lot access requirements, the Traditional Neighborhood Development – Master Planned (TND) zoning district has a design standard for streets that lots must be publicly accessible.

The proposed amendment to item ***(D) (1)*** in subsection 4.7.11.5 (Design Standards) of Section 4.7.11 (Traditional Neighborhood Development - Master Planned) is:

> ~~Public streets~~ **Streets that are publicly accessible** shall provide access to all lots. Designs shall permit comfortable use of the street by motorists, pedestrians and bicyclists. Pavement widths, design speeds, and number of motor travel lanes should be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the building types which front on the street and the relationship of the street to the overall town street network. All roads shall be in compliance with the requirements as indicated in the Town of Black Mountain Standards and Detail Manual.

ANALYSIS

CONSISTENCY WITH ADOPTED POLICY GUIDANCE:

Chapter 4 is the zoning chapter of the Land Use Code. The Land Use Code should not implicitly or explicitly commit the Town of Black Mountain or the North Carolina Department of Transportation to the building of roadways.

REASONABLENESS/PUBLIC INTEREST:

It is reasonable and in the public interest for the Town to not indicate through its zoning regulations that either the Town or the State is committed to the construction of roadways. It's reasonable and in the public interest for the zoning chapter to consistently refer to all types of roadways (private streets, Town roadways, State roadways) when detailing anything related to the rights of an owner of a lot to establish a building, structure, or use of land.

RECOMMENDATION

Staff recommends that Planning Board recommend to Council that item ***A*** in Section 4.4.2 (Lot Access), and item ***(D) (1)*** in subsection 4.7.11.5 (Design Standards) of Section 4.7.11 (Traditional Neighborhood Development - Master Planned) be amended so as to bring accuracy to the way streets and roadways are referenced in the zoning chapter of the Land Use Code, and so as to not indicate a commitment by the Town or the State to roadway projects.

REPORT PREPARATION

This report was prepared by Planning Department staff member Russell Cate, Planner/Zoning Administrator, and reviewed by Michelle Kennedy, Planning Director.

4.4.2 Lot access.

A. No building, structure or use of land for other than conservation purposes shall be established on a lot which does not have access to a ~~public street~~ **street that is publicly accessible** directly or by means of an easement. Access shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual and connect any lot that does not abut a street with the nearest reasonable accessible street to said lot. The strip shall be under the same ownership as the lot to which it provides access, or shall be an easement of record and appurtenant to the lot for which it provides access.

B. Up to three lots may share access by means of a shared right-of-way so long as each lot has off-street parking for two cars, which parking shall not be located within the right-of-way of the private drive. In cases where four or more lots share access through a common right-of-way, the right-of-way shall be considered and designed as a named roadway and meet the requirements of the Town of Black Mountain Standards and Details Manual.

   1. In a conservation subdivision, rights-of-way that cannot meet the road standards for a subdivision without compromising performance goals of the conservation subdivision requirements (see 7.5.4) and which access more than three lots must meet the approval of the public works director and fire marshal for the purpose of waste collection, snow removal and maintenance, and emergency vehicle access.

   2. In a development undertaken pursuant to a special use permit, the design of any shared parking and loading areas that also serve to access more than three residential units must be approved by the fire marshal.

C. Lots which include or are adjacent to perennial or intermittent surface waters as indicated on the most recent version of the 1:24,000 scale quadrangle topographic maps prepared by the USGS are subject to a 30-foot setback from the top of the bank of that surface water in accordance with phase II stormwater regulations. (see section 8.2.10)

4.7.11 TND traditional neighborhood development (master planned).

4.7.11.1 Purpose and Intent. The purpose of this district is to allow for the development of fully integrated, mixed-use pedestrian oriented neighborhoods. The intent is to minimize traffic congestion, suburban sprawl, infrastructure costs, and environmental degradation. The provisions of this district are based on urban design and development conventions which were widely used in the United States from colonial times until the 1940's and were based on the following principles:

A. All neighborhoods have identifiable centers and edges.

B. The center of the neighborhood is easily accessed by non-vehicular means from lots on the edges (i.e. approximately one-quarter-mile from center to edge, or a five-minute walk).

