



TOWN OF BLACK MOUNTAIN

160 Midland Avenue ♦ Black Mountain ♦ N.C. ♦ 28711

Phone: (828) 419-9300 ♦ Fax: (828) 669-2030

MEMORANDUM

To: Town of Black Mountain Planning Board
From: Jennifer Tipton, Zoning Administrator
Re: Agenda Packet for July 22, 2019
Date: July 15, 2019

The **Town of Black Mountain Planning Board** will meet on **Monday, July 22, 2019 at 6:00 p.m.** in Town Hall at 160 Midland Avenue.

Please find the following items for your information and use at the meeting:

1. The proposed agenda;
2. Draft minutes from June 24, 2019;
3. Review of Boards and Commissions Manual and Code of Ethics Policy;
4. Potential Rezoning Boundary Map
5. Proposed Text Amendment – Traffic Impact Analysis;
6. Proposed Text Amendment – Subdivisions;
7. Proposed Text Amendment – Duplex Definition;
8. Proposed Text Amendment – Nonconformities; and
9. Proposed Text Amendment – Historic District Overlay.

Please let Jennifer Tipton know if you are **unable** to attend this meeting.
jennifer.tipton@townofblackmountain.org or (828) 419-9373.

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act. Should you need assistance or a particular accommodation for this meeting, please inform Jennifer Tipton at (828) 419-9373 or by email at jennifer.tipton@townofblackmountain.org.

CC: Jessica Trotman, Planning Director
Ron Sneed, Town Attorney
Josh Harrold, Town Manager



PUBLIC NOTICE

BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING

Monday, July 22, 2019 at 6:00 p.m.

The Black Mountain Planning Board will meet for their monthly meeting on **Monday, July 22, 2019 at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to elect officers, discuss the Code of Ethics and Boards and Commissions Manual, consider text amendments for traffic impact analysis, subdivision approval, duplex definition, nonconformities, and historic district overlay, and discussion of potential rezoning of portions of Flat Creek road.

The meeting is open to the public.

Jennifer Tipton
Zoning Administrator

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Posted to the Town Bulletin Board 07/01/19

www.townofblackmountain.org



**Planning Board Regular Meeting
July 22, 2019**

PROPOSED AGENDA

I. CALL TO ORDER

- Welcome
- Determination of Quorum

II. ADOPTION OF AGENDA

- **Motion:** To adopt the agenda as presented [or as amended]

III. ADOPTION OF MINUTES

- **Motion:** To adopt the minutes of June 24, 2019 as written [or as amended]

IV. OLD BUSINESS

- Potential rezoning – Information Only

V. NEW BUSINESS

- Election of Officers
- Review Code of Ethics and Boards and Commissions Manual
- Proposed Text Amendment – Traffic Impact Analysis
- Proposed Text Amendment – Subdivisions
- Proposed Text Amendment – Duplex Definition
- Proposed Text Amendment – Nonconformities
- Proposed Text Amendment – Historic District Overlay

VI. COMMUNICATION FROM PLANNING BOARD

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

**TOWN OF BLACK MOUNTAIN
PLANNING BOARD**

The Black Mountain Planning Board held its regular meeting on Monday, June 24, 2019 at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina.

I. CALL TO ORDER

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

Peter Vazquez, Chair
Pam Norton, Vice Chair
Jennifer Willet
Lisa Milton
Michael Raines
Scott Reed

Absent:

Jesse Gardner

Staff:

Jennifer Tipton, Zoning Administrator
Jessica Trotman, Planning Director
Ron Sneed, Town Attorney

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of six (6) regular members.

II. ADOPTION OF AGENDA

Lisa Milton made a motion to adopt the agenda as presented. The motion was approved by consensus with a vote of 6-0.

III. ADOPTION OF MINUTES

Scott Reed made a motion to adopt the minutes of April 22, 2019 as written. The motion was approved by consensus with a vote of 6-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Rezoning Request – 300 Flat Creek Road from SR-2 to TR-4

Jennifer Tipton reported that Ann Best had requested a rezoning for 300 Flat Creek Road from SR-2 (suburban residential) to TR-4 (town residential). Ms. Tipton went over the staff report explain the subtle differences between the SR-2 and TR-4 zoning districts, including setbacks, lot sizes, and uses. Ms. Tipton explained that overall, TR-4 is slightly less restrictive and allows one or two more uses than SR-2 allows. Lisa Milton expressed concern that this was spot zoning and that the area had been zoned SR-2 to protect slopes and that it would allow the applicant to have rights that other property owners in the area would not have. Ms. Milton asked about the possibility of a variance to allow the applicant to build a second dwelling and Town Attorney Ron Sneed explained that that would a use variance and those are not allowed in North Carolina. Town Attorney Sneed explained that spot zoning is not necessarily illegal if it can be found that

Planning Board Regular Meeting

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the request is reasonable and that a rezoning request such as this would raise the standard of looking at reasonableness and that the decision could not be arbitrary and capricious.

Ann Best and Thomas Wright, 144 Rabbit Ridge Road, explained that they are working of fixing up the existing house that is currently on the lot and would like to be able to subdivide and build an affordable home on the existing foundation of the old Roseland Gardens building. Board members asked how the property would be divided and the applicants explained that they wanted to leave the longer piece of the parcel with the original house that they are renovating.

Buzz Yeatman, 313 Flat Creek Road, said that slope did not have anything to do when the area was rezoned to SR-2 and said that the felt the rezoning in 2010 was done too rapidly. Mr. Yeatman said that the town needs affordable housing with the influx of residents that are coming into the town and said that all of Flat Creek should be rezoned to TR-4 and not just one parcel and that Flat Creek Road should have higher density rather than lower density and that it would be personally beneficial to him if Flat Creek Road were rezoned.

Elaine Loutzenheiser, 410 Avena Road, said that all of or a portion of Flat Creek Road should be rezoned as opposed to spot zoning as that leaves the possibility of spot zoning open to other lots that would have a hard time if they were not rezoned when it was allowed for another and reiterated that all of Flat Creek Road should be rezoned or none of Flat Creek Road rezoned.

Joe Snyder, 304 Portmanvilla Road, reported that he owns 302 Flat Creek Road, right next to the subject parcel, and that he was planning on asking to be rezoned to be able to allow another lot and that his lot is not steep but the areas around Rainbow Terrace and Montreat Road are where the steeper lots are located and agreed with rezoning the area as a whole.

Jessica Trotman explained that the board can look at a larger area to rezone and this does happen when there tends to be a change in conditions. If a larger area is looked at it will require additional noticing and hearings. Board members questioned how many lots could be subdivided if the area were to be rezoned and Ms. Trotman said that staff would have to obtain that data.

Town Attorney Sneed asked the board to determine if the request is reasonable or not and why. Town Attorney Sneed read a definition of spot zoning from a court case which is below:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the small tract greater restrictions than those imposed upon the large area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is call spot zoning. Town Attorney Sneed told the board to keep in mind that other than a use or two the only differences between the districts were that you could create smaller lots and double the density.

Town Attorney Sneed also told the board to consider the area around the request. The board were told that the whole area had not been petitioned and that a decision ahd to be based on the application submitted. Town Attorney Sneed said that this was marginally spot zoning and was just a little less restrictive. Jennifer Willet made a motion to recommend the rezoning request for 300 Flat Creek Road from SR-2 to TR-4. The motion tied with a vote of 3-3 with Jennifer Willet, Michael Raines and Scott Reed voting to recommend and Lisa Milton, Pam Norton and Peter Vazquez voting to not recommend. Town Attorney Sneed said that the request would go to the Board of Aldermen as a tie vote. The board agreed to look at rezoning Flat Creek Road as a whole and Ms. Trotman said that staff would bring some boundary maps to the next meeting to start looking at creating a defined area to look at.

2. Resolutions of Appreciation

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Jennifer Tipton thanked Peter Vazquez, Lisa Milton and Jesse Gardner for their hard work and dedication to the Planning Board. All three were given Resolutions of Appreciation for their time on the Planning Board.

VI. COMMUNICATION FROM PLANNING BOARD

None.

VII. COMMUNICATION FROM STAFF

Jessica Trotman reported to the board that the draft document of the Blue Ridge Road Small Area Plan should be ready by mid-July at which time it will be brought to the board for review and recommendation.

Ms. Trotman reported that the parking study has begun and that staff will begin collecting data and asked that if anyone is interested in volunteering to help collect data to just contact Ms. Trotman.

VIII. ADJOURNMENT

Pam Norton made a motion to adjourn the meeting at 7:00 p.m. The motion was approved by consensus with a vote of 6-0.

Prepared by:

Pam Norton, Vice Chair

Jennifer Tipton, Zoning Administrator



**Town of Black Mountain
Building, Planning and Zoning**

160 Midland Avenue ☎ Black Mountain ☎ North Carolina ☎ 28711
Phone: 828-419-9300 ☎ Fax: 828-669-2030 ☎ TDD: 1-800-735-2962

MEMORANDUM

To: Black Mountain Planning Board

From: Jessica Trotman, Planning Director

Date: July 15, 2019

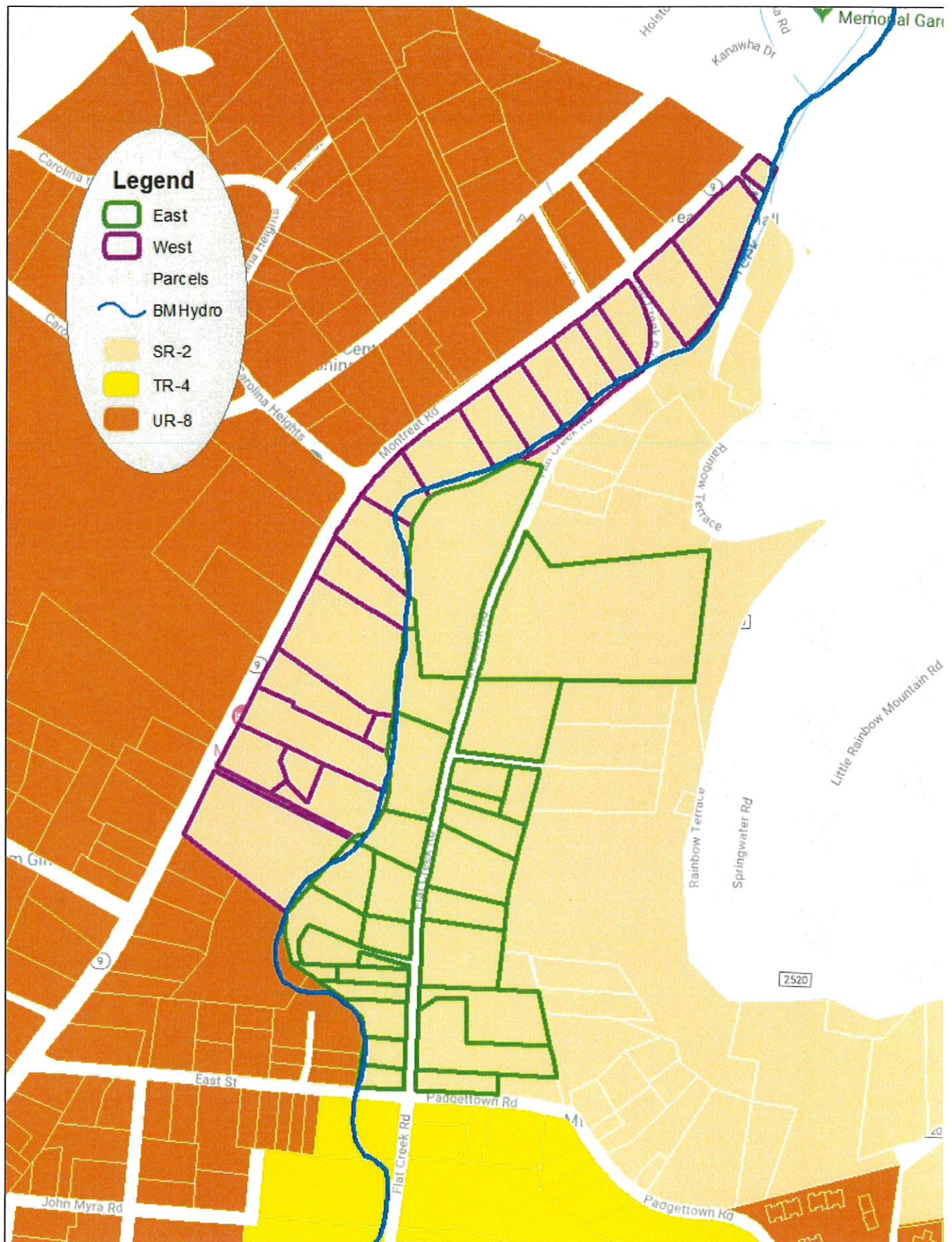
RE: Potential Rezoning Study Area

At the June meeting Planning Board discussed potential rezoning of parcels on Flat Creek Road. Attached you will find a boundary map noting a study area on Flat Creek Road, which represents the maximum limits of the area as recommended by staff. Parcels on Montreat Road area included on this map as well, as a potential rezoning on Flat Creek prompts discussion of a section of Montreat Road as well.

This is for informational purposes only. Additional analysis will be available at the meeting for discussion.

