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.

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.