C. Uses and housing types are mixed and in close proximity to one another.

D. Street networks are interconnected and blocks are small.

E. Civic buildings are given prominent sites throughout the neighborhood.

4.7.11.2 Master plan required.

A. A master plan in compliance with TND design standards and the general provisions of the subdivision regulations shall be provided with any application to reclassify a property to TND zoning. A rezoning request for TND zoning is contingent upon the approval of a master plan; if a master plan is not approved for the property, then it reverts to its previous zoning classification(s). No use or development of any property located in a TND district shall be permitted until a master plan, showing the proposed uses and development of the property, has been approved by the town council, upon a recommendation made by the planning board. Once the master plan has been approved, the developer must follow the processes and regulations set forth in the Town of Black Mountain's Subdivision Regulations to proceed with development of the property.

B. All submissions for approval shall include an agreement and approval by the associated TND master association governing the overall development. Specifically each new phase will have appropriate design standards and restrictions agreed upon and submitted to the appropriate county authority in the form of a supplemental master declaration. These additional design standards and restrictions shall be approved and filed prior to the commencement of any construction associated with that phase. The final plat submission and approval shall follow the same guidelines as the above preliminary plan.

C. The master plan shall be certified by a registered architect, registered landscape architect or certified planner.

D. If a developer proposes to construct the subdivision in phases, then the master plan shall be prepared for the entire property, and shall show the proposed phases of development. Each phase of development shall be preceded by the submission and approval of a preliminary plat for that phase, followed by the submission and approval of a final plat. In addition the master plan shall include:

1. An outline of any additional regulatory intentions or design guidelines,
2. Show intended phasing of development, and
3. Include any other information, e.g., conceptual building prototypes, which may be required to evaluate the interior pedestrian environment and conditions at project edges.

E. Approval process:

1. The owner or developer shall submit ten copies of the master plan to the zoning administrator for consideration by the planning board at least ten working days prior to the next scheduled meeting of the planning board.

2. The zoning administrator shall submit to the planning board at its next meeting any master plan that is in compliance with the design standards specified herein.

3. A filing fee shall be paid. Any master plan re-submitted within one year for substantially the same property shall not pay an additional filing fee. (0-99-09, adopted 6-14-99)

4. The planning board shall review a master plan submission or re-submission for no more than 180 days from the first meeting it is presented, in order to make a recommendation to the town council. Failure to make a recommendation accordingly shall cause the master plan to be forwarded to the town council without a recommendation. The applicant may withdraw a master plan by a written request to the zoning administrator. A withdrawn master plan may be re-submitted to the planning board for further reconsideration at a later time.

5. Before approving a master plan and subsequent rezoning, the town council shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

   (a) Staff shall prominently post a notice of the public hearing on the site of the proposed master plan and rezoning or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed master plan and rezoning and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

6. Master plans not approved by the town council and subsequently revised shall be re-submitted through the approval process.

7. Approved master plans shall not be revised without re-submission through the approval process. However, minor amendments at the site plan level for specific land uses or developments may be approved by the zoning administrator, provided:

   - Building floor areas are not changed by more than 20 percent;
   - Building or structure heights are not increased by more than 20 percent;
   - Parking areas or spaces are not diminished by more than 20 percent;
   - Relocated buildings or uses maintain the same general building relationships, landscaping and utility standards; and
   - The amendment preserves compliance with any specific requirements of the TND district and the town's general guidelines;
   - Appropriate HOA (master association) has reviewed and approved all revisions and submittals for a new phase commencement. This approval shall be in the form of a supplemental master declaration which is agreed to and approved by the master association.

8. Once a master plan has been approved, the project may proceed through the major subdivision and permitting processes outlined in the subdivision regulations of chapter 3, with the master plan being considered as a preliminary plat.

4.7.11.3 Development Parameters.

A. No minimum development size; however 40 acres is the recommended minimum size.

B. No maximum development size; however 200 acres is the recommended maximum size.

C. Maximum permitted densities and total number of dwelling units shall be established during the master plan review process.

D. Buffer requirements shall be established during the master plan review process. Property located on the perimeter of the TND district shall have setbacks and buffers that are consistent with the setbacks and buffers of the adjoining zoning district, including provisions for accessory buildings, but shall be a minimum of 15 feet.

4.7.11.4 Uses.

A. Permitted uses shall be based on the general category of use that has been established for a lot or group of lots in the TND master plan. The general land use categories are listed below with particular uses allowed and suggested amounts for each, expressed as a percentage of the total gross area of the neighborhood.