Attachments:

Boundary map



Code of Ethics for Members of Boards and Commissions of the Town of Black Mountain, North Carolina

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics and, pursuant to Section 160A-86, the Black Mountain Board of Aldermen has previously adopted a Code of Ethics for the Mayor and Board of Aldermen, and

WHEREAS, it is appropriate that members of Town boards, committees, and commissions, as well as Mayoral and Board of Aldermen appointees to non-Town bodies (hereinafter "Board Members"), also adhere to a Code of Ethics.

NOW THEREFORE, in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens of the Town of Black Mountain, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the Board of Aldermen do hereby adopt the following General Principles and Code of Ethics to guide Boards Members in their lawful decision-making.

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
- Board Members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- Board Members must always remain aware that they may, at various times, play different roles:
 - As advisors, who balance the public interest and private rights in considering and recommending, among other things, ordinances, policies, and decisions
 - As decision-makers, who arrive at fair and impartial determinations.
- Board Members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- Board Members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of the Mayor and Board of Aldermen and the citizens of Black Mountain. Each Board Member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for Board Members and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a member's best judgment.

Section 1.

Board Members should obey all laws applicable to their official actions. Board Members should be guided by the spirit as well as the letter of the law in whatever they do.

At the same time, Board Members should feel free to assert policy positions and opinions without fear of reprisal from fellow Board members or citizens. However in doing so, Board Members:

- (a) shall be mindful that they were appointed by the Mayor or Board of Aldermen, or by another appointing authority to a Town Board, Committee, or Commission and, therefore, if they are advising or advocating a position that is contrary to a Council policy, that they notify the Mayor and Board of Aldermen of such as soon as practicable;
- (b) who serve in an advisory capacity shall be mindful that their chief responsibility is to advise the Mayor and Board of Aldermen or other decision-making body rather than to advocate to the public at large, particularly when the position of advocacy is contrary to a Council policy;
- (c) shall understand that they hold a position of trust on behalf of the Town and its citizens; and
- (d) shall assert policy positions and opinions on matters within or related to the jurisdiction and subject matter of the body on which they serve only through the transparency of official proceedings of the body or in a capacity and manner appropriate for a member of such body. Board Members shall not represent their individual views as being representative of the full body unless they have been formally authorized by the body to do so.

These guidelines are especially important to Chairpersons who must recognize that they are often viewed as speaking for the body.

To declare that a Board Member is behaving unethically because one disagrees with that official on a question of policy (and not because of the council member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Section 2.

Board Members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values
- Exhibiting trustworthiness
- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others

- For Board Members who act in a quasi-judicial capacity, disclosing contacts and information about issues that they receive outside of public meetings and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves
- Treating other Board Members and the public with respect and honoring the opinions of others even when the board members disagree with those opinions
- Showing respect for their offices and not behaving in ways that reflect badly on those offices
- Recognizing that they are part of a larger group and acting accordingly
- Recognizing that individual Board Members are not generally allowed to act on behalf of the body but may only do so if the body specifically authorizes it, and that the body must take official action as a body

Section 3.a.

Board Members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach and they should not use their official position for personal gain. Although opinions may vary about what behavior is inappropriate, the Board of Aldermen will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Board Member's action would conclude that the action was inappropriate.

Section 3.b.

If a Board Member believes that his or her actions, while legal and ethical, may be misunderstood, the official should seek the advice of the Town Attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4.

Board Members should faithfully perform the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Board Members should faithfully attend and prepare for meetings.

Board Members should be willing to bear their fair share of the body's workload. To the extent appropriate, they should be willing to put the Town's interests ahead of their own.

Section 5.

Board Members should conduct the affairs of the board in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they

are conducting the public's business. They should also remember that local government records belong to the public and not to them or Town employees.

In order to ensure strict compliance with the laws concerning openness, the Mayor and Board of Aldermen members have made it clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should take deliberate steps to make certain that any closed sessions held by the body are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Sanctions

Following the review of an allegation against a member of a Town board or commission conducted pursuant to Section 2, the Town Board of Aldermen may sanction the member who was the subject of the review. Potential sanctions include removal of the member, adoption of a Resolution of Censure, and any other lawful sanction within the Board of Aldermen's power.

ACKNOWLEDGEMENT OF RECEIPT OF Code of Ethics for Members of Boards, Committees, and Commissions of the Town of Black Mountain, North Carolina

On the date written below, I certify I have reviewed the "Code of Ethics for Members of Boards, Committees, and Commissions of the Town of Black Mountain, North Carolina, online on the Town's website at www.townofblackmountain.org . I acknowledge this policy contains basic information related to serving as a volunteer on a board or commission.

I understand that I am responsible for reviewing the contents of this policy and asking questions if I do not understand any part of it.

DATE: _____

NAME: _____

BOARD OR COMMISSION: _____

SIGNATURE: _____

(A signed copy of this form will be maintained in the Town Clerk's Office with the application once appointed to serve.)

Please Sign and Return this page to the Town Clerk

ACKNOWLEDGEMENT OF RECEIPT OF Code of Ethics for Members of Boards, Committees, and Commissions of the Town of Black Mountain, North Carolina

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Town of Black Mountain Boards & Commissions Manual

2018



Town of Black Mountain Boards & Commissions Manual

BOARDS AND COMMISSIONS MEMBER INFORMATION

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Amended 06/13
Amended 06/12
Amended 07/11
Amended 10/10
Amended 05/09
Amended 08/08
Amended 09/07
Amended 08/06
Amended 12/05
Amended 10/04
Amended 12/03
Amended 01/02
Amended 02/01

I. Introduction

The Black Mountain Board of Aldermen consists of a Mayor and five Aldermen who are elected at large in a non-partisan election. The Mayor and Board of Aldermen hold four year, overlapping terms. Terms are staggered with the Mayor and two Aldermen being elected at one time and the remaining three Aldermen being elected in the municipal election held two years later. The governing board has the authority to adopt policies for the Town and is responsible to the citizens to ensure that the Town responds to public needs and works well to meet those needs.

The Town also has appointed boards and commissions that provide opportunities for many citizens to assist the elected governing board in shaping public policy. State law requires that some of these boards and commissions (such as the Alcoholic Beverage Control Board) play a direct role in selecting agency heads and setting operating policies for the agency. Other boards and commissions are established by the Board of Aldermen to advise them directly on matters ranging from land use to recreation. In some cases, at least some of the members of an appointed board or commission must be residents of the Town or have other specific qualifications.

Advisory board and commission members are responsible directly to the Board of Aldermen. While different members of the staff of the Town of Black Mountain are assigned by the Town Manager to assist various boards and commissions in their endeavors, the members of the advisory boards are appointed by and directly accountable to the Board of Aldermen. Chairs of the various advisory groups are requested to appear before the Board of Aldermen, from time to time, and report on the activities of their commission or board. Similarly, chairs may request to report to the Mayor and Board of Aldermen in order to provide updates and information. The governing body and their advisory boards should work to facilitate an optimal working relationship and to promote a better understanding of the endeavors in which the various boards and commissions are involved.

The Town of Black Mountain is fortunate to have a wealth of people with special expertise and qualifications who volunteer to serve on appointed boards and commissions. Many of these people have a particular concern or interest for the subject the board or commission deals with. This is especially important to the success of these boards and commissions in helping to represent the best interests of the Town.

II. Policies Concerning Boards and Commissions

Terms of Office and Oath

Advisory board and commission members are appointed by and serve at the pleasure of the Board of Aldermen. Appointments for all advisory bodies are made for three-year terms of office. Terms on various boards and commissions are overlapping so as to avoid replacement of all members of any one board at a single time. All terms shall become effective on the date of the first meeting in the month following the date of appointment, except that all appointments to fill the balance of

unexpired terms shall become effective upon the appointee having taken the oath of office. *(Revised 5-14-07)* By signing the oath of office, board and commission members agree to the following:

I, Name do solemnly and sincerely affirm that I will support and maintain the Constitution and the laws of the United States, and the Constitution and laws of North Carolina, not inconsistent therewith, and that I will in all respects, observe the provisions of the Charter and ordinances of the Town of Black Mountain, and will faithfully discharge the duties of my office as a member of the Name of Board or Commission of the Town of Black Mountain, North Carolina.

All board and commission members are subject to the North Carolina Public Records Act when acting as a board or commission member conducting town business. NC G.S. §§ 132-1

Term Limits

The Board of Aldermen has expressed their preference to limit advisory board and commission members' terms of service to two consecutive terms; however, they have reserved the right to override that preference when they deem the circumstances of an individual's service to the community to be of such notable importance as to warrant a continuation of service. In those situations where the Board of Aldermen deems special circumstances to exist that warrant the continuation of community service by an individual on a board or commission, any member of the Board of Aldermen may place the name of that individual into nomination and state that they believe special circumstance warrant a continuation of service. The Board of Aldermen may then reappoint said individual by voting in no less than a 4/5 majority of the membership to reappoint the individual to another term of office. This process may be repeated as often as the Board of Aldermen deems the special circumstances to warrant an additional appointment.

A person who has served more than two-thirds of a full term after being appointed to complete the term of a previous board member shall be considered to have served a full term for the purposes of determining eligibility under the provisions of this section.

Vacancies

When a vacancy occurs on a board or commission due to a resignation or the end of a three-year term, the Town Clerk's office should be notified by the chair of that board or commission as soon as possible. The vacancy may be advertised in the Black Mountain News and posted on the web site. The notice will instruct persons interested in being considered for appointment to fill out an "Application for Appointment" and set an application deadline. The notice shall also contain any residency restrictions for the board or commission. The deadline for the applications to be submitted will be determined by the Town Clerk but shall be no less than 10 days prior to a regularly scheduled monthly meeting of the Board of Aldermen. All applications will be copied and submitted to the Board of Aldermen for consideration. Vacancies shall be filled for the remainder of the unexpired term of the person being replaced.

Membership Requirements

Membership requirements are specific to the particular board or commission as set out in the Black Mountain Code of Ordinances and are further detailed herein under the description of the particular board or commission.

Advisory board and commission members are expected to be diligent in the performance of their duties and responsibilities. The Board of Aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single-six month period without good cause (such as temporary severe illness of member or family member or overriding but temporary business concerns.) Such dismissal may be considered upon report or complaint by the advisory commission chairperson, a member of the advisory commission, or on the Board of Aldermen's own motion.

Pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, the Board of Aldermen adopted a General Principles and Code of Ethics to guide Boards Members in their lawful decision-making. Each Board or Commission Member is required to sign the Code of Ethics for Members of Boards and Commissions of the Town of Black Mountain. The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for Board Members and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a member's best judgment. *(Revised 7-13-15)*

Meeting Requirements

A majority of the members of any board or commission are required to be present before an official meeting may be called to order. In the event that a quorum is not present, the advisory board or commission may not act on any item brought before them. Once a quorum has been established, the committee may proceed with its work. Members who find it necessary to withdraw from the meeting prior to adjournment shall be counted as present for the purposes of a quorum unless the committee has excused said member by a majority vote. Any member choosing to withdraw from a meeting without first being excused by a vote of the committee shall be counted as present for the purposes of maintaining a quorum and shall be considered to have voted in the affirmative for any motion that is brought before the board or commission.

Officers

Each board and commission shall elect a chair person and a vice-chair person. The election of a secretary is required for those boards or commissions for which the Town does not provide staff support. The election of a secretary is optional for those boards or commissions to which the Town provides staff support. The duties of the chairman of any commission are set forth herein below. In the absence of a chair person, the vice-chair person assumes the role of the chair and is, at that point in time, vested with the responsibilities of the chair of the board or commission. The duties of the secretary are to insure that proper records are maintained, notices made, and minutes taken for the advisory board on which the secretary may serve. All officers serve one-year terms and are eligible for re-election to as many terms as the advisory board may deem appropriate.

Rules of Procedure

Each board or commission shall adopt rules of procedure that shall not be inconsistent with any other rules governing their operation as expressed in Town policies and ordinances or in conflict with State statutes and administrative codes.

III. Duties of Chair Person

Presiding at Meetings

The chair of the board/commission shall preside at meetings if he or she is present, unless he or she becomes actively engaged in debate on a particular matter. The chair may vote in all cases. In order to address the board/commission, a member must be recognized by the chair.

If the chair is absent, the vice-chair shall preside. (If both the chair and vice-chair are absent, another member designated by vote of the board shall preside.) The vice-chair or another member who is temporarily presiding retains all of his or her rights as a member, including the right to make motions and the right to vote.

If the chair sees a conflict of interest or becomes actively involved in debate on a particular matter, he or she shall designate another board member to preside over the debate. The chair shall resume presiding as soon as action on the matter is concluded.

The presiding officer shall have the following powers:

- To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground;
- To entertain and answer questions of parliamentary law or procedure;
- To call a brief recess at any time;
- To adjourn in an emergency.

A decision by the presiding officer may be appealed to the Board upon motion of any member. Such a motion is in order immediately after a decision by the presiding officer is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

Action by Board

The board shall proceed by motion made by any member, including the chair. A motion does not require a second and a member may make only one motion at a time. Each motion shall be considered and dealt with one at a time, and a new motion may not be put forth until action on the previous one is concluded. With the exception of special rules applicable only to the Zoning Board of Adjustment, a motion shall be adopted by a majority of the votes cast with a quorum present.

Notification of Absentee Member

It is the duty of the chairperson of each board or commission to be responsible for notifying the Mayor and Board of Aldermen when members of that board or commission have not met the guidelines for faithful attendance. In the event that a member of an advisory board fails to comply with the attendance policies contained herein, it shall be the responsibility of the chair of that advisory board to notify the Mayor and Board of Aldermen, in writing, of the policy violation and to request that said member be replaced.

IV. Open Meetings, Proper Notification, And Record Keeping

All meetings of all advisory boards and commissions as appointed by the Board of Aldermen shall be open to the public and shall be properly publicized. If the board/commission has a designated meeting place, day, and time each month, a copy of the regular meeting schedule shall be filed with the Town Clerk, posted at the Town Hall or regular meeting location, sent to the Black Mountain News and standard media list by the office of the Town Clerk or Deputy Clerk or advisory board support staff. Any change or cancellation of a meeting must also be posted and sent to the news and standard media list. For those committees that do not have a designated meeting date, place and time, a minimum of 48 hours' notice must be given to the public before a meeting may take place. Said notice shall contain the date, time, location, and purpose of the meeting. If an agenda is developed, the agenda may be publicized as well. The Office of the Town Clerk or Deputy Clerk shall be notified of any special call or emergency meeting in sufficient time for the 48 hour notice to be given. No meeting shall be held unless the meeting notice requirements contained herein are met.

The chair of each board/commission shall be responsible for insuring that the proper meeting notices are sent to each member of the respective boards or commissions and to the Office of the Town Clerk or Deputy Clerk. That notification may be made either through the secretary of the respective advisory board or through the staff member, if any, who provides advisory board support. The Office of the Town Clerk or Deputy Clerk shall be responsible for public notification of all meetings in accordance with locally adopted procedures and the North Carolina General Statutes.

The chair of each board or commission shall be responsible for insuring that proper rules are adopted for transaction of business and that proper records, including minutes of all proceedings, are kept in accordance with the guidelines specified herein. *(Revised 4-9-12)*

V. Procedure For Taking Minutes

Minutes of a board/commission are the official written record of actions taken by the board/commission. It is the responsibility of the chair, through either the secretary or the clerk, to keep a record of the proceedings of the board/commission. Minutes should be kept in a permanent minute book and are open to public inspection. The minutes provide future generations with the past history of a board/committee. They are used for many types of research and can be consulted

for purposes of verification that certain actions were taken, when those actions were taken, and why. It is imperative that the minutes be a clear, concise, informative and accurate record of the proceedings of the meeting.

The minutes must be “full and accurate” (G.S. 160A-72; G.S. 143-318.10e) for they are the legal evidence of what the advisory board has said and done. “Full and accurate” does not generally mean, however, that a verbatim transcript of a meeting’s proceedings must be made. Including a detailed record of comments may well be counterproductive and the board or commission may find itself spending an excessive amount of time at its next meeting discussing the details of this record, which could have been omitted altogether. Rather, the minutes must record the results of each vote taken by the board or commission, and they should also show the existence of any condition that is required before a particular action may validly be taken. The full text of each motion should be recorded, including the full text of all ordinances and resolutions passed by the advisory board.

Minutes should include the following essential facts:

1. The name of the board/commission, date, time and place of the meeting.
2. The minutes should state that the meeting was legally convened.
3. Show that a quorum was present at all times during the meeting. The late arrival and the early departure of members (including whether someone leaving was excused by the remaining members) should be noted.
4. The names of the members present and absent.
5. The names of any person addressing the board/commission, a summary of subject matter presented and any action taken as a result of the person’s appearance before the board/commission.
6. A record of all motions. A motion must be recorded verbatim, along with the name of the person making the motion and the person seconding the motion (if applicable). The results of each vote must be recorded and upon the request of any member of the board/commission, votes for and against a motion shall be recorded.
7. A record of all ordinances and resolutions introduced (if applicable). Ordinances and resolutions must be recorded verbatim as adopted by the board/commission. Short resolutions and ordinances should be incorporated into the body of the minutes. Lengthy resolutions and ordinances may be attached as an addendum to the minutes.
8. The exact words of each amendment to any motion, order, ordinance or resolution.
9. A record of all subjects before the board/commission and actions taken.

10. Draft copies of advisory board minutes are generally sent by the secretary or the clerk to members several days before the meeting at which they are to be considered for approval. The circulated draft minutes are a public record that must also be made available for public inspection. The minutes do not become the official record of the committee's action until it approves them.
11. The advisory board may correct minutes that it has already approved if it later finds that they are incorrect. In such a case the correction should be noted in the minutes of the meeting at which the correction is made, with an appropriate notation and cross-reference at the place in the minute book where the provision being corrected appears. Non-substantive corrections, such as those pertaining to grammar or spelling, may be corrected outside of the meeting by way of individual members contacting the secretary or clerk for their particular board or commission.
12. A statement that the meeting adjourned and at what time.
13. Minutes should be signed by the respective chair and clerk, if applicable.
14. The secretary or clerk may ask for assistance from the Town staff in publishing the minutes.
15. Under the open meetings law, "full and accurate" minutes must also be kept of the meetings of "public bodies" that are part of municipal government. Included are all city council committees, all other boards and committees of the city that perform either legislative, policy-making, quasi-judicial, administrative, or advisory functions, and all subcommittees of these other boards and committees. The Board of Aldermen establishes procedures to ensure that the minutes of these various boards are properly recorded and maintained.

The minutes should **not** include:

1. Any personal opinions or comments (unless meeting is a bona fide Public Hearing).
2. Irrelevant comments or discussion surrounding a topic under discussion or action being taken.

A copy of the minutes, after approval, shall be filed in a permanent minute book and a copy delivered to the Office of the Town Clerk.

VI. Order Of Business

- Call meeting to order
- Ascertain quorum present
- Discussion and revision of proposed agenda; adoption of agenda (optional for some boards/commissions)
- Approval of the minutes
- Old business

- New business
- Informal discussion
- Adjourn

Unless the Board or Commission deems a different “order of business” more appropriate for its work and sets it by policy, or by motion at the start of the meeting. *(Revised 5-14-07)*

VII. Terms & Duties of Boards/Commissions

1. ABC BOARD

Purpose

The ABC Board is responsible for the general oversight of the Town operated ABC store.

Membership

The Alcohol Beverage Control (ABC) Board shall consist of three members. Residency requirements are limited to persons residing in the corporate limits of Black Mountain. The residency requirement will become effective July 1, 2007.

The North Carolina General Statute 18B-700(a) requires the Board of Aldermen to appoint the Chair of the ABC Commission.

Powers

The ABC Board shall have all of the powers and duties imposed by Section 18B-701 and 702 of the North Carolina General Statutes.

1. Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores
2. Adopt rules for its ABC system, subject to the approval of the Commission
3. Hire and fire employees for the ABC system
4. Designate one employee as manager of the ABC system and determine his responsibilities
5. Require bonds of employees as provided in the rules of the Commission
6. Operate ABC stores as provided in Article 8
7. Issue purchase-transportation permits as provided in Article 4

8. Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5
9. Borrow money as provided in G.S. 18B-702
10. Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system
11. Invest surplus funds as provided in G.S. 18B-702
12. Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes
13. Perform any other activity authorized or required by the ABC law.

Duties and Functions

1. Generally. – A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7 (b)(10).
2. Borrowing Money. – A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.
3. Audits. – A local board shall submit to the Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the Commission.
4. Deposits and Investments. – A local board may deposit moneys at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31 (b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

5. Compliance with Commission Rules. – The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds.
6. Applicability of Criminal Statutes. – The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.

Meetings

The ABC Board meets on the third Thursday of every month at 3:00 p.m. at the ABC Store on Highway 9 in Black Mountain. All meetings of the Board are open to the public.
(Revised 5-14-12)

Compensation

Members of the ABC Commission shall serve at the rate of compensation established by the Board of Aldermen.

2. GREENWAYS COMMISSION

Purpose

The Greenways Commission exists to advise the Board of Aldermen about greenways development and management, to work with staff to develop the greenways system, and to actively promote public education and awareness of the benefits of greenways.

Membership

The Greenways Commission shall consist of seven (7) members. All members must be full-time residents of the East Buncombe Fire District (recognizing that the Black Mountain Greenways Commission may choose to promote construction of a regional network that expands beyond the limits of the Town.) Candidates for membership should demonstrate special interest, experience, or education about Greenways. Also, experience with grant writing and landscaping would be considered an asset to the work of the Commission.

Powers, Duties, and Functions

It shall be the function and duty of the Greenways Commission to perform the following functions and duties:

1. Advise the Board of Aldermen and the Parks and Recreation Commission on issues concerning Greenways, including the safe and accessible walkability of the Town, interconnectedness of Town facilities, and pertinent decisions regarding the accessibility of natural areas and open space.
2. Coordinate with the Planning Board and other committees or boards as appropriate to ensure that the Greenways system is integrated with the Town's overall transportation network.
3. Receive public input and give voice to public demand for Greenways
4. Coordinate with Town staff and the Board of Aldermen to set priorities for spending funds allocated for Greenways projects.
5. Identify outside funding sources to support Greenways and actively pursue those opportunities.
6. Maintain liaisons with groups of similar interest and intent within the region, in an effort to explore opportunities for connections that expand the Greenways network.
7. Provide outreach and education activities to promote the benefits of Greenways to the local population.
8. Work with Town staff to recruit and coordinate volunteers to support Greenways development and maintenance.
9. Maintain and revise the Greenways master plan as needed, in coordination with the Recreation and Parks Commission and the Board of Aldermen.

Meetings

The Greenways Commission meets on the third Tuesday of the month at 6:00 p.m.

The Greenways Commission shall elect a chairman and a vice-chairman. Other offices may be created as may be determined as necessary. The term of the chairman and other officers shall be one year, with eligibility for reelection.

Staff Support, Liaison Members

Staff support to the Greenways Commission shall be provided by the Assistant Town Manager, the Director of Recreation and Parks, and the Health Initiative Administrator as appropriate. The Board of Aldermen may appoint a member of the Board to serve as a liaison member to the Greenways Commission. One member of the Greenways Commission shall attend all meetings of the Recreation and Parks Commission. This responsibility may rotate among Greenways Commission members as needed.

Compensation

Members of the Greenways Commission shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

3. HISTORIC PRESERVATION COMMISSION

Purpose

There is hereby established a Black Mountain Historic Preservation Commission for the purpose of designating historic districts and landmarks within the Town of Black Mountain. In addition, the Historic Preservation Commission shall develop and recommend to the Board of Aldermen rules and regulations governing the designation and maintenance of historic properties in the Town.

Membership

The Historic Preservation Commission shall consist of five members all of whom shall reside within the territorial jurisdiction of Black Mountain. A majority of the members of the Commission shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields.

Powers, Duties, and Function

1. Undertake an inventory of properties of historical, pre-historical, architectural and/or cultural significance.
2. Recommend to the Board of Aldermen areas to be designated by ordinance as “historic districts,” and individual structures, buildings, sites, areas or objects to be designated by ordinance as “landmarks”.
3. Recommend to the Board of Aldermen that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area or object as a landmark, be revoked or removed for cause.
4. Review and act upon proposals for alterations, demolition or new construction within historic districts, or for the alteration or demolition of designated landmarks.
5. Conduct an educational program with respect to historic districts and landmarks within its jurisdiction, and advise property owners about treatment of historical characteristics of their properties.

6. Cooperate with the state, federal and local governments in pursuance of the purposes of this ordinance; to offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest. The Board of Aldermen, or the Commission when authorized by the Board of Aldermen, may contract with the State or the United States, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law.
7. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the Commission may enter any private building or structure without express consent of the owner or occupant therefore.
8. Prepare and recommend the official adoption of a preservation element as part of the Town of Black Mountain comprehensive plan.
9. Negotiate with property owners who propose to demolish or relocate designated landmarks and/or significant properties in designated districts, in an effort to find a means of preserving the properties.
10. Institute action to prevent, restrain, correct, or abate violations of the ordinance establishing the commission or of ordinances designating historical landmarks or districts.
11. The Commission may appoint advisory bodies and committees as appropriate.
12. The Commission shall also prepare and adopt principles and guidelines for altering, restoring, moving, or demolishing properties designated as landmarks or within historic districts.
13. The Commission shall adopt rules of procedure governing its meetings and the conduct of official business and bylaws governing the election of officers and related matters.

Meetings

The Historic Preservation Commission shall meet quarterly on the third Wednesday of each month at 6:00 p.m.

Compensation

Members of the Historic Preservation Commission shall serve without compensation except that they be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

4. PLANNING BOARD

Purpose

The Planning Board is established to advise the Board of Aldermen on matters related to land use and community development. The Planning Board shall be governed by the terms of G.S. §§ 160A-360 through 160A-387 and by the terms of the Town Zoning Ordinance enacted December 1982 and the Subdivision Regulations enacted September 1985, and any subsequent amendments thereto. All Board members shall thoroughly familiarize themselves with the provisions of these statutes and ordinances.

Membership

The Planning Board shall consist of seven members all of whom reside within the corporate limits of the Town of Black Mountain. *(Revised 5-14-07)*

Powers, Duties, and Functions

The Planning Board shall be governed by the terms of G.S. §§ 160A-360 through 160A-387 and by the terms of the Town Zoning Ordinance enacted December 1982 and the Subdivision Regulations enacted September 1985, and any subsequent amendments thereto. All Board members shall thoroughly familiarize themselves with the provisions of these statutes and ordinances.