Use	**Amount**	**Allowable Uses**
Public	At least 5%	Parks, squares, greenbelts, sidewalks/walkways, streets, alleys, civic uses, and emergency housing.
Civic	At least 2%	Community buildings including meeting halls, libraries, post offices, schools, child care centers, clubhouses, religious buildings, recreational facilities, museums, performing arts buildings, municipal buildings, and emergency housing.
Shop front	2% to 20%	Residential and commercial uses; approximately 50% of the building area shall be designated for residential use. *Also, emergency housing.
Attached Homes (Multi-Family)	15% to 30%	Buildings for residential use and limited commercial use, such as a coffee house, home occupation, bed and breakfast inn, and emergency housing.
Detached Homes	30%	Buildings for residential uses, customary home occupational uses, bed and breakfast inns, and emergency housing.
Business	5% to 15%	Office, bar/brewery, restaurant, brew pub/tavern, retail, including eating establishments, mobile retail vendors***, and other commercial uses provided they produce little or no noise, odor, dust or vibration**. Also, emergency housing.

* Residential uses are not permitted on the ground floors of shop front buildings.

** Business uses shall be grouped together as follows: office and retail may be grouped with shop front buildings to form town centers. All other business uses shall be grouped together outside town and neighborhood center.

***Mobile retail vendors shall allow up to six vendors per parcel and there is a limit of ten mobile retail vendors allowed in the district.

B. Special uses:

1. Cemeteries, mausoleums or columbaria.
2. Churches.
3. Electric power and public utility stations or substations and public utility transmission lines.
4. Fairgrounds.
5. Drive-thru restaurants.
6. Automotive services.
7. Community living facilities.
8. Laboratories.
9. Outdoor theaters.
10. Public or non-residential swimming pools.
11. Schools—Public or private.
12. Stalls or merchandise stands for outdoor sale of goods at street front.
13. Veterinarian offices.

C. Prohibited uses:

1. Any commercial use which encourages patrons to remain in their automobiles while receiving goods or services, except service stations.
2. Carting, moving, or hauling terminal or yard.
3. Chemical manufacturing, storage or distribution as a primary use.
4. Enameling, painting or plating, except artist's studios.
5. Kennels.
6. Landfills.
7. Manufacturing, storage or disposal of hazardous waste materials.
8. Mobile homes.
9. Outdoor advertising or billboard as a principle use.
10. Parking lot as principal use.
11. Prisons, detention centers, or half-way houses.
12. Sand, gravel, or other mineral extraction.
13. Scrap yards.
14. Any use which produces the following adverse impacts; noise at a level greater than typical street or traffic noise, offensive vibration, emission of noxious solids, liquids, or gases.

*Large-scale, single-use facilities (e.g., conference centers, theaters, athletic facilities) shall generally occur above or behind smaller scale street front space.

4.7.11.5 Design standards.

A. *Neighborhood form.*

1. Dwellings at the edge of the neighborhood shall be roughly a five-minute walk to the center of the neighborhood.
2. A great variety of housing types and price ranges shall exist in the neighborhood, with the highest density of housing located towards the center of the neighborhood.
3. Within a neighborhood the following land uses shall be arranged to serve the needs of the residents in a convenient walking environment: open space/recreational areas, civic buildings, low and high density residential, retail/commercial, business/workplace, and parking.
4. The area of the TND shall be divided into blocks, streets, lots and open space.
5. Similar land uses shall generally enfront across each street. Dissimilar land uses shall generally abut at rear lot lines. Corner lots which front on streets of dissimilar use shall generally observe the setback established on each fronting street.
6. Along existing streets, new buildings shall be compatible with the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
7. The appearance of the neighborhood should blend in with existing neighborhoods and feature the use of natural materials in construction.

B. *Lots and buildings:*

1. All lots shall share a frontage line with a street or public space; lots fronting on a public space shall have access to a rear alley.
2. Consistent build-to lines shall be established along all streets and public space frontages.
3. All buildings, except accessory structures, shall have their main entrance opening on a street or public space.
4. No structure shall exceed 35 feet in height.