It shall be the function and duty of the Planning Board to perform the following duties:

1. Make studies within its jurisdiction and surrounding areas.
2. Determine objectives to be sought in the development of the study areas.
3. Prepare and adopt plans for achieving these objectives.
4. Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
5. Advise the Board of Aldermen concerning the use and amendment of means for carrying out plans.
6. Exercise any functions in the administration and enforcement of various means for carrying out plans that the Aldermen may direct.
7. The Planning Board shall have power to promote public interest in and an understanding of its recommendations, and to that end it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.
8. Perform any other related duties that the Aldermen may direct.

Meetings

The Planning Board meets on the 4th Monday of each month at 6:00 p.m. In addition, special meetings may be called at any time by the chairman. *(revised 02-24-14)*

Compensation

Members of the Planning Board shall serve without compensation except that they be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

5. RECREATION COMMISSION

Purpose

The Recreation Commission advises the Board of Aldermen on matters related to public recreational opportunities as provided by the Town of Black Mountain.

Membership

The Recreation Commission shall consist of five members. A minimum of three-fifths of the membership shall be made up of full-time residents within the corporate limits of Black Mountain. The remaining two –fifths of the memberships may be made up of residents who do not reside within the corporate limits but who do reside in the East Buncombe Fire District but not within the corporate limits of any other incorporated municipality.

Powers, Duties, and Functions

1. Serve as the recreation advisory body to the Mayor and Board of Aldermen for the Town of Black Mountain
2. Assist the staff of Recreation and Parks to develop rules, regulations and procedures governing the operation and conduct of the recreation facilities, to be submitted to the Board of Aldermen for approval
3. Act as the recreation liaison between the citizens and the Board of Aldermen for the Town of Black Mountain
4. Recommend policies to the Recreation Director and Board of Aldermen with the scope of responsibilities as outlined in town ordinances
5. Consult with and advise the Recreation Director and Aldermen in matters affecting parks and recreation policies, programs, personnel, finances, facilities, land acquisition and disposal, and the long range vision for parks and recreation

6. Review and monitor park-planning documents from other governmental jurisdictions in regards to proposals for sites and/or activities within or near the Town of Black Mountain
7. Through staff, maintain liaison with Buncombe County and City of Asheville and State of North Carolina Recreation Resources park officials on changes, proposals, etc., for park facilities which impact on the Black Mountain area; and provide such information to the Board of Aldermen
8. Review existing park sites with the Town of Black Mountain and provide recommendations to the Board of Aldermen on the development of these sites; ensure coordination of existing and proposed parks and recreation activities with those of other jurisdictions and organizations to eliminate unnecessary duplication of services and facilities
9. Develop and maintain an overall park and recreation master plan for the Town of Black Mountain, to include the following: proposed locations for park sites; types of recreation activities and/or facilities to be provided; a five-year capital improvement program for both acquisition and development (as well as operational and maintenance costs)
10. Ensure that staff monitors park/activity usage; that staff reports usage to Recreation Commission; Commission reports same to Board of Aldermen
11. Ensure that staff monitors conditions of park facilities; that staff reports condition problems to Recreation Commission; Commission reports it to Board of Aldermen with recommendations on alternatives for changes, modifications, improvements
12. Participate in the preparation of any special plans or studies authorized by the Board of Aldermen having a bearing on parks and recreation issues pertinent to or affecting the Town of Black Mountain
13. Subject to review and approval by the Board of Aldermen, who shall rule on the propriety and legality of acquisitions, accept on behalf of the Town of Black Mountain any grant, gift, bequest or donation of any personal property offered or made for recreation purposes and, with the approval of the Board of Aldermen, may accept any grant, gift, or devise of real estate. Title to any such gift, grant or devise of personal property or real estate shall vest in the town as owner. Any gift or bequest of money or other personal property or grant of devise of real estate, shall be held, used and finally disposed of in accordance with the terms or conditions under which such grant, gift, or devise is made or accepted. The Recreation Commission shall have no authority to enter into any contract or incur any obligations binding the Town of Black Mountain. Funds received by the gift, bequest, or grant shall be budgeted and disbursed by the Board of Aldermen through the Recreation Department in accordance with the terms of such gift, bequest or grant.

14. Make full and complete reports to the Board of Aldermen at such times as may be requested and such other times as the Board of Aldermen may deem proper.

Meetings

The Recreation Commission shall meet on the fourth Thursday of each month at 5:30 p.m. In addition, special meetings may be called at any time by the chairman. *(Revised 10-11-10)*

Compensation

Members of the Recreation Commission shall serve without compensation except that they be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

6. URBAN FORESTRY COMMISSION

Purpose

The Urban Forestry Commission assists in the administration of the Town of Black Mountain tree ordinance as it pertains to advice on the regulation of tree planting, maintenance, and removal on publicly owned and maintained property within the Town.

Membership

The Urban Forestry Commission shall consist of five members who shall be appointed by the Board of Aldermen. A minimum of three-fifths of the membership shall be made up of full-time residents within the corporate limits of Black Mountain. The remaining two-fifths may be resident(s) who do not reside within the corporate limits but who do reside in the East Buncombe Fire District but not within the corporate limits of any other incorporated municipality.

Powers, Duties, and Functions

1. It shall be the responsibility of the Commission to study, investigate, counsel and develop and update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, along streets, and in other public areas. Such plan, which will be presented annually, shall constitute the official comprehensive town tree plan.
2. The Commission, when requested by the Board of Aldermen, shall consider, investigate, make finding, report, and recommend upon any special matter of question coming within the scope of its work.

3. The Commission shall serve as an advisory board to the Board of Aldermen with the following duties and responsibilities:
 - a. To facilitate the planting, growth, and protection of trees within the city.
 - b. To foster the communication among citizens of the town that would provide the needed protection of trees and to coordinate active measures to support their health and growth within the town.
 - c. To conduct a tree survey of existing trees along streets and on public property within the town.
 - d. To investigate available grants, loans, or contributions from other governmental agencies, public or private corporations, or individuals; and to recommend the expenditures of any proceeds toward the accomplishment of the Board's purpose.
4. The Commission will be responsible for establishing guidelines for the spacing of city trees in accordance with the three species size classes in the official street tree species list. These guidelines will cover spacing between street trees, the distance street trees may be planted from curbs or curb lines and sidewalks, the distance street trees may be planted from any street corner, the location of the street trees relative to overhead and underground water line, sewer lines, transmission line, or other utility, and any other areas involving the spacing of street trees, park trees, city-owned trees.
5. The Commission shall submit an annual report of its activities and recommendations to the Board of Aldermen and shall submit copies of its minutes and proceedings of its regular and special meetings.
6. The Commission is authorized to appoint committees from its membership whose function shall be fixed by the Commission at the time of appointment. The committees may be standing committees and shall perform the duties as may be assigned by the Commission.

Meetings

The Urban Forestry Commission shall meet on the first Tuesday of every month at 5:30 p.m. In addition, special meetings may be called at any time by the Chairman.

(Revised 07-08-14)

Compensation

Members of the Commission shall serve without compensation except that they be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

7. ZONING BOARD OF ADJUSTMENT

Purpose

The Board of Adjustment is established as a “quasi-judicial” administrative Board that operates on a level between the enforcement officials of the Town and the courts. The purpose of the Zoning Board of Adjustment is to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcement of an ordinance adopted pursuant to the land use regulations adopted by the Town. In addition, under the provisions of the Town’s zoning regulations, the Zoning Board of Adjustment is responsible for the issuance of Conditional Use Permits.

Membership

Members of the Zoning Board of Adjustment, and alternate members as hereinafter provided for, shall be full-time residents within the corporate limits of Black Mountain. In addition to five regular members, the Board of Aldermen shall appoint three alternate members. Any vacancy in the membership shall be filled by the first alternate member, whether on a temporary or permanent basis, with the second alternate filling the vacancy left by succession of the first, and the third alternate filling the vacancy left by succession of the second. The Board of Aldermen would only, and always, be appointing new members to the ZBA into the third alternate position. This rotation allows for orderly succession of trained individuals, ensuring that the most experienced members available at any time will be seated to hear a case. Alternate members, while serving in the capacity of a regular member, shall have and may exercise all of the powers and duties of a regular member. *(Revised 10-11-10)*

Powers, Duties, and Functions

1. Administrative Review. Hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the Zoning Administrator in the enforcement of the zoning ordinance
2. Variance. Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the zoning ordinance will, in an individual case result in practical difficulty or unnecessary hardship, so that the spirit of the zoning ordinance shall be observed, public safety and welfare secured, and substantial justice done.
3. Conditional Use Permits. Hear requests for conditional use permits and grant the permits in accordance with the guidelines set forth by the applicable ordinances.
4. Appeals. Appeals to the Zoning Board of Adjustment concerning interpretation or administration of this zoning ordinance may be taken by any person aggrieved or by an officer, department or board of the town.

Decisions

The concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to or to effect any variation of the zoning ordinance. On all appeals, applications and matters brought before the Zoning Board of Adjustment, the Board shall inform, in writing, the applicant of its decisions. The Board must also inform, in writing, all persons who, at the meeting, specifically request a copy of the decision.

Meetings

Meetings of the Board shall be held on the third Thursday of each month at 6:00 p.m. and at other such times as the Board may determine. The Chair, or in their absence the Vice Chair, may administer oaths. *(Revised 3/8/10)*

Compensation

Members of the Zoning Board of Adjustment shall serve without compensation except that they be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

VIII. Appendices

Code of Ethics for Members of Boards and Commissions of the Town of Black Mountain, North Carolina

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics and, pursuant to Section 160A-86, the Black Mountain Board of Aldermen has previously adopted a Code of Ethics for the Mayor and Board of Aldermen, and

WHEREAS, it is appropriate that members of Town boards, committees, and commissions, as well as Mayoral and Board of Aldermen appointees to non-Town bodies (hereinafter "Board Members"), also adhere to a Code of Ethics.

NOW THEREFORE, in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens of the Town of Black Mountain, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the Board of Aldermen do hereby adopt the following General Principles and Code of Ethics to guide Boards Members in their lawful decision-making.

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
- Board Members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- Board Members must always remain aware that they may, at various times, play different roles:
 - As advisors, who balance the public interest and private rights in considering and recommending, among other things, ordinances, policies, and decisions
 - As decision-makers, who arrive at fair and impartial determinations.
- Board Members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- Board Members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of the Mayor and Board of Aldermen and the citizens of Black Mountain. Each Board Member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for Board Members and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a member's best judgment.

Section 1.

Board Members should obey all laws applicable to their official actions. Board Members should be guided by the spirit as well as the letter of the law in whatever they do.

At the same time, Board Members should feel free to assert policy positions and opinions without fear of reprisal from fellow Board members or citizens. However in doing so, Board Members:

- (a) shall be mindful that they were appointed by the Mayor or Board of Aldermen, or by another appointing authority to a Town Board, Committee, or Commission and, therefore, if they are advising or advocating a position that is contrary to a Council policy, that they notify the Mayor and Board of Aldermen of such as soon as practicable;
- (b) who serve in an advisory capacity shall be mindful that their chief responsibility is to advise the Mayor and Board of Aldermen or other decision-making body

- rather than to advocate to the public at large, particularly when the position of advocacy is contrary to a Council policy;
- (c) shall understand that they hold a position of trust on behalf of the Town and its citizens; and
- (d) shall assert policy positions and opinions on matters within or related to the jurisdiction and subject matter of the body on which they serve only through the transparency of official proceedings of the body or in a capacity and manner appropriate for a member of such body. Board Members shall not represent their individual views as being representative of the full body unless they have been formally authorized by the body to do so.

These guidelines are especially important to Chairpersons who must recognize that they are often viewed as speaking for the body.

To declare that a Board Member is behaving unethically because one disagrees with that official on a question of policy (and not because of the council member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Section 2.

Board Members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values
- Exhibiting trustworthiness
- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others
- For Board Members who act in a quasi-judicial capacity, disclosing contacts and information about issues that they receive outside of public meetings and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves
- Treating other Board Members and the public with respect and honoring the opinions of others even when the board members disagree with those opinions
- Showing respect for their offices and not behaving in ways that reflect badly on those offices
- Recognizing that they are part of a larger group and acting accordingly

- Recognizing that individual Board Members are not generally allowed to act on behalf of the body but may only do so if the body specifically authorizes it, and that the body must take official action as a body

Section 3.a.

Board Members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach and they should not use their official position for personal gain. Although opinions may vary about what behavior is inappropriate, the Board of Aldermen will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Board Member's action would conclude that the action was inappropriate.

Section 3.b.

If a Board Member believes that his or her actions, while legal and ethical, may be misunderstood, the official should seek the advice of the Town Attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4.

Board Members should faithfully perform the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Board Members should faithfully attend and prepare for meetings.

Board Members should be willing to bear their fair share of the body's workload. To the extent appropriate, they should be willing to put the Town's interests ahead of their own.

Section 5.

Board Members should conduct the affairs of the board in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that local government records belong to the public and not to them or Town employees.

In order to ensure strict compliance with the laws concerning openness, the Mayor and Board of Aldermen members have made it clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should take deliberate steps to make certain that any closed sessions held by the body are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Sanctions

Following the review of an allegation against a member of a Town board or commission conducted pursuant to Section 2, the Town Board of Aldermen may sanction the member who was the subject of the review. Potential sanctions include removal of the member, adoption of a Resolution of Censure, and any other lawful sanction within the Board of Aldermen's power.

**ACKNOWLEDGEMENT OF RECEIPT OF Code of Ethics for
Members of Boards, Committees, and Commissions of the Town of
Black Mountain, North Carolina**

On the date written below, I received the "Code of Ethics for Members of Boards, Committees, and Commissions of the Town of Black Mountain, North Carolina" I acknowledge this policy contains basic information related to serving as a volunteer on a board or commission.

I understand that I am responsible for reviewing the contents of this policy and asking questions if I do not understand any part of it.

DATE: _____

NAME: _____

BOARD OR COMMISSION:

SIGNATURE: _____

(A signed copy of this form will be maintained in the Town Clerk's Office with the application once appointed to serve.)



Town of Black Mountain Boards & Commissions Meeting Schedule

ABC Board

- *3 Member Board each serving a 3- year term.*
- **Meetings will be held on the 3rd Thursday, 3:00 p.m. at the ABC Store.**
- The ABC Board is responsible for the general oversight of the Town operated ABC store.
- Members must live within corporate limits of Black Mountain.
- Board of Aldermen will appoint the Chair.

Greenways Commission

- *7 Member Commission each serving a 3-year term.*
- **Meetings will be held on 3rd Tuesday, 6:00 p.m. at Town Hall, 160 Midland Ave.**
- The Greenways Commission exists to advise the Board of Aldermen about greenways development and management, to work with staff to develop the greenways system, and to actively promote public education and awareness of the benefits of greenways.
- Members must be full-time residents of the East Buncombe Fire District (recognizing that the Black Mountain Greenways Commission may choose to promote construction of a regional network that expands beyond the limits of the Town.)
- Commission will elect Chair and Vice Chair.

Historic Preservation Commission

- *5 Member Commission each serving a 3-year term.*
- **Meetings will be held quarterly on the 3rd Wednesday, 6:00 p.m. at Town Hall, 160 Midland Ave.**
- The Historic Preservation Commission's purpose is to designate historic districts and landmarks within the Town of Black Mountain. In addition, this commission shall develop and recommend to the Board of Aldermen rules and regulations governing the designation and maintenance of historic properties in the Town.
- Members must live within the territorial jurisdiction of the municipality. Commission shall adopt rules of procedure governing its meetings and the conduct of official business and bylaws governing the election of officers and related matters.
- Commission will elect Chair and Vice Chair.

Planning Board

- **7 Member Board each serving a 3-year term.**
- **Meetings will be held on the 4th Monday, 6:00 p.m. at Town Hall, 160 Midland Ave.**
- The Planning Board is established to advise the Board of Aldermen on matters related to land use and community development. The Board shall be governed by the terms of GS §§ 160A-360 through 160A-387 and by the terms of the Town Zoning Ordinance enacted December 1982 and Subdivision Regulations enacted September 1985, and any subsequent amendments thereto. All Board members shall thoroughly familiarize themselves with the provisions of these statutes and ordinances.
- Members must reside within the corporate limits of the Town of Black Mountain.
- The Planning Board will appoint the Chair.

Recreation Commission

- **5 Member Commission each serving a 3-year term.**
- **Meetings will be held on the 4th Thursday, 5:30 p.m. at 304 Black Mountain Ave.**
- The Recreation Commission advises the Board of Aldermen on matters related to public recreation opportunities as provided by the Town of Black Mountain.
- A minimum of three-fifths of the membership shall be made up of full-time residents within the corporate limits of Black Mountain. The remaining two-fifths of the membership may be made up of residents who reside in the East Buncombe Fire District but not within the corporate limits of any incorporated municipality.
- The Commission will appoint the Chair.

Urban Forestry Commission

- **5 Member Commission each serving a 3-year term.**
- **Meetings held on the 1st Tuesday, 5:30 p.m. at 304 Black Mountain Ave.**
- The Urban Forestry Commission assists in the administration of the Town of Black Mountain tree ordinance as it pertains to advice on the regulation of tree planting, maintenance, and removal on publicly owned and maintained property within the Town.
- A minimum of three-fifths of the membership shall be made up of full-time residents within the corporate limits of Black Mountain. The remaining two-fifths may be residents who do not reside within the corporate limits but who do reside in the East Buncombe Fire District, but not within the corporate limits of any other incorporated municipality.
- The Commission will appoint the Chair and Co-Chair.

Zoning Board of Adjustment

- **5 Members (each serving a 3-year term)/3 Alternates (without expiring term).** Any vacancy in the membership shall be filled by the first alternate member, who shall serve the remainder of the unexpired term. The Board of Aldermen would only, and always, be appointing new members to the Board into the third alternate position.
- **Meetings held on the 3rd Thursday, 6:00 p.m. at Town Hall, 160 Midland Ave.**
- The Zoning Board of Adjustment (ZBA) is established as a “quasi-judicial” administrative Board that operates on a level between the enforcement officials of the Town and the courts. The purpose of the ZBA is to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcement of an ordinance adopted pursuant to the land use regulations adopted by the Town. In addition, under the provisions of the Town’s zoning regulations, the ZBA is responsible for the issuance of Conditional Use Permits.
- Members must be full-time residents within the corporate limits of Black Mountain.
- The ZBA Board will appoint the Chair.

Public Records

In General

GS 132-1 establishes a very broad definition of "public record", generally unlimited by the form of the material in question or by the circumstances under which it was received or created. The statute begins by including within the definition not only documents and other papers but also "maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records and artifacts,.....regardless of physical form or characteristics." The statute then goes on to state that "public record" means the listed items "made or received pursuant to law or ordinance in connection with the transaction of public business" by any agency of North Carolina government or its subdivisions.

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

Phone record transcripts and emails are considered public record and can be subject to being revealed for public view.

Closed Sessions

North Carolina General Statutes 143-318.11 (a)

Calling a closed session: A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed below.

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. **NOTE:** Must state name or citation of law that renders the information to be discussed privileged or confidential. *NCGS § 143-318.11(a)(1)*

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award. *NCGS § 143-318.11(a)(2)*

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney – client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a

participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded. **NOTE:** Must identify parties in existing lawsuit. *NCGS §143-318.11(a)(3)*

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session. *NCGS §143-318.11(a)(4)*

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or leases; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract. *NCGS §143-318.11(a)(5)*

Closed Sessions- North Carolina General Statutes 143-318.11(a)

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting. *NCGS §143-318.11(a)(6)*

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct. *NCGS §143-318.11(a)(7)*

(8) To formulate plans by a local board of education relating to emergency response to incidents of school violence. *NCGS §143-318.11(a)(8)*

(9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity. *NCGS §143-318.11(a)(9)*

Open Meetings

What kinds of groups are subject to the open meetings law?

The law extends to any public body.

What is a public body?

It is any authority board, commission, committee, council, or other body of state or local government that meets both of two conditions. First, it must have at least two members. And second, it must be authorized to exercise at least one of the following five functions; legislative, policy-making, quasi-judicial, administrative, or advisory. It is hard to image a formal group that is not authorized to exercise at least one of the listed functions.

What is an "official meeting"?

An official meeting occurs whenever a majority of the members of a group meet – in person or by some electronic means, such as a conference telephone or TV – in order to do any of the following:

- Conduct a hearing,
- Deliberate,
- Take action or
- Otherwise transact public business.

The "Riggins Rules":

SUGGESTED DO'S & DON'TS FOR THE CONDUCT OF PUBLIC HEARINGS AND THE DEPARTMENT OF MEMBERS OF BOARDS, COMMISSIONS, & OTHER BODIES

by Fred Riggins

1. Don't accept an appointment or nomination to a Board, Commission, or Council unless you expect to attend 99.9999 percent of the regular and special meetings, including inspection trips, briefings and public functions where your presence is expected. If your participation falls below 85 percent during any six months' period, you should tender your resignation. You aren't doing your job. You aren't keeping well enough informed to make intelligent decisions, and you are making other people do your work for you and assume your not inconsiderable responsibility. Your effectiveness and the regard given to your opinions by other members will be in direct ratio to your attendance.

2. Do create a good impression of city government. Remember that this is the first important contact that many of the people in the audience have had with the administration of their city and for some this is the most important matter in which

[Editor's Note: The "Riggins Rules" were brought to my attention by Bev Moody. Bev spent 26 years with the City of Phoenix Planning Department before moving to his current position with the Arizona Department of Commerce. During that time he knew the late Fred Riggins, a former Chairman of the Phoenix Planning Commission and author of these "Suggested Do's & Don'ts" (since re-titled the "Riggins Rules" in his honor). Bev Moody notes that the Riggins Rules have been left just as Fred Riggins wrote them in 1967 "because in their bluff, crusty, no-nonsense style, the man himself shines through." As Bev further explains, "you may notice that Mr. Riggins did not follow the principles of non-sexist language that prevail today ... please be forgiving as he was raised in and wrote these in less sensitive times — and it doesn't detract from the good advice he offers."

We'd very much like to get some reaction from you, our readers, to any of the Riggins Rules that particularly strike you — ones that you agree with or ones you disagree with. Or, perhaps you've had an experience that relates to one of Riggins' observations. Please take a few minutes to jot down your comment(s) and mail them to us at: P.O. Box 4295, Burlington, VT 05406, or FAX them to: (802) 862-1882].

they have ever been involved. Many will never be back again and many will never have another such contact and experience. Your performance will create in their minds the picture which they will always carry with them of "the way the city is run." Make it as pleasant and comforting a picture as possible.

3. Do be on time. If the hearing is scheduled at 7:30, the gavel should

descend at the exact hour, and the hearing begin, if there is a quorum. If you have to wait ten minutes for a quorum and there are 100 people in the room, the straggler has wasted two full working days of someone's time besides creating a very bad beginning for what is a very important occasion for most of those present.

4. Don't dress like a bum. Shave, wear a tie, and remember that a coat is

never out of place. The people in the audience think you are a very important person. Don't disappoint them by your appearance, conduct, and attitude.

5. Don't mingle with friends, acquaintances, unknown applicants or objectors in the audience before the meeting or during a recess period, if it can be politely avoided. You will invariably create the impression with the uninformed that there is something crooked going on, especially when you vote favorably on the case of the applicant you were seen conversing with. When the other fellow's case comes up and you deny it, he says, "Well, it's easy enough to see that you've gotta know the right people if you ever expect to get anywhere around here." Save your socializing and fraternizing for some other time and place.

6. Don't discuss a case privately and as a single member of a body with an applicant or objector prior to the filing and prior to

the hearing if it can be politely avoided. In the event that it is not avoidable, and many times it is not, be very non-committal, don't be too free with advice, and by all means explain that you are only one member of the body, that you have not had an opportunity to study the matter thoroughly, that you have not seen the staff recommendation, and that you have no way of knowing what opposition there may develop or what will occur at the public hearing.

Be certain that the person concerned understands that you cannot commit yourself in any manner, except to assure him that he may expect a fair and impartial hearing. Even if the case looks pretty good to you, it is wise to be pessimistic about his chances of securing approval. If you give him any encouragement and any advice and he is then denied, he will hate you until your dying day and tell everyone in town that he did just exactly what you told him to do and then, like a dirty dog, you voted against him.

7. Do your homework.

Spend any amount of time necessary to become thoroughly familiar with each matter which is to come before you. It is grossly unfair to the applicant and to the City for you to act on a matter with which you have no previous knowledge or with which you are only vaguely familiar. And you will make some horrible and disturbing decisions.

8. Don't indicate by word or action how you intend to vote during the portion of the hearing devoted to presentations by the applicant, presentations by any persons appearing in objection, and comments by members of the staff.

During this period your body is the judge and the jury and it is no more appropriate for you to express an opinion as to the proper decision, prior to hearing all of the testimony, than it would be for a judge or jury member to announce his firm conviction in the middle of a court trial regarding the guilt or innocence of the defendant. This is not

clearly understood by a majority of persons sitting on hearing bodies.

It is not too difficult to phrase one's questions or comments in a manner that implies that you are seeking information rather than stating an irrefutable fact and that your mind is closed to further argument.

One does not say, "I happen to know that the applicant has no intention of placing an apartment building on this site. In fact, it has been sold subject to zoning and the purchaser intends to put a mobile home park here if he can get a special permit." Rather than this, one could say, "We have been furnished with some information which indicates that perhaps your plans are not too firm regarding the development you propose. In fact, there are some who are concerned about a rumor that the property is being sold and that the new owner planned to put a mobile home park at this location, if he can secure the necessary permit. Would you care to comment on this concern of

the neighborhood and tell us if there is any truth in this rumor?" The same result is accomplished; the information is brought out and made part of the record and you don't look as if you are leading the attack to secure defeat of the applicant's request.

9. Don't fail to disqualify yourself if either directly or indirectly you have any financial interest in the outcome of the hearing, and let your conscience be your guide where it could be said that moral, ethical, political, or other considerations, such as personal animosity, would not permit you to make a fair and impartial decision.

In disqualifying yourself, *do not* state your reasons inasmuch as the mere stating of your reasons can be construed as exerting undue influence on your fellow members. To avoid all accusations of undue influence, it is generally wise to leave the room and ask that the record show that you did so and that you did not indicate by word or action whether

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you were in favor of, or opposed to, the matter under discussion.

10. Do rotate the seating

In some regular manner each successive meeting to prevent a "strong" member from gradually dominating a "weak" and indecisive member always seated next to him. This will also prevent the forming of little cliques or a not infrequent grouping of members to the left of the Chair who always oppose those to the right of the Chair, regardless of the merits of the case, to the great detriment of the applicant, the City and other interested parties.

11. Do be polite and impartial; as helpful as possible to the nervous, the frightened and the uneducated, and patient with the confused.