C. *Inclusion of affordable housing:*

1. Ten percent of all units created, whether for rental or purchase, must meet the affordable housing thresholds established by Buncombe County Community Development. Affordable units must blend into the overall development and not be aesthetically distinguishable from the other units, but may be of a higher density or smaller scale than other units within the development. For example, by making one of the buildings into a duplex, or by building a smaller sized unit of similar style, a developer can decrease their per unit cost and maintain the architectural integrity of their design.
2. Instead of constructing affordable units, developers may opt to convey an undeveloped lot or lots within the development for construction by a town approved affordable housing agency to meet the ten-percent requirement as long as the lot(s) conveyed can accommodate an equal or greater number of units to ten percent of the overall development.
3. A developer may also pay a fee-in-lieu of development or conveyance of a lot of equal value to ten percent of the overall estimated construction cost of the built-out master plan to the Town of Black Mountain for the purpose of creating new and affordable housing opportunities.

D. *Streets, alleys and pathways:*

1. ~~Public streets~~ **Streets that are publicly accessible** shall provide access to all lots. Designs shall permit comfortable use of the street by motorists, pedestrians and bicyclists. Pavement widths, design speeds, and number of motor travel lanes should be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the building types which front on the street and the relationship of the street to the overall town street network. All roads shall be in compliance with the requirements as indicated in the Town of Black Mountain Standards and Detail Manual.
2. Streets and alleys shall, wherever practical, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Cul-de-sac and dead-end streets are discouraged and should only occur where absolutely necessary due to natural conditions.
3. No block face should have a length greater than 500 feet without dedicated alley or pathway providing through access.
4. To prevent the build-up of vehicular speed, disperse traffic flow, and create a sense of visual enclosure, long uninterrupted segments of straight streets should be avoided.
5. A continuous network of rear alleys is recommended for all lots in a TND.
6. Utilities shall be underground and shall run along alleys wherever possible.
7. Streets shall be organized according to a hierarchy based on function, size, capacity and design speed. Streets and rights-of-ways are therefore expected to differ in dimension. The proposed hierarchy of streets shall be indicated on the submitted master plan and each street type shall be separately detailed in the master plan.
8. Every street, except alleys, shall have a sidewalk on at least one side that is at least five feet wide. In shop front areas, sidewalks shall be at least ten feet wide.

E. *Parking:*

1. On-street parking should be provided on all streets. Occasional on-street parking can be accommodated without additional pavement width. For streets which serve workplace and storefront buildings, on-street parking is required and should be marked as such. On-street parking should be parallel to street unless the street lends itself to other parking layouts.
2. Parking lots shall generally be located at the rear or at the side of buildings and shall be screened from public rights-of-way and adjoining properties by land forms or evergreen vegetation so as to provide a barrier that will be at least three feet high and provide a 75 percent visual barrier within two years.
3. To the extent practicable, adjacent parking lots shall be interconnected.
4. Small and strategically placed parking areas are recommended.
5. Parking areas shall be paved as required in chapter 10 and all parking areas and traffic lanes shall be clearly marked.
6. The number, width and location of curb cuts shall be such as to minimize traffic hazards, inconvenience and congestion.
7. Off-street parking and loading requirements as outlined in the town's parking regulations may be used as guidance.
8. The developer shall demonstrate the provision of adequate parking and off-street loading areas for different areas of the development, based on the uses allowed and the density of development.

9. In addition to landscaping provided for screening above, trees should be planted around the perimeter and interior of parking lots to provide shade.

F. *Landscaping:*

1. Trees shall be planted within rights-of-way parallel to the street along all streets except alleys.
2. Tree spacing shall be determined by species type. Large maturing trees shall be planted a minimum of 40 feet and a maximum of 50 feet on center. Small and medium maturing trees shall be planted a minimum of ten feet and a maximum of 30 feet on center.
3. Large maturing trees shall generally be planted along residential streets and along the street frontages and perimeter areas of parks, squares, greenbelts and civic structures.
4. Small maturing trees shall generally be planted along non-residential streets, interior portions of parks, squares, greenbelts and civic lots. Storefronts shall not be obstructed by the planting pattern.
5. The natural features of the landscape shall be incorporated into the landscaping plan.
6. All plantings shall be with native or appropriate species (refer to list in appendix).

G. *Requirements concerning sidewalks and greenways:*

1. Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan or shall connect to pedestrian facilities shown on the comprehensive pedestrian master plan. A fee-in-lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town planning board.
2. Existing sidewalks at the time of development or re-development must be improved, repaired, or replaced as necessary in order to be compliant with town and ADA regulations as part of new projects.

(Ord. No. O-24-14, 9-9-2024; Ord. No. O-24-16, 12-9-2024; Ord. No. O-25-01, 1-13-2025)