12. Do be attentive.

Those appearing before you have probably spent hours and hours preparing and rehearsing their arguments. The least you can do is *listen* and make them think that you are as interested as you should be. Refrain from talking to other members, passing notes and studying unrelated papers.

13. Don't interrupt a presentation until the question period, except for very short and *necessary* clarifying remarks or queries.

Most applicants have arranged their remarks in a logical sequence and the thing about which you are so concerned will probably be covered if you can force yourself to be quiet for a few minutes. You can wreck his whole case by a long series of unnecessary questions at the wrong time. He will be your enemy forever.

14. Don't permit more than one person at the podium and microphone at any one time.

15. Don't permit a person to directly question or interrogate other persons in the audience. All questions should be addressed to the Chair and to the hearing body. When this person has finished his discussion and stated the questions to which he would like to have answers, then the Chair will permit those who care to make an answer to come forward and do so, but only voluntarily. Do not permit anyone to *demand* answers to all and sundry questions, especially if it is obviously done for the purposes of harassment.

16. Don't use first names in addressing *anyone* at all

during the course of the hearing. This includes audience, applicants, members of your particular body, even if the person concerned is your brother or your best friend.

Nothing, repeat nothing creates a more unfavorable impression on the public than this practice. It is poor "hearing manners," destroys the formality of the occasion, and makes the uninformed certain that some sort of "buddy-buddy deal" is about to be consummated. If you just can't bring yourself to calling someone Mr. or Mrs., use the third person form and call him "the applicant," or "the person who is objecting," or "the gentleman (or lady)," who is appearing here in connection with this case.

17. Do show great respect for the chair, always addressing the Chairman as "Mr. Chairman," "The Chairman," or "Chairman Jones," and always wait to be recognized before continuing. This will set an example for applicants and others wishing to be heard and will contribute a great deal toward the orderliness of the proceedings.

18. Don't be critical of attorneys who sometimes feel impelled to give unnecessarily lengthy presentations on behalf of

their clients. Avoid the strong temptation to make matters as difficult as possible for them. They are just trying to make a living and must convince their clients that they are really earning the rather substantial fee which they feel their service merits.

19. Don't indulge in personalities and don't permit anyone else to do so.

20. Don't try to make the applicant or any other person appearing before you look like a fool by the nature of your questions or remarks. This is often a temptation, especially when it is apparent that someone is being slightly devious and less than forthright in his testimony. But don't do it. If you must "expose" someone, do it as gently and kindly as possible.

21. Don't become involved in altercations. Some persons seem to come to hearings with the express purpose of "telling them guys down there how the cow ate the cabbage." If you answer their irrelevant rantings, you are immediately involved in a *fight*.

Don't answer or try to defend yourself. You are there to hear testimony and make decisions based thereon, not to head up a debating society. Remember, you are the judge and

the jury. In most cases, it is sufficient to say, "thank you very much for coming here and giving us the benefit of your thinking. I am sure that the members of this body will give your remarks serious consideration when they are making their individual determinations on the merits of this case. Is there anyone who wishes to be heard?"

22. Do invite interested persons to come forward where they can see when an applicant is discussing or talking from a diagram, site plan, or exhibit which is not visible to the audience.

23. Do not permit people to speak from the audience. If it is important enough for them to speak at all, it is important enough for them to be recognized, come forward, give their name and address and say what they care to, if their remarks are pertinent.

24. Do not permit people to leave the podium and microphone and approach closer to the hearing body except in unusual circumstances, usually to show a small exhibit or to explain some detail. This ordinarily breaks down into a small mumbling session at one end of the dais with one or two members of the hearing body; the others are

uncertain about what is going on. The conversation usually does not get recorded, cannot be heard by the audience, and is almost impossible to control from the Chair.

25. Don't become involved in neighborhood quarrels or wind up as the referee even if you are a veritable Solomon. No matter how fair or impartial you should be, both sides will be mad at you. Stick to the merits of the case and rule out-of-order testimony which is irrelevant, personal, hearsay, and not pertinent to the matter being heard.

26. Don't be vindictive and "punish" the applicant for some real or imagined affront to you or your Body on some previous occasion, perhaps bearing no relation to the present hearing. It must be assumed that he is there legally, he has a right to be heard, and he has a right to a fair and impartial hearing on the merits of his present case without reference to something which he might or might not have done in the past or will perhaps do in the future.

27. Don't try to be a hero to beautiful women, little old ladies, widowed mothers with tiny infants in their arms, and the financially and socially dis-

tressed. Be sympathetic, but objective, and don't get carried away with such a strong desire to help that you throw the rule book out the window. Ninety-nine times out of a hundred you will do them some questionable service at the expense of their neighbors or the City and your kind-hearted action will come back to haunt you much sooner than anyone could have imagined. Stick to the rules.

28. Don't assume the role of a fairy godfather to those who have become involved in bad business deals or other self-imposed difficulties.

29. Do not fail to give a reason when making a motion for approval or denial of an applicant's request. If you fail to do this, the applicant, any objectors, a reviewing body of higher authority, or the courts may well assume that your decision was an arbitrary one not supported by the facts and should be reversed. Always mention the staff recommendation.

30. Do not take staff recommendations lightly. These recommendations are made after much study by professional people with years of experience in their field and are based on pertinent laws, ordinances,

regulations, policies, and practices developed by you and your predecessors. The recommendations of a good staff in possession of all the facts will almost always produce a *technically correct* recommendation.

Your job is to temper this recommendation with information developed during the hearing which was not available to the staff. It is not unusual for a staff to voluntarily reverse or change the details of its recommendation during the course of a hearing. Always announce the staff recommendation prior to hearing any testimony and always make appropriate mention of it in the final decision.

31. Don't forget that the staff is there to help you in any way possible. It is composed of very capable professional people with vast experience. Lean on them heavily. They can pull you out of many a bad spot if you give them a chance. Or they may just sit and let you stew, if you do not give them the respect which is their due.

Remember that their usual practice is to remain silent unless they are specifically asked to comment. Most of them consider it presumptuous and unprofessional to inject any unsolicited comments into the hearings.

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Always ask them to comment prior to the final vote.

32. Don't try to answer technical questions even

If you are sure that you know the answer. You probably *don't* and will wind up looking like a fool. Refer these matters to the staff. That is one of the things they are there for. They have intimate day-by-day working experience with all pertinent ordinances and can nearly always give a timely, up-to-the-minute, professional dissertation on any subject in their field. And besides, it makes them more important and helps create an image of competency which is most helpful in assuring the public that their case has received more than a cursory glance and an arbitrary decision.

Lay members of a hearing body who "explain" ordinances to the audience usually wind up their less than accurate remarks with the pretty lame comment, "That's the way I understand it and if I am wrong, I would appreciate it if the staff would correct me." The staff usually does correct them, and ordinarily at some length. *Don't* try to show how smart you are, because you're not.

33. Don't try to ease your conscience and toss the applicant a bone by granting him something less than he asked for, something he doesn't want, and something he can't use. In all cases where it is appropriate, *give him what he asked for or deny it.* To do otherwise will only encourage applicants to ask for the "moon and the stars" in the hope that they will, at the worst, get the minimum requirements. A reputation for approving or denying applications as filed will result in much more realistic requests and make your job much easier.

34. Do vote by roll call, except for routine administrative matters. This is wonderful character training for each member of the body and emphasizes the "moment of truth" when he must look the applicant in the eye, make his own individual decision, and say "aye" or "nay" in a loud clear voice, all alone, with no one to hide behind. The alternate voting method is difficult for the Secretary to record, doesn't mean anything on a tape recording, is many times quite confusing, and gives cowards an opportunity to change their minds and vote twice when they are caught in the minority.

35. Don't show any displeasure or elation, by

word or action, over the outcome of a vote. This is very bad hearing manners and won't lead to the maintenance of a friendly cooperative spirit among members of a Body. It will lead to the creation of little cliques whose members vote in a block and become more interested in clobbering each other than in making fair and equitable decisions.

36. Do discourage any post-mortem remarks by applicant, objectors, or members after the final vote and decision is announced, especially those afterthoughts designed to reopen the case. It will invariably result in an unpleasant wrangle. Just say, "I'm sorry, but the final decision has been made. If you wish to submit additional testimony, it will be necessary for you to state your reasons by letter and the Body will decide at a subsequent meeting whether or not they wish to reopen the case. The next case on the agenda will be ———."

37. Do not hesitate to continue a case or take it under advisement if more information or greater deliberation is truly necessary, but do not use these administrative actions merely to avoid or delay making a decision before a hostile applicant or audience.

38. Do sit down and have a long soul searching session with yourself if you find that you are consistently "out in left field," that no one seems inclined to second your profound motions, and that you are quite often a minority of one. You might be theoretically right, and probably are, but give some thought to what is practical, possible, and just. Don't be "stiff-necked" in your opinions. Give a little.

39. Don't select chairmen on a seniority basis alone and *don't* pass the office along from member to member as a reward and honor. The nicest guy in the world, the hardest working, the most interested and your most valuable member can be indescribably horrible in the Chair. This is just one of those facts of life which is hard to explain, but, unfortunately, all too true.

As occasion presents itself, give prospective chairmen a chance to preside, head up a sub-committee, report on special projects, and otherwise prepare themselves and demonstrate their abilities and leadership under pressure. ♦

Code of Ethics for Members of Boards and Commissions of the Town of Black Mountain, North Carolina

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics and, pursuant to Section 160A-86, the Black Mountain Board of Aldermen has previously adopted a Code of Ethics for the Mayor and Board of Aldermen, and

WHEREAS, it is appropriate that members of Town boards, committees, and commissions, as well as Mayoral and Board of Aldermen appointees to non-Town bodies (hereinafter "Board Members"), also adhere to a Code of Ethics.

NOW THEREFORE, in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens of the Town of Black Mountain, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the Board of Aldermen do hereby adopt the following General Principles and Code of Ethics to guide Boards Members in their lawful decision-making.

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
- Board Members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- Board Members must always remain aware that they may, at various times, play different roles:
 - As advisors, who balance the public interest and private rights in considering and recommending, among other things, ordinances, policies, and decisions
 - As decision-makers, who arrive at fair and impartial determinations.
- Board Members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- Board Members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of the Mayor and Board of Aldermen and the citizens of Black Mountain. Each Board Member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for Board Members and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a member's best judgment.

Section 1.

Board Members should obey all laws applicable to their official actions. Board Members should be guided by the spirit as well as the letter of the law in whatever they do.

At the same time, Board Members should feel free to assert policy positions and opinions without fear of reprisal from fellow Board members or citizens. However in doing so, Board Members:

- (a) shall be mindful that they were appointed by the Mayor or Board of Aldermen, or by another appointing authority to a Town Board, Committee, or Commission and, therefore, if they are advising or advocating a position that is contrary to a Council policy, that they notify the Mayor and Board of Aldermen of such as soon as practicable;
- (b) who serve in an advisory capacity shall be mindful that their chief responsibility is to advise the Mayor and Board of Aldermen or other decision-making body rather than to advocate to the public at large, particularly when the position of advocacy is contrary to a Council policy;
- (c) shall understand that they hold a position of trust on behalf of the Town and its citizens; and
- (d) shall assert policy positions and opinions on matters within or related to the jurisdiction and subject matter of the body on which they serve only through the transparency of official proceedings of the body or in a capacity and manner appropriate for a member of such body. Board Members shall not represent their individual views as being representative of the full body unless they have been formally authorized by the body to do so.

These guidelines are especially important to Chairpersons who must recognize that they are often viewed as speaking for the body.

To declare that a Board Member is behaving unethically because one disagrees with that official on a question of policy (and not because of the council member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Section 2.

Board Members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values
- Exhibiting trustworthiness
- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others

- For Board Members who act in a quasi-judicial capacity, disclosing contacts and information about issues that they receive outside of public meetings and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves
- Treating other Board Members and the public with respect and honoring the opinions of others even when the board members disagree with those opinions
- Showing respect for their offices and not behaving in ways that reflect badly on those offices
- Recognizing that they are part of a larger group and acting accordingly
- Recognizing that individual Board Members are not generally allowed to act on behalf of the body but may only do so if the body specifically authorizes it, and that the body must take official action as a body

Section 3.a.

Board Members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach and they should not use their official position for personal gain. Although opinions may vary about what behavior is inappropriate, the Board of Aldermen will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Board Member's action would conclude that the action was inappropriate.

Section 3.b.

If a Board Member believes that his or her actions, while legal and ethical, may be misunderstood, the official should seek the advice of the Town Attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4.

Board Members should faithfully perform the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Board Members should faithfully attend and prepare for meetings.

Board Members should be willing to bear their fair share of the body's workload. To the extent appropriate, they should be willing to put the Town's interests ahead of their own.

Section 5.

Board Members should conduct the affairs of the board in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they

are conducting the public's business. They should also remember that local government records belong to the public and not to them or Town employees.

In order to ensure strict compliance with the laws concerning openness, the Mayor and Board of Aldermen members have made it clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should take deliberate steps to make certain that any closed sessions held by the body are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Sanctions

Following the review of an allegation against a member of a Town board or commission conducted pursuant to Section 2, the Town Board of Aldermen may sanction the member who was the subject of the review. Potential sanctions include removal of the member, adoption of a Resolution of Censure, and any other lawful sanction within the Board of Aldermen's power.

ACKNOWLEDGEMENT OF RECEIPT OF Code of Ethics for Members of Boards, Committees, and Commissions of the Town of Black Mountain, North Carolina

On the date written below, I received the "Code of Ethics for Members of Boards, Committees, and Commissions of the Town of Black Mountain, North Carolina" I acknowledge this policy contains basic information related to serving as a volunteer on a board or commission.

I understand that I am responsible for reviewing the contents of this policy and asking questions if I do not understand any part of it.

DATE: _____

NAME: _____

BOARD OR COMMISSION: _____

SIGNATURE: _____

(A signed copy of this form will be maintained in the Town Clerk's Office with the application once appointed to serve.)

Please Sign and Return this page to the Town Clerk

**ACKNOWLEDGEMENT OF RECEIPT OF Code of Ethics for Members of
Boards, Committees, and Commissions of the Town of Black
Mountain, North Carolina**

On the date written below, I received the "Code of Ethics for Members of Boards, Committees, and Commissions of the Town of Black Mountain, North Carolina" I acknowledge this policy contains basic information related to serving as a volunteer on a board or commission.

I understand that I am responsible for reviewing the contents of this policy and asking questions if I do not understand any part of it.

DATE: _____

NAME: _____

BOARD OR COMMISSION: _____

SIGNATURE: _____

(A signed copy of this form will be maintained in the Town Clerk's Office with the application once appointed to serve.)



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

MEMORANDUM

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

Date: July 1, 2019

RE: Proposed Text Amendment – Traffic Impact Analysis

Please find pertinent information attached.

Summary:

When the new land use code was adopted in 2010 there was reference to a section for a traffic impact analysis that did not get carried over, therefore it does not exist. The language below provides for specific standards where a traffic impact analysis would be required. This also stems from the discussion at the March Planning Board meeting.

Below is some potential language. All wording is subject to change.

3.5.2 – Streets.

- M. ~~Traffic impact studies may be required for subdivision roads connecting to the town or NCDOT system per title IX: 100 of the Town of Black Mountain's Code of Ordinances or NCDOT guidelines.~~ **Traffic impact study. A traffic impact study shall be submitted for subdivisions with 100 lots or more. The study shall meet the guidelines for traffic impact studies provided in the North Carolina Department of Transportation's "Policy on street and Driveway Access to North Carolina Highways." No major subdivision of 100 lots or more shall be approved that would generate a decrease in service to a level D or lower as defined by the Highway Capacity Manual (HCM) and the AASHTO Geometric Design of Highways and Streets.**

6.3.1 – Application.

3. ~~Results and recommendations of a traffic impact analysis if applicable.~~ **For developments of more than 75 residential units, a traffic impact study meeting the guidelines for traffic impact studies provided in the North Carolina Department of Transportation's "Policy on Street and Driveway Access to North Carolina Highways." No development of more than 75 units or more shall be approved that would generate a decrease in service to a level D or lower as defined by the Highway Capacity Manual (HCM) and the AASHTO Geometric Design of Highways and Streets.**

7.2.3 – Master plan requirements.

- 14. For developments of more than 75 residential units, a traffic impact study meeting the guidelines for traffic impact studies provided in the North Carolina Department of Transportation's "Policy on Street and Driveway Access to North Carolina Highways." No development of more than 75 units or more shall be approved that would generate a decrease in service to a level D or lower as defined by the Highway Capacity Manual (HCM) and the AASHTO Geometric Design of Highways and Streets.**

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: July 22, 2019

Subject: Zoning Text Amendment

Description: Amend traffic impact analysis sections

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

_____ The zoning amendment **is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

_____ The zoning amendment **is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

_____ In addition to approving this zoning amendment, this approval **is also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:



**Town of Black Mountain
Building, Planning and Zoning**

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Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

MEMORANDUM

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

Date: July 1, 2019

RE: Proposed Text Amendment – Minor Subdivisions

Please find pertinent information attached.

Summary:

There have been concerns about minor subdivisions taking place while leaving larger residual lots that could potentially be subdivided again therefore not requiring all of the development standards for a major subdivision. The proposed language would allow a “cooling-off” period between minor subdivisions to ensure that the ordinance is not being circumvented. This also stems from discussions at the March Planning Board meeting.

Below is some potential language. All wording is subject to change.

3.3.1 – Minor Subdivision.

- A. A minor subdivision is defined as a subdivision where:
 - 1. No new public streets or roads are proposed (except for private driveway easements with each driveway easement serving no more than three lots; and
 - 2. Where four or fewer lots will result after the subdivision is complete.
- B. The minor subdivision process shall be used only where the subdivision includes all contiguous land under the ownership of the applicant.
- C. The applicant must demonstrate to the acting subdivision administrator that such division is in fact a minor subdivision. **Any subsequent minor subdivision application shall not be approved until two years after the original minor subdivision plat is filed with the Register of Deeds.** ~~If the developable area of the remaining parcel (residual lot) is greater than three times the size of the proposed lot or lots and the residual lot containing such area has the potential for redivision, then the applicant may be required to reapply under the major subdivision procedure.~~
- D. 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 with sketch plan and submittal of preliminary plat.

- 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 the land use code.
- B. The subdivision administrator shall review a sketch plan with the applicant for general compliance with requirements, the zoning and eligible uses, and other needs. The public works **director**, fire chief or police chief, ~~local NCDOT district representative or other representative~~ may be invited to review the sketch plan depending on the determination of the staff reviewer. Additional information concerning the proposed subdivision may be required at the request of the administering staff.
- 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 sketch plan 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 and based on consultation and sketch plan comments and any improvements made since the preliminary plat was filed.

Step 3. Review of final plat by subdivision administrator.

The subdivision administrator shall review the final plat in accordance with the requirements of this ordinance **and** any other applicable ordinances. Any revisions to the approved final plat shall be considered in accordance with section 1.8.1 (vested rights) of the land use code.

Step 4. Application revision period (if necessary).

The applicant shall revise the plan in accordance with the comments provided by the subdivision administrator and other applicable agencies. All necessary revisions shall be made prior to approval by the subdivision administrator.

Step 5. Subdivision administrator approval of final plat.

- A. The subdivision administrator shall decide approval, disapproval, or approval subject to minor modifications within 15 days of submission of the plat for minor subdivisions.
- B. Approval shall be null and void unless the final plat is offered for filing and recording in the office of the register of deeds of Buncombe County within 90 days from the date of approval.
- C. 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.

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: July 22, 2019

Subject: Zoning Text Amendment

Description: Amend minor subdivision section

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

_____ The zoning amendment is **approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

_____ The zoning amendment is **rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

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MEMORANDUM

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

Date: July 1, 2019

RE: Proposed Text Amendment – Duplex Definition

Please find pertinent information attached.

Summary:

There has been an instance where someone built two structures and then connected them with a covered breezeway with fire separation and called it a duplex. The current definition of a duplex is somewhat ambiguous and staff wishes to amend the definition to clarify that a duplex is one single structure and how the structure is to be connected. Staff does not wish to change how a duplex can be subdivided.

Current Definition:

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.

*This sentence will remain in the definition.

Below are some potential definitions. All wording is subject to change.

Potential Definitions:

Duplex: A building designed as a single structure, containing two separate living units, each of which is designed to be occupied as a separate permanent residence for one family. (Source: Planners Dictionary)

Duplex: A structure on a single lot containing two apartment 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 units. (Source: Planners Dictionary)

Additional Information:**Court Cases re: Ownership**

Ownership: One thing is clear. Ownership status may not be used to define a land use. In Graham Court Associates v. Town Council of Chapel Hill, the property owner sought to convert a multifamily building from tenant-occupied apartments to owner-occupied condominiums. The court found that "[t]here would be absolutely no change in the use of the land" and stated clearly that the change in ownership to condominiums does not constitute a change in use which the town can regulate by its zoning ordinance. 53 N.C. App. 543, 281 S.E2d 418 (1981).

That decision was re-affirmed in City of Wilmington v Hill in which the court rejected a city zoning ordinance that required an owner to occupy one of the residences in the case of an accessory dwelling unit. The court quoted from Graham, stating that "it is 'beyond the power of the municipality to regulate the manner of ownership of the legal estate.'" 189 N.C. App. 173, 178, 657 S.E.2d 670, 673 (2008)

Emails from Doug Brock re: Duplex Definition:

January 22, 2019

Jessica,

Please leave the definition of duplex intact where a duplex can be converted into two townhomes. There are cost savings in construction where a single foundation, a single roof, and other shared components make the cost less per square foot.

Please investigate my duplex's on Tree Canopy Lane for an example. I have four duplex's there on four different lots. What would serve the community housing needs better? For me to keep them as rental inventory or sell them as individual units to the tenants?

I request you to investigate this and get back to me. I will be glad to give you a tour of the property as an example.

Doug Brock

February 14, 2019

Jessica, I read the meeting notes and the discussion on duplex's. The remaining question tabled until the next meeting dealt with lot size. It is my suggestion that the lot size be tied to the density of the zoning district. For example in R-4 the density is 4 units per acre. Thus, the density calculated limit would be 4 units per acre.

Doug Brock

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: July 22, 2019

Subject: Zoning Text Amendment

Description: Amend definition of duplex

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

_____ The zoning amendment is **approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

_____ The zoning amendment is **rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

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_____ In addition to approving this zoning amendment, this approval is **also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:



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MEMORANDUM

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

Date: July 1, 2019

RE: Proposed Text Amendment – Nonconformities

Please find pertinent information attached.

Summary:

Currently the timeframe for replacing nonconforming structures or reestablishing nonconforming uses is one year or 365 days. Most other municipalities use six months or 180 days. The goal is to eventually make nonconforming uses and structures conforming with the existing code and by cutting the timeframe for reestablishment in half, that helps further the goal of making nonconforming structures and uses conforming.

Below is some potential language. All wording is subject to change.

1.3.1 – Nonconforming uses, structures and lots.

- A. Any use, structure, or lot which does not conform to the requirements of the town's land use 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 the land use 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 regulations that has been granted by the zoning board of adjustment subsequent to the adoption of this code. 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, any lot, building, structure, or use of land existing at the time of the enactment of these land use codes or any amendment thereto, that does not conform to the requirements of the district in which it is located may be continued or maintained subject to the following provisions. They shall not be:
 - 1. Changed to another nonconforming use;
 - 2. Enlarged or extended except in conformity with this chapter;
 - 3. Reestablished after a discontinuance of ~~one-year~~ **six months**;
 - 4. Extended beyond adopted amortization period if applicable (as with the sign ordinance);

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

A single-family dwelling unit or replacement manufactured home meeting the criteria set forth in manufactured housing regulations (chapter 5), 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 shall be obtained through the action of the zoning board of adjustment.
- C. A replacement, nonconforming manufactured home may be placed within ~~one-year~~ six months after the previous home is removed and shall conform to the setback standards of the district in which it is located, and, when this is not possible, the replacement manufactured home shall not increase the nonconformity of the setback of the district requirements and shall be placed to achieve the maximum amount of setback required under the ordinance as possible.
- D. After ~~one-year~~ six months, new construction or replacement manufactured homes shall conform to 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 zoning 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 zoning 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 may be enlarged or extended only:
 - a. Where such alteration does not enlarge or increase the nonconformance of the structure, or
 - b. Where such alteration is required by law or an order from the building safety director, fire chief or the planning and development director to ensure the safety of the structure.
 - 3. A nonconforming use of a structure that is ceased for a continuous period of more than ~~one year (365 days)~~ **six months (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 conditional 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 zoning board of adjustment.
- B. If a nonconforming vacant lot adjoins and has continuous frontage with one or more other lots in the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may 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 marshall, 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 ~~365~~ **180** successive days of the 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.

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: July 22, 2019

Subject: Zoning Text Amendment

Description: Amend nonconformities chapter

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

_____ The zoning amendment **is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

_____ The zoning amendment **is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

_____ In addition to approving this zoning amendment, this approval **is also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:



Town of Black Mountain
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MEMORANDUM

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

Date: July 1, 2019

RE: Proposed Text Amendment – Historic District Overlay

Please find pertinent information attached.

Summary:

The Historic District Overlay chapter has inconsistent language between the historic and conservation districts so the proposed amendment cleans up the language making everything consistent. Currently the conservation district has a mandatory review but a voluntary compliance that the ordinance speaks to but the ordinance does not speak to review and compliance for the historic district. The proposed amendment removes the conservation district review altogether and sets up procedures for historic district review and compliance.

Below is some potential language. All wording is subject to change.

Section 4.7.3 Historic district and historic ~~conservation~~ district overlay.

4.7.3.1 Intent.

The historical heritage of our town is one of our most valued and important assets. The ~~conservation and~~ 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 ~~conservation districts~~, historic districts and landmarks is to encourage the restoration, preservation, and rehabilitation ~~and conversation~~ 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.

4.7.3.2 Historic district, ~~conservation district~~ and landmark establishment.

- A. Historic districts, ~~conservation districts~~ and landmarks are established through the application of an overlay district which are zoning districts that are applied only in conjunction with other zoning districts, and may grant additional use or development requirements upon the underlying zoning controlling the use and development of a lot to ensure the compatibility and appropriateness of exterior design within the historic district or for the landmark.
- B. Overlay districts can be applied to any zoning districts and the boundaries of such overlay shall be shown on the official zoning map of the Town of Black Mountain. (i.e. "HD" overlay also referred to as "historic district".) An overlay district can be initiated as an amendment by board of aldermen, planning board, historic preservation commission, or a property owner.

4.7.3.3 Designation of historic districts.

The board of aldermen 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 board of aldermen 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 board of aldermen 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 ~~conservation~~ 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 board of aldermen 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 G.S. 160A-384.
- E. Following the board of aldermen designation and approval an historic district, the area so designated shall be labeled “HD” on the official zoning map.
- F. With respect to any changes in the boundaries of such district subsequent to its initial establishment or the creation of additional districts within the town, the investigative studies and reports shall be prepared by the historic preservation commission and shall be referred to the planning board for its review and comment. Changes in the boundaries of an initial district or proposals for additional districts shall also be submitted to the department of cultural resources in accordance with the provisions as stated above.

4.7.3.4 Designation of conservation district.

The board of aldermen may adopt, amend, reject, or repeal ordinances designating conservation districts when adoption or amendment is pursuant to the following procedure:

- A. The board of aldermen shall designate the boundaries of a conservation district in accordance with the procedures set forth in chapter 1.5, amendments chapter and G.S. 160A-384.
- B. Following the board of aldermen designation and approval of a conservation district, the area so designated shall be labeled “CD” on the official zoning map.

Section 4.7.3.5 Designation of landmarks.

The board of aldermen may adopt, amend, reject, or repeal ordinances designating historic landmarks that meet the following criteria, when those ordinances contain the following elements and when adoption or amendment is pursuant to the following procedure:

- A. Criteria for designation. No building, structure, site, area, or object shall be recommended for designation as an historic landmark unless it is deemed and found by the historic preservation commission to be of special significance in terms of its historical, prehistorical, architectural, archaeological, and for cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.
- B. Elements of ordinances designating historic landmarks. Ordinances designating historic landmarks shall contain the following elements, which shall:
1. Describe each property designated in the ordinance, including the approximate area of the property so designated.
 2. List the name or names of the owner or owners of the property.
 3. Describe those elements of the property that are integral to its historical, prehistorical, architectural, archaeological and/or cultural significance.
 4. Describe the nature of the commission's jurisdiction over the interior, if any, and those interior features of the property to be reviewed for certificates of appropriateness if they are to be changed.
 5. Require, for each building, structure, site, area, or object designated as an historic landmark that the waiting period set forth in the general statutes be observed prior to demolition.
 6. Recite any other information the board of aldermen deems necessary within the authority conferred by the general statutes.
- C. Procedure for adopting or amending historic landmark ordinances. Ordinances designating historic landmarks shall be adopted and amended according to the following procedure:
1. The historic preservation commission shall make, or cause to be made, an investigation and report on the historical, prehistorical, architectural, archaeological and/or cultural significance of each building, structure, site, area, or object proposed designation. Applications prepared by owners will be judged by the same criteria as those prepared by the commission. Such reports shall contain the following information:
 - The name of the property to be considered for designation – both common and historic names, if they can be determined.
 - The name and address of the current property owner.
 - The location of the property proposed to be designated historic, including the street address and tax map and parcel numbers.
 - The date of construction and of any later alterations, if any.
 - An assessment of the significance of the site or structure.
 - An architectural or archaeological description of the area of the site or structure proposed to be designated. If outbuildings or other appurtenant features are proposed to be designated, the report shall contain a description of those features.
 - An historical discussion of the site or structure within its type, period, and locality.
 - Black and white photographs and color slides that clearly depict the property proposed to be designated, including views of all facades, pertinent details and siting.

- A map showing the location of the property, including any outbuildings and appurtenant features.
 - A clear description of the boundaries.
2. The commission shall forward its recommendation to the board of aldermen. The commission shall refer the report to the state department of cultural resources, division of archives and history.
 3. The department of cultural resources, acting through the state historic preservation officer or his or her designee, may make an analysis of and recommendations in connection with any proposed designation within 30 calendar days after a written request for such analysis has been received by the department, the commission and the board of aldermen shall be relieved of any responsibility to consider such comments.
 4. The historic preservation commission and the board of aldermen shall each hold a public hearing on the proposed ordinance. Notice of the hearings shall be published at least once in a newspaper generally circulated within the town. Written notice of the hearings shall be mailed by the preservation commission to all owners of property proposed for landmark status and the owners of all properties that abut the proposed landmark property whose identity and current mailing address can be ascertained by the exercise of reasonable diligence. All such notices shall be published or mailed not less than ten nor more than 25 days prior to the date set for the public hearing. The mailed notices in this subsection are for the convenience of property owners and occupants and any defect of their omission therein shall not impair the validity of the public hearing or any action following therefrom.
 5. Following the public hearings, the board of aldermen may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
 6. Upon adoption of the ordinance or any amendments thereto, the owners and occupants of each designated historic property shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and each amendment thereto shall be filed by the historic preservation commission in the office of the county register of deeds. Each historic property designated as an historic landmark in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the historic preservation commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and of each amendment thereto shall be kept on file in the town clerk's office and shall be made available for public inspection at any reasonable time. A third copy of the ordinance and each amendment thereto shall be given to the county town building inspector.
 7. Upon adoption of the ordinance or any amendments thereto, it shall be the duty of the historic preservation commission to give notice thereof to the county tax assessor. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the assessor in appraising for tax purposes. The fact that a building, structure, site, area, or object has been designated an historic landmark shall be clearly

indicated on all tax maps maintained by the county for such period as the designation remains in effect.

4.7.3.6 Jurisdiction of historic preservation commission.

There is hereby established a commission, which shall be known as the Black Mountain Historic Preservation Commission and is further described in title III, section 30.70 through section 30.72 [chapter 2, article III, division 7] of the Black Mountain Code of Ordinances. Its jurisdiction shall include the Town of Black Mountain and any extraterritorial jurisdiction area of the town as shown on the official zoning map and atlas of the town.

4.7.3.7 Rules of procedure, design guidelines and meetings.

- A. The historic preservation commission shall develop and adopt rules of procedure, which shall govern the conduct of its business in accordance with the provisions of this ordinance. Such rules of procedure shall also include as an appendix "The Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings" and the "Historic District Guidelines" including photographs, illustrations, descriptions and other similar material interpreting the criteria for determine appropriateness. The design guidelines shall be placed on file in the Black Mountain town offices and made available to the general public during the regular town office business hours.
- B. The historic preservation commission may review and propose changes to the design guidelines and forward any such recommendations for changes to the board of aldermen for their approval.
- C. Specific provisions shall be made in the commission's rules of procedure for commission meetings following the filing of a proposal on which the commission is required to pass. Such specific provisions shall be made in order that a proposal be brought before the commission:
 - 1. Within a reasonable time;
 - 2. In a manner which is conducive to commission consideration; and
 - 3. In a manner which will facilitate commission action.
- D. The commission shall meet at regularly scheduled times and at such other times as the commission may determine or at the call of its chairman as provided for in its rules of procedure.

4.7.3.8 Powers and duties.

- A. The powers of the historic preservation commission shall be to:
 - 1. Receive applications for certificates of appropriateness. The commission shall review such application according to the criteria to determine appropriateness, provided in the historic district guidelines, and the guidelines of the Secretary of the Interior, and shall approve, approve with conditions, or disapprove such application.
 - 2. Recommend to the board of aldermen districts or areas to be designated by ordinance as historic overlay districts, conservation districts, and recommend

individual structures, buildings, sites, areas, or objects to be designated by ordinance as an historic landmark.

3. Recommend to the board of aldermen that designation of any areas as an historic overlay district or part thereof be revoked or removed for cause and recommend that designation of individual structures, buildings, sites, areas, or objects as historic landmarks be removed for cause.
- B. The Black Mountain Historic Preservation Commission shall exercise such other powers and perform such other duties as are required elsewhere by the ordinance creating the historic preservation commission, the Black Mountain Zoning Ordinance or the General Statutes of North Carolina or as assigned by the Black Mountain Board of Aldermen.

4.7.3.9 Certificates of Appropriateness required.

- A. From and after the designation of a landmark or an historic district, no exterior portion of any building or other structure (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 on a landmark, or within the historic district, 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 purposes of this ordinance. A certificate of appropriateness shall be required whether or not a building or other permit is required. Any such zoning permits or such other permits not issued in conformity with this section shall be invalid.
- B. For purposes of this ordinance, "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.
- C. 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 for landmarks and in the historic district 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 or of designated landmarks.
- D. Examples of specific items which fall under ordinary maintenance or repair that will not require a certificate of appropriateness are:
 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 delete 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-mountain installation.

4.7.3.10 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. No application which does not include the aforementioned information will be accepted. **It is the responsibility of the property owner to ascertain if the project will require a certificate of appropriateness.**
- B. It shall be the policy of the commission, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that an applicant may request a meeting with staff and an individual commission member prior to going to the full historic commission in order to advise them informally at an early state in the development process concerning the commission's guidelines, the nature of the area where the proposed project will take place, and other relevant factors. The staff members and individual commission member, collectively and individually, shall refrain from any indication of approval or disapproval. Advice or opinions given by any staff member or commission member at such an informal meeting shall not be considered official or binding upon the commission.

4.7.3.11 Criteria to determine appropriateness.

- A. No certificate of appropriateness shall be granted unless the commission finds that the application complies with the principles and guidelines as adopted in the historic district design guidelines. It is the intent of these regulations to insure, insofar as possible, that construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures in the district or of landmarks shall be congruous with the special character of the district or landmark.
- B. The following review criteria, in addition to the principles and design guidelines and the guidelines of the secretary of the interior, 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 distance between adjacent buildings.
 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 façade.
 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 Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Building" shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for certificate of appropriateness.
- D. The commission shall adopt principles and guidelines interpreting these criteria for new construction, alterations, moving and demolition of landmarks or properties in the historic district.

4.7.3.12 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 historic district may not be denied except as provided in section 4.7.3.12(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 board of aldermen, 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 board of aldermen takes a final action on the designation, whichever comes first.
- C. The board of aldermen may enact an ordinance to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.
- D. 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.

4.7.3.13 Land use, interior arrangement, maintenance, emergency repairs not considered.

- A. Nothing herein shall be construed to prevent a property owner from making any use of his or her property not prohibited by other statutes, ordinances or regulations.
- B. The commission may enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without express consent of the owner or occupant thereof.
- C. Except as provided in paragraph D, below, the commission shall have no jurisdiction over interior arrangement and shall take no action except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs, or other significant features which would be incongruous with the special character of a landmark or of the district.
- D. Notwithstanding paragraph C, above, the jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owner designated landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of any owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds and indexed accordingly to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.
- E. 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.

- F. 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.
- G. 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.

4.7.3.14 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 guidelines 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 be materially affected by the application shall be given an opportunity to be heard. All meeting of the commission shall be open to the public in accordance with the North Carolina Open Meetings law, G.S. ch. 143, and art. 33C.
- E. In cases where the commission deems it necessary, it may hold a public hearing concerning an application for a certificate of appropriateness.
- 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 zoning board of adjustment (a) by an 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 riling of the written decision with the town clerk. The superior court of Buncombe County shall hear appeals

of the board of adjustment. 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 the 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.

4.7.3.15 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 works projects.
- B. Minor works – A certificate of appropriateness application when determined to involve a minor work, may be reviewed and approved by the minor works committee or in some cases by staff as outlined in the design guidelines. The minor works committee consists of the historic preservation chairman and vice-chairman and the planning director and his or her designee.
 - 1. Minor works are defined as 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.
 - 2. An application may receive a certificate of appropriateness from staff or the committee if it falls under the list of minor works provided in the historic preservation commission rules of procedure or the design guidelines. If the staff or committee does not issue a certificate of appropriateness, the applicant will be advised to make a formal application to the historic preservation commission. 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.

4.7.3.16 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 a zoning permit or other permit for constructing or altering structures. 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 and his or her designee. Failure to comply with a certificate of appropriateness shall be a

violation of the zoning ordinance 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 ordinances 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 ordinance, 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 a building or structure.

4.7.3.17 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 zoning 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 zoning requirements, 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 zoning board of adjustment authorizes such a special exception and not 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 zoning 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 hazard to public safety, such findings shall be transmitted to board of aldermen for its consideration in authorizing or denying such encroachments into rights-of-way.
- C. If the board of aldermen authorizes such encroachments, 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.

4.7.3.18 ~~Conservation~~ Historic district review required.

- A. From and after the designation of a downtown ~~conservation~~ historic district, no project involving a major work (as defined in the "Black Mountain HHistoric District Guidelines") shall be erected, altered, restored, moved or demolished within the downtown ~~conservation~~ historic district, until after an application for a certificate of appropriateness has been submitted to and reviewed 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.

- ~~B. The conservation district review procedure is established as an education program and as a means to further the goals of the town's historic preservation efforts. The purpose of the review procedure is to advise and educate rather than to regulate. The review process in this section is mandatory, however compliance with the recommendations contained in the review is voluntary.~~
- C. Application for a ~~conservation~~ historic district review 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.
- D. Projects shall be reviewed and certificates of appropriateness shall be issued consistent with the principles and guidelines adopted by the commission for review of changes. It is the intent of these regulations to insure, insofar as possible, that construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, or appurtenant fixtures shall be congruous with the special character of the district.
- E. Applications for a ~~conservation~~ historic district review shall be reviewed and a certificate of appropriateness issued within 30 days from the date that the application is received by the town.

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: July 22, 2019

Subject: Zoning Text Amendment

Description: Amend Historic District Overlay chapter

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

_____ The zoning amendment is **approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

_____ The zoning amendment is **rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

_____ In addition to approving this zoning amendment, this approval is **also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